

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

**Civil Revision No. 713 of 2022**

**IN THE MATTER OF**

Md. Jamal Hossain Dhalu

.....Plaintiff-Petitioner

-Versus-

Md. Rokun Zaman and others

.....Defendants-Opposite parties

Mr. Md. Alim Hossain, Advocate

.....For the petitioner

Mr. Kazi Akhter Hossain with

Mr. Mustafijur Rahman Shakil, Advocates

.....For opposite party Nos. 1-3

**Heard on 18.01.23, 23.01.23 and  
Judgment passed on 31.01.2023**

**Present:**

***Mr. Justice Kazi Md. Ejarul Haque Akondo***

***Kazi Md. Ejarul Haque Akondo, J.***

This Rule, under section 115(4) of the Code of Civil Procedure,  
1908, was issued in the following term-

*“Leave is granted. Let a Rule be issued calling upon  
opposite party Nos. 1-3 to show cause as to why the impugned  
judgment and order dated 11.01.2022 passed by learned  
Additional District Judge, 5<sup>th</sup> Court, Dhaka in Civil Revision No.  
151 of 2019 disallowing the revisional application and affirming*

*the judgment and order dated 08.09.2019 passed by the learned Assistant Judge, 1<sup>st</sup> Court, Dhaka in Title Suit No. 33 of 2019 should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.”*

At the time of issuance of the Rule all further proceedings of Title Suit No. 33 of 2019 pending before the Court of Learned Senior Assistant Judge, 1<sup>st</sup> Court, Dhaka stayed for 6(six) months from the date, which was lastly extended on 31.08.2022 for 3(three) months from the date of expiry.

The present petitioner as the plaintiff filed Title Suit No. 33 of 2019 before the learned Senior Assistant Judge, 1<sup>st</sup> Court, Dhaka for a permanent injunction in respect of shop No.36 belonging to Dhaka City Corporation alleging, inter alia, that the suit shop was allotted to one Md. Mizan Miah at a monthly rent of Tk. 150.00/- on 28.11.1996. Mizan Miah died leaving his wife Sharmin Aktar and 03 minor daughters in 2015 as heirs. Dhaka City Corporation collects the monthly rent of the shop from the petitioner on behalf of said Sharmin Akhter regularly as Sharmin Akhter sold the possession of the shop to him at a consideration of tk. 10, 00,000.00 (ten lacks) on 12.03.2018 and executed a deed before a Notary Public to that effect and delivered possession, for the shop cannot be transferred by a registered deed of sale. The petitioner

owned and possessed the suit shop from the date of purchase but the defendants and others tried to evict the petitioner therefrom on 02.02.2019 and hence, the suit.

The defendants entered an appearance and submitted a written statement in the suit claiming that they purchased the possession of the suit shop from Sharmin Akhtar on 30.07.2018 by a deed executed before a Notary Public. And since both the parties claimed to be the purchasers of possession of the suit shop by purchasing the same from said Sharmin Akhtar, the defendants filed an application before the Trial Court for a comparison of the signature of Sharmin Aktar with the signatures of the said deeds for ascertaining the genuineness of the deeds. After hearing the same the learned Trial Judge allowed the application for comparison of the signature of Sharmin Aktar by a handwriting expert on 8.9.2019 and sent the matter to the Criminal Investigation Department, Malibag, Dhaka.

Being aggrieved by the said judgment and order dated 08.09.2019 the plaintiff as the petitioner preferred a civil revision before the learned District Judge, Dhaka, and the same was numbered Civil Revision No. 151 of 2019. Thereafter, the same was transferred before the learned Additional District Judge, 5<sup>th</sup> Court, Dhaka for hearing and after hearing

the learned Judge by judgment and order dated 11.01.2022 disallowed the civil revision by affirming those of the Trial Court.

Being aggrieved by and dissatisfied with the said impugned judgment and order dated 11.01.2022 the plaintiff as the petitioner had preferred this civil revision and obtained the instant Rule which is before us for consideration.

Anyway, Mr. Md. Alim Hossain, the learned Advocate appearing for the plaintiff-petitioner submits that a comparison of the signature of a third party is not necessary before examination of the witness in the suit. He also submits that the petitioner purchased the possession of the shop in question from Sharmin Aktar and possesses the same by running a shop therein but the defendants' opposite parties most illegally trying to evict the petitioner from his lawful possession but both the Courts below on misconception of law and on misreading and non-consideration of the material facts on record passed the impugned judgment and order and thereby committed a serious error of law occasioning failure of justice.

Conversely, Mr. Kazi Akhter Hossain, the learned Advocate appearing for defendants-opposite party Nos. 1-3 submits that both the Courts below considering the facts and circumstances of the case on concurrent findings rightly allowed the application for comparison of the

signature of vendor Sharmin Aktar for proper adjudication of the suit and thereby committed no illegality.

I have heard the learned Advocates of the contending parties and have perused the materials on record. It appears that the plaintiff filed the instant suit for permanent injunction in respect of the suit shop belonging to Dhaka City Corporation. Both the parties claimed that they purchased possession of the shop from one Sharmin Akhtar, the wife of the deceased allotted Md. Mizan Miah by way of deeds executed before Notary Public and entered into possession and as such, it is very much necessary to examine the signature of alleged vendor Sharmin Akhtar on the alleged deeds by a handwriting expert to ascertain the genuineness of the deeds for proper adjudication of the case. As such, both the Courts below rightly allowed the application for comparison of the signature of Sharmin Akhtar with the signatures of the deeds and sent the case to the CID for expert opinion and thereby committed no illegality to be interfered with.

Given the above, I find no substance in the submissions made by the learned Advocate for the petitioner; rather I find substance in the submissions made by the learned Advocate for opposite party Nos. 1-3. Accordingly, the Rule fails.

As a result, the Rule is discharged without cost.

Stay, if any, vacated.

The impugned judgment and order dated 11.01.2022 passed by the Learned Additional District Judge, 5<sup>th</sup> Court, Dhaka in Civil Revision No. 151 of 2019 disallowing the revision by affirming the judgment and order dated 08.09.2019 passed by the learned Senior Assistant Judge, 1<sup>st</sup> Court, Dhaka in Title Suit No. 33 of 2019 allowing the application for comparison of the signature of Sharmin Akhtar is hereby affirmed.

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

(TUHIN BO)