

**District-Narayanganj.**

**In the Supreme Court of Bangladesh  
High Court Division  
(Civil Revisional Jurisdiction)**

Present:

**Mr. Justice Md. Anowarul Islam**

**Civil Revision No. 1405 of 2025**

**IN THE MATTER OF :**

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

-And-

In the Matter of:

Kumudini Welfare Trust of Bengal (BD) Ltd.

.....Petitioner

Versus

Pubali Bank Limited and another

.....Opposite parties

Mr. Rehan Hossain, Advocate with

Mr. Saurav Saha, Advocates

.....For the petitioner

Mr. Md. Nazmul Haque, Advocate with

Mr. Zahidur Rahman, Advocates

.....For the opposite parties

*Heard on: 08.06.2026, 15.06.2026 and 22.06.2026*

**Judgment on: 30.06.2026**

**Md. Anowarul Islam, J:**

Rule was issued calling upon the opposite parties to show cause as to why the order No. 13 dated 10.02.2025 passed by the learned Additional District Judge, First Court, Narayanganj, in Other Class Appeal No. 243 of 2023 rejecting the application filed by the defendant-appellant-petitioner under Order VI Rule 17 of the Code

of Civil Procedure for amendment of the written statement, and refusing to extend the order staying further proceedings of Other Class Suit No. 92 of 2002, should not be set aside and/or such other or further order or orders be passed as this Court may deem fit and proper.

At the time of issuance of the Rule, all further proceedings of Other Class Appeal No. 243 of 2023 pending before the learned Additional District Judge, First Court, Narayanganj, were stayed for a period of six months. The parties were also directed to maintain status quo in respect of possession of the suit land for the same period. The said orders have subsequently been extended from time to time and were last extended on 09.06.2026 until disposal of the Rule.

The facts, relevant for disposal of the Rule, are that Pubali Bank Limited, Narayanganj Branch instituted Other Class Suit No. 92 of 2002 against Kumudini Welfare Trust of Bengal (BD) Limited and the Government of Bangladesh seeking a declaration of title, recovery of khas possession and correction of R.S. Khatian No. 241. By judgment and decree dated 22.06.2023, the suit was decreed. Aggrieved thereby, the defendant preferred Other Class Appeal No. 243 of 2023 before the learned District Judge, Narayanganj. During the pendency of the appeal, the defendant-appellant filed an application under Order VI Rule 17 of the Code of Civil Procedure seeking amendment of the written statement. By the impugned order

dated 10.02.2025, the learned Additional District Judge rejected the said application. Hence, the present Rule.

The plaintiff's case, in brief, is that the suit land originally belonged to Ranada Prasad Saha, who transferred it to Comilla Banking Corporation by registered Deed No. 3450 dated 07.09.1946 and delivered possession thereof. Thereafter, Comilla Banking Corporation became United Bank of India (UBI), in whose favour the suit land was recorded during the S.A. operation. Following the merger of UBI with Pubali Bank Limited in 1978, all its assets, including the suit land, vested in Pubali Bank Limited.

It is further alleged that the plaintiff Bank effected mutation in its favour on 18.09.1990 and has since been paying rent regularly. According to the plaintiff, on 15.11.1999 the defendant attempted to raise a boundary wall over the suit land and, despite police intervention following an FIR lodged on 16.11.1999, subsequently dispossessed the plaintiff by forcibly occupying the land. Consequently, the suit was instituted seeking declaration of title, recovery of khas possession and correction of the R.S. record.

The defendant No. 1 contested the suit by filing a written statement contending, inter alia, that the suit land, along with other lands, originally belonged to M. David and Company, which transferred the same by registered Deed No. 2818 dated 31.07.1929 in favour of George Henderson. Thereafter, George Henderson transferred the suit land, together with other properties, to Ranada

Prasad Saha by registered deed dated 29.03.1945 and delivered possession thereof. Upon acquiring title and possession, Ranada Prasad Saha transferred all his properties, including the suit land, to Kumudini Welfare Trust by registered Deed No. 816 dated 22.04.1948 for charitable purposes, pursuant to which Kumudini Hospital and Bharateshwari Homes were established. It was further asserted that the original deed remains deposited with Sonali Bank Limited, Corporate Branch, Narayanganj, as security for a mortgage and that the plaintiff has neither right, title nor possession in the suit land. The defendant also alleged that the plaintiff procured mutation in its favour without any lawful deed or supporting documents.

During the pendency of the appeal, the defendant-appellant filed an application under Order VI Rule 17 of the Code of Civil Procedure seeking amendment of the written statement by incorporating the subsequent developments relating to Miscellaneous Case No. 21 of 2003 pending before the Assistant Commissioner (Land), Narayanganj. The application, inter alia, stated that the plaintiff had obtained Mutation Case No. 5136/90 on 18.09.1990 without the knowledge of the defendants. Upon coming to know of the mutation, the defendants instituted Miscellaneous Case No. 21 of 2003 before the Assistant Commissioner (Land), Narayanganj, seeking cancellation of the mutation and partition of holdings. It was further stated that although the Miscellaneous Case was dismissed on 28.08.2017 during the pendency of the civil suit, the Additional

Divisional Commissioner (Revenue), Dhaka, by order dated 14.03.2021, condoned the delay and directed that the Miscellaneous Case be reheard and disposed of on merit. According to the defendant, Miscellaneous Case No. 21 of 2003 is still pending before the Assistant Commissioner (Land), Narayanganj.

Upon hearing the parties, the learned Appellate Court, by the impugned order dated 10.02.2025, rejected the application under Order VI Rule 17 of the Code of Civil Procedure upon the following findings:

"After the plaintiff instituted Title Suit No. 92 of 2002 for declaration of title and recovery of khas possession, the defendant/appellant filed Miscellaneous Case No. 21 of 2003 before the AC (Land), Narayanganj, challenging Mutation Case No. 5136/90. As the civil suit was pending, the said Miscellaneous Case was dismissed. Subsequently, the defendant/appellant preferred Miscellaneous Appeal No. 293 of 2017 before the ADC (Revenue), which was also rejected. However, by order dated 14.03.2021, the Additional Divisional Commissioner (Revenue) allowed the appeal and directed that Miscellaneous Case No. 21 of 2003 be heard and disposed of on merit. The present application for amendment has been filed solely for the purpose of incorporating in the written statement the fact that Miscellaneous Case No. 21 of 2003 is presently pending adjudication.

However, judgment in Title Suit No. 92 of 2002 was delivered on 22.06.2023, and no satisfactory explanation has been offered for the delay in filing the amendment application. Moreover, any order passed or to be passed by the AC (Land) during the pendency of a civil suit does not bind or affect the Civil Court, as mutation proceedings are dependent upon the determination of title to the land. Therefore, there is no necessity for incorporating the proposed amendment, and the same is liable to be rejected. Accordingly, the amendment application dated 10.02.2025 is rejected."

Mr. Rehan Hossain, the learned Advocate, assisted by Mr. Saurav Saha, appearing on behalf of the petitioner, submits that although the learned trial Court found that both parties claimed title under registered deeds executed by the same vendor, namely R.P. Saha, and that the S.A. record stood in the name of the predecessor of the plaintiff Bank whereas the R.S. record stood in the name of the defendant, it ultimately placed considerable reliance upon the plaintiff's mutation records while decreeing the suit. In support of his submission, he refers to the following observations made by the learned trial Court:

“কিন্তু বিবাদীপক্ষ নালিশা ভূমি সম্পর্কিত কোন নামজারী জমাভাগ বা খাজনা দাখিলার কাগজাদী দাখিল করেননি।

বাদীপক্ষ আরজিতে উল্লেখ করেছেন যে, বাদী ব্যাংক তপসিল বর্ণিত সম্পত্তি সম্পর্কে ১৮/০৯/১৯৯০ ইং তারিখে নামজারী ও জমাভাগ করে খাজনাদি আদায়ে নালিশা ভূমিতে ভোগ দখলে নিয়ত হয়। বাদীপক্ষ তাদের বর্ণিত

দাবীর সমর্থনে নামজারী জমাভাগ ও খাজনার দাখিলা রশিদ দাখিল করেছেন,  
যা প্রদর্শনী- ২ সিরিজ ও ৩ হিসেবে চিহ্নিত হয়েছে।

বাদীপক্ষের নামে নালিশা ভূমি সম্পর্কিত এস.এ ও আর.এস পর্চা মোতাবেক  
নামজারী জমাভাগ রয়েছে এবং বাদীপক্ষ খাজনাদি পরিশোধ করেছে মর্মে  
প্রতীয়মান হয়।

বিবাদীপক্ষ উক্ত দাবীর সমর্থনে কোনো দালিলিক প্রমাণ আদালতে উপস্থাপন  
করতে পারেননি। অধিকন্তু বাদীপক্ষ কর্তৃক দাখিলকৃত প্রদর্শনী- ৪(ক) দৃষ্টে  
প্রতীয়মান হয় যে, মিস আপীল নং-২৯৩/২০১৭ যা অত্র মামলার বিবাদীপক্ষ  
কর্তৃক দায়েরকৃত, উহা অতিরিক্ত জেলা প্রশাসক (রাজস্ব) কর্তৃক নামঞ্জুর করা  
হয়েছে। ফলে আর.এস-২৪১ খতিয়ানের পর্চায় বিবাদীপক্ষের নাম লিপি হওয়া  
সঠিক হয়নি মর্মে প্রতীয়মান হয়।”

Referring to the aforesaid findings, the learned Advocate submits that the learned trial Court erroneously proceeded on the assumption that the mutation in favour of the plaintiff Bank had attained finality, whereas the mutation proceedings are still pending before the Revenue Authority. According to him, the subsequent developments in Miscellaneous Case No. 21 of 2003 constitute material facts which ought to have been brought on record by way of amendment so that the learned Appellate Court could effectively examine the correctness of the findings recorded by the trial Court.

He further submits that the issue before this Court is not the ultimate merit of the pending appeal but whether the proposed amendment is necessary within the meaning of Order VI Rule 17 of the Code of Civil Procedure. Although mutation proceedings ordinarily have little relevance in a title suit, the learned trial Court itself having relied upon the mutation in support of the plaintiff's

title, the defendant-appellant ought to have been permitted to amend the written statement by bringing the subsequent developments in those proceedings to the notice of the appellate Court. He lastly submits that the proposed amendment neither changes the nature and character of the defence nor causes any prejudice to the plaintiff. Accordingly, the impugned order is liable to be set aside.

Per contra, Mr. Md. Nazmul Haque, the learned Advocate, assisted by Mr. Zahidur Rahman, appearing on behalf of the opposite party No. 1, submits that it is a settled principle of law that an amendment of pleadings may be allowed only if it is necessary for determining the real question in controversy between the parties. Referring to *Motasim Ali Chowdhury vs. Md. Ismail*, reported in 53 DLR (AD) 74, he submits that the proposed amendment is wholly unnecessary, since any order passed or to be passed by the Revenue Authority in mutation proceedings neither determines nor affects the title to the suit land, which is the subject matter of adjudication before the Civil Court. He also relies upon the decision in *Nur Mohammad vs. Asen Ali and others*, reported in 21 BLC (HC) 347, wherein it was held that mutation neither confers title nor concludes disputes regarding ownership and that the Revenue Authority should await the outcome of the civil suit where title is in dispute.

The learned Advocate further submits that the amendment application was filed more than twenty-one years after the institution of the suit and after the judgment and decree of the trial Court,

without any satisfactory explanation for such inordinate delay. He also points out that although the plaintiff obtained mutation in 1990, the defendant challenged the same only long after institution of the suit, which, according to him, demonstrates the lack of due diligence on the part of the defendant. He therefore submits that the learned Appellate Court rightly exercised its discretion in rejecting the application under Order VI Rule 17 of the Code of Civil Procedure and that the Rule is liable to be discharged.

I have heard the learned Advocates for the respective parties, perused the impugned judgment, the judgment and decree passed by the learned trial Court and the materials available on record.

The only question requiring determination in the present Rule is whether the learned Appellate Court committed any error of law in rejecting the petitioner's application under Order VI Rule 17 of the Code of Civil Procedure seeking amendment of the written statement at the appellate stage.

Order VI Rule 17 of the Code empowers the Court to permit amendment of pleadings at any stage of the proceedings. The discretion, however, is not absolute. The amendment must be necessary for determining the real question in controversy between the parties and must not be intended merely to introduce unnecessary or collateral matters.

In *Motasim Ali Chowdhury vs. Md. Ismail*, 53 DLR (AD) 74, the Appellate Division held that although amendment of pleadings may be allowed at any stage of the proceedings, such amendment should be permitted only when it is necessary for determining the real controversy between the parties. Where the proposed amendment serves no useful purpose in resolving the actual dispute, the Court is fully justified in rejecting the application.

In the present case, the proposed amendment merely seeks to incorporate the subsequent history of Miscellaneous Case No. 21 of 2003 pending before the Assistant Commissioner (Land), Narayanganj, relating to mutation proceedings. The real controversy in the suit is the competing title of the parties over the suit property. Mutation proceedings neither create nor extinguish title, nor are the findings of the Revenue Authority binding upon the Civil Court in adjudicating questions of title. Consequently, the pendency of the mutation proceeding is not a fact necessary for deciding the real controversy between the parties.

The learned Appellate Court rightly observed that any order passed or to be passed by the Revenue Authority would not govern the determination of title by the Civil Court. I find no legal infirmity in that reasoning. On the contrary, it accords with the settled principle that mutation proceedings are merely fiscal in nature and remain subject to the decision of the competent Civil Court.

There is another important aspect of the matter. The suit was instituted in 2002, whereas the application for amendment was filed only after the decree of the trial Court and during the pendency of the appeal, more than twenty-one years after institution of the suit. The petitioner has not offered any satisfactory explanation for such extraordinary delay. Even though Order VI Rule 17 permits amendment at any stage, the Court must be satisfied that the party acted with due diligence and that the amendment could not have been sought earlier. In the absence of any convincing explanation, the learned Appellate Court rightly declined to exercise its discretionary jurisdiction in favour of the petitioner.

I also find no substance in the petitioner's submission that the proposed amendment became necessary merely because the learned trial Court referred to the mutation proceedings while appreciating the evidence. The correctness or otherwise of the findings recorded by the learned trial Court is a matter to be examined by the appellate Court in the pending appeal. If the petitioner considers any of those findings to be erroneous, it is open to him to assail the same in the appeal. Such alleged error cannot, by itself, justify amendment of the written statement within the meaning of Order VI Rule 17 of the Code of Civil Procedure, particularly when the proposed amendment neither alters nor clarifies the original defence but merely seeks to bring on record a subsequent development relating to mutation

proceedings, which has no decisive bearing on the determination of the real question in controversy between the parties.

Accordingly, I am of the considered view that the learned Appellate Court committed no error of law in rejecting the petitioner's application for amendment. The proposed amendment neither assists in determining the real controversy between the parties nor is supported by any satisfactory explanation for the inordinate delay in seeking it. The impugned order, therefore, does not call for interference in revisional jurisdiction under section 115(1) of the Code of Civil Procedure.

For the reasons discussed above, I find that the proposed amendment is neither necessary for determining the real question in controversy between the parties within the meaning of Order VI Rule 17 of the Code of Civil Procedure nor would it assist the learned Appellate Court in effectively adjudicating the appeal. The learned Appellate Court, therefore, rightly exercised its judicial discretion in refusing the prayer for amendment. Furthermore, the petitioner has failed to furnish any satisfactory explanation for seeking the amendment after an inordinate delay of more than twenty-one years from the institution of the suit. I also find that the impugned order suffers from no jurisdictional error, illegality or material irregularity warranting interference by this Court in the exercise of its revisional jurisdiction under section 115(1) of the Code of Civil Procedure.

Accordingly, the Rule is discharged. There shall, however, be no order as to costs.

The order of stay and status quo granted at the time of issuance of the Rule stands vacated.