

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Civil Appellate Jurisdiction)**

First Miscellaneous Appeal No. 350 of 2023

With

Civil Revision No. 3139 of 2024

With

(Civil Rule No. 942 (FM) of 2023)

In the matter of:

Md. Salim

... Appellant-petitioner

-Versus-

Alhaj Shamsul Haque Chowdhury and others

... Respondents-opposite party

Mr. M. Sayed Ahmed, senior Advocate with

Mr. Md. Tajul Islam with

Mr. Zillur Rahman with

Mr. Md. Abdullah Al mamun with

Mr. Md. Saiful Bakar Mojumder and

Mr. Ferdous Al Mahmud, Advocates

...For the appellant-petitioner

None appears

....For the respondents-opposite parties

Heard and Judgment on 25.08.2024

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

Md. Mozibur Rahman Miah, J.

Since the point of law and facts so figured in civil revision no. 3139 of 2024 and that of the First Miscellaneous Appeal No. 350 of 2023 vis-a-vis the Civil Rule No. 942 (FM) of 2023 all are intertwined those have been heard together and are being disposed of by this single judgment.

The salient facts leading to issuance of the rule in Civil Revision No. 3139 of 2024 are:

The opposite party of in the civil revision and that of the respondent in First Miscellaneous Appeal as plaintiff originally filed a suit being Money Suit No. 4 of 2021 claiming compensation to the tune of taka 500,00,000.00 seeking following reliefs:

(ক) বাদীর অনুকূল বিবাদীর বিরুদ্ধে ১-১১নং বিবাদী কর্তৃক তপশী-ল উল্লেখিত সংবাদ পত্রে প্রকাশিত শিরোনামে বক্তব্যসমূহ বেআইনী, ভূয়া, ভিত্তিহীন, দালিলিক প্রমান ব্যতি-র-খ এবং তৎ দ্বারা সামাজিক, রাজনৈতিক অংগ-ন বাদীর মানহানী শারীরিক ও মানসিক ক-ষ্টর কা-র্য্য ক্ষতি সাধিত হইয়া-ছ তৎ ম-র্ম সিদ্ধা-ন্ত উপনীত হইয়া তপশী-লর দাবীকৃত ৫০০,০০,০০,০০০/- (পাচশত কোটি) টাকার ক্ষতিপূরণের বিবাদীগণের বিরুদ্ধে ডিক্রী হয়।

(খ) মোকদ্দমার ব্যয় বিঘ্নকারী বিবাদীগণের বিরুদ্ধে ডিক্রী হয়।

(গ) মোকদ্দমার অবস্থামতে আদালত বাদীকে অন্যান্য যে যে প্রতিকার দেওয়া সংগত ম-ন ক-রন তাহা দেওয়ার আ-দশ হয়।

After filing of the suit, the defendant no. 7 herein the petitioner appellant filed written statement denying all the material statement so made in the plaint and ultimately prayed for dismissing the suit. Soon after filing of the written statement by the defendant no. 7, the plaintiff-respondent-opposite party on 30.06.2022 filed an application before the trial court asking the defendant no. 7 to file the documents and the deeds in support of his written statement. On that very date, the said application was taken up for hearing and the learned judge of the trial court allowed the same vide order being No. 9 dated 30.06.2022 and directed the defendant no. 7 to submit the documents and deeds in

support of the written statement stating “বাদীর আনিত ৭ নং বিবাদীর কাগজপত্র দলিল দাখিলের দাখাস্ত মঞ্জুর করা হ-লা” and fixed 08.08.2022 for framing issue as well as filing the documents and the deeds as per the prayer so made by the plaintiff-respondent. It is at that stage, the defendant no. 7 as petitioner came before this court and obtained rule and order of stay by filing Civil Revision No. 3139 of 2024. Since the defendant no. 7 did not file documents as well as the deeds as sought by the plaintiff-respondent, the written statement filed by the defendant no. 7 was ultimately rejected 03.07.2023 vide order no. 18.

Challenging that order, the defendant no. 7 as appellant then preferred an appeal being First Miscellaneous appeal No. 350 of 2023. After preferring the appeal, the defendant no. 7-appellant then filed an application for stay of the operation of the said order passed dated 03.07.2023 on which rule was issued on 06.11.2023 and operation of the said order was stayed for 1 month which was subsequently extended from time to time that eventually gave rise to Civil Rule No. 942(FM) of 2023.

Mr. Md. Tajul Islam, the learned counsel appearing for the appellant-petitioner upon taking us to the civil revisional application as well as the memo of First Miscellaneous Appeal No. 350 of 2023 at the very outset submits that, under the provision of Order 11 rule 14 of the Code of Civil Procedure, it is the absolute desecration of the court to ask for production of the documents if it feels necessary having no scope to direct the defendant to do so on the basis of any application filed by any party to a suit.

The learned counsel further contends that, though the application filed by the plaintiff-respondent seeking production of documents as well as the deeds by the respondent no. 7 but there has been no particulars in the application as to which documents or deeds will have to be filed by the defendant no. 7 in support of his written statement in absence of which, the application filed by the plaintiff is totally preposterous having no scope to consider the same by the trial court. The learned counsel by referring to the appendix so laid out in the Code of Civil Procedure in particular form 7 also contends that, in the said form it has clearly been outlined the format as to how a party to a suit will be asked to produce document for inspection but that very provision has not been complied with. The learned counsel then by taking us to judgment and order impugned in the Civil Revision (order No. 9 dated 03.06.2022) also contends that, that order has been passed in a very slipshod and casual manner which clearly exemplifies non application of the judicial mind of the learned judge of the trial court as the learned judge has just given a go by to the application filed by the plaintiff seeking to produce documents and deeds.

The learned counsel lastly contends that, since the order being no. 9 dated 30.06.2022 is devoid of any legal basis so the subsequent order dated 03.07.2023 rejecting the written statement filed by the defendant no. 7- petitioner-appellant also bears no substance and then finally prays for making the rule absolute as well as allowing the appeal.

Though in the First Miscellaneous Appeal as well as in the Civil Rule No. 942(FM) of 2023 the plaintiff-respondent No. 1 entered

appearance but none appeared when all those matters were taken up for hearing even though it has been appearing in the list with the name of the learned counsel for the parties.

Be that as it may, we have considered the submission so advanced by the learned counsel for the petitioner-appellant and perused the revisional application and that of the memo of appeal in First Miscellaneous Appeal. We have also carefully gone through the provision so have been enshrined in Order 11 Rule 14 of the Code of Civil Procedure and the appendix of the code in particular, form 7 thereof. Aside from that, we have also gone through the orders being order Nos. 9 and 18 impugned in the Civil Revision and appeal passed in Money Suit No. 7 of 2021. Together, we have also perused the application filed by the plaintiff-respondent no. 1 dated 30.06.2022 asking the defendant no. 7 to produce documents and the deeds (Annexed as annexure 'C' to the Civil Rule No. 942 (FM) of 2023). On going through the said application, we don't find that, the plaintiff prayed for any particular document to be produced by the defendant no. 7 in support of his written statement when the learned judge of the trial court simply basing on that application and without bothering to consult the respective provision of law passed the mechanical order allowing the application. Since the order dated 31.06.2022 which was impugned in the Civil Revision can in way be sustained as that very order has not been passed complying with the provision of Order 11 Rule 14 of the Code of Civil Procedure so for obvious reason the same can not be sustained. In the same vein, since the order dated 30.06.2022 is not

tenable in law so invariably the subsequent order dated 03.07.2023 through which the written statement so filed by the defendant-petitioner-appellant No. 7 was rejected does not stand resulting in, the said order is thus set aside.

Resultantly, the rule in Civil Revision No. 3139 of 2024 is made absolute and that of the appeal being First Miscellaneous Appeal No. 350 of 2023 is allowed.

Accordingly, the order No. 9 dated 30.06.2022 as well as order no. 18 dated 03.07.2023 passed in Money Suit No. 4 of 2021 is hereby set aside.

Since we allow the appeal so the connected rule being Civil Rule No. 942(FM) of 2023 is hereby disposed of and stay passed thereof is vacated enabling the appellant-petitioner to contest the suit.

However, the learned Joint District Judge, Potia, Chattogram is hereby directed to restore the written statement filed by the defendant no. 7 and to dispose of the suit in accordance with law.

Let a copy of this order be communicated to the court concerned forthwith.

Md. Bashir Ullah, J.

I agree.