

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

Present:

Mr. Justice S M Kuddus Zaman

And

Ms. Justice Tamanna Rahman Khalidi

CIVIL REVISION NO.2874 OF 2019

In the matter of:

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

And

Niko Resources (Bangladesh) Limited

... .Petitioner

-Versus-

The People's Republic of Bangladesh, represented by its Secretary, Ministry of Energy and Mineral Resources, Bangladesh Secretariat, Dhaka and others

.... Opposite parties

Mr. Mustafizur Rahman Khan, Senior Advocate with

Ms. Sumaiya Ifrit Bine Ahmed, Advocate

Mr. Shafayet Ahmed, Advocate

Mr. Pranta Barua, Advocate

Mr. Mohammed Iftekhar Hossain, Advocate

Mr. Suman Sen Gupta, Advocate

Mr. Md. Abul Kashem, Advocate

Ms. Farzana Rashid, Advocate

.... For the petitioner.

Mr. Md. Jahangir Hossain, Advocate with

Ms. Sonchita Siddique, Advocate

....For the opposite party No.2.

Heard on 25.08.2026 and Judgment on 30.08.2026

S M Kuddus Zaman, J:

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued calling upon the opposite parties to show cause as to why the impugned order No.173 dated 11.09.2019 rejecting an application of the defendant No.1-petitioner for

adjournment, closing the deposition of DW1 and fixing the suit for argument and order No.174 dated 18.09.2019 rejecting an application of the defendant No.1-petitioner for allowing the DW1 to complete his deposition upon withdrawal the suit from arguments hearing by the learned Joint District Judge, 2nd Court, Dhaka in Money Suit No.224 of 2008 should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

Facts in short are that opposite party Nos.1 and 2 as plaintiffs instituted above Money Suit for damage of Taka 746,50,83,973/- claiming damages against defendant No.1. Above suit was fixed for preemptory hearing and the evidence of the plaintiff was concluded. On 08.08.2018 Mr. Md. Masudur Rahman started to give evidence DW1 but his examination-in-chief remained incomplete and defendants obtained 11 adjournments on various grounds. On 11.09.2019 above suit was fixed for conclusion of evidence of DW1 Md. Masudur Rahman defendant No.1 submitted a petition for adjournment for amendment of the written statement. The learned Joint District Judge rejected above petition and fixed the suit for arguments hearing on 18.09.2019. On above date plaintiffs filed a petition for expunge of incomplete evidence of DW1 Md. Masudur Rahman and defendant No.1 submitted a petition recording remaining evidence of DW1. The learned Joint District Judge rejected the petition of defendant No.1 and fixed above suit for hearing of argument and above petition of the plaintiff.

Being aggrieved by and dissatisfied with above mentioned orders Nos.173 and 174 dated 11.09.2019 and 18.09.2019 respectively defendant No.1 as petitioner moved to this Court and obtained this Rule.

Mr. Mustafizur Rahman Khan, learned Senior Advocate for the petitioner submits that in above suit DW1 Md. Masudur Rahman started his deposition on 08.08.2018 but above Suit involves complicated facts and laws and the defendant need time and the written statement required amendment. On 11.09.2019 the defendant submitted a petition for amendment of the written statement. The learned Joint District Judge should have allowed above petition for adjournment with cost but the learned Joint District Judge rejected above petition and fixed the suit for arguments hearing on 18.09.2019. On above date plaintiff filed a petition for expunge of evidence of DW1 and the defendant filed a petition for conclusion of evidence of DW1. The learned Joint District Judge rejected the petition of defendant No.1 but did not proceed for disposal of above suit in accordance with the provision of Order XVII Sub-rule 3 of the Code of Civil Procedure, 1908. Above suit has not yet been disposed of on merit. As such defendant No.1 may be given one opportunity to submit his evidence in writing with an affidavit and subject himself to cross examination. The learned Advocate lastly submits that defendant No.1 shall not seek any adjournment if the suit is remanded for conclusion of trial in accordance of the law.

On the other hand Ms. Sonchita Siddique, learned Advocate for opposite party No.2 submits that above suit was filed in 2008. The evidence of plaintiff was concluded the evidence of DW1 Md. Masudur Rahman started on 08.08.2018. Defendant No.1 deliberately tried to obstruct the conclusion of trial and adopted various dilatory tactics and obtained adjournments showing various causes for about 11 times. On 18.09.2019 the suit was fixed for conclusion of evidence of DW1 but the defendant submitted a petition for amendment of written statement. The learned Joint District Judge rightly rejected above petition for adjournment and fixed the suit for arguments hearing on 18.09.2019. On above date the plaintiff filed a petition for expunge of incomplete evidence of DW1 and the defendant filed a petition for recording incomplete evidence of DW1 and the learned Joint District Judge on correct appreciation of materials on record rightly rejected the petition of defendant No.1 and fixed above suit for hearing of argument and petition of the plaintiff which calls for no interference.

We have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record.

It is admitted that the evidence of DW1 Md. Masudur Rahman started on 08.08.2018 and 11.09.2019 was fixed for recording of remaining evidence of DW1 but on above date defendant No.1 submitted a petition for amendment of the written statement and the learned Joint District Judge rejected above petition and fixed the suit for

arguments hearing on 18.09.2019 when plaintiff filed a petition for expunge of evidence of DW1 and defendant No.1 filed a petition for completion of evidence of DW1 and the learned Joint District Judge rejected the petition of defendant No.1 and fixed 30.09.2019 for hearing of arguments and petition of the plaintiff.

Order XVII Rule 1(4) of the Code of Civil Procedure provides as follows:-

“1(4) Notwithstanding anything contained in the Code, the Court shall not grant any adjournment at the preemptory hearing stage and thereafter in a suit at the instance of either party to the suit:

Provided that if for ends of justice any adjournment is granted to a party under this sub-rule, the Court shall direct that party to pay a cost of not less than two hundred taka and not more than one thousand taka to the other party, within time to be specified by it, noncompliance with which, by the plaintiff shall render the suit liable to be dismissed and, by the defendant shall render the suit liable to be disposed to ex-parte.”

Order XVII Rule 3 of the Code of Civil Procedure provides as follows:-

“3.Where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been

allowed, the Court may, notwithstanding such default, proceed to decide the suit forthwith."

It is clear from order XVII Rule 1(4) that the Court shall not grant any adjournment at the stage of preemptory hearing of the suit unless it finds that the ends of justice requires an adjournment and imposes cost upon the party seeking adjournment. If the party at whose instance adjournment was allowed fails to pay cost the suit shall be dismissed if the party was plaintiff and the suit shall be disposed of ex-parte if the party was defendant. The learned Joint District Judge granted adjournments at the preemptory stage of above suit but did not impose any cost upon the defendant. As such above adjournments were allowed in contravention of the provisions of order XVII Rule 1(2) of the Code of Civil Procedure, 1908.

Order 17 Rule 3 of the Code of Civil Procedure provides that if adjournment was granted in a suit at the instance of a party who fails to appear and adduce evidence or perform any other act necessary for the progress of the suit the Court shall notwithstanding such default proceed to decide the suit forthwith.

The learned Joint District Judge rejected the petition of the defendant for completion of recording of evidence of DW1 on 18.09.2019 but did not dispose of the suit ex-parte but instead fixed above suit for arguments and petition hearing which was also in contravention of the provision of Order XVII Rule 3 of the Code of Civil Procedure, 1908. The learned Joint District Judge totally failed to

appreciate the provisions of Order XVII Rule 1(4) and Rule 3 of the Code of Civil Procedure, 1908 and instead of disposing above suit forthwith in accordance with law kept the issue of recording of incomplete evidence of DW1 Md. Masudur Rahman alive.

The learned advocates for the respective parties frankly concedes above that suit is still pending in the trial court and the same has not been disposed of in accordance with above provisions of the Code of Civil Procedure. The Code of Civil Procedure has been amended and the examination-in- chief of a witness may be presented in writing with an affidavit who is then subjected to cross examination. The learned advocate for the petitioner has assured us that the defendant shall not seek adjournments and submit the written evidence of DW1 within one month from the date of receipt of the case record by the trial court and co-operate in disposing of above suit expeditiously.

On consideration of above facts and circumstances of the case and evidence on record we hold that the ends of justice will be met if the impugned orders are set aside and the learned Joint District Judge is directed to dispose of above suit in accordance with law after giving the defendant an opportunity to submit written evidence of DW1 within 30 days from the date of receipt of this order and conclude his cross examination without unnecessary adjournment.

In above view of the materials on records we find substance in this Civil revisional application under Section 115(1) of the Code of

Civil Procedure, 1908 and the Rule issued in this connection deserves to be made absolute.

In the result, the Rule is hereby made absolute.

The impugned order Nos.173 and 174 dated 11.09.2019 and 18.09.2019 respectively passed by the learned Joint District Judge, 2nd Court, Dhaka in Money Suit No.224 of 2008 are set aside.

The learned Joint District Judge is directed to conclude the trial of above suit expeditiously in accordance with law after giving the defendant an opportunity to submit written evidence of DW1 Md. Masudur Rahman within 30 days from the date of receipt of this order and produce him for cross examination without unnecessary adjournment.

The learned Joint District Judge is further directed to dispose of above suit on merit in accordance with law within a period of six months from the date of receipt of the order.

However, there is no order as to costs.

Tamanna Rahman Khalidi, J:

I agree.