

Present:

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

CIVIL REVISION NO. 2189 OF 2020.

IN THE MATTER OF:

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

- AND -

IN THE MATTER OF:

Rahimuddin Mohammad being dead, his heirs; 1. Md. Sakiuddin and others.

....Defendant-petitioners.

-Versus –

Entaz Ali and others.

....Plaintiff-opposite parties.

No one appears.

..... For the petitioners.

Mr. Md. Mubarak Hossain, Advocate with

Mr. Md. Shafiqul Islam, Advocate.

..... For opposite parties.

**Heard on: 28.04.2024 and Judgment on: 06.05.2024.**

On an application of the petitioners Rahimuddin Mohammad being died, his heirs; 1. Md. Sakiuddin and others under section 115 (4) of the Code of Civil Procedure the Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and order dated 18.08.2020 passed by the learned Additional District Judge, 3<sup>rd</sup> Court, Dinajpur in Civil Revision No. 44 of 2019 rejecting the Civil Revision and thereby affirming the judgment and order dated 24.07.2019 passed by the court of Assistant Judge, Khansama, Dinajpur in Other Class Suit No. 34 of 2005 closing the evidence and thereby fixing the date for argument

hearing upon rejecting the application for adjournment filed by the defendant Nos. 1-8 should not be set aside.

Facts necessary for disposal of the Rule, in short, is that the predecessor of the opposite parties as plaintiffs instituted Other Class Suit No. 34 of 2005 in the court of Assistant Judge, Khansama, Dinajpur against the defendant petitioner and others for a perpetual injunction.

The defendant Nos. 1-8 entered appear through Vokatnama and contested the suit by filing written statement.

At the trial the plaintiff side examined two witnesses as P.W.s and then closed their evidence.

Thereafter the defendant side produced three witnesses and the date was fixed for further examination and cross examination of the D.W.1 and further date was fixed on 24.07.2019 for cross examination of the D.W.2 and D.W.3. On the said date the D.W.1 and D.W.2 were examined and they were duly cross examined by the plaintiff side. Thereafter the defendant side filed an application for adjournment which was rejected by the trial court and D.W.3 was also called for examination. But the said D.W.3 was not present at the court thus the trial court expunged his part deposition and fixed the matter on 01.07.2019 for argument hearing.

Against the said order the defendant side filed Civil Revision No. 44 of 2019 under section 115(2) of the code of civil procedure before the learned District Judge, Dinajpur.

The said revisional application was heard and disposed of by the Additional District Judge, 3<sup>rd</sup> Court, Dinajpur who after hearing the parties and considering the evidence on record and the facts and circumstances of the case rejected the revisional application by its judgment and order dated 18.08.2020.

Being aggrieved by and dissatisfied with the impugned judgment and order of the courts below the defendant-petitioners filed this revisional application under Section 115(4) of the Code of Civil Procedure accordingly the leave was granted and a Rule was issued.

On the prayer of the learned Advocate of the opposite party the matter was fixed for hearing on 14.01.2014 and come up in the daily cause list for a couple of days but none turned up to press the Rule. Since this revisional application only against an order thus the matter has taken for hearing on merit.

However, Mr. Mubarak Hossain, the learned Advocate of the opposite party has appeared and made his submission.

I have heard the learned Advocate of the opposite party, perused the impugned judgment and order of the courts below and the papers and documents as available on the record.

The simple case is that on 24.07.2019 the date was fixed for further examination of the D.W.1 and for cross examination of the D.W.2 and D.W.3 and defendant side filed Hajira of the D.W.1 and D.W.2 and accordingly they were cross examined by the plaintiff side. Thereafter, the

defendant side filed application for adjournment since P.W.3 was not present in the court but which was rejected and the D.W.3 was called on for his cross examination but since he was not present the trial court has expunged his deposition and closed the trial and fixed the next date on 07.08.2019 for argument hearing.

Against the said order the defendant petitioner filed Civil Revision No. 44 of 2019, wherein they claimed that on the said day the father of the D.W.3 was expired and as such he could not appear before the court. The revisional court considering the facts and circumstances of the case took view that the petitioner of the revisional application did not disclose the said facts in the trial court as well as in the revisional application thus upheld the said order of the trial court by its order dated 18.08.2020.

It appears that on the date fixed the defendant side produced two witnesses, D.W.1 and D.W.2 and they were duly cross examined by the plaintiff side, and filed an application for adjournment of the matter since the D.W.3 was not present in the court. The trial court rejected the said application for adjournment and the D.W.3 was called on for his part deposition but he was not present as such the trial court rejected the application for adjournment and also expunged the deposition of the D.W.3. It is my view that since the two P.W.s were examined and cross-examined by the plaintiff side and filed application for adjournment of the part deposition of the D.W.3 in such a case the court may took lenient

view and may adjourned the matter but expunged the part deposition of the P.W.3 which seems to be a harsh order.

It appears that the revisional court also took such view that the defendant side failed to explain the said facts sufficiently and did not produce any single evidence in support of the death of the father of D.W.3. Since the defendant side examined two witnesses in such a case it is better to adjourned the matter but the trial court rejected the application of the defendant in such a case it is my view that both the courts passed the impugned order without giving any scope to the petitioner to produce him in the next date. Normally in our country the parties did not disclose any false statement regarding the death of anyone. It is found that the defendant side disclosed the facts that the father of the D.W.3 died in the aforesaid date at the time of hearing of the revisional application though no document was produced in support of the same. However, in such a case the court should take lenient view. Thus it is better to direct the trial court to dispose of the suit expeditiously giving scope to the petitioner to produce the D.W.3 for further examination.

Considering the facts and circumstances of the case and the discussions as made above I find merit in the Rule.

In the result the Rule is made absolute. The the impugned judgment and order dated 18.08.2020 passed by the learned Additional District Judge, 3<sup>rd</sup> Court, Dinajpur in Civil Revision No. 44 of 2019 rejecting the Civil

Revision and thereby affirming those dated 24.07.2019 passed by the court of Assistant Judge, Khansama, Dinajpur in Other Class Suit No. 34 of 2005 is hereby set-aside.

The trial court is directed to dispose of the suit as early as possible preferably within 6 (six) months from the date of receipt of this order giving scope to the defendant side to produce the D.W.3 for examination and also allow the parties to prove their respective cases by adducing further evidence if requires and in accordance with law.

Communicated the order at once.

M.R.