

Present:-

Mr. Justice Mahmudul Hoque

Civil Revision No. 4898 of 2022

Piaru Begum

... Petitioner

-Versus-

Monir Ahmed and others

...Opposite-parties

Mr. Muhammad Amir Hosen, Advocate

...For the petitioner

Ms. Nusrat Jahan, Advocate

...For the opposite-party Nos. 1 and 2.

Heard on 28.01.2024 and

judgment on 30th January, 2024.

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued at the instance of the petitioner calling upon the opposite party Nos. 1-7 to show cause as to why the impugned judgment and order dated 21.08.2022 passed by the learned Additional District Judge, 4th Court, Chattogram in Miscellaneous Appeal No. 108 of 2020 disallowing the appeal and thereby affirming the judgment and order No. 36 dated 01.09.2020 passed by the learned Senior Assistant Judge, Banshkhali, Chattogram in Miscellaneous Case No. 27 of 2019 dismissing the case should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

Facts relevant for disposal of this Rule, in short, are that the opposite-party Nos. 1 and 2, as plaintiff, filed Other Suit No. 307 of 2014 in the Court of Senior Assistant Judge, Banskhali, Chattogram for a decree of permanent injunction against the present petitioner as defendant No. 6 along with 5 others, as principal defendant and the government as proforma-defendants. In Other Suit No. 307 of 2014 though summon notices were served upon the principal defendants and proforma-defendants none came forward to contest the suit by filing written statements. Consequently, the suit was decreed ex parte on 04.08.2019. Thereafter, only the petitioner, as defendant No. 6 in suit came with an application under Order 9 Rule 13 of the Code of Civil Procedure, praying for setting aside the ex parte decree passed in Other Suit No. 307 of 2014, only on the ground of non service of summon upon her. The application was registered as Miscellaneous Case No. 27 of 2019. After receipt of notice the plaintiff opposite-parties appeared in the case and contested the same by filing written objection.

The trial court after hearing by its judgment and order dated 01.09.2020 rejected the miscellaneous case. Thereafter, the applicant preferred Miscellaneous Appeal No. 108 of 2020 before the learned

District Judge, Chattogram. Eventually, the said appeal was transferred to the Court of learned Additional District Judge, 4th Court, Chattogram for hearing and disposal who after hearing by the impugned judgment and order dated 21.08.2022 disallowed the appeal affirming the judgment and order passed by the trial court. At this juncture, the petitioner, moved this Court by filing this revision and obtained the present Rule and order of stay.

Mr. Muhammad Amir Hosen, learned Advocate appearing for the petitioner submits that the petitioner was defendant No. 6 in suit, no summons/notices was served upon her either through Nejarat or by registered post. When plaintiff No. 1 in Other Suit No. 307 of 2014 disclosed the fact of obtaining an ex parte decree against the petitioner on 15.08.2019, the petitioner's son made a search with the concerned court by filing an information slip and came to know that the opposite-parties obtained an ex parte decree in Other Suit No. 307 of 2014 by suppressing service of summon notices upon the petitioner and other defendants in suit. Consequently, she filed Miscellaneous Case No. 27 of 2019 for setting aside the ex parte decree. He submits that in deciding an application for setting aside ex parte decree or dismissal of suit, the court should liberally

construed the facts stated in the application only to enable the litigants to have their dispute disposed of on merit affording opportunity to the parties to place their respective case before the court and to lead evidences in support of their claim. But in the instant case the trial court as well as the appellate court most unfortunately instead of giving a pragmatic approach decided the matter highly putting stress on the merit of the case giving a pedantic approach. As such, the impugned judgment and order passed by both the courts below is beyond the scope of law and fact. He candidly submits that the applicant in her application did not state any positive fact of having interest in the suit but if an opportunity is afforded to the petitioner she will place her case in suit by filing written statement and in the event of failure of the petitioner to place a positive case the decree whatever passed in favour of the plaintiffs will sustain and in that case there is no chance of suffering any loss by the plaintiffs.

Ms. Nusrat Jahan, learned Advocate appearing for the opposite-party Nos. 1 and 2 submits that the plaintiffs in suit could able to prove report of the Process Server to the effect that summon notices were duly served upon the defendants along with the

petitioner through court. Defendant Nos. 1-5 received summons by putting their signatures and defendant No. 1 also received summon of defendant No. 6 as her son but none of the defendants appeared before the trial court to contest the suit by filing written statement. She submits that defendant Nos. 1-5 all are male persons they did not come with an application for setting aside the ex parte decree ,but took a tactics showing defendant No. 6 who is a female member of the family to come with an application for setting aside the ex parte decree as they know that in the event of filing miscellaneous case by them for setting aside the decree it would be clear that they received the summons by putting their signatures. She finally submits that the opposite-party obtained settlement of the suit property from the government and mutated their names in the khatian. At a point of time the lease was cancelled by the A.D.C, (Revenue), against which they preferred appeal before the Divisional Commissioner wherein the matter was referred to the District Committee for decision. Against that order moved before the Revenue Board wherein order of the Divisional Commissioner maintained. Thereafter, the matter in dispute now is pending before the District Committee for decision. Since the plaintiffs in suit have been possessing the suit property on

the basis of lease granted in their favour, the defendants in suit have no right to disturb with the possession of the plaintiffs. Resultantly, the plaintiffs filed the suit for injunction against the principal defendants which was decreed ex parte. She submits that the trial court while rejecting the application for setting aside ex parte decree as well as the appellate court rejecting the appeal and affirming the judgment and order of the trial court rightly observed that in the absence of any positive case of the petitioner how her interest has been affected and what interest attaches with the property, there was no earthly reason to set aside the decree passed and as such, the Rule is liable to be discharged.

Heard the learned Advocates of both the parties, have gone through the revisional application, application under Order 9 Rule 13 of the Code of Civil Procedure, written objection thereto and the impugned judgment and order passed by both the courts below.

The opposite-party Nos. 1 and 2 filed Other Suit No. 307 of 2014 for a decree of permanent injunction against 6 persons including the petitioner, as principal defendants along with government as proforma-defendants. The petitioner claims that no

summon notice was served upon her, consequently, the suit was decreed ex parte at the instance of the plaintiffs.

From plain reading of application in Miscellaneous Case No. 27 of 2019, it appears that the ground taken by the petitioner is non service of summon upon her, but no positive assertion has been made regarding service of summons upon other defendant Nos. 1-5 who are happened to be her sons and member of the family. The trial court found that summon notices were duly served upon defendant Nos. 1-5 and 6 who received the same by putting their signatures in presence of witnesses as appearing from the report of the Process Server. The applicant did not even asserted a single word in her application what right she has in the suit property. On the other hand, the plaintiffs in suit claimed that they got settlement of the property in the year 2007 from the government and delivered with possession of the suit property but subsequently, the settlement was cancelled then they are fighting before higher authority to have the lease restored in their favour which is now pending before the District Committee for decision. In this situation the defendants are threatening the plaintiffs with dispossession, consequently, they filed Other Suit No. 307 of 2014 which was decreed ex parte. It is true

that the petitioner did not claim the property giving a positive statement in her application how she is entitled to contest the suit by giving a definite case. In the absence of any positive case on the part of the petitioner, both the courts below found nothing to be interfered with the decree passed ex parte, observing that in the event of allowing the petitioner to contest the suit by filing written statements by setting aside the ex parte decree nothing will come positive in favour of the petitioner, as such, for a fruitless claim of the petitioner the impugned judgment and decree passed by the trial court is not liable to be set aside.

Moreover, in this Court's view the decree is merely a decree for injunction by which no right either of the plaintiffs or the defendants have been taken away. In the event of having any title in the property in favour of the petitioner the door is open to agitate the same by filing any other suits and if the suit is filed by the petitioner there will be no impediment to proceed with that suit for existence of the ex parte decree in question.

Apart from this, if the plaintiffs in suit failed to get the lease renewed they will automatically loss their possession and the

government will evict them at any time from the suit land and grant further lease in favour of the defendants or any other parties. Therefore, I do not find any ground or material in the submissions of the learned Advocate for the petitioner to interfere with the judgment and order of both the courts below.

In the result, the Rule is discharged, however, without any order as to costs.

Order of *stay* granted at the time of issuance of the Rule stand vacated.

Communicate a copy of the judgment to the Court concerned at once.