

Bench:

Mr. Justice Md Ruhul Quddus

Civil Revision Number 5771 of 2024

Alhaj Mizanur Rahman

... Petitioner

-Versus-

Syed Al Farooque and others

... Opposite parties

No one appears for the petitioner

Mr. M. A. Muntakim, Advocate

...for opposite party number 1

Mr. Md. Emran Hossain, Advocate

... for opposite party number 2

Mr. Skeikh Shaminur Rahman, Advocate

... for opposite party number 3

Judgment on 01.07.2025

This rule at the instance of added defendant number 5 was issued on an application under Section 115 (4) of the Code of Civil Procedure challenging the validity of judgment and order dated 26.09.2024 passed by the District Judge, Dhaka in Civil Revision Number 247 of 2024 rejecting the revision affirming order dated 29.08.2024 passed by the Joint District Judge, Fourth Court, Dhaka in Title Suit Number 550 of 2019 rejecting an application for rejection of plaint filed by the defendant-petitioner under Order VII, rule 11 of the Code of Civil Procedure.

The matter was fixed for hearing by order dated 21.04.2025 reportedly on intimation to the learned advocate for the petitioner. Since this is an interlocutory matter and the plaintiff-opposite party had some urgency, it was upgraded by order dated 22.06.2025 on the prayer of the learned advocate for the opposite party 1 on further intimation to the learned advocate for the petitioner. It was taken up for hearing on 25.06.2025 and again on 29.06.2025 in presence of the plaintiff-opposite party, but on both the occasions, learned advocate for the defendant-petitioner remained absent. In such a position, this court has been constrained to take up the matter for disposal in absence of the petitioner.

Facts relevant for disposal of the rule are that opposite party number 1, Syed Al Faruque being plaintiff instituted the suit in 2011 for specific performance of contract imploding opposite party number 2, the proposed vendor of the agreement for sale. The present petitioner was added as defendant number 5 in the suit long back in 2013. In 2022, he filed an application for rejection of the plaint stating, *inter alia*, that he had entered into an agreement on 04.04.2012 to purchase the suit land, took possession over the same and obtained approval from Rajdhani Unnayan Kartipakkha for construction of a multi-storied building thereon. However, he prayed for rejection of the plaint on the ground of maintainability. The trial court rejected the application by order dated 29.08.2024 on the ground that the question raised therein could only be determined in

due course of trial. Without evidence, the Court could not take a decision on the disputed question of facts on an application under Order VII, rule 11 of the Code. Challenging the said order, defendant number 5 filed Civil Revision Number 247 of 2024 in the Court of District Judge, Dhaka. Learned District Judge heard the application in motion and rejected the same by the impugned order giving rise to the present civil revision under Section 115 (4) of the Code.

Mr. M. A. Muntakim, learned advocate for the plaintiff-opposite party number 1 refers to the counter affidavit and submits that earlier the principal defendant filed a similar application, which was rejected by the trial court and ultimately it was dragged up to the Appellate Division, wherein the Appellate Division by order dated 04.07.2018 dismissed the criminal miscellaneous petition for non filing of a regular leave petition. In order to drag the suit for a longer period, the added defendant number 5 filed another application without any ground whatsoever, which the learned trial Judge rightly rejected. Learned District Judge also rightly rejected the revisional application.

I have considered the submissions of the learned advocate and gone through the plaint, application for rejection of the plaint, and the impugned orders. It appears that the petitioner was added as a defendant on 17.02.2013, still he did not file any written statement in order to contest the suit. He claimed his possession over the suit land on the strength of a sale agreement allegedly executed in 2012

but the suit was instituted in 2011. He was not a party to the agreement for sale between the plaintiff and principal defendant, upon which the instant suit for specific performance of contract was instituted. The previous attempt of rejection of the plaint initiated by the principal defendant ended up to appellate division in 2018. Thereafter, the added defendant number 5 filed this application for rejection of the plaint without any cogent ground, which was rejected by the trial court as well as by the revisional court below. Then the added defendant approached this court with the present civil revision under Section 115(4) of the Code. On the face of record, the application for rejection (Annexure-B) does not reply the requirements of rejection of plaint under Order VII, rule 11 of the Code, or Section 151 thereof. It is manifestly clear that in order to drag the suit and delaying the disposal of the same at the cost of public time, the petitioner has come with the present revision and obtained the stay order, which should not be indulged.

Accordingly, the rule is discharged with a cost of Taka 20,000/- to be paid by the added defendant number 5 before filling the written statement on his part. Since this is a very old suit instituted in 2011, the trial court is directed to dispose of the same in an expeditious manner.