

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

Present:

Mr. Justice Md. Riaz Uddin Khan

Civil Revision No. 2534 of 2022

IN THE MATTER OF :

An application under section 115(4) of the Code of Civil Procedure

-And-

In the Matter of:

Md. Saidul Islam Sayed

...Defendant-Petitioner

-Versus-

Lokman Ali Shah and another

...Plaintiff-Opposite Parties

Mr. Md. Mainul Islam with

Mr. Md. Mesbahul Islam, Advocates

...For the petitioner

Mr. Tanvir Ahmed with

Mr. Mashiur Alam, Advocates

...For the Opposite Party No.2

Judgment on: 17.12.2025

Md. Riaz Uddin Khan, J-

This Rule was issued asking the opposite parties to show cause as to why the impugned judgment and order dated 11.05.2022 passed by the District Judge, Natore in Civil Revision No. 03 of 2022 allowing the Revision and thereby reversing the judgment and order dated 10.01.2022 passed by the Senior Assistant Judge, Gurudaspur, Natore in Other Class Suit No. 313 of 2021 allowing the opposite party No. 2 to contest the suit, should not be set aside and/or such other or further order or orders should not be passed as to this Court may deem fit and appropriate.

At the time of issuance of Rule this Court stayed all further proceedings of Other Class Suit No. 313 of 2021 pending before the Senior Assistant Judge,

Garudaspur, Natore initially for a period of 08(eight) weeks which was extended time to time and lastly on 08.05.2023 it was extended till disposal of the Rule.

Succinct facts for disposal of this Rule are that one Md. Lokaman Ali Shah as the plaintiff filed a suit for cancellation of a register heba deed. In the suit the principal of ৰঙৰঞ্চ টেকনিক্যাল বিজ্ঞান ও তথ্য প্রযুক্তি এন্ড বিজনেস ম্যানেজমেন্ট ইন্সটিউট, বেরগঙ্গারামপুর, নাজিরপুর, গুরুদাসপুর, নাটোর is made the only defendant. The summons was served and the present petitioner received the same claiming himself as the principal of the Institute. At one stage the present opposite party no.2, Md. Babul Akter claiming himself as the principal of the institute appeared before the trial court and filed an application for local inspection which was allowed and an advocate commissioner was appointed by the court who submitted his report. Both Md. Saidul Islam Sayed (the present petitioner) and Md. Babul Akter (the present opposite party no.2) appeared before the trial court claiming themselves as principal of the institute, as such defendant of the suit. So, a dispute was raised before the trial Court as to whether Md. Saidul Islam Sayed or Md. Babul Akter is the principal of the institute and entitled to appear and contest the suit as sole defendant. The trial court by his order dated 10.01.2022 held that the court issued summons and writs which were received by Md. Saidul Islam Sayed as the principal of the institute and accordingly he appeared. The trial court further found that Md. Babul Akter being animated appeared before the court claiming himself as the principal but has no *locus-standi* to appear as the principal as summons and writs were not served upon him.

Against that order passed by the trial court dated 10.01.2022 the opposite party no.2, Md. Babul Akter filed Civil Revision No.03 of 2022 before the District Judge, Natore and upon hearing both the parties the learned District Judge by his impugned judgment order dated 11.05.2022 reversed the decision of the trial court on the finding that though summons was served upon the petitioner but as per the advocate commissioner's report opposite party no.2 was present during the inspection at the institute. The lower revisional court further found that the documents filed before him by both the parties appeared to him that both are the principal of the institute and he finally held that since as per the advocate commissioner's report opposite party no.2 was present at the institute during inspection he is entitled to appear as defendant to defend the institute.

Being aggrieved by and dissatisfied with the aforesaid impugned judgment and order dated 11.05.2022 Md. Saidul Islam Sayed being the petitioner filed the instant civil revision under section 115(4) of the Code of Civil Procedure. Leave was granted and Rule was issued and this court also stayed further proceeding of Other Class Suit No.313 of 2021 pending before the trial court as stated at the very outset.

Mr. Md. Mainul Islam along with Mr. Md. Mesbahul Islam, the learned advocate appearing for the petitioner referring Annexure-M, M-1, M-2, M-3, M-4, M-5, & M-6 submits that the petitioner having requisite qualifications was appointed as Principal of the Institute on 22.11.2013 and he joined on 25.11.2013 in the said post and has been performing the function of the Principal which is apparent from the correspondences with the NTRCA, BANBAISE and other

authority of the Government. The learned advocate then submits that to be a Principal of an institute as per the provisions of law at the relevant time an incumbent must be certified by NTRC index number holder with 12 years of teaching experience. The petitioner having requisite qualifications and teaching experiences of 12 years has joined as Principal of the Institute following the due process of law and has been performing as Principal and as such is entitled to contest the suit for and on behalf of the Institute.

The learned advocate next submits that an inquiry was held by the Upazila Secondary Education Officer, Gurudaspur, Natore and report was submitted to that effect on 15.03.2022 that the petitioner is the Principal. That as of now the petitioner has been performing as principal of the Institute and accordingly the registration cards and admit cards of the students, 2025 are issued under his signature and seal. The online information of BANBEIS also reveals his position in the institute. The petitioner was appointed as examiner by the board on 02.09.2025 who has been attending the institute and maintaining the attendance register as principal. The Institute is represented by its Principal or Member Secretary and accordingly the petitioner was so entrusted by the resolution of the governing body of the Institute. The Upazila Nirbahi Officer (UNO) Gurudashpur, Natore being the president of the governing body of the institute granted leave to the petitioner on 11.12.2025. The Institute took resolution and entrusted the petitioner to execute the registered gift deed in favour of the government for the purpose of its nationalization which was duly executed by the petitioner and was duly accepted by the government.

Mr. Islam further submits that on the other hand the opposite party no.2 Babul Akter a claimant to the post of the Principal is quite incompetent as per law and he is not an Index number holder and not registered or certified by NTRCA, even he has got no academic qualification or experience to be a Principal of the Institute who earlier applied for the post of Office Assistant of the Institute. For want of requisite qualifications and experiences he is not competent for holding the post of principal of the Institute, hence he is not entitled to contest the suit on behalf of the Institute and as such the impugned judgment and order is liable to be set aside.

The learned advocate then submits that lower revisional court allowed the opposite party No. 2 to contest the suit and disallowed the petitioner on the basis that a restraining order was passed against the petitioner in Other Class Suit No. 19 of 2018 which was in force but the lower revisional court missed the fact that the said order of restraint was already set aside and the concerned plaint was rejected in Civil Revision No. 24 of 2023 vide Order dated 26.06.2024 and in that view of the matter the learned District Judge committed an error in passing the impugned judgment and order which is liable to be set aside.

Mr. Islam finally submits that the opposite party No.2 Babul Akter is a stranger who is causing hindrance to the Institute, when government decided to nationalize the Institute in 2020 and he has got no *locus standi* to claim the post of the Principal of the Institute inasmuch as he earlier applied for the post of Office Assistant of the said Institute. The local inspection was held at the instance of the opposite party no.2 Babul Akter who managed to obtain a local

inspection report, wherein the plaintiff was not present. Moreover the local inspection report is not conclusive evidence.

Per-contra Mr. Tanvir Ahmed along with Mr. Mashiur Alam, the learned advocate appearing for the opposite party no.2 submits that the suit, being Other Class Suit No. 313 of 2021, is instituted by the plaintiff-opposite party No. 1 for cancellation of heba deed wherein the Principal of the Bangabandhu Science and Information Technology and Business Management Institute is impleaded as the sole defendant and an application for temporary injunction under Order 39, Rules 1 and 2 of the CPC was filed. That both the petitioner and the opposite party No. 2 held themselves out as the Principal of the said institute and filed separate written objections against the application for temporary injunction and the learned trial Court allowed the petitioner to contest the suit on the basis of service of summons upon him while the learned revisional Court allowed the opposite party No. 2 to contest the suit on the basis of local inspection report.

The learned advocate then submits that the Rule issuing order was conditional upon having the Rule ready for hearing within the specified period of 8 (eight) weeks and the failure to comply with the said condition means that the rule is automatically discharged without requiring any further course of action. The phrase 'shall stand discharged' means automatic operation and subsequent extension of the said order is simply non-est in the eye of law for that the order dated 20.06.2022 is no longer in existence so as to be subsequently extended by the Courts and the Courts granting extensions did not indulge themselves

into the specific deliberation of this point either. The orders passed by this Court cannot be done away so lightly and as such the Rule is automatically discharged.

Mr. Ahmed next submits that local inspection report shall prevail over the service of summons as the summons was not duly served. It appears from the front page of the summons that it was addressed to: অধ্যক্ষ/সচিব, বঙ্গবন্ধু টেকনিক্যাল বিজ্ঞান ও তথ্য প্রযুক্তি এন্ড বিজনেস ম্যানেজমেন্ট ইনসিটিউট, সাং-বেরগঙ্গারামপুর, পোঃ নাজিরপুর, উপজেলা-গুরুদাসপুর, জেলা-নাটোর। which also corresponds with the address given in the plaint but it appears from the rear page of the summons that it was received by the petitioner at " সাং-বেরগঙ্গারামপুর, পোঃ নাজিরপুর, উপজেলা-গুরুদাসপুর, জেলা-নাটোর। " The petitioner admitted shifting of the premises in his written objection; therefore, there is no way that the summons could have been received by the petitioner at the address given in the plaint as well as the front page of the summons and as such there is no due service in the eye of law. Notices were issued upon lawyers for both parties before local inspection and the opposite party no.2 was found to be present in the scheduled properties and he signed the list of attendees as the principal of the said Institute in the presence of local people and the said report was duly submitted before the trial Court on 07.11.2021 without any objection whatsoever till date. In view of the fact that the summons was not duly served upon the person addressed as required under Order 5, Rule 12 of the CPC and Rule 71 of the Civil Rules and Order and that the opposite party No. 2 was found to be present in the scheduled property during local inspection which was not objected to at any stage of the suit, it is clear that the local inspection

report shall take priority over the service of summons and hence the Rule is liable to be discharged.

Mr. Ahmed further submits that the Plaintiff filed the original suit in connivance with the petitioner to usurp the scheduled properties. The suit is filed on 07.07.2020 for cancellation of the scheduled deeds of gift pertaining to the scheduled properties impleading the principal of the concerned Institute as the sole defendant. The petitioner somehow managed the process server to serve the summons at Gurudaspur, Natore instead of the address given in the plaint on 24.06.2021 holding himself out as the principal of the concerned Institute. The petitioner despite receiving the summons chose to remain silent so as to enable the plaintiff-opposite party No. 1 to obtain an ex parte decree but the opposite party No. 2, being aware of the conspiracy, entered appearance in the court below and filed written objection on 02.11.2021 against the application for temporary injunction preferred by the plaintiff-opposite party No.1 and the petitioner thereafter entered appearance and filed a separate written objection on 09.01.2022 holding himself out as the principal of the concerned Institute in order to support the case of the plaintiff-opposite party No.1 as evident by the statements in the written objection filed by him against the application for temporary injunction.

The learned advocate further submits that petitioner's initial attempt to procure an ex parte decree despite receiving the summons at a different address and subsequently filing written objection supporting the case of the plaintiff-opposite party No.1 clearly indicate that the suit is motivated by ill-will and the opposite party No. 2 should be allowed

to contest the suit for effective and complete adjudication.

Mr. Ahmed strenuously submits that Petitioner is not the principal of the said Institute as apparent from the record. The petitioner's letter of joining dated 25.11.2013 states that the petitioner joined the institute at 10:00 AM; but the petitioner was present in Sarder Kajimuddin Technical and Business Management Institute from 09.00 AM to 02.00 PM as apparent from the attendance sheet dated 25.11.2013 and as certified by the concerned principal vide memo dated 06.09.2022 and as such it is impossible for him to join in the said Institute vide joining letter dated 25.11.2013 at 10:00 AM as alleged. The petitioner's application for appointment to the post of Principal is dated 08.08.2019 which means that he was not appointed as Principal of the said Institute at least as of 2019, even though he consistently claims to have been appointed as such on 22.11.2013. The concerned education board vide office memo dated 23.06.2022 sought written explanation from the petitioner regarding his alleged appointment to the post of Principal in the concerned Institute on 25.11.2013 when he was already an MPO enlisted lecturer of another college and his participation in the recruitment process as a candidate for the post of Principal in the said Institute during 2019 but the petitioner could not provide any satisfactory answer and the concerned education board vide office memo dated 29.01.2023 sought further explanation but he did not respond as of yet meaning that he is not the Principal of the said Institute. The petitioner already admitted that he was an MPO enlisted lecturer of Sarder Kajimuddin Technical and Business Management Institute during July, 2019

which proves that his claim of discharging the functions of the principal of the concerned Institute since 25.11.2013 is absolutely false. The petitioner was appointed as Lecturer (Secretarial Science) of Sarder Kajimuddin Technical and Business Management Institute as apparent from the appointment letter dated 05.06.2003, joining letter dated 07.06.2003, MPO list for May, 2004 and office memo dated 15.09.2020 and hence the petitioner could not be the Principal of the concerned institute as simultaneous employment is prohibited.

The learned advocate then submits that on the other hand the opposite party No. 2 is the lawful principal of the concerned Institute as apparent from the resolution of the Institute dated 24.06.2016, appointment letter dated 27.06.2016 and joining letter dated 29.06.2016 and hence the opposite party No. 2 is entitled to contest the original suit as defendant.

The learned advocate for the opposite party no.2 lastly submits that revisional court under section 115 of the CPC is only entitled to examine error of law and jurisdictional error and factual findings are immune, save only exceptional circumstances. Referring the case of Chowdhury Mosaddequl Isdani vs. Abdullah Al Munsur Chowdhury and others reported in 70 DLR (AD) 168 and the case of Md. Noor Mohammad Howlader and Ors. vs Mosammat Kulsum Begum and others reported in 13 ADC 924 the learned advocate submits that *it does not require any elaboration for the legal principle that in exercising jurisdiction under section 115(1) of the Code of Civil Procedure, the High Court Division cannot re-assess and sift the evidence and substitute the finding of the Appellate Court by its own, it is*

therefore not open to this Court to take into new facts which was not placed before the courts below.

I have heard the arguments advanced at the bar, perused the application, affidavits, counter-affidavits along with all the documents available with records.

It appears from record that opposite party no.1, Md. Lokaman Ali Shah being the plaintiff filed Title Suit No. 313 of 2021 against the Principal/Secretary of Bangabandhu Science and Information Technology and Business Management Institute, Bergangarampur (hereinafter referred to as the Institute) on the prayer: বাদীনি প্রার্থনা করেন যে, (ক) আরজির বর্ণিত কারন ও ঘটনাধীনে (ক), (খ) এবং (গ) তপশীল ভূমি বাবদ স্ট্ট নালিশী (ঘ) তপশীল দলিল সমূহ যোগসাজশী, শৃতাপূর্ণ, ফলবলহীন, অকার্যকর মর্মে নালিশী (ঘ) তপশীল দলিল সুহ রদ রহিতের ডিক্রী বাদীর অনুকূলে ও বিবাদীর বিরুদ্ধে দিতে;

(খ) ডিক্রীর একপ্রস্ত নকল প্রয়োজনীয় ব্যবস্থা গ্রহনের নির্দেশ সহ সংশ্লিষ্ট সাব-রেজিস্ট্রি অফিসে প্রেরণের যথাবিহীত আদেশ দিতে;

(গ) যাবতীয় আদালত খরচার ডিক্রী বাদীকে বিবাদীর বিরুদ্ধে দিতে,

(ঘ) আইন ও ইকুইটি মূলে বাদী আর যে যে প্রতিকার পাইতে হকদার তাহারও ডিক্রী বাদীকে বিবাদীর বিরুদ্ধে দিতে মর্জি হয়।

The Suit was filed on 07.07.2020. The plaintiff also filed an application for temporary injunction. In course of time summons was issued by the trial court upon the sole defendant which was received by the present petitioner on 24.06.2021. On the other hand, opposite party no.2 entered appearance on 02.11.2021 and filed application for local inspection which was allowed by the trial court on the same date, i.e. 02.11.2021 and the advocate commissioner submitted his report on 07.11.2021 and during inspection he found the opposite party present at the said Institute. Thereafter, the petitioner on 09.01.2022 filed written objection against the application for temporary injunction.

At this stage a question has been arisen before the trial court that who can represent the defendant Institute as its Principal. The trial court held that since the petitioner received the summons he is entitled to appear as sole defendant while the revisional court (district judge) held that since advocate commissioner found the opposite party present at the Institute he is entitled to appear as the sole defendant.

It is apparent from the above facts that there was no question as to who is the necessary or proper party but who is entitle to appear as sole defendant. We have already noticed that the plaintiff made the Principal/Secretary of Bangabandhu Science and Information Technology and Business Management Institute, Bergangarampur as sole defendant of the suit. Now, the question is if more than one persons claim themselves as Principal of the said Institute, then what is the legal course to determine that dispute. It is apparent from the plaint of the present suit that there is no dispute regarding the post and position of the Principal of Bangabandhu Science and Information Technology and Business Management Institute. So, can it be determined by the trial court in the present suit without taking evidence of such a serious dispute regarding the post of the Principal of an Institute? In the present suit it is not the dispute between the plaintiff and the defendant that who is the principal of the Institute rather the dispute is whether the deed of gift would be cancelled or not. The trial court as well as the lower revisional court failed to understand the lis of the plaint. Both the courts below beyond their jurisdiction tried to decide who is entitled to appear before the trial court as the

defendant which is not the dispute for adjudication of the dispute between the plaintiff and the defendant.

If there is any dispute regarding the post of Principal of the Institute, it is clearly a separate dispute and cannot be adjudicated considering affidavit and counter affidavit without taking evidence in a properly instituted suit. Who received the summons an/or who was present at the Institute during local inspection in no way can be a determining factor for deciding who the Principal of the Institute is. It appears from the impugned judgment and order that the learned District Judge observed that after going through the papers filed by both the petitioner and opposite party no.2 it appeared to him that both of them are Principal of the Institute. So, it is apparent that in such circumstances without taking evidence this dispute cannot be resolved. Since a serious dispute has been arisen regarding the post of Principal as two persons claimed the position, the courts below should have stayed the instant suit and asked the parties to decide first who is the Principal of the Institute and can appear as the sole defendant. Since it is not the issue of the plaint (no written statement has yet been submitted) I am not inclined to interfere into the matter which is not the lis or dispute in the instant suit. Because, this dispute cannot be decided sitting in a revisional jurisdiction on the basis of affidavit and counter affidavit along with series of documents filed for the first time before this court. This dispute is to be resolved after taking evidence in a properly instituted suit by a competent court.

In the facts and circumstances and the position of law as discussed above, I am of the view, justice would be best served if the order of stay earlier

granted by this Court is continue till the fate of the parties who are trying to appear as sole defendant is at first decided by a competent court in a properly instituted Suit in relation to the post of Principal of Bangabandhu Science and Information Technology and Business Management Institute.

With this observation the Rule is **disposed of**.

Communicate the judgment and order at once.