

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

Civil Revision No. 2109 of 2020

IN THE MATTER OF

Md. Mojibor Rahman Shonar and others

.....Defendants-Appellants-Petitioners

-Versus-

1. Md. Robiul Islam and others

.....Plaintiffs-Respondents-Opposite parties

2. Md. Anwarul and others

.....Pro-forma opposite parties

Mr. Muntasir Mahmud Rahman, Advocate

.....For the petitioners

Mr. Md. Abdur Rouf Akonda, Advocate

.....For opposite party Nos. 1-5

Heard on 04.06.23, 08.06.23 and judgment passed on 21.06.2023

Present:

Mr. Justice Kazi Md. Ejarul Haque Akondo

Kazi Md. Ejarul Haque Akondo, J.

This Rule, under section 115(1) of the Code of Civil Procedure, 1908, was issued in the following term-

“Let a Rule be issued calling upon the opposite party Nos. 1-5 to show cause as to why the impugned judgment and order No.55 dated 22.01.2020 passed by the learned Joint District Judge and Sessions Judge, 1st Court, Gaibandha in

Title Appeal No. 99 of 2010 rejecting an application for amending the written statement should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.”

At the time of issuance of the Rule all further proceedings of Title Appeal No. 99 of 2010 pending before the learned Joint District Judge Judge, 1st Court, Gaibandha was stayed.

The present opposite party Nos. 1-5 as the plaintiffs filed Other Class Suit No. 199 of 2000 for declaration of title and recovery of khas possession. The suit was decreed on 22.02.2010 on the contest against defendant Nos.1 to 5 and ex-parte against the rest without cost. Against which the contesting defendants preferred an appeal before the learned District Judge and the same was numbered as Title Appeal No. 99 of 2010. Thereafter, it was transferred to be Court of learned Joint District Judge, 1st Court, Gaibandha for hearing the appeal, and on the day of delivery of judgment on 22.01.2020 the appellants filed an application under Order 6 Rule 17 read with section 151 of the Code of Civil Procedure, 1908 praying for amendment of the written statement. After hearing the application the learned Joint District Judge, Gaibandha by his impugned judgment and order dated 22.01.2020 rejected the same. Against which the defendants as

the petitioners had preferred this civil revision before this Court and obtained the instant Rule.

Mr. Muntasir Mahmud Rahman, the learned Advocate appearing for the petitioners submits that it is the settled principle of law that pleadings can be amended at any point of time if required for the ends of justice, and by the proposed amendment the nature and character of the suit will not be changed, which is a bonafide one for determination of the real question of fact and doing substantial justice.

Mr. Md. Abdur Rouf Akonda, the learned Advocate appearing for the plaintiffs' opposite party Nos. 1-5 submits that at the stage of delivery of the judgment, the petitioners purposely applied for amendment of the written statement intending to delay disposal of the appeal though the amendment as prayed for is not relevant for proper disposal of the appeal and as such, the learned Judge of the Appellate Court below rightly passed the impugned judgment and order and thereby committed no illegality.

Heard the learned Advocates of the contending parties and perused the materials on record. It appears that during the pendency of Title Appeal No. 99 of 2010 and on the day of its judgment i.e. on 22.01.2020 the defendants-appellants filed an application under Order 6 Rule 17 read with section 151 of the Code of Civil Procedure, 1908 praying for amendment

of their written statement for the reason of adding B.R.S Khatian No. 288 in the written statement which was prepared in the name of defendant-appellant No. 1 but the learned Judge rejected the prayer on the ground that the said Khatian had been prepared after the judgment and decree of the Trial Court and as such, the same was not relevant. However, considering the facts and circumstances of the case it appears that if the prayer for amendment is allowed neither party will be prejudiced thereby in any manner.

Given the above, the application for amendment of the written statement may be allowed for the ends of justice and also for the sake of early disposal of the appeal since it is a very old case of the year 2000.

In view of the above, I find substance in the submissions so made by the learned Advocate for the petitioner and merit in the Rule. Accordingly, the Rule succeeds.

As a result, the Rule is made absolute without cost.

Stay vacated.

The impugned order No.55 dated 22.01.2020 passed by the learned Joint District Judge, 1st Court, Gaibandha in Title Appeal No. 99 of 2010 rejecting the application for amendment of the written statement is set

aside. The application so filed under Order 6 Rule 17 read with section 151 of the Code of Civil Procedure, 1908 is hereby allowed.

Send a copy of this judgment to the Court below at once.

(TUHIN BO)