

Present:

**Mr. Justice Sheikh Abdul Awal
And
Mr. Justice Md. Mansur Alam**

CIVIL REVISION NO. 3009 OF 2018

Farida Begum and others
Defendants- Petitioners

Versus

Gono Purto Odhidoptor, Purta Bhaban,
Segun Bagicha, Dhaka, represented
by its Executive Engineer Gono Purta
Kather Karkhana Bivag
Plaintiff- Opposite Party

Mrs. Afsana Begum, Advocate
for the petitioner

Md. Md. Yousuf Ali, D.A.G with
Mr. Md. Golam Hasnaen, Advocate
for the opposite party No.1

Heard on:18.05.2025

Judgment on: 20.05.2025

Md.Mansur Alam, J

This Rule was issued calling upon the opposite party to show cause as to why the Order No.20 and impugned Judgment and Order dated on 16.09.2018 passed by the Joint District Judge, 4th Court, Dhaka in Money Suit No. 24 of 2016 should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

The Plaintiff Opposite Party Gonopurto Odhidoptor filed Money Suit No.24 of 2016 for a decree of payment of Tk. 37,69,74,079/ against the defendant appellant as the said money was misappropriated by the defendant-appellant.

The plaintiff's case, in short, is that Ansarul Huq predecessor of defendant-appellant was an Executive Engineer in PWD and was posted at Sher E Bangla Nagar, Wood factory. He had misappropriated a huge amount of money of his working period during Financial Year 1999 to 2000 and 2003 to 2004. The Audit team under Comptroller and Auditor General on an allegation conducted an audits and found misappropriation amounting to Tk.37,69,74,079/-. Thereafter that Ansarul Huq died leaving behind wife Farida, son Fuad Bin Asar and daughters Farhana Huq Diba and Foujia Huq Noor. The plaintiff respondent then filed a Certificate Case No.181 of 2012 against the heirs of Ansarul Huq but Ld. Certificate officer being deluded dismissed that case on the grounds that the case is not lawful and maintainable since the same is not legal against a dead person. Therefore the plaintiff appellant brought this present Money Suit for a prayer of passing a decree of amounting to Tk.37,69,74,079/.

Defendant-appellants the heirs of late Ansarul Huq entered appearance in the suit by filing an application under Order 7 rule 11 stating inter alia that there is no cause of action for filing the alleged money suit. They added further that there is no provision of law in instituting suit or in taking any other steps against a deceased person. It is admitted that there was no any certificate proceeding against Ansarul Huq before his death, so the case after his death against his legal heirs under

Public Demands Recovery Act is contradictory. It is worth mentioning that Ansarul Huq died almost one year before the composition of inquiry Committee which implicated Ansarul Huq in the alleged misappropriation. The then Superintendent Engineer withdrew the allegation against Ansarul Hoqe on the basis of the written statement of Executive Engineer A.K.M Shafi. Even Honorable Administrative Tribunal 1 disposed of A T Case No.145 of 2006 and an appeal thereof by this plaintiff is also rejected.

Ld. Trial Court on elaborate discussion dated on 16.09.2018 rejected the petition under Order 7 rule 11 mainly on the ground that the plaint does not suffer from want of cause of action or barred by law. Ld. Trial judge also observed that the subject matter and parties of previous suit and that of subsequent suit is different. So the present suit is not barred by Res-judicata or by law. As such Ld. Trial judge rejected the application under Order 7 rule 11.

Being aggrieved by and dissatisfied with the impugned judgment and order this Petitioner-defendant moved this revision before this Court and obtained this Rule.

Mrs Afsana Begum learned Advocate for the petitioners submits that the Court below erred in law observed that the subject matter of the previous case and subsequent case is

different, so the present money suit is not barred by law or by res judicata.

She further submits that the learned Trial Court did not consider the (NOC) না দাবীপত্র given by the Ex Executive Engineer (E/M) গণপূর্ত কার্ঠের কারখানা বিভাগ dated 23.12.2003 where it transpires that they have no any due from the deceased Ansarul Huq. Learned trial Court also committed error of law in not considering the limitation of the impugned money suit. She also argued that learned Court below ought to have considered the decision passed in the case of Abdul Jalil and others Vs. Islamic Bank Bangladesh Ltd. and others reported in 9 BLT(AD) at page 71 wherein their Lordships held that it is well settled that where a plaint cannot be rejected under Order 7 rule 11 Code of Civil Procedure, the Court may invoke its inherent jurisdiction and the reject the plaint taking recourse to section 151 of the Code of Civil Procedure. The learned Advocate finally prays for making the Rule absolute.

Mr. Md. Yusuf the Learned Deputy Attorney General for the opposite party contended that the alleged misappropriation of Tk.37,69,74,079/ is proved on an audit by the Comptroller and Auditor General's office. Learned Deputy Attorney General further submits that the defendant-appellant earlier filed a Revision Case No.3896 of 2016 against the order of Learned trial Court dated 09.11.2016. Honorable High Court Division

disposed of the case on 25.07.2017 and directed the plaintiff respondent to submit necessary documents (though the same are submitted earlier) and to dispose of the suit as early as possible preferably within six months from the date of receipt of the judgment but the defendant-appellant without filing written statement, brought this petition for rejection of the plaint with a view to delay the disposal of the original Money Suit.

Learned Deputy Attorney General further submits that the plaint do well disclose the cause of action of the case and a mixed question of law and fact is involved in this case which cannot be determined without leading evidence. The learned Deputy Attorney General finally prays for discharging the Rule.

We heard learned Advocate and learned Deputy Attorney General and having gone through memo of revision and other materials on record including the impugned order. It is well settled now that a plaint may be rejected under Order 7 rule 11 of the Code of Civil Procedure merely on a plain reading of the plaint but in exceptional circumstances the Court may invoke its inherent jurisdiction and can through the plaint out in limitation. It is also well settled that the plea of implied bar should be decided on evidence unless the fact disclosed in the plaint clearly indicate that the suit is not maintainable.

We can keep our eyes here on the leading case of Ismat Jerin Khan vs The World Bank reported in 11 MLR (AD), 2006 at 58-64 where it is held as follows:

“Plaint cannot be rejected under Order 7 rule 11 C P C, either on the question of law or on fact before filing written statement by the defendant. Immunity is a mixed question of law and fact which can be pressed upon filing written statement containing material averments. Upon considering the decision on the principles since propounded so long on similar issues, the apex court directed the trial court to decide all the issues including maintainability of the suit after filing of the written statement by the defendant and evidence led thereon. This observation of the Honorable Appellate Division is also applicable in a petition under section 151 of Code of Civil Procedure because it is a settled principle that a plaint cannot be rejected before filing written statement by the defendant.

We clearly find here that the subsequent suit was a Certificate Case being No.181 of 2012 and the present suit is a Money suit being No.24 of 2016 between the parties. The principles of Res-judicata also lie on whether the judgment of the previous suit was passed by a Court not competent to pass or obtained by fraud or collusion. We can also refer here the case of Federation vs Kumudini reported in 6 DLR at page 177 where it is decided that “ Decision of a Certificate officer is not

res judicata to a proceeding in civil suit.” The principles of res judicata regarding ‘by a court not competent to try’ is well cited in Modhari vs Surjat reported in 31 DLR 84, 25 D L R 21, Al Baraka vs Rina reported in 56 DLR 588. In all these cases the principle is applied that for invoking the provision of res judicata under section 11 of Code of Civil Procedure, the former Court must have the jurisdiction to try or dispose of the subject matter of the subsequent Case. It is admitted that the present suit is a money suit exclusively triable by a civil Court where the previous case was a certificate case triable by other than a Civil Court.

In view of the discussion made as above we are convinced by the argument advanced by Learned Deputy Attorney General that the defendant appellant have been failed to show want of cause of action or the case is barred by law or by res judicata or the former certificate Court was competent to try any suit of civil nature like the present money suit. So learned trial judge is quite justified to reject the application under Order 7 rule 11 of Code of Civil Procedure and as such the impugned order is not liable to be interfered with.

In view of the above circumstances this Court finds that learned trial Court rightly passed the alleged order and hence, the Rule is liable to be discharged.

Considering the facts and circumstances of the Case, we find no substance in this Rule.

In the result, the Rule is discharged without any order as to costs.

The Order No.20 and impugned Judgment and Order dated on 16.09.2018 passed by the Joint District Judge, 4th Court, Dhaka in Money Suit No. 24 of 2016 is hereby upheld.

The order of stay granted earlier by this Court at the time of issuance of the Rule is hereby recalled and vacated.

Let a copy of this judgment be communicated to the Court concerned at once.

Sheikh Abdul Awal, J

I agree