

**IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(CIVIL REVISIONAL JURISDICTION)**

**Present:**

**Mr. Justice Zafar Ahmed**

**Civil Revision No. 1936 of 2019**

Md. Mofijul Islam Tohshilder

....Petitioner

-Versus-

Abdur Rob and others

....Opposite parties

Ms. Zubaida Gulshan Ara, Advocate

....For the petitioner

Mr. Mohammad Eunos, Advocate

....For the opposite party No. 1

**Heard on: 22.01.2026**

**Judgment on: 18.02.2026**

In the instant revisional application filed under Section 115 of the Code of Civil Procedure (CPC), this Court on 16.07.2019 issued a Rule calling upon the opposite party No. 1 to show cause as to why the judgment and decree dated 27.05.2019 (decree signed on 28.05.2019) passed by the learned Joint District Judge, 2<sup>nd</sup> Court, Charfashion, Bhola in Title Appeal No. 01 of 2019 allowing the appeal and setting aside the judgment and decree dated 25.07.2018 (decree signed on 30.07.2018) passed by the learned Senior Assistant Judge, Charfashion, Bhola in Title Suit No. 252 of 2007 dismissing the suit should not be set aside.

Heard the learned Advocates of both sides and perused the materials on record.

The only point taken by Ms. Zubaida Gulshan Ara, learned Advocate appearing for the contesting defendant No. 5-petitioner is that in disposing of the appeal the learned Joint District Judge, 2<sup>nd</sup> Court, Bhola violated the provisions of Order XLI rule 14 of the CPC. The learned Advocate prays for sending back the appeal to the appellate Court for fresh hearing upon setting aside the judgment of the appellate Court below which is opposed by Mr. Mohammad Eunos, appearing for the plaintiff-opposite party No. 1.

It appears from the order sheets of the appellate Court below that when the appeal was made ready for hearing and the defendant No. 5-respondent entered appearance in the appeal, the learned District Judge, Bhola by Order No. 5 dated 15.05.2019 fixed 23.05.2019 for hearing of the appeal and transferred the matter to the Court of Joint District Judge, 2<sup>nd</sup> Court, Charfashion, Bhola for hearing.

The learned Joint District Judge, 2<sup>nd</sup> Court, Bhola received the matter along with the L.C.R. on 19.05.2019 and passed Order No. 6 dated 19.05.2019 fixing 23.05.2019 for appeal hearing. He further ordered, “অবগত করান হোক”। It appears from the L.C.R. that neither the defendant No. 5-respondent nor his engaged lawyer was notified of the Order No. 6 dated 19.05.2019. On 23.05.2019 (Order No. 7)

learned Joint District Judge heard the appeal *ex parte* in the absence of any of the respondents and fixed 27.05.2019 for judgment. Vide Order No. 8 dated 27.05.2019 the judgment was pronounced and the appeal was allowed. The defendant No. 5-respondent did not appear on 27.05.2019.

I have no hesitation to hold that the appellate Court below ought to have notified the defendant No. 5-respondent regarding the hearing of the appeal as per his own Order No. 6 dated 19.05.2019. Non-compliance of the Order No. 6 regarding notifying the respondent and proceeding with the *ex parte* appeal hearing on 23.05.2019 as reflected in the order No. 7 has indeed caused failure of justice. Therefore, in my view, the appeal should be heard afresh on merit. Hence, the Rule succeeds.

In the result, the Rule is made absolute. The impugned judgment and decree passed by the learned Joint District Judge, 2<sup>nd</sup> Court, Charfashion, Bhola in Title Appeal No. 1 of 2019 is set aside.

The appeal is sent back to the learned District Judge, Bhola for fresh hearing by himself or by any other Court allocated by him upon notifying the parties in accordance with law as expeditiously as possible.

The application for acceptance of additional evidence filed by the defendant No. 5-respondent-petitioner and also the counter affidavit filed by the plaintiff-opposite party No. 1 are kept with the

records. Parties are at liberty to file application for additional evidence before the appellate Court below. If such application is filed, the appellate Court below shall decide the matter in accordance with law.

Learned Advocates of both sides are permitted to take back the certified and original documents annexed to the application for accepting additional evidence and the counter affidavit by replacing those with photocopies attested by the learned Advocates.

Send down the L.C.R.