

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

Present:

Mr. Justice Md. Anowarul Islam

Civil Revision No. 1848 of 2025

IN THE MATTER OF :

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

-And-

In the Matter of:

Saad Muhammad Hayder

.....Petitioner

Versus

Md. Jahangir Alam and others

.....Opposite parties

Mr. Sarder Md. Abul Hossain, with

Mr. Md. Saidur Rahman, Advocates

.....For the petitioner

None appears

.....For the opposite parties

Heard on: 26.04.2026 and 03.05.2026

Judgment on: 10.05.2026

Md. Anowarul Islam, J:

Rule was issued calling upon the opposite parties to show cause as to why the judgment and order dated 25.02.2025 passed by the learned Additional District Judge, 3rd Court, Rajshahi in Civil Revision No. 34 of 2021, whereby the order dated 30.11.2021 passed by the learned Senior Assistant Judge, Rajshahi in Other Class Suit No. 34 of 2005 was reversed and the suit was held to have abated, 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, this Court stayed the operation of the judgment and order dated 25.02.2025 passed by the

learned Additional District Judge, 3rd Court, Rajshahi till disposal of the Rule.

The relevant facts, necessary for disposal of the Rule, are that Mustari Hyder, the mother of the present petitioner, as plaintiff instituted Other Class Suit No. 34 of 2005 before the Court of the Joint District Judge, 1st Court, Rajshahi seeking, *inter alia*, a declaration that the kabala deeds dated 24.02.1997 being Deed Nos. 2001 of 1997 and 2002 of 1997, allegedly created on the basis of a photocopy of Deed No. 21069 of 1975, in which the names of the transferor and transferee appearing in the photocopy differed from those contained in the original deed, were forged and fraudulent, and that defendant Nos. 1 and 2 had acquired no right, title or interest thereunder. The suit was instituted through her duly constituted attorney, Md. Shariful Islam alias Liton.

During the pendency of the suit, the original plaintiff, Mustari Hyder, died on 23.12.2014 leaving behind her only son, Saad Muhammad Hyder, the present petitioner, as her sole legal heir. The petitioner also appointed Md. Shariful Islam, the same person who had been acting as the attorney of the deceased plaintiff, as his duly constituted attorney to conduct and administer the suit on his behalf. The attorney thereafter filed an application for amendment of the plaint seeking substitution of the petitioner in place of the deceased plaintiff. Upon hearing the parties, the learned Joint District Judge, 1st Court, Rajshahi rejected the application holding that such an

application could not be maintained through an attorney unless the legal heir himself was first brought on record. Consequently, by Order No. 112 dated 14.05.2015, the learned Judge recorded the abatement of the suit.

Thereafter, the present petitioner, acting through his attorney, instituted Miscellaneous Case No. 04 of 2015, which was subsequently renumbered as Miscellaneous Case No. 43 of 2021, under Order XXII Rule 9A of the Code of Civil Procedure, praying for setting aside the order of abatement dated 14.05.2015 and for his substitution in the suit by way of amendment of the plaint.

Subsequently, following the enhancement of the pecuniary jurisdiction of the subordinate courts, Other Class Suit No. 34 of 2005 was transferred to the Court of the learned Senior Assistant Judge, Sadar, Rajshahi. Upon hearing the parties, the learned Senior Assistant Judge, by judgment and order dated 30.11.2021, allowed Miscellaneous Case No. 43 of 2021, set aside the order of abatement dated 14.05.2015, and restored the suit to its original file and number.

Being aggrieved by the aforesaid order, the opposite parties preferred Civil Revision No. 34 of 2021 before the Court of the learned Additional District Judge, 3rd Court, Rajshahi. Upon hearing the parties, the revisional court, by judgment and order dated 25.02.2025, allowed the revision and reversed the judgment and order passed by the trial court.

Challenging the legality and propriety of the judgment and order dated 25.02.2025 passed by the learned Additional District Judge, 3rd Court, Rajshahi in Civil Revision No. 34 of 2021, the plaintiff-petitioner has preferred the present Civil Revision under section 115(4) of the Code of Civil Procedure, in which the Rule was issued and an ad interim order of stay was granted.

The Rule having become ready for hearing, it has been taken up for hearing before this Bench at the instance of the learned Advocate appearing for the petitioner.

Mr. Sarder Md. Abul Hossain, learned Advocate, assisted by Mr. Md. Saidur Rahman, appearing on behalf of the petitioner, submits that the learned Senior Assistant Judge, upon proper appreciation of the facts and the law, rightly allowed Miscellaneous Case No. 43 of 2021 by judgment and order dated 30.11.2021, setting aside the order of abatement, restoring the original suit to its file and allowing the petitioner's prayer for amendment of the plaint. He submits that the learned Additional District Judge, while exercising revisional jurisdiction, failed to appreciate the facts and the applicable provisions of law and most erroneously reversed the well-reasoned order of the trial Court. Accordingly, the impugned judgment and order are liable to be set aside.

The learned Advocate further submits that, after the death of the original plaintiff, the present petitioner, being her sole legal heir, sought to be substituted in the suit by filing an application for

amendment of the plaint through his duly constituted attorney, praying for deletion of the name of the deceased plaintiff and substitution of his own name in her place. However, the learned Additional District Judge erroneously held that such an application could not be maintained through an attorney and stated in his order that “মূল মোকদমায় বাদী শ্রেণীভুক্ত না হয়ে উক্ত মোকদমা পরিচালনা করার জন্য এটর্নী নিয়োগ করা বিধি সম্মত হয় নাই এবং উক্ত মোকদমা পরিচালনা করার জন্য এটর্নী নিয়োগের কোন ক্ষমতা মৃত বাদীর পুত্র সাদ মোহাম্মদ হায়দারের ছিল না।” and thereby committed an error apparent on the face of the record.

Referring to the provisions of Order III Rule 2 of the Code of Civil Procedure, the learned Advocate contends that a duly constituted attorney is legally competent to act, apply and appear on behalf of the principal in judicial proceedings, including the filing of an application for substitution and consequential amendment of the plaint. According to him, the learned Additional District Judge failed to appreciate the true scope and effect of the aforesaid provision and as a result, illegally interfered with the order passed by the trial Court. Such erroneous interpretation of law, he submits, has occasioned a failure of justice.

The learned Advocate, therefore, prays that the Rule be made absolute by setting aside the impugned judgment and order passed by the learned Additional District Judge, 3rd Court, Rajshahi, thereby restoring the judgment and order dated 30.11.2021 passed by

the learned Senior Assistant Judge, so that the petitioner's claim may be adjudicated on merit in accordance with law.

Despite the matter having appeared in the daily cause list on several occasions, no one appeared on behalf of the opposite parties to oppose the Rule.

I have heard the learned Advocate appearing for the petitioner and perused the revisional application together with the annexures appended thereto.

It appears from the records that, following the death of the original plaintiff, the present petitioner, being her sole legal heir, filed an application through his duly constituted attorney seeking his substitution in the suit by way of amendment of the plaint. In the said application, it was, inter alia, stated as follows:

প্রস্তাবিত সংশোধনঃ

১। আরজির বাদী মুস্তারী হায়দার এর নামের পূর্বে “মৃত” শব্দ লিখিত হইবে।

২। মৃত মুস্তারী হায়দার এর নামের নীচে পুত্র সাদ মোহাম্মদ হায়দার, পিতা-মৃত সালেহ উদ্দিন হায়দার, সাং-৮/৪ এ, ব্লক-লালমাটিয়া, থানা- মোহাম্মদপুর, জেলা- ঢাকা, জাতীয়তা-বাংলাদেশী, পক্ষে ১৩/০২/২০১৫ ইং আরজির সম্পাদিত আমমোক্তার নামা মূলে নিযুক্তিয় আমমোক্তার জনাব মোঃ শরিফুল ইসলাম ওরফে লিটন, পিতাঃ মোঃ আব্দুস সামাদ, সাং- লক্ষীপুর বাউতলা, থানা- রাজপাড়া, জেলা- রাজশাহী। আরজির প্রথম পৃষ্ঠায় লিখিত হইবে।

Upon the death of the original plaintiff, the right to continue the suit vested exclusively in her legal representative. Accordingly,

the present petitioner, Saad Mohammad Hyder, being the sole legal heir and successor-in-interest of the deceased plaintiff, was required to seek his substitution in the suit in his own right as the legal representative under the provisions of Order XXII Rule 3 of the Code of Civil Procedure. Such substitution could not legally be sought through the power of attorney executed by the deceased plaintiff, since the authority conferred thereunder stood terminated upon her death by operation of section 201 of the Contract Act, 1872.

However, upon careful scrutiny of the facts and circumstances of the case, this Court is of the view that the learned Additional District Judge, 3rd Court, Rajshahi committed an error of law in holding that Saad Mohammad Hyder could not appoint an attorney unless and until he had first been substituted as the plaintiff in person. Such a view is contrary to the provisions of Order III Rule 1 of the Code of Civil Procedure(CPC), which expressly provides that any appearance, application or act required or authorised by law to be made or done by a party in any Court may, unless otherwise expressly provided by law, be made or done either by the party in person or by his recognised agent or pleader. Order III Rule 2(a) further provides that persons holding powers of attorney authorising them to make and do such appearances, applications and acts on behalf of the parties are recognized agents within the meaning of the Rule. The expression "party" includes a person asserting the right to

be brought on record as legal representative. Otherwise every substitution application would require personal appearance. There is no such requirement anywhere in the CPC.

Therefore, although the petitioner could not claim substitution through the authority derived from the power of attorney executed by the deceased plaintiff, there was no legal impediment to his executing a fresh power of attorney in favour of Md. Shariful Islam authorising him to file the application for substitution on the petitioner's behalf. The authority of such attorney would derive solely from the petitioner's own power of attorney and not from the authority previously conferred by the deceased plaintiff. Consequently, the application for substitution, having been presented through the petitioner's own duly constituted attorney, was maintainable under Order III Rules 1 and 2(a) of the Code of Civil Procedure.

The learned Additional District Judge failed to appreciate the distinction between the termination of the deceased plaintiff's agency under section 201 of the Contract Act, 1872 and the petitioner's independent right to appoint his own recognised agent under Order III Rules 1 and 2(a) of the Code of Civil Procedure. The rejection of the petitioner's application on the sole ground that he had not first appeared personally before the Court before appointing an attorney was, therefore, based on a misinterpretation of the law and has resulted in an erroneous decision occasioning a failure of justice.

In such view of the matter as discussed above, considering all aspect of the case, I am inclined to interfere with the impugned judgment and order which is liable to be set aside.

In the result the Rule is made absolute. There will be no order as to costs.

The Judgment and Order dated 25.02.2025 passed by the Learned Additional District Judge, 3rd Court, Rajshahi in Civil Revision by abatement the Other class Suit No. 34 of 2005 and thereby reversing the order dated 30.11.2021 the learned Senior Assistant Judge, Rajshahi in Other Class Suit No. 3 of 2005 is hereby be set aside.

The order of stay granted earlier at the issuance of the Rule is hereby vacated.

Communicate the judgment and order at once.

Bo Khalek