

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

Present:

Mr. Justice Md. Shohrwardi

Civil Revision No. 3155 of 2019

IN THE MATTER OF

An application under section 115(4) of
the Code of Civil Procedure, 1908.

-AND-

IN THE MATTER OF:

Md. Sairat Ali @ Md. Ameer
Hossain(Sairat)

... Petitioner

-Versus-

Abdul Hamid and others

... Opposite Parties

No one appears

.....For the petitioner

Mr. Sharif Uddin, Advocate

....For the opposite party Nos. 1, 2 and
5, 6(a) and 7.

Heard on 12.05.2026 and 13.05.2026

Judgment on: 17.05.2026

On an application filed under section 115(4) of the Code of Civil Procedure, 1908 at the instance of the plaintiff petitioner Rule was issued calling upon the opposite party Nos. 1 to 3 and 5 to 7 to show cause as to why the impugned judgment and order No. 2 dated 27.06.2019 passed by District Judge, Kishoreganj in Civil Revision No. 21 of 2019 summarily rejecting the revisional application affirming the order No. 64 dated 09.05.2019 passed by Assistant Judge, Katiadi, Sadar Court, Kishoreganj in Miscellaneous Case No. 06 of 2013 arising out of Other Class Suit No. 79 of 2011 should not be set aside and/or pass such

other or further order or orders as to this Court may seem fit and proper.

The relevant facts for disposal of the Rule are that the petitioner, as plaintiff, filed Other Class Suit No. 79 of 2011 in the Court of Assistant Judge, Katiadi, Kishoreganj, praying for a decree of declaration of right, title and interest of the plaintiff over the suit land. After hearing, Assistant Judge, Katiadi, Kishoreganj, by judgment and decree dated 17.04.2012 decreed the suit ex parte against the defendants. Thereafter, the defendant/opposite party Nos. 1 to 6 filed Miscellaneous Case No. 06 of 2013 in the Court of the Assistant Judge, Katiadi, Kishoreganj, praying for setting aside the said ex parte judgment and decree (decree signed on 13.05.2012). After filing the said miscellaneous case, the plaintiff petitioner filed an application on 13.03.2018 under section 151 of the Code of Civil Procedure, 1908 for rejecting the said miscellaneous case stating that after passing the decree, the Assistant Commissioner of Land, Katiadi mutated the name of the plaintiff in the record on the ground that Other Class Suit No. 143 of 2015 filed by the defendant opposite parties was dismissed on 30.04.2017 and no appeal has been filed by the defendants against the said judgment and decree passed in the said suit for which the miscellaneous case is barred by law.

After hearing the parties, the Assistant Judge, Katiadi, Kishoreganj, by order dated 09.05.2019 rejected the application filed by the plaintiff petitioner holding that the defendants legally filed the miscellaneous case under Order IX Rule 13 of the Code of Civil Procedure, 1908 for setting aside the ex parte judgment and decree passed by the trial court and the miscellaneous case is not barred by principle of res judicata.

Against the said separate order the plaintiff petitioner filed Civil Revision No. 21 of 2019 in the Court of the District Judge, Kishoreganj who after hearing by impugned judgment and order dated 27.06.2019 affirmed the judgment and order passed by the Assistant Judge, Katiadi summarily rejecting the revisional application holding that no illegality is committed by the trial court in rejecting the application filed under section 115 of the Code of Civil Procedure, 1908. Thereafter, the petitioner obtained the rule.

No one appears on behalf of the plaintiff petitioner.

The learned Advocate Mr. Sharif Uddin appearing on behalf of the opposite parties Nos. 1 to 3 and 5 to 7 submits that the trial court rejected the application filed under section 115 of the Code of Civil Procedure, 1908 holding that there is no bar in filling miscellaneous case under Order IX Rule 13 of the Code of Civil Procedure, 1908 for setting aside the exparte judgment and decree passed by the trial court and the appellate court summarily rejected the revisional application finding no illegality in the impugned judgment and order passed by the trial court. He prayed for discharging the Rule.

I have considered the submission of the learned Advocate Mr. Sharif Uddin, who appeared on behalf of the opposite party Nos. 1, 2 and 5, 6(a) and 7, perused the impugned judgments and orders passed by the courts below, the revisional application and the records.

At the very outset, it is noted that this matter appeared in the daily cause list on 07.05.2026, 10.05.2026 and 11.05.2026, but on repeated calls, the learned Advocate for the petitioner did not appear, for which the rule is taken up for hearing.

On perusal of the records, it reveals that the Assistant Judge, Katiadi, Kishoreganj, by judgment and decree dated 17.04.2012 decreed the Other Class Suit No. 79 of 2011 ex parte against the defendants, and the defendants filed Miscellaneous Case No. 6 of 2013 under Order IX Rule 13 of the Code of Civil Procedure, 1908 for setting aside said ex parte judgment and decree. On a bare reading of Order IX Rule 13 of the Code of Civil Procedure, 1908, it reveals that there is no bar in filing a miscellaneous case under Order IX Rule 13 of the Code of Civil Procedure, 1908 for setting aside the ex parte judgment and decree passed against the defendants. The petitioner agitated a frivolous cause to delay the disposal of the said miscellaneous case.

I am of the view that the trial court legally passed the impugned judgment and order dated 09.05.2019 rejecting the application filed by the plaintiff petitioner under section 151 of the Code of Civil Procedure, 1908, and the appellate court below legally affirmed the judgment and order passed by the trial court.

I find no merit in the Rule.

In the result, the Rule is discharged with a cost of Tk. 1000(one thousand).

The petitioner is directed to pay the costs within 30 days in the Court of the Assistant Judge, Katiadi, Kishoreganj, failing which, the said court is directed to do the needful following law.

The order of stay granted on 28.10.2019 is hereby vacated.