

Bench:

Mr. Justice Bhishmadev Chakrabortty

And

Mr. Justice Murad-A-Mowla Sohel

Civil Revision No. 1132 of 2021

(Converted from FMA No. 137 of 2019)

MS G.K. Brothers ..... petitioner

-Versus-

Syed Ziad Rahman and others

..... opposite parties

Ms. Salina Akter Chowdhury with

Ms. Mahbuba Sultana, Advocates

..... for the petitioner

Mr. Md. Ziaul Haque, Advocate

..... for opposite party 1

Judgment on 04.12.2025

Bhishmadev Chakrabortty, J:

The third party applicant preferred Miscellaneous Appeal 137 of 2019 in this Court challenging order number 87 dated 29.11.2018 passed by the Joint District Judge, Court 1, Chattogram, so far it was related to rejecting his petition filed under Order 1 Rule 10(2) read with section 151 the Code of Civil Procedure (the Code) for addition as defendant in Title Suit 361 of 2018. The aforesaid miscellaneous appeal was admitted on 29.05.2019 and an interim order of stay of the impugned order was passed which was subsequently extended till disposal of the appeal.

Subsequently, the appellant felt that the forum of challenging the aforesaid order would be revision and then he filed an application for conversion of the miscellaneous appeal into a civil revision. The application was allowed on 08.06.2021 and the appeal was converted

into aforequoted revision under section 115(1) of the Code. But since respondent in the meantime appeared in the appeal and as such no fresh Rule was issued upon the opposite parties.

Facts relevant for disposal of the revision, in brief, are that the plaintiff ICI BD Ltd instituted Other Class Suit 361 of 2018 in the Court of Joint District Judge, Court 1, Chattogram against Syed Ziad Rahman and others for specific performance of contract in respect of the suit land. During pending of the suit the petitioner in this revision MS G.K. brothers as third party filed an application in the suit on 29.11.2018 for adding him as defendant stating reasons therein that earlier against the same defendant he filed Other Class Suit 41 of 1974 and obtained a decree on 31.11.1977 against which defendant 1 preferred first appeal in the High Court Division which was dismissed. The defendant filed leave petition to the appellate division against the aforesaid judgment and order which was also dismissed. The applicant then filed Execution Case 20 of 1985 in the concerned Court which is still pending. In the premises above, the applicant is a necessary party to the present suit. The Joint District Judge upon hearing rejected the application and on the same day passed an *ex parte* decree against the defendant. Being aggrieved by, the third party applicant approached this Court challenging the aforesaid order, so far it was related to the rejection of the application for addition of the party. The miscellaneous appeal was admitted with an interim order which was subsequently converted into this Revision.

Ms. Salina Akter Chowdhury, learned Advocate for the third party-petitioner taking us through the materials on record submits that since this petitioner obtained a decree in a suit for specific performance of contract against defendant 1 in respect of selfsame property long ago, therefore, he is a necessary party to the suit. The trial Judge without considering the aforesaid facts rejected the application and thus committed error of law resulting in an error in such order occasioning in failure of justice. The impugned order, therefore, is required to be interfered with by the Court and would be set aside.

Mr. Md. Ziaul Haque, learned Advocate for opposite party 1, defendant 1 of the original suit on the other hand submits that although by the selfsame impugned judgment and order the suit was decreed *ex parte* but subsequently on his application made under Order 9 Rule 13A of the Code, the miscellaneous case was allowed and *ex parte* judgment and decree was set aside. The suit is still pending and the impugned order has been merged with the judgment of setting aside the *ex parte* decree. Since this applicant-petitioner is not a party to the agreement for sale and as such he is not a necessary party to the suit and the trial Court on correct assessment of fact and law rejected the said application. There is nothing to interfere with the impugned order so far it was related to the rejection of the application for addition of party.

No one appears for opposite party 2.

We have considered the submissions of both the sides, gone through the impugned order as well as the application for addition of party filed under Order 1 Rule 10 read with section 151 of the Code.

It is found that in the application for addition of party this third party-petitioner claimed that earlier he instituted Other Class Suit 41 of 1974 against same defendant for specific performance of contract. The suit was decreed on 31.11.1977 which was affirmed up to the appellate division. Thereafter, this third party petitioner filed Execution Case 20 of 1985 to execute the decree he obtained which is still pending. It is found that the schedule of the property of the previous suit and the present suit are same. Since this applicant-petitioner obtained a decree against the same defendant in a suit for specific performance of contract and an execution case is pending, we find that his presence in the present suit is necessary for its effective disposal. The general principle in a suit for specific performance of contract is that the parties to the agreement are necessary parties and nobody else. But under the aforesaid exceptional circumstance, where there is a decree in favour of third party-petitioner in respect of the selfsame land against the same defendant, we are of the view that the applicant is a necessary and proper party in the suit. It is further found that although an *ex parte* decree was passed in this suit in same order, but the *ex parte* decree has been set aside and the original suit is

restored to its file and number. The suit is found still pending but the impugned part of the order remained intact.

In view of the discussion made hereinabove, we find substance in the submissions of the learned Advocate for the petitioner. Accordingly, we find merit in the converted revision and as such it is allowed. The impugned order dated 29.11.2018, so far it was related to the rejection of petitioner's application for addition as defendant is hereby set aside and the application for addition of party is allowed.

The trial Court is directed to proceed with the suit adding this petitioner as defendant in the suit. The order of stay, therefore, stands vacated. However, the trial Court is directed to dispose of the suit expeditiously, preferably within 06 (six) months from the date of receipt of this judgment and order.

Communicate this judgment and order to the concerned Court.

Murad-A-Mowla Sohel, J.

I agree.

*Rajib*