

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.118 of 2020

In the matter of:

An application under Section 115(4) of the Code of Civil Procedure.

And

Abdur Rashid Hawlader

.... Petitioner

-Versus-

Ramendra Nath Kirtonia @ Kirtonia and others

.... Opposite parties

Mr. Preyanka Mohalder , Advocate

.... For the petitioner.

Mr. Chanchal Kumar Biswas, Advocate

.... For the opposite party Nos.1 and
2.

Heard 12.08.2025 and Judgment on 14.08.2025

On an application under Section 115(4) of the Code of Civil Procedure this Rule was issued calling upon the opposite party Nos.1-2 to show cause as to why the impugned order dated 06.11.2019 passed by the learned District Judge, Bagerhat in Civil Revision No.36 of 2019 disallowing the revision upon affirming the order dated 04.09.2019 passed by the Assistant Judge, Mongla, Bagerhat in Title Suit No.107 of 2011 closing the step of witness of defendant Nos.1-3 should not be set aside and/or pass such other or further order or as to this Court may seem fit and proper.

Facts in short are that the opposite parties as plaintiffs instituted above suit for declaration that the ex-parte judgment and decree dated 17.05.2009 passed in Title Suit No.50 of 2001 is not binding upon the plaintiffs. Defendant Nos.1-3 and 50 contested above suit by filing separate written statements and evidence of plaintiffs was closed and the suit was fixed for examination of witness for defendant Nos.1-3 on 04.09.2019. On above date defendant Nos.1-3 were found absent. The learned Assistant Judge closed evidence for above defendants and fixed the suit for recording of evidence of defendant No.50.

Being aggrieved by above order of the learned Assistant Judge defendant Nos.1-3 as petitioners preferred Civil Revision No.36 of 2019 to the learned District Judge, Bagerhat who dismissed above Civil Revision and affirmed the order of the trial Court.

Being aggrieved and dissatisfied with above judgment and order of the Court of Revision below above petitioner as petitioner moved to this Court with this Civil Revisional application under Section 115(4) of the Code of Civil Procedure and obtained leave and this Rule.

Ms. Preyanka Mohalder, learned Advocate for the petitioner submits that on 04.09.2019 the petitioner was busy for giving evidence in another suit in another Court. As such he was unable to appear before the Court and examine witnesses. On above grounds the petitioner filed a petition before the trial Court for setting aside above order and give the defendants an opportunity to adduce evidence. But the learned Judge of the trial Court rejected above petition and the learned District Judge utterly failed to appreciate above facts

and circumstances of the case and most illegally dismissed above Civil Revision and affirmed the unlawful order of the trial Court which is not tenable in law.

Mr. Chanchal Kumar Biswas, learned Advocate for the opposite party Nos.1 and 2 submits that in above suit evidence of the plaintiff has been recorded. The plaintiff wants that above suit be disposed of on merit in accordance with law so that above dispute is finally settled between the parties. The opposite party has no objection if this Rule is made absolute and the impugned order is set aside and the petitioner is given an opportunity to adduce evidence in the trial Court.

On consideration of above facts and circumstances of the case and submissions of the learned Advocate for the opposite party I hold that the ends of justice will be met if the order dated 04.09.2019 passed by the learned Assistant Judge in Title Suit No.107 of 2011 is set aside and the petitioner is given an opportunity to adduce evidence in above suit.

In above view of the materials on record I find substance in the Civil Revision under Section 115(4) of the Code of Civil Procedure and the Rule issued in this connection deserves to be made absolute.

In the result, this Rule is hereby made absolute.

The impugned order dated 06.11.2019 passed by the learned District Judge, Bagerhat in Civil Revision No.36 of 2019 disallowing the revision and affirming the order dated 04.09.2019 passed by the

Assistant Judge, Mongla, Bagerhat in Title Suit No.107 of 2011 closing the evidence of defendant Nos.1-3 is set aside.

Learned Assistant Judge is directed to examine the witnesses of defendant Nos.1-3 in accordance with law and dispose of above suit expeditiously in accordance with law.

However, there is no order as to costs.

MD. MASUDUR RAHMAN
BENCH OFFICER