

**Present:**  
**Mr. Justice Md. Salim**

**CIVIL REVISION NO.3891 OF 2018**

Arafat Hossain and another  
..... *Defendant-Petitioners.*

**-VERSUS-**

Mohammad Bodruzzaman  
..... *Plaintiff-Opposite party.*

Mr. Khan Md-Peer-E-Azam with  
Mr. Md. Shah Alam, Advocate  
..... *For the petitioners.*  
Mr. Md. Hassan Shaheed Qamruzzaman, Advocate  
..... *For the opposite party*

**Judgment on 30.10.2025**

By this Rule, the opposite parties were called upon to show cause as to why the judgment and order dated 12.04.2018 passed by the learned Joint District Judge, 2<sup>nd</sup> Court, Jessore in Miscellaneous Appeal No.23 of 2016 dismissed the appeal and affirmed the judgment and order dated 10.04.2016 passed by the learned Senior Assistant Judge Sadar, Jessore in Miscellaneous Case No. 87 of 2005 rejecting the Miscellaneous case for setting a side the Ex-parte Judgment and decree dated 25.02.2004 passed by the Assistant Judge, Sadar, Jessore in Tittle Suit No. 150

of 1997 should not be set aside and or pass such other or further order or orders as to this court may seem fit and proper.

Facts, in a nutshell, for disposal of the Rule, is that the opposite party herein, as plaintiff, instituted Title Suit No. 150 of 1997 before the Assistant Judge, Sadar, Jessore, for declaration of title of the land described in the schedule of the plaint.

The defendant entered an appearance in the suit and filed a written statement, denying all material allegations against him. Subsequently, the learned Assistant Judge of Sadar, Jessore, decreed the suit by an ex parte judgment and decree dated February 25, 2004.

Thereafter, the defendants, as petitioners, filed Miscellaneous Case No. 87 of 2005 before the Senior Assistant Judge, Sadar, Jessore, under Order IX, Rule 13, read with Section 151 of the Code of Civil Procedure, for the restoration of the suit, setting aside the ex parte impugned judgment and decree.

The plaintiff as opposite party contested the miscellaneous case by filing a written objection.

Subsequently, the learned Assistant Judge of Sadar, Jessore, by the judgment and order dated April 10, 2016, disallowed the Miscellaneous Case.

Being aggrieved by and dissatisfied with the above judgment and order dated 10.04.2016, the defendant-petitioner preferred Miscellaneous Appeal No. 23 of 2016 before District Judge Jessore.

Eventually, the learned Joint District Judge of the 2nd Court, Jessore, by the judgment and order dated April 12, 2018, disallowed the appeal, and affirmed those passed by the trial court below.

Being aggrieved by and dissatisfied with the above, the defendant-petitioner filed this Civil Revision under section 115(1) of the Code of Civil Procedure before this court and obtained the present Rule and order of status quo from time to time.

We have heard the learned advocate, perused the impugned judgment and order, and other materials on

record. In order to substantiate the argument raised from the Bar, it will be appropriate to quote the relevant provision of Order IX Rule 13 of the Code of Civil Procedure:

13-“(I) In any case in which a decree is passed ex parte against a defendant, he may apply to the court by which the decree was passed for an order to set aside; and if he satisfies the court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the court shall make an order setting aside the decree as against him upon such terms as to cost, payment into court or otherwise as it thinks fit and shall appoint a day for proceeding with the suit.

Provided that where the decree is of such a nature that it cannot be set aside as against such defendants only it may be set aside as against all or any of the other defendants.”

It manifests that an ex parte decree can be set aside on two grounds: (I) that the summons was not duly served or (II) that any sufficient cause prevented him from appearing when the suit was called on for hearing.

In the instant case, after reviewing the order sheet of the record, it appears that the defendant petitioner No.1 was a minor at the time of the pronouncement of the ex-party judgment and decree. Upon considering the evidence adduced and produced by both parties, it is evident that the summons was not duly served upon him. Therefore, we are of the firm view that both the courts below, without considering this aspect, most erroneously rejected the application under Order IX, Rule 13 of the Code of Civil Procedure for setting aside the ex-party judgment and order. So, it is presumed that the defendant-petitioner was prevented by sufficient cause from appearing when the suit was called on for hearing, ex parte Judgment and decree. Moreover, the petitioner had made out a case with sufficient cause for restoring the ex-party

judgment, the application for restoration of the suit is required to be granted.

On the above facts, circumstances of the case, and discussions made herein above, we are of the firm view that both the court below did not correctly appreciate and construe the documents and materials on record in accordance with the law in rejecting the application under Order IX Rule 13 of the Code of Civil Procedure which suffers from legal infirmity and perversity and as such, the same is liable to be set aside.

Resultantly, the Rule is made absolute with the cost of Tk 2000/-

Communicate this judgment.

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**(Md. Salim,J).**