District-Patuakhali.

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

Present:

Mr. Justice Md. Toufiq Inam

Civil Revision No. 698 of 2021.

Luxman Chandra Shil being dead his heirs Pankaj Chandra Shil and others.
---- Plaintiffs-Respondents-Petitioners.

-Versus-

Jamuna Rani Sarker and others
---- Defendant- Opposite Parties.

Government of Peoples Republic of Bangladesh and others.
---- Proforma-Defendant Respondent -Opposite Parties.

Mr. Garib Newaz, Advocte.
---- For the Plaintiffs-Respondents-Petitioners.

Mr. Zakir Hossain Munshi, Advocate
----For the Defendant- Opposite Parties.

Heard On: 23.02.2026, 25.02.2026,09.03.2026 & 10.03.2026.

And

Judgment Delivered On: 12.03.2026.

Md. Toufiq Inam, J.

This Rule was issued at the instance of the plaintiffs–petitioners calling upon the defendant–opposite parties to show cause as to why the impugned judgment and decree (dated 24.09.2020and 30.09.2020 respectively) passed by the learned Additional District Judge, Patuakhali in Title Appeal No. 198 of 2018, reversing the judgment and decree of the learned Assistant Judge, Patuakhali in Title Suit

No.113 of 2012 decreeing the suit, should not be set aside and/or such other or further order or orders be passed as to this Court may deem fit and proper.

The supplementary affidavit filed by the petitioner, replacing the incorrect statements and grounds made earlier in the revisional application, shall be treated as forming part of the original revisional application.

The petitioners, as plaintiffs, instituted Title Suit No. 113 of 2012 in the Court of the learned Assistant Judge, Patuakhali against the defendants seeking a declaration that the ex parte judgment and decree dated 23.07.2008 (decree signed on 29.07.2008) passed in Title Suit No. 143 of 2005 by the Court of the learned Senior Assistant Judge, Patuakhali, in a suit for specific performance of contract, are void, illegal, irregular, mala fide and collusive.

The case of the plaintiffs, in brief, is that while they were in lawful ownership and possession of the suit land, the husband of defendant No. 1, in collusion with others, fabricated a forged *bainapatra* showing defendant No. 1 as purchaser. On the basis of that document, Title Suit No. 143 of 2005 for specific performance of contract was instituted impleading the present plaintiffs as defendant Nos. 1–3. It is alleged that summons were deliberately suppressed and the process

server falsely showed his own henchmen as witnesses of service, whereupon the suit proceeded ex parte and an ex parte decree was obtained on 23.07.2008 behind the back and without the knowledge of the defendants of that suit land, and that no summons or postal notices were ever served upon them before the Court passed the ex parte decree.

The defendants, in their written statement, contend that plaintiff Nos. 1–3 agreed to sell 6 decimals of land; Title Suit No. 143 of 2005 was filed for specific performance, wherein summons and postal notices were duly served and the ex parte decree was lawfully passed.

The trial Court, upon consideration of the evidence on record, decreed the suit. It found that in the earlier suit the summons issued against the defendants had been served by affixation and that the postal notices issued were not returned after service. The Court held that service of summons by mere affixation did not constitute proper (উৎকৃষ্ঠ) service and that, since the postal notices were not returned after service, it could not be presumed that the summons had been duly served upon the defendants. In view of its finding that the summons and postal notices in the original suit were not duly served, the Court held that the ex parte judgment and decree were liable to be set aside. The Court also noted that the plaintiffs stated in the plaint that they came to know of the impugned judgment and decree on 26.01.2012 and that

the present suit was instituted on 07.03.2012; accordingly, it held that the suit was not barred by limitation.

The appellate Court, however, reversed the judgment and decree of the trial Court and dismissed the suit. It observed that Title Suit No. 113 of 2012 had been instituted mainly for setting aside the judgment and decree passed in Title Suit No. 143 of 2005. On examination of the record of that suit, it appeared that the Nazir of the Court issued summons on 31.08.2005 through the process server Md. Abdus Salam for service upon the defendants. The process server reported that when he went to serve the summons upon defendant Nos. 1–3, he met defendant No. 1, the brother of defendant Nos. 2 and 3. After being informed of the contents of the summons, defendant No. 1 refused to accept it. Consequently, the process server served the summons by affixation in the presence of three local witnesses. The summons so served was returned on 03.09.2005 and the Nazir of the District Judge’s Court accepted the service and placed the report before the Court. Summons upon defendant No. 4, representing the Government of Bangladesh, was served on 01.09.2005.

It further appeared from the record that beside Order No. 4 dated 18.09.2005 there was a note written in red ink stating that two sets of summons had been placed on record and the next date was fixed on 30.10.2005. On the adjourned date the summons was returned after

service and subsequently time was fixed for return of the A.D. Thereafter, on 17.01.2006 the A.D. was returned and a date was fixed for the appearance of the defendants. When the defendants failed to appear on 23.02.2006, the Court fixed a date for ex parte hearing. The suit thereafter remained fixed for ex parte hearing from 18.04.2006 and, upon recording the plaintiff's evidence, the Court ultimately passed the ex parte judgment and decree on 23.07.2008.

The appellate Court further observed that once thirty days had elapsed after the issuance of the A.D., the summons ought to have been treated as duly served. Upon an overall assessment of the record, it held that the trial Court erred in concluding that service of summons by affixation, following refusal by the defendants, did not amount to proper service. Accordingly, the appellate Court reversed the judgment of the trial Court and dismissed Title Suit No. 113 of 2012.

Being aggrieved thereby, the plaintiffs, as petitioners, obtained the present Rule.

Referring to the decision reported in 25 DLR (HC) 91, Mr. Garib Newaz, the learned Advocate for the plaintiff–petitioner, submits that Rule 19A of Order V of the Code of Civil Procedure provides that the return of service duly submitted by the serving officer may be accepted as evidence of the facts relating to the service or attempted

service of summons. However, according to him, Rule 19A does not dispense with the mandatory requirements of Rule 19. It merely provides that a declaration duly subscribed by the serving officer may be received as a piece of evidence in the course of the Court's inquiry, which may include examining the serving officer on oath or making such further inquiry as the Court may consider necessary. He contends that Rule 19A cannot be interpreted in a manner that absolves the Court of the duty imposed upon it under Rule 19, nor can it justify the routine recording in the order sheet that "summons duly served" without the Court being satisfied as to the legality and sufficiency of the service.

Developing his argument further, Mr. Garib Newaz submits that, in view of the provisions contained in Rules 17, 19 and 19A of Order V of the Code of Civil Procedure, the High Court has provided specific directions in Rule 92(4) of the Civil Rules and Orders, Volume I, requiring that the declaration in proof of service must be recorded in legible writing in the manner prescribed in Form No. 11 of Appendix B, Schedule I of the Code of Civil Procedure as amended by the High Court. When such a declaration is made in the prescribed manner, it becomes evidence within the meaning of Rule 19A. He further points out that Rule 90 of the Civil Rules and Orders, Volume I, directs that even where there has been technical compliance with the provisions relating to service, the Court retains the discretion to direct service

through another mode, such as by registered post with acknowledgement due. This course, according to the Rule, should particularly be adopted in cases involving minors or pardanashin women, or where attempts at personal service have been unsuccessful and the Court is not fully satisfied regarding due service.

He further refers to Rule 91 of the Civil Rules and Orders, Volume I. Sub-rule (1) thereof requires that in determining whether service is good or sufficient, the provisions of the Code of Civil Procedure must be strictly followed. Sub-rule (2) further provides that where service has been effected under Order V, Rule 17 of the Code by affixing a copy of the summons, it is incumbent upon the Court to conduct an inquiry under Order V, Rule 19 and to record a clear and distinct declaration that the summons has been duly served if the Court is satisfied about the service.

Mr. Garib Newaz also submits that order sheets are essentially administrative or clerical in nature and do not constitute judicial orders reflecting the Court's satisfaction regarding the legality and sufficiency of service. According to him, before proceeding to pass an ex parte judgment, the Court must record its judicial satisfaction that summons had been duly served upon the defendants. In the present case, he contends, neither the order sheet nor the ex parte judgment contains any indication that the Court applied its judicial mind and

recorded such satisfaction regarding the service of summons. In this regard, he relied upon the decision of *Abu Zafor Miah (Md.) vs. Abdul Motaleb and others reported in 5 MLR (HCD) 249*.

In elaborating this submission, Mr. Garib Newaz again refers to sub-rule (2) of Rule 91 of the Civil Rules and Orders, which provides that where service has been effected under Order V, Rule 17 of the Code, the Court is required to conduct an inquiry and record a declaration that the summons has been duly served. He, however, fairly submits that such inquiry does not necessarily require the examination of the process server in Court in every case, particularly where the report and declaration of service by the process server already appear on record along with the return of summons. Rule 91(2) of the Civil Rules and Orders, he submits, must be read in conjunction with Rule 19 of Order V of the Code of Civil Procedure. In that view of the matter, the mere non-examination of the process server as a witness before the trial Court which passed the ex parte decree cannot, by itself, be treated as sufficient to hold that the requirements of Rule 19 were not complied with. Nevertheless, he contends that the Court is under a legal obligation to make a specific and distinct declaration regarding due service of summons, and that merely recording in the order sheet that “summons has been served” does not amount to compliance with this mandatory requirement of law.

Per contra, Mr. Zakir Hossain Munshi, the learned Advocate appearing for the defendant–opposite parties, submits that the summons in the original suit were duly served in accordance with law. He contends that the process server submitted a return of service accompanied by a declaration stating that the summons had been served by affixing a copy thereof to a conspicuous part of the defendants' house or place of work in the presence of witnesses. According to him, when the Court considers such declaration together with the service return, which contains the names of the witnesses before whom the service was effected, and is satisfied that the summons had been duly served, the mandatory requirement of the rule regarding declaration stands fulfilled. Such declaration, he argues, is admissible as evidence under Rule 19A of Order V of the Code of Civil Procedure. He further submits that in the present case the order sheet, particularly Order No. 5, records that the summons had been "duly served", which, according to him, reflects the Court's satisfaction regarding the legality of the service.

Mr. Zakir Hossain Munshi further relies upon the decisions of *Santosh Kumar vs. Motaleb Hossain* reported in 36 DLR(AD) 248 and the decision of *Md. Insan Ali vs. Mir Abdus Salam* reported 40 DLR (AD) 193 and submits that the present plaintiffs, who were defendants in the suit decreed ex parte, did not in their deposition make any clear and positive assertion that the summons had not been served upon them.

Rather, they merely stated that had they received notice of the suit they would have contested it. According to him, the burden lay upon them to prove that summons had not been served, which could have been discharged by making a categorical statement on oath that the process server did not serve the summons in the manner alleged. Since they failed to do so, the presumption of due service cannot be displaced.

In this revision, this court cannot now evaluate the merit of the earlier Title Suit No. 143 of 2005 for specific performance of contract. The central question for determination in this Rule is whether the summons in the earlier suit were duly served upon the defendants in accordance with law and whether the Court, before proceeding ex parte, complied with the procedural requirements embodied in Order V Rules 17, 19 and 19A of the Code of Civil Procedure read with Rule 91(2) of the Civil Rules and Orders.

Upon hearing the learned Advocates of the respective parties, perusing the impugned judgment and decree and examining the records of the courts below including the original record of Title Suit No. 143 of 2005, it appears that the entire controversy in this Rule revolves around the legality and sufficiency of the service of summons in the earlier suit which culminated in the ex parte judgment and decree dated 23.07.2008.

The Civil Rules and Orders framed by the High Court Division regulate the practice and procedure of civil courts and guide ministerial officers in matters such as service of summons, maintenance of records and preparation of reports. These rules operate mainly in the administrative and procedural sphere to ensure uniformity in the functioning of subordinate courts. They do not override the statutory provisions of the Code of Civil Procedure; rather they supplement the Code by prescribing the manner in which its provisions are to be carried out in practice.

Where summons is served by affixation under Order V Rule 17 of the Code of Civil Procedure, the Civil Rules and Orders provide guidance regarding the manner in which such service should be effected and reported. The process server is expected to state clearly the circumstances necessitating affixation, such as refusal by the defendant to accept the summons or inability to find the defendant despite due diligence. The report should also mention the place where the summons was affixed and the names of persons present at the time of such affixation. These requirements are intended to enable the Court to form a proper judicial opinion regarding the sufficiency of service.

Non-compliance with such procedural directions, however, does not by itself invalidate the service if the essential requirements of the

Code of Civil Procedure have otherwise been satisfied. The decisive consideration is whether the provisions of Order V Rules 17 and 19 of the Code have been substantially complied with. Nevertheless, the Civil Rules and Orders serve as an indicator of the reliability of the service report. Where the report suffers from serious deficiencies—such as absence of explanation for failure of personal service, omission to state the place of affixation, or failure to mention witnesses—such defects may cast doubt on the genuineness of the alleged service. In such circumstances the Court may decline to treat the service as duly effected or may require further inquiry before acting upon the report.

The question of due service frequently arises in proceedings relating to an ex parte decree. In determining such matters, the Court is required to consider whether the summons of the suit were duly served in accordance with law and whether the defendant had sufficient cause for non-appearance. In examining the question of service the Court ordinarily considers the process server's report, the declaration appended thereto and the order sheet recording the Court's satisfaction regarding service. Where the return of service has been verified by the process server and the Court records in the order sheet that the summons have been duly served, such record ordinarily indicates the Court's satisfaction as contemplated under Order V Rule 19 of the Code. The absence of elaborate discussion on service in the

ex parte judgment does not by itself invalidate the decree so long as the judicial record otherwise reflects such satisfaction.

In the present case the plaintiffs instituted the suit mainly on the allegation that summons in the earlier suit had been fraudulently suppressed and that the process server falsely reported service by affixation. The entire foundation of the suit therefore rests upon the plea of non-service of summons and the alleged collusive procurement of the ex parte decree. In such circumstances the burden squarely lay upon the plaintiffs to establish, by cogent and convincing evidence, that summons had in fact not been served upon them and that the report of service was fabricated.

From the record of Title Suit No. 143 of 2005 it appears that summons were issued through the Nazir of the Court and entrusted to the process server Md. Abdus Salam. The process server submitted a return stating that when he attempted personal service the defendant No. 1 refused to accept the summons after being informed of its contents. Consequently, the summons was served by affixing a copy on a conspicuous part of the defendants' residence in the presence of three local witnesses whose names were mentioned in the report. The summons so served was returned to Court and accepted by the Nazir and placed before the Court. The order sheet further reveals that the

Court considered the return of service and recorded that the summons had been duly served.

The principal contention advanced on behalf of the petitioners is that where service is effected by affixation under Order V Rule 17 of the Code the Court is required to conduct an inquiry under Rule 19 and record a clear declaration regarding due service, and that such requirement was not complied with in the present case. This contention cannot be accepted in the factual context of the case.

Order V Rules 17 and 19 undoubtedly require that where service is effected by affixation the Court must be satisfied that the requirements of the rule have been complied with. The law, however, does not prescribe any rigid form in which such satisfaction must be expressed. When the return of service submitted by the process server describes the circumstances of refusal and affixation and mentions the names of witnesses in whose presence such service was effected, and when the Court upon consideration of that report records in the order sheet that the summons have been duly served, such recording sufficiently indicates the Court’s satisfaction regarding the legality of the service.

In the present case the service return clearly shows refusal by the defendants to accept the summons and the subsequent affixation of the summons in the presence of witnesses. The Court accepted the report

and recorded in the order sheet that the summons had been duly served. Such recording cannot be treated as a mere clerical endorsement; rather it reflects the judicial satisfaction of the Court upon consideration of the service return.

The submission that the process server ought to have been examined on oath in Court is also without substance. Order V Rule 19 does not make such examination mandatory in every case. Where the Court finds the declaration of the process server and the return of service to be satisfactory, it may accept the same without further inquiry. The declaration made by the process server constitutes evidence and the Court may rely upon it unless circumstances exist casting doubt upon its correctness.

The Civil Rules and Orders relied upon by the learned Advocate for the petitioners are essentially procedural guidelines intended to assist the Court in scrutinizing the service report. They cannot be interpreted in a manner that would invalidate judicial proceedings merely on account of technical defects when the record otherwise demonstrates that the Court was satisfied regarding the service of summons.

The issue is often misdirected by describing service as “good” or “bad”, whereas the Code of Civil Procedure recognises only one controlling standard—whether summons has been duly served in

accordance with law. Under Order V Rules 17, 19 and 19A, the emphasis is on substantial compliance and the Court's judicial satisfaction. Where the process server discloses the circumstances necessitating affixation (such as refusal), effects service in the prescribed manner, and submits a return with necessary particulars, the Court, upon applying its judicial mind, may record that summons has been duly served; such recording is not a mere clerical formality but a reflection of its satisfaction as to legality and sufficiency. The law does not insist on perfection, and therefore an irregular or imperfect service—so long as it conforms to the essential requirements of the Code—does not become invalid merely because it may be termed "bad"; it remains legally effective unless it goes to the root of jurisdiction.

However, a distinct and more serious dimension arises where "fraud" or "deliberate suppression of summons" is alleged. Fraud strikes at the very foundation of judicial proceedings and, if established, vitiates even the most regular-looking record. In such a case, the apparent compliance with procedural formalities or the Court's recorded satisfaction does not conclude the matter. The party alleging fraud must, however, discharge a heavy burden by producing cogent and convincing evidence that the service return was fabricated, that no attempt at service was in fact made, or that the process was manipulated to obtain an ex parte decree behind the back of the

defendant. Mere assertions of non-knowledge or speculative criticism of the mode of service are insufficient. Thus, while lawful service—though procedurally imperfect—binds the defendant once the Court is satisfied under Rule 19, that presumption stands displaced where fraud is affirmatively proved; absent such proof, the Court's recorded satisfaction as to due service carries a presumption of correctness and cannot be lightly interfered with.

More importantly, in this case, the plaintiffs themselves failed to discharge the burden of proving non-service. In their depositions they did not make any clear and categorical statement denying the service of summons. Their evidence is confined to the assertion that they had no knowledge of the earlier suit and that had they received notice they would have contested it. Such vague statements fall far short of a definite denial of service. When a process server submits a report of service in the discharge of his official duty, a presumption of correctness attaches to such report unless the contrary is convincingly established. In the absence of any substantive evidence demonstrating that the report was false or fabricated, the Court cannot discard it merely on conjecture.

In the present case the plaintiffs neither examined the process server nor produced any independent evidence to show that the witnesses mentioned in the service report were fictitious or that the report of

refusal and affixation was fabricated. The plea of fraud and collusion has therefore remained wholly unsubstantiated.

It is further to be noted that the ex parte decree in question was passed in 2008 whereas the present suit challenging the same was instituted in 2012. Although the plaintiffs alleged that they came to know of the decree only in January 2012, no convincing evidence was produced to substantiate that claim. The long silence on their part also lends support to the inference that the plea of ignorance was taken as an afterthought.

Viewed as a whole, the record unmistakably shows that the Court which passed the ex parte decree had before it the service return containing the declaration of the process server, that the Court accepted the report and recorded that the summons had been duly served. In such circumstances the procedural requirements of Order V Rules 17, 19 and 19A of the Code of Civil Procedure cannot be said to have been violated.

Accordingly, where the record discloses that the requirements of Order V Rules 17 and 19 of the Code have been substantially complied with and the Court has recorded its satisfaction regarding service, the service cannot ordinarily be treated as invalid merely on

the ground of technical non-compliance with certain procedural directions contained in the Civil Rules and Orders.

The learned appellate Court therefore committed no illegality or material irregularity in reversing the judgment of the trial Court and dismissing the suit. Its findings are based on proper appreciation of the evidence and the materials on record and do not call for interference in revisional jurisdiction. In the absence of any error of law, misreading of evidence or failure of justice, this Court finds no ground to interfere with the impugned judgment and decree.

Accordingly, the Rule has no merit. The Rule is discharged.

The impugned judgment and decree passed by the learned District Judge in Title Appeal reversing those of the trial Court are hereby affirmed.

There shall be no order as to costs.

Send down the lower court's record at once together with this judgment.

(Justice Md. Toufiq Inam)

Ashraf /ABO.