

IN THE SUPREME COURT OF BANGLADESH

HIGH COURT DIVISION

(CIVIL REVISIONAL JURISDICTION)

Civil Revision No. 2885 of 2022

In the matter of:

An Application under section 115(1) of the Code of Civil Procedure, 1908

And

In the matter of:

Present
Mr. Justice Mamnoon Rahman

Md. Abul Hasem.

...Petitioner.

-Vs-

Noor Mohammed and others.

...Opposite parties.

Mr. Md. Zakir Hossain, Adv. with

Ms. Shamsad Rahman, Adv.

...For the petitioner.

Mr. Md. Al Amin, Adv.

...For the opposite party No. 1.

The 18th February, 2024

In an application under section 115(1) of the Code of Civil Procedure, 1908 rule was issued calling upon the opposite party No. 1 to show cause as to why the Order dated 25.05.2022 passed by the Senior District Judge, Munshigonj in Title Appeal No. 103 of 2017 rejecting application under Order 6 Rule 17 for amendment of written statement, should not be set aside and/or pass such other or further order or orders as to this court may seem fit and proper.

The learned Advocate for the opposite party No. 1 submits that he has no objection if the rule is made absolute for expeditious disposal of the appeal in question.

I have heard the learned Advocates for the petitioner as well as opposite party No. 1. Perused the impugned judgment and order,

revisonal application, grounds taken thereon as well as rule issuing order dated 23.06.2022.

On perusal of the same, it transpires that the defendant-respondent pressed an application under Order 6 Rule 17 of the Code of Civil Procedure, 1908 for amendment of the written statement before the lower appellate court pending disposal of the Title appeal No. 103 of 2017. The lower appellate court rejected the same. Against which the petitioner moved before this court and obtained the present rule.

So, it transpires that the defendant-respondent during pendency of the appeal filed an application praying for amendment of the written statement. On perusal of the impugned judgment and order, it transpires that the lower appellate court rejected the same on technical ground which runs as follows;

সংশোধনী দরখাস্তে বর্ণিত ২৭.১০.২০২২ ইং তারিখ ভুল লিপি হওয়ায় দরখাস্ত নামঞ্জুর করা হইল। আগামী ২২.০৬.২০২২ তারিখ আপীল শুনানী/শেষ সময়।

So, it transpires that the application was not disposed of on merit. As such, I am of the view that justice would be done if a direction be given upon the lower appellate court to hear and dispose of the substantive application for amendment strictly on merit within a fixed period.

Accordingly, the lower appellate court is directed to hear and dispose of the substantive application for amendment strictly on merit

by applying its independent and judicial mind within 2(two) weeks from the date of receipt of the instant judgment without fail.

With this observation and direction the instant rule is disposed of. The order of stay passed at the time of issuance of rule is hereby vacated.

The office is directed to communicate the judgment and order to the concerned court below at once.

(Mamnoon Rahman,J:)

Emdad.B.O.