

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

Present:

Mr. Justice Md. Khairul Alam

Civil Revision No. 3546 of 2022

Kanu Das and another

.....Petitioners.

-Versus-

Rahul Dutta and others.

..... Opposite parties.

Mr. Mustafa Niaz Mohammad with

Mr. A.Z.M. Nurul Amin, Advocates

..... For the petitioners.

Mr. S.M. Salim, Advocate

..... For the opposite parties.

**Heard on: 21.05.2025, 28.05.2025 and
Judgment on: 01.06.2025.**

Md. Khairul Alam, J.

This Rule was issued calling upon the opposite party No. 1 to show cause as to why the impugned order dated 27.01.2022 passed by the learned Additional District Judge, 1st Court, Chittagong in Civil Revision No. 39 of 2021 should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

Relevant facts for disposal of the Rule are that 27 persons including the present petitioners as plaintiffs, on 02.11.2015, filed Other Class Suit No. 466 of 2015 in the Court of Senior Assistant Judge, 1st Court, Patiya, Chattogram implading the present opposite parties No.1 and others as defendants praying, inter alia, declaration of Title in the suit land. Petitioner No. 1 and No. 2 were plaintiffs No. 17 and 23 respectively in the suit. At that relevant time, plaintiffs No. 16, 17, 22, 23 and 26 had been staying in abroad, hence they authorized their respective wives to sue on their behalf, but subsequently their wives

authorized one Sumon Das as their attorney. In the said suit, defendants No. 3, 5 and 6 jointly filed an application under Order VII rule 11 of the Code of Civil Procedure for rejection of the plaint contending, inter alia, that as the plaint was not properly signed or verified or presented by the plaintiffs No. 16, 17, 22, 23 and 26 the plaint should be rejected. Amongst the said plaintiffs, plaintiffs No. 22 and 23 filed two separate applications to accept new authorizations. The application for rejection of plaint was rejected, the application of plaintiff No. 22 for accepting new authorization was allowed and the application of plaintiff No. 23 for accepting new authorization was rejected on the ground that the same was not executed properly. By the said order the trial Court transposed plaintiffs No. 16, 17, 22 and 26 as defendants No. 17-20 on the ground of lack of their authorization and signature. Against the said order present opposite party No. 1 filed Civil Revision No. 39 of 2021 before the District Judge, Chattagram which was subsequently transferred to the Court of Additional District Judge, 1st Court, Chattagram for disposal. In the said Civil Revision the present petitioners were made opposite parties No. 17 and 23. Opposite Party No. 17 was made party through his attorney Suman Das, but opposite party No. 23 was made party independently. Despite of that opposite parties No. 17 and 23 filed an application to contest the civil revision directly contending, inter alia, that at the time of filing the suit they were staying abroad but now they are staying in the country, so they are willing to contest the suit as well as the revision without the attorney. The learned Additional District Judge, 1st Court, Chattagram by the order dated 27.01.2022 rejected the application holding, inter alia, that since the suit was filed through an

improper attorney, allowing the application is tantamount to filing up the lacuna.

Being aggrieved thereby the petitioners filed this civil revision and obtained the Rule.

Mr. Mustafa Niaz Mohammad with Mr. A.Z.M. Nurul Amin, the learned Advocate appearing for the petitioners submits that the defect of improper authorization to present a plaint is technical in nature and curable at any stage of the suit, but the court below without considering the same passed the impugned order and thereby committed an error of law resulting in an error in the decision occasioning failure of justice and he prays for making the Rule absolute.

On the other hand, Mr. S.M. Salim, the learned Advocate appearing for the opposite parties submits that since the plaint has not been signed by the petitioners but rather signed by the invalidly constituted attorney, therefore, the revisional court below rightly passed the impugned order rejecting the prayer of the petitioners to contest the revision directly and therefore this Rule is liable to be discharged.

Heard the learned Advocates for the contending parties, and perused the revisional application and other materials on record.

The matter of signature on the plaint is governed by the provision of Order VI rule 14 of the Code of Civil Procedure. It will be advantageous to quote the said provision which runs as follows:

“Every pleading shall be signed by the party and his pleader (if any): provided that where a party pleading is, by reason of absence or for other good cause, unable to sign the pleading it may be signed by any person duly authorized by him to sign the same or to sue or defend on his behalf”

From the said provision of the law, it appears that if a party of the pleading because of absence or for other good cause is unable to sign the pleading it may be signed by any person duly authorized by him to sign the same or to sue or defend on his behalf.

By several jurisdiction pronouncements, it has been settled that the defect of the signature on the plaint is always technical in nature and the same is curable. If it is detected that the pleading was not signed by the parties or signed by a defective agent in that case the court should fix a date for the appearance of the parties. On that day the parties may appear in person or by a new recognized agent or by the same recognized agent after removing the defects.

An unlawfully constituted attorney instituted an S.S.C. suit and the defendants of the suit filed an application for rejection of the plaint. Accordingly, the plaint was rejected by the S.S.C Judge which was affirmed by a Single Bench of this division, but our apex in the case of Anath Bandhu & Sons Ltd. Vs Babu Sudhangshu reported in 42 DLR(AD) 244 set aside the said order. In setting aside the said order our apex court held to the effect that:

“ In any view of the matter if a plaint is not properly signed or verified or presented the Court has always got the discretion to allow the plaintiff to remedy the defect at a later stage, on the view that the defects are of technical nature relating to matters of procedure curable at any time.”

Considering the facts and circumstances of the present case, in the light of the above decision of our apex Court I am of the view that the revisional court below committed an error of law resulting in an error

in the impugned decision occasioning failure of justice which required to be interfaire.

Therefore, I find merit in the Rule.

Accordingly, the Rule is made absolute without any order as to costs.

The impugned order dated 27.01.2022 passed by the learned Additional District Judge, 1st Court, Chittagong in Civil Revision No.39 of 2021 is hereby set aside. The Revisional Court below is hereby directed to allow the petitioners to contest the Rule either in person or by a newly recognized agent or by the existing recognized agent allowing removing the defect in the authorization.

Let a copy of the judgment and order be communicated at once.

Kashem, B.O