

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

**Present:**  
**Mr. Justice Md. Moinul Islam Chowdhury**

**CIVIL REVISION NO. 578 OF 2022**

**IN THE MATTER OF:**

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

-And-

**IN THE MATTER OF:**

Md. Abdul Ali

--- Defendant-Petitioner.

-Versus-

Most. Anowara Begum and others

--- Plaintiff-Opposite Parties.

Mr. Mohammad Zahirul Amin, Advocate

--- For the Defendant-Petitioner.

Mr. Abdul Wahab Dewan Kajol, Advocate

---For the Plaintiff-Opposite Parties.

**Heard on: 16.07.2023 and 20.07.2023.**

**Judgment on: 20.07.2023.**

At the instance of the present defendant-petitioner, Md. Abdul Ali, this Rule was issued upon a revisional application filed under section 115(4) of the Code of Civil Procedure calling upon the opposite parties to show cause as to why the impugned judgment and order dated 02.11.2021 passed by the learned District Judge, Joypurhat in the Civil Revision No. 32 of 2019 dismissing the revision and thereby affirming the order dated 14.11.2019 passed by the learned Senior Assistant Judge, Sadar,

Joypurhat in the SCC Suit No. 02 of 2009 rejecting the application filed by the defendant under section 45 of the Evidence Act for examination of signature of the defendant by handwriting expert should not be *set aside*.

The relevant facts for disposal of this Rule, *inter-alia*, are that the predecessor of the opposite parties as the plaintiff instituted the SCC Suit No. 02 of 2009 in the court of the learned Senior Assistant Judge, Sadar, Joypurhat for eviction and due rent against the petitioner in respect of the shop ( two rooms) described in the schedule of the plaint. The plaint contains that the suit property belonged to the plaintiff and he rented 2 (two) rooms to the one Bhupendra Nath Sarker. The said Bhupendra Nath Sarker became a defaulter to pay the rent. The landlord-plaintiff filed the Other Suit No. 132 of 1979 for recovery of the rent. The suit was decreed on a compromise on 15.01.1981. Subsequently, the plaintiff again rented the said 2 (two) rooms to the tenant-defendant-petitioner but after December 2006 the tenant again became a defaulter. However, earlier on 21.09.1997 a Bainapatra was executed by both parties and the defendant-tenant paid a major amount of Baina money to purchase the property (2 rooms shop). But the landlord-plaintiff received

money but failed to execute a sale deed which has been described in the written statement filed by the present-defendant-petitioner. In the said suit the present petitioner filed an application for a handwriting expert opinion as to his signature in the said tenant agreement.

After hearing the parties the learned Senior Assistant Judge, Sadar, Joypurhat passed an order on 14.11.2019 rejecting the said application for handwriting expert opinion. Being aggrieved the present defendant-petitioner filed the Civil Revision No. 32 of 2019 before the learned District Judge, Joypurhat who also concurrently found against the present petitioner. Being aggrieved challenging the said impugned order of the learned District Judge, Joypurhat filed this revisional application under section 115(4) of the Code of Civil Procedure and the Rule was issued thereupon.

Mr. Mohammad Zahirul Amin, the learned Advocate, appearing for the defendant-petitioner submits that both the learned courts below failed to consider that since the plaintiff claimed that there was an agreement for rent between the parties and the instant petitioner categorically denied the said signature upon the agreement and claimed that the agreement was forged

and in such a situation it would be just and proper that the signature of the petitioner in the rent agreement should be examined by the handwriting expert for proper appreciation and disposal of the suit, as such, the impugned order is liable to be *set aside* and the Rule should be made absolute.

The present Rule has been opposed by the present opposite parties.

Mr. Abdul Wahab Dewan Kajol, the learned Advocate, appearing on behalf of the present opposite parties submits that the present petitioner as the defendant filed an application for obtaining an expert opinion of the handwriting due to Bainanama executed by and between the parties on 10.03.1981 which was signed by the present tenant-defendant-petitioner and the plaintiff-opposite parties but this alleged application was filed at the late stage of rent suit in order to delay the proceeding with a malafide intention, as such, the learned trial court and the learned appellate court below concurrently and rightly rejected the application, as such, no interference is called for by this court at this stage and the Rule is liable to be discharged.

Considering the above submissions made by the learned Advocates appearing for both parties and also considering the

revisional application filed by the present defendant-petitioner under section 115(4) of the Code of Civil Procedure along with the annexures therein, in particular, the impugned order dated 02.11.2021 passed by the learned District Judge, Joypurhat, it appears to me that the predecessor of the present opposite parties as the plaintiff as the owner of the suit shop situated at Joypurhat containing that the shop (two rooms) which was rented to the defendant-petitioner on 10.03.1981. It further appears that the predecessor of the present opposite parties as the plaintiff filed the suit for defaulting to pay the rent, as such, there was a case by the landlord against the tenant. It further appears that the defendant-petitioner claimed that there was a Bainanama executed by the predecessor of the opposite parties as the plaintiff in order to sell the shop to the defendant-petitioner. The instant Rule was issued upon a claim that the present predecessor of the plaintiff-opposite parties never executed a tenancy agreement on 10.03.1981 and never signed any such document. The petitioner as the applicant filed an application in the learned trial court at the late stage of the suit, as such, the learned trial court rejected the application for obtaining an expert opinion as to the signature on the tenancy agreement.

I have noticed that the present petitioner filed this application for expert opinion when the learned trial court ordered being No. 80 on 14.11.2019 which is an unusual step by the present petitioner with an intention to delay the proceeding. The learned revisional court below concurrently found and dismissed the application on reasonable grounds.

This Rule was obtained by the petitioner by impugning the judgment and order passed by the learned District Judge, Joypurhat who concurrently mentioned the civil revision filed by the defendant-petitioner that the petitioner's application was filed with a malafide intention. However, I am inclined to allow the present defendant-petitioner to obtain an expert opinion at his own cost initiative after an order is passed by the learned trial court.

Accordingly, the Rule is hereby disposed of. However, the Rule is hereby disposed of with the following directions:

The present defendant-petitioner is hereby directed to arrange an expert to examine his signature on the said tenancy agreement dated 10.03.1981 and he has to bear all the expenses for obtaining such expert opinion, if the defendant-petitioner fails to obtain such arrangement of expert opinion within the

stipulated period of time stated below the learned trial court must continue and conclude the trial of the suit within the above 3 (three) months from the receipt of this judgment and order.

The defendant-petitioner is also directed to file an application before the learned trial court afresh within 3 (three) days from the date of receipt of this judgment and order and the learned trial court would be ordered such an expert opinion by initiatives and steps of the petitioner within another 15 (fifteen) days from the date of the order to be passed by the learned trial court and to submit the same in the learned trial court in order to conclude the hearing and dispose of the suit within 3 (three) months from the date of the receipt of this judgment and order.

The interim order passed by this court at the time of issuance of this Rule staying all further proceedings of SCC Suit No. 02 of 2009 which is now pending in the court of the learned Senior Assistant Judge, Sadar, Joypurhat for a period of 6 (six) months and the same was extended from time to time i. e. lastly the same was extended till disposal of the Rule are hereby recalled and vacated.

The concerned section of this court is hereby directed to communicate this judgment and order to the learned Senior Assistant Judge, Sadar, Joypurhat immediately.