

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

Present:

**Mr. Justice Md. Mozibur Rahman Miah
and**

Mr. Justice Md. Bashir Ullah

Civil Revision No. 1255 of 2020

In the matter of:

An application under Section 115(1) of the
Code of Civil Procedure.

And

In the matter of:

Jewel Mir (Jhatan) and others

... Plaintiffs-Applicants-Petitioners.

-Versus-

English Pressbritarian Church, represented by
the Church of Bangladesh Mission and others

... Defendants-Opposite parties-
opposite parties.

Ms. Snigdha Sarker, Advocate

... For the Petitioners.

Mr. Humayun Kabir Sikder, Advocate

... For the Opposite party nos. 1-2.

Heard on 27.04.2025

Judgment on: 28.04.2025

Md. Bashir Ullah, J.

At the instance of the plaintiffs in Other Class Suit No. 71
of 2010, this Rule was issued calling upon the opposite parties to

show cause as to why the judgment and order dated 18.02.2020 passed by the learned Joint District Judge, First Court, Rajshahi in Miscellaneous Case No. 68 of 2017 filed under Order XVII, Rule 1(7) of the Code of Civil Procedure for revival of Other Class Suit No.71 of 2010 and thereby affirming the order No. 37 dated 11.11.2014 dismissing the suit under Order XVII, Rule 1(4) of the Code of Civil Procedure for non-compliance with the order of paying cost for adjournment of peremptory hearing 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 short facts leading to issuance of the rule are:

The present petitioners as plaintiffs originally filed a suit being Other Class Suit No. 71 of 2010 before the learned Joint District Judge, First Court, Rajshahi impleading the present opposite parties as defendants praying for declaration of title and confirmation of possession in the suit property. The case of the plaintiff in short is that the suit property originally belonged to one, Chakraborty Estate represented by the Jamindars, Sri Anukul Chandra Chakraborty and others. One Douglas James Edward took the permanent settlement of the suit property on 10.01.1933 for his foster son namely, Mir Paul Rashid. Then Paul

Rashid appointed Hazam Mir, one of his uncles as his Attorney for looking after the suit property before going abroad for higher education. The S.A. record was prepared in the name of the original owner. On behalf of defendant no.1, Church one P.K. Baroi and others as plaintiffs filed a suit for permanent injunction being Other Class Suit No. 74 of 1958 impleading the predecessors of the present petitioners as defendants and the suit was dismissed and being aggrieved, the plaintiffs of that suit then preferred an appeal, which was allowed on 29.06.1960. Then, the plaintiffs filed Second Appeal No. 104 of 1961 before the High Court Division and it was dismissed. Since then the predecessor of the plaintiffs have been enjoying right, title and possession over the suit land. At the time of preparation of the R.S. record the predecessor of the plaintiffs tried to have their names in the R.S. record but failed and the same was recorded in the name of defendant no.1. The plaintiffs had no knowledge about the R.S. record and they went to the local Tahashil Office on 10.05.2009 for mutation of the suit property when they came to learn that the R.S. record was prepared in the name of defendant no.1. The plaintiffs then after collecting the certified copy of the R.S. record instituted the suit.

The defendants entered appearance in the suit and contested the same by filing a written statement. The trial Court then framed issues and eventually, the suit was fixed for peremptory hearing and at that stage on 19.02.2014, the plaintiffs prayed for adjournment of the hearing but the said application was allowed with a cost of Taka 200/- and the next date was fixed on 03.04.2014 for paying the cost and that of peremptory hearing. On 03.04.2014, the plaintiff again prayed for adjournment for hearing and the said application was allowed with a cost of Taka 300/-. However, the plaintiffs kept on praying for adjournment on subsequent occasions, without paying the costs and as a result, the trial Court dismissed the suit as per provision of Order XVII of the Code of Civil Procedure on 11.11.2014. Being aggrieved, the plaintiffs then filed a Miscellaneous Case being No. 180 of 2014, on 24.11.2014 under Order IX, Rule-9A of the Code of Civil Procedure. On 25.08.2015, the said Miscellaneous Case was heard, but it was rejected. Thereafter, the plaintiffs filed another Miscellaneous Case being No. 181 of 2015 under Order IX, Rule 4 of the Code of Civil Procedure for restoration of the suit along with an application for condonation of delay of 372 days. The said case was also rejected on 11.01.2016.

After that, the plaintiffs-applicants filed Miscellaneous Case No. 68 of 2017 under Order XVII, Rule 1(7) of the Code of Civil Procedure for the revival of the suit on 06.04.2017 along with an application under section 5 of the Limitation Act for condonation of delay. The plaintiffs-applicants also filed an application under section 151 of the Code of the Civil Procedure for the revival of the Other Class Suit No. 71 of 2010 on 18.02.2020. Upon hearing the parties, the learned Joint District Judge, First Court, Rajshahi then rejected all the applications on 18.02.2020

Being aggrieved by and dissatisfied with the said order dated 18.02.2020, the plaintiffs as petitioners preferred this Civil Revision and obtained instant Rule.

Ms. Snigdha Sarker on behalf of the petitioners submits that the petitioners are laymen having no knowledge about the legal steps to be taken in a civil suit and the trial Court ought to have considered the said aspect and allowed the Miscellaneous case.

Per contra, Mr. Humayun Kabir Sikder, learned Advocate appearing on behalf of the defendant-opposite party nos. 1 and 2 submits that as the plaintiffs-petitioners failed to pay the cost

directed by the trial Court and hence the trial Court has very legally rejected the miscellaneous case and passed the impugned judgment and order. He further submits that there is no illegality or infirmity in the impugned judgment and order. He next submits that the learned Joint District Judge, First Court, Rajshahi directed the plaintiffs to deposit Taka 700/- as cost but as the plaintiffs-petitioners did not comply with the said order of the Court and hence they cannot get any relief from the Court.

With those submissions, the learned counsel finally prays for discharging in the Rule.

We have considered the submissions so advanced by the learned Advocates for both parties at length and perused the Civil Revision and the impugned order passed by the trial Court and other materials on record.

It appears from the record that Other Class Suit No. 71 of 2010 was dismissed for default and non-compliance with the Court's order with the direction for payment of costs on 11.11.2014 by order No. 37 under 17 of the Code of Civil Procedure. However, the plaintiffs-appellants-applicants failed to file application under Order 17, Rule 1(7) of the Code of Civil

Procedure with cost of Taka 2,000/- within 30 days before the trial Court for revival of the suit.

Order 17, Rule 1(7) of the Code of Civil Procedure speaks as follows:

“A suit dismissed or disposed of *ex parte* under sub-rule (3) or (4) shall not be revived for hearing unless the party, for whose noncompliance the suit was dismissed or disposed of *ex parte*, makes within thirty days of such dismissal or *ex parte* disposal, an application together with cost of two thousand taka into Court for such revival; and upon such application being made, the suit shall be revived for hearing without any further proceeding; and cost deposited into Court shall be paid to the other party.”

We also find that the learned Joint District Judge, First Court, Rajshahi directed the plaintiffs to deposit Taka 700/- as cost vide order No. 38 but the plaintiffs-petitioners did not comply with the direction of the Court and hence they cannot get any relief from the Court.

We find gross negligence and apathy on the part of the plaintiffs as they prayed adjournment for several occasions after fixing the suit for peremptory hearing. Even they flouted the direction passed by the trial Court for paying costs though they

were liable to pay the same. They filed miscellaneous cases one after another. So, under no circumstances the indolent plaintiffs are entitled to get any relief from a Court of law. Rather, it turns out that the plaintiffs in order to prolong the proceedings of the suit and to harass the defendants, have purported such cunning device which cannot be allowed to continue and the trial Court has rightly found so.

Regard being had to the above facts and circumstances, we find no illegality or impropriety in the impugned order that has occasioned failure of justice. Hence, we do not find any substance in the Rule which is liable to be discharged.

Resultantly, the rule is discharged, however without any order as to cost.

The judgment and order dated 18.02.2020 passed by the learned Joint District Judge, First Court, Rajshahi in Miscellaneous Case No. 68 of 2017 is thus affirmed.

Let a copy of this judgment be communicated to the Court concerned forthwith.

Md. Mozibur Rahman Miah,J.

I agree.