

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

Present:

Mr. Justice Mohammad Showkat Ali Chowdhury

Civil Revision No. 4152 of 2008

IN THE MATTER OF:

**An application under section 115 (1) of the Code
of Civil Procedure, 1908 (Against Order)**

- AND -

IN THE MATTER OF:

Mrs. Rabia Basri

----- Plaintiff- Petitioner

-Versus-

Mohammad Habibur Rahaman and Others

---Defendant- Opposite -Party

Deputy Commissioner, Dhaka

----- Pro-forma Defendant Opposite Party

Mr. M.G. Mahmud (Shaheen), Advocate

----- For the petitioner

None appears

--- For the Opposite party

Heard On: 03.03.2026 & 08.03.2026

Judgment On: 11.03.2026

Mohammad Showkat Ali Chowdhury, J: On an

application under Section 115 (1) of the Code of Civil Procedure, 1908 (in short, the Code) a Rule was issued in the following terms;

“Let a Rule be issued calling upon the Opposite Party to show cause as to why the impugned Order No.34 dated 09.09.2008 passed by the learned Joint District, Judge, 1st Court, Dhaka in Title Suit No.179 of 2004 rejecting an application filed by the plaintiff petitioner under Order 11 Rule 14 of the Code of

Civil Procedure should not be set aside and/or pass such other or further order of orders as to this Court may seem fit and proper”.

2. The short facts relevant for disposal of the Rule are that the petitioner as the plaintiff filed a Title Suit No. 179 of 2004 in the 1st Court of the Joint District Judge, Dhaka against the defendants-opposite parties for the declaration of title over the suit land stating inter alia that the owner of the suit land, namely, the defendant Nos. 1 and 2 out of love and affection made oral gift (Hiba) of the suit property to her with delivery of Khas possession of the suit property along with all the documents in respect of the suit property which were in the custody and possession of the donors. She mutated her name in the Khatian No.1308/1 regarding the suit property and recorded her name in the register of the Dhaka City Corporation and has been paying rent and taxes to the Government regularly and received receipts of those payments accordingly. Present Mohanagar Operation Khatian No.13258 has also been correctly recorded in the name of the plaintiff as she is the sixteen annas owner of the suit property. The defendants Nos.1 and 2 after transferring the suit property to the plaintiff by way of gift left this country for West Bengal in India and permanently there as Indian nationals. The defendants even having no right, title and possession over the suit property wrongly managed to record their names in R.S

Khatian. Recently, they came from India and having ill advice of some enemies of the plaintiff, they are claiming their title in respect of the suit land. The plaintiff constructed 02 (two) storied building in the suit property with the permission from the RAJUK. The Plaintiff has been possessing the suit property for more than long 12 years in asserting of her own right, title, interest and possession but for the said wrong recording of the R.S Khatian, the cloud casts upon the title of the Plaintiff over the suit land, accordingly, she has filed the suit for declaration of title and the defendant No.3 is made party in the suit as per provision of President's Order No. 142 of 1972.

3. One Abdul Quddus Mollah claiming himself as the lawful attorney of the defendant Nos. 1-2 entered appearance in the suit by filing written statement denying the claims made in the plaint and stated that the said defendants are the owner and possessor of the suit land and they left from Dhaka for West Bengal, India for business purpose. Before departure from Dhaka, the husband of the plaintiff, Ahsan Kabir was allowed to live as a licensee in the suit property and some relevant papers and documents were handed over to him to pay rent to the Tohsil office and Taxes to the Dhaka City Corporation, Dhaka, WASA and electricity bills regularly on their behalf, accordingly, the defendant Nos. 1 and 2 sent money to the said Ahsan Kabir, the

husband of the plaintiff for paying those bills but the said Ahsan Kabir without giving those to the government misappropriated the money and tried to grab the suit property by manufacturing false and fabricated documents during R.S operation, the plaintiff in connivance with her husband tried to grab the suit property. On having the information, the defendants filed a case being No. 31690/1960 in the Settlement Court and submitted the said Kabla being No. 6008 for mutation Khatian. On the other hand, the plaintiff submitted photo copy of declaration of unregistered hiba and some false and fabricated papers but the learned Court after through inquiry passed an order that those papers are false, frivolous and concocted document and the Settlement Court rejected the case of the plaintiff along with the appeal on contest. It is claimed that the defendant Nos. 1 and 2 appointed Mr. Abdul Quddus Mollah as their lawful attorney for conducting their civil suit and other benefits and on being appointed as lawful attorney Mr. Abdul Quddus Mollah submitted written statement on behalf of the defendants to contest the suit.

4. The plaintiff during of the pendency of the suit filed a petition before the trial court for the production of the said power of attorney before the Court pursuant to rule 14 of Order 11 of the Code and in the said petition, the plaintiff claimed that the defendant Nos. 1 and 2 are the Indian citizen, since it is claimed

that Abdul Quddus Mollah has been appointed as a lawful attorney by a power of attorney to conduct the case on behalf of the defendant Nos. 1 and 2, accordingly, the plaintiff needs to know whether the power of attorney by the defendant Nos. 1 and 2 have executed and registered in favour of the said Abdul Quddus Mollah or not and or when and where, it was executed, has not been mentioned, even in a single sentence in the written statement.

5. The learned Joint District Judge, 1st Court, Dhaka upon hearing the petition filed by the plaintiff under rule 14 of Order 11 of the Code for the production of the said power of attorney has been pleased to reject the same stating the reason by the order being No. 34 dated 9.09.2008, thereafter, the plaintiff being aggrieved by and dissatisfied with the above Judgment and Order preferred the revisional application under section 115 (1) of the Code before the High Court Division of the Supreme Court of Bangladesh and obtained the instant Rule.

6. The Opposite Party has not appeared before this Court to contest the Rule in spite of the rule is being appeared in the Cause List consecutively; so, the stand of the Opposite Party remains obscure before this Bench, however, his absence will not affect the merit of the case.

7. Conversely, Mr. M.G. Mahmud (Shaheen), the learned Advocate has appeared before the Bench on behalf of the plaintiff petitioner arguing that one Abdul Quddus Mollah claiming himself as the constituted attorney of the defendant Nos. 1 and 2 filed a written statement on their behalf but the said power of attorney has not been filed in the trial court and since the defendant Nos.1 and 2 relinquished their right, title and possession over their suit land by making gift to the plaintiff and in such circumstances, the plaintiff doubts the genuineness of the so-called the power of attorney and the plaintiff for the adjudication of the dispute as ancillary but important point needs to examine and inspect the genuineness of the said power of attorney, also to guard against the false representation, if any, filed a petition following the provision of rule 14 of Order 11 of the Code for the production of the said original power of attorney given by the defendant Nos. 1 and 2 as claimed by the said attorney Abdul Quddus Mollah. But the learned Joint District Judge, 1st Court without appreciating the provision of rule 14 of Order 11 of the Code most illegally rejected the said petition making the observation that the plaintiff is not as per law entitled to ask for the production of the said document which is erroneous and not tenable in the eye of law. He next contends that the impugned order is not speaking one in true sense and

having passed the impugned order being misconceived which is liable to be set aside for ends of justice and thereby prayed for making the Rule absolute.

8. I have heard Mr. M.G. Mahmud (Shaheen), the learned Advocate for the Plaintiff Petitioner and perused the materials on record and consulted the provision of rule 14 of the Order 11 of the Code. Upon careful perusal of the materials on record, it appears that the plaintiff filed a Title Suit against the defendant Nos. 1 and 2 who have been mentioned in the plaint as Indian citizen and resident of West Bengal and in the plaint claims that she has got the suit property from the defendant Nos. 1 and 2 by way of gift but while the defendant Nos. 1 and 2 appeared to contest before the Court submitted written statement and in Para 14 (g) stated that the defendants have become an old man and they appointed one Abdul Quddus Mollah as their lawful attorney for conducting civil suit but the said original power of attorney has not been filed and moreover, nowhere in the written statement, it has been stated whether the said power of attorney has been registered or un-registered and on what date, by whom and where, it has been executed or registered and the same is at all lawful or not and the genuineness of the power of attorney needs to be inspected by the plaintiff in order to protect her interest over the suit land and accordingly, she has prayed before

the said Court to direct the defendant Nos. 1 and 2 to produce the original copy of the power of attorney.

9. The learned Joint District Judge, 1st Court after hearing both the parties was pleased to pass the impugned judgment and order dated 09.09.2008 which goes as under;

“বাদী পড়়া দেওয়ানী কার্যবিধি ১১ আদেশের ১৪ বিধি মতে দরখাস্ত দাখিল করেছেন। কমিশন ফি দাখিল করা আছে। বাদী পড়়া দেওয়ানী কার্যবিধি আইনের ১১ আদেশের ১৪ নিয়ম অনুযায়ী ১/২ নং বিবাদী পড়়া আমমোক্তার মূল কপি আদালতে দাখিলের প্রার্থনা করিয়াছে। ১/২ নং বিবাদীপড়়া আম-মোক্তার নামা দিয়াছে কিনা উহা একমাত্র ১/২ নং বিবাদী পড়়াই দাবী করতে পারে, উহাতে বাদী পড়়ার উক্ত আম মোক্তার নামার। genuineness judge করিবার জন্য আদালতে দাখিলের প্রার্থনা করিতে পারেন না। বিধায় অত্র দরখাস্ত না মঞ্জুর করা হইল। আগামী ২৯/০৯/২০০৮ ইং তারিখে Commission fee দাখিল”।

10. From the plain reading of the said impugned judgment and order dated 09.09.2008 stated above, it appears to me that the said Judge observed that whether the defendant Nos.1 and 2 executed the power of attorney or not that can alone be claimed by the said defendants but the Plaintiff cannot pray before the Court to produce the said power of attorney to judge the genuineness of the same and accordingly, on that observation, he rejected the said petition.

11. In order to appreciate the impugned judgment and order passed by the learned Joint District Judge, 1st Court, Dhaka, it

would be profitable to reproduce the relevant provision of rule 14 of Order 11 of the Code which runs as under:

“Production of documents: It shall be lawful for the Court, at any time during the pendency of any suit, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such suit, as the Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.”

12. On careful examination of the provision of rule 14 of Order 11 of the Code, it appears that the sentence, **“any party to the suit at any time during the pendency of the suit can pray for the production of the document before the court” gives the legal sanction that any party to the suit can pray for the production of the documents** and no party to the suit has been debarred from seeking the production of the documents which he requires to inspect for examining its genuineness. More specifically can be said that the words, “any party to the suit” means, the plaintiff or the defendant to the suit and the concerned rule is not made qualified provision but it is absolutely unqualified. On plain reading the above provision of law, it appears to me that rule 14 of Order 11 of the Code requires two conditions as sine qua non before passing the order by the Court

directing the concerned party to produce the documents, such as (1) the document must be in the possession or power of the party against whom the order is made and (2) the document must be relating to any mater in question in such suit. It is to be borne in mind that an order under this rule is not dependent on an order under rule 12 of Order 11; it can be made at any time on application or sou motu.

13. On perusal of the pleadings, it appears that in the written statement, it has been claimed that due to the old age of the defendant Nos. 1 and 2, they appointed Abdul Quddus Mollah as attorney to conduct the case on their behalf, since the right, title and interest of the plaintiff accrued in the suit land from the defendant Nos. 1 and 2 by way of gift as robustly claimed by the Plaintiff and the allegation made by her that the defendant Nos. 1 and 2 are Indian nationals, in such paradigm, the said power of attorney is related to the matter in question in the suit and the facts and circumstances gives the conclusive presumption that the said power of attorney is in the possession and power of the said Abdul Quddus Mollah, accordingly, the two condition have been complied with and secondly, in such premises, the power of attorney shall have to be executed pursuant to section 85 of the Evidence Act, 1872, in that case, the relevant section of the Evidence Act suggests that the Court shall presume its

genuineness but drawing the presumption with regard to the genuineness of the said power of attorney, the same shall have to be examined in touch stone with section 85 of the Evidence Act, 1872. In this connection, it is profitable to produce section 85 of the Evidence Act, 1872 which goes as under;

“Presumption as to power of attorney- The Court shall presume that every document purporting to be a power of attorney, and to have been executed before, and authenticated by, a notary public or any Court, Judge, Magistrate, Bangladesh Consul, Vice Consul or representative of the government was so executed and authenticated.”

14. On perusal of the written statement, it is found that nowhere in its four corners has been stated whether the said power of attorney has been executed before, and authenticated by a notary public or any Court, Judge, Magistrate, Bangladesh Consul or Vice Consul or Representative of the Government and since as per claim of the Plaintiff, the defendant Nos. 1 and 2 are the Indian Nationals, in such landscape, section 85 of the Evidence Act, 1872 suggests that the court shall presume that every document purporting to be a power of attorney, and to have been executed before, and authenticated by, a notary public or any Court, Judge, Magistrate, Bangladesh Consul, Vice Consul or representative of the government was so executed and

authenticated and in this regard, the Plaintiff doubts about the genuineness of the power of attorney and the same demands for the production of the same. If a power of attorney is executed by a person resident in Bangladesh and registered, the same is said to be a legal document. But a power of attorney made by a foreign resident must be executed before, and authenticated Bangladesh Consul or Vice- Consul or representative of the Government and if it is not done so, a person holding such a power of attorney is not legally permitted to represent his principal pursuant to rule 2 (a) of Order 3 of the Code". Reliance may be made in the **case of Shah Alam (Md) Vs. Abul Kalam, 54 DLR 276**, wherein it has been held by their Lordships, "**the power of attorney, not executed before, and authenticated by a notary public nor any representative of the foreign mission, is not admissible in evidence**".

15. Since nowhere in the written statement regarding the attestation and authentication of the said power of attorney by whom has been made and where and what date has been done has not stated, accordingly, it is obscure to the plaintiff as well as to the Court as to whether the said power of attorney has been executed and authenticated in accordance with the provision of section 85 of the Evidence Act, 1872 or not. In such premises, law has given the sanction/ power to the Court directing the

party to the suit in possession the said document/power of attorney to produce to the Court but subscribing the misconceived/utopian idea by the concerned Judge rejecting the said petition for the production of the power of attorney opining that the plaintiff cannot seek for the production of the original copy of the power of attorney but only the defendants can claim whether they have given the said power of attorney to Abdul Quddus or not as observed by the said Judge is nothing but not inconsonance with the provision of rule 14 of Order 11 of the Code and absolutely Greek to the said provision of law. It is patently clear that the learned Joint District Judge, 1st Court, Dhaka at his own whim most illegally interpreted rule 14 of Order 11 of the Code which is erratic and perverse and flagrant violation of the provision of law, accordingly, his way of adjudication of dispute highly deprecated by this Bench. Before passing any order, the concerned Court should read time and again the relevant of provisions of law but unfortunately, it has not been done by the said Judge, consequently, the High Court Division has been over burdened with the matter for such below poverty line decision and occasioned failure of justice which requires to be remedied. Before parting, I must make observation that justice in the hand of the judge who pass judgment and order is not safe if the same is passed without looking and

appreciating the relevant provisions of law. So, for future guidance, the judgment and order of this Court needs to be sent to the concerned Judge and also needs to be sent to learned District Judge, Dhaka for sensitizing the Judges working under Judgeship to dispose of the dispute in their seisin in accordance with law.

[All under lines are supplied for emphasis]

16. In view of the threadbare discussion made in the foregoing paragraphs, I am persuaded to form the opinion that the rule has enough oxygen and vigorous strength for survival and accordingly, the same requires to be made absolute.

17. In the result, the Rule is made absolute, however, without any order as to costs. The impugned judgment and order dated 09.09.2008 in Title Suit No. 179 of 2004 passed by the learned Joint District Judge, 1st Court, Dhaka is hereby set aside and Abdul Quddus Mollah who is contesting the suit claiming as lawful attorney on behalf of the defendant Nos. 1 and 2 is directed to produce the said power of attorney before the trial court within 30 (thirty) days from the date of receipt of this judgment and order of this Court failing which he will have to face the consequences as enumerated in rule 21 of Order 11 of the Code.

18. The order of stay granted earlier by this Court at the time of the issuance of the rule is hereby recalled and vacated. The concerned Judge is directed to proceed with the suit in accordance with law.

19. The office is directed to send a copy of the Judgment and Order of this Court to the Court concerned at once. Let a copy of this judgment and order of this Court be sent to the concerned learned Joint District Judge, 1st Court, Dhaka for his future guidance and also send a copy of the same to the learned District Judge, Dhaka for the purpose of informing the judges working in the judgeship that before passing any judgment and order/decreed in any law suit the relevant provisions of law must be saluted but must not be avoided and ignored.

Mohammad Showkat Ali Chowdhury, J.