

Present:

***MR. JUSTICE S.M. EMDADUL HOQUE***

CIVIL REVISION NO. 4005 OF 2019.

IN THE MATTER OF:

An application under Section 25 of the Small Causes Court Act.

- AND -

IN THE MATTER OF:

Akter Hossain alias Md. Akter Hossain  
....Petitioner.

-Versus-

Mrs. Syeda Shamsun Nahar Khan and others  
.....opposite parties.

Mr. J.K. Paul with

Mr. Liton Acharjeea, Advocates

.... for the petitioner.

Mr. Md. Ashanur Rahman, Advocate

..... for the opposite parties.

**Heard on: 20.05.2024, 29.05.2024**  
**and Judgment on: 30.05.2024.**

On an application of the petitioner Akter Hossain alias Md. Akter Hossain under section 25 of the Small Causes Courts Act the Rule was issued calling upon the opposite parties to show cause as to why the Order No.64 dated 11.06.2019 passed by the learned Senior Assistant Judge, 4<sup>th</sup> Court, Dhaka in S.C.C Suit No.142 of 2008 rejecting the application filed under Order XI Rule 21 of the Code of Civil Procedure should not be set-aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

Facts necessary for disposal of the Rule, in short, is that the opposite parties as plaintiffs instituted S.C.C Suit No.142 of 2008 before the Court of Senior Assistant Judge, 4<sup>th</sup> Court and S.C.C Court Dhaka against the defendant-petitioner praying for decree of ejectment and to deliver the possession of the schedule shop to the plaintiff's through the processes of the Court removing all obstructions from the defendant and pass a decree for realization of Tk.3,608/- as arrear rents from January, 2007 upto July, 2007 against the defendant.

The defendant-petitioner contested the suit by filing written statements denying all the material allegations made in the plaint.

The defendant filed an application on 10.06.2015 under Order IX rule 14 and 15 of the Code of Civil Procedure for a direction to deposit the counter file of the rent receipt as well as the transfer fees dated 17.07.2002.

The plaintiffs objected the same by filing written objection on 07.06.2016 claiming that they did not received Tk.14,760/- on 17.06.2002 or any other day and as such the application is liable to be rejected.

The Court after hearing both the side and considering the facts and circumstance of the case allowed the said application by its order dated 27.10.2016.

Thereafter, on 14.09.2017 the defendant filed an application under Order XI rule 21 of the Code of Civil procedure with a prayer for

dismissal of the suit due to non-compliance of the Court's order dated 27.10.2016.

Thereafter, the plaintiff filed an application praying for exempting them from filing the counter file of the receipt dated 17.07.2002 claiming that no such documents are in their hands since they did not receive any rent from the defendant.

The trial Court after hearing the parties and considering the facts and circumstance of the case passed the impugned order by its order No.64 dated 11.06.2019.

Being aggrieved by and dissatisfied with the impugned judgment and order of the S.C.C Court the petitioner filed this revisional application under Section 25 of the Small Causes Court Act and obtained the Rule.

Mr. Md. Ashanur Rahman, the learned Advocate enter appeared on behalf of the opposite party through vokalatnama to oppose the Rule.

The petitioner filed a supplementary-affidavit annexing photo copies of the agreement made between the father of the plaintiff Amanuddin Khan and one Akter Hossain who was the original tenant (Annexure-G) and a photo copy of the agreement of transfer of the possession which was made between Talukder Abul Fazal and Md. Akter Hossain and also filed a photo copy of the money receipt of

Jonaki Super Market, wherein it appears that Tk.14,760/- for the rent of 18 months @ 820/- was received.

Mr. J.K Paul, the learned Advocate along with Mr. Liton Acharjeea, Advocate submits that the S.C.C Court committed serious error in law resulting in an error in the decision occasioning failure of justice in not considering the provision of Order XI rule 21 of the Code of Civil Procedure. He further submits that the petitioner filed an application for directing the plaintiff to deposit the aforesaid documents as mentioned in the supplementary-affidavit under Order XI rule 14 and 15 and the said application though was objected by the plaintiff opposite party but the trial Court allowed the said application by its order dated 27.10.2016 directing the plaintiff to deposit the said documents. He further submits that for non-compliance of the Courts order the defendant-petitioner again filed an application under Order XI rule 21 on 14.09.2017 for dismissing the suit for wants of prosecution and though the said application was also objected by the plaintiff but the trial Court without considering the provision of Order XI rule 21 exempted the plaintiff to deposit the said documents whereas law clearly states that for non-compliance of the Court's order the suit should be dismissed for want of prosecution whereas the trial Court without considering the said facts passed the impugned judgment. He cited the decision of the case of *Abdul Jalil and others Vs. Hossain Trust reported in 2 BLC (AD)-181*. He prayed for making the Rule absolute.

On the contrary, Mr. Md. Ashanur Rahman, the learned Advocate appearing on behalf of the opposite party submits that the S.C.C Court rightly passed the impugned order. He submits that in the written objection the plaintiff specifically mentioned that they did not make any agreement with the defendant and did not issue any money receipt and thus prayed that they should be exempted from depositing the said documents since which was not in their hands. He further submits that the trial Court rightly passed the impugned order since the documents is not in the hand of the plaintiffs and also the trial Court took view that the said matter should be considered on the basis of the evidence as adduced by the parties and the case should be decided on the basis of the evidence on record. He further submits that the photo copies filed through supplementary-affidavit from where it is found that the initial agreement was made between the father of the plaintiff and one Akter Hossain and another documents (Annexure-H) also made between one Talukder Abul Fazal and Akter Hossain wherein no counter singe of their father and the money receipt which was also issued by the Jonaki Super Market not by the father of the plaintiffs or by them. He prayed for discharging the Rule.

I have heard the learned Advocates of both the sides, perused the impugned judgment as well as the papers and documents as available on the record.

The plaintiff opposite party filed S.C.C suit No.142 of 2008 for ejectment of the tenants. The suit was contested by the defendant-petitioner by filing written statement. Subsequently the defendant filed an application under Order XI rule 14 and 15 for producing the documents specially the agreements and the money receipts claiming that which were issued by the plaintiff. The said application was objected by the plaintiff opposite parties and wherein they claimed that the documents as sought for are not in their hands.

The trial Court after considering the facts and circumstance of the case allowing the application by its order dated 27.10.2016 directing the plaintiff-opposite party to produce the said documents.

Subsequently, the defendant side again filed application for dismissal of the suit for non-compliance of the Courts order under Order XI rule 21 of the Code of Civil Procedure on 14.09.2017. The plaintiff side then filed an application for exempting them from filing the said documents. The Court after hearing the parties and considering the facts and circumstance of the case passed the impugned order by its order No.64 dated 11.06.2019.

In the impugned order the trial Court while rejecting the application filed by the defendant-petitioner under Order XI rule 21 stated to the effect:

"বাদী পক্ষ বিবাদীপক্ষের দরখাস্তের বিরুদ্ধে আপত্তি দাখিল পূর্বক বিবাদী পক্ষের দাখিলী দরখাস্ত নামজুর করত; রশিদের কাউন্টার ফায়াল দাখিলের দায় হইতে অব্যাহতির প্রার্থনা করিয়াছে। বাদীপক্ষের আপত্তির বর্ণনা মতে বাদীগন কর্তৃক নালিশী দোকান বাবদ

কোন হস্তান্তর ফি গৃহীত হয় নাই বিধায় বাদীগনের দখলে বা কর্তৃত্বে বিবাদীগনের চাহিদাকৃত বিগত ১৭.০৭.২০০২ খ্রিঃ তারিখের রশিদের কাউন্টার ফয়েল রক্ষিত নাই বিধায় উক্ত কাউন্টার ফয়েল দাখিল করা সম্ভব নয়। কাউন্টার ফয়েল দাখিল করা বা না করার আইনগত সুবিধা বা অসুবিধা বাদী পক্ষকেই বহন করিতে হইবে।"

From the aforesaid order it is found that the Court specifically mentioned that since the plaintiffs claimed that they have no any counter file dated 17.07.2002 and thus the Court took view that the consequence of the case should be leased by the plaintiff for non filing the documents and matter should be decided on considering the evidence on record. On considering the aforesaid order it is my view that by the aforesaid order the defendant petitioner has not been deprived from getting justice.

Furthermore, in the case of *Abdul Jalil and others Vs. Hossain Trust reported in 2 BLC (AD)-181* where in our Apex Court though decided that failing to deposit or non-compliance of the Courts order the Court should dismiss the suit for want of prosecution. But the facts and circumstance of the instant case and the order passed by the trial Court it is my view that the aforesaid judgment is not applicable in the instant case since the Court specifically mentioned that the plaintiff should bear the consequence of the case for non-depositing the documents as sought for by the defendant petitioner. Furthermore, the plaintiffs specifically mentioned that they did not make agreement with the defendants and no rent receipt was issued which also support from

the photo copies of the documents annexing in the supplementary-affidavit filed by the petitioner.

Considering the aforesaid facts it is better to direct the trial Court to dispose of the matter expeditiously.

In the result, the Rule is disposed of.

Since this is a long pending case the trial Court is directed to dispose of the S.C.C suit as early as possible preferably within 06 (six) months from the date of receipt of this order in accordance with law.

The order of stay granted earlier by this is hereby recalled and vacated.

Communicate the order at once.