

Present:
Mr. Justice Md. Shohrowardi
Civil Revision No. 3118 of 2022
Masudur Rahman and others....Petitioners
-Versus-
Md. Anowar Hossain and others....Opposite parties
Mr. Md. Haroon Ar Rashid, Advocate
....For the petitioners
Mr. Md. Ahia, Advocate
....For the opposite party Nos. 1 to 13
Heard on 10.06.2026 and 16.06.2026
Judgment delivered on 23.06.2026

On an application under section 115(1) of the Code of Civil Procedure, 1908 Rule was issued calling upon the opposite party Nos. 1 to 13 to show cause as to why the impugned judgment and decree dated 06.07.2022 passed by the District Judge, Dhaka in Title Appeal No. 78 of 2020 reversing the judgment and decree dated 21.11.2019 passed by the Senior Assistant Judge, Court No. 3, Dhaka in Title Suit No. 400 of 2012 rejecting the plaint under Order 7 Rule 11 of the Code of Civil Procedure, 1908 should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

Relevant fact for disposal of the Rule is that the opposite party Nos. 1 to 13 filed Title Suit No. 400 of 2012 in the Court of Senior Assistant Judge, Court No. 3, Dhaka, praying for a decree of specific performance of contract dated 05.04.1980 and permanent injunction, impleading the petitioners as defendants. After filing the suit, the Senior Assistant Judge, Court No. 3, Dhaka, by order No. 2 dated 15.10.2012 dismissed the suit on the ground of maintainability against which the plaintiff-opposite party Nos. 1 to 13 preferred Civil Revision No. 244 of 2012 in the Court of the District Judge, Dhaka and the appellate Court after hearing the parties by judgment and decree dated 04.06.2013 dismissed the appeal against which, the plaintiffs again filed Civil Revision No. 2675 of 2013 before the High Court Division who by judgment and order dated 16.03.2016 discharged the Rule affirming the judgment and decree passed by the appellate Court. The plaintiffs again moved to the Hon'ble Appellate Division in Civil Petition for Leave to Appeal No. 2931 of 2016, and the Appellate Division, by judgment and order dated 02.03.2017, set aside the judgment and order passed by the High Court Division and directed the trial Court to proceed with the Title Suit No. 400 of 2012 in accordance with law.

After disposal of the said Civil Petition for Leave to Appeal by the Hon'ble Appellate Division, the defendants filed an application under Order VII Rule 11(a) and (d) of the Code of Civil Procedure, 1908 for rejection of plaint and after hearing the parties the Senior Assistant Judge, Court No. 3, Dhaka by

judgment and decree dated 21.11.2019 rejected the plaint holding that there is no cause of action for filing the suit and the suit is barred by law against which, the plaintiff-petitioners filed Title Appeal No. 78 of 2020 in the Court of District Judge, Dhaka who by impugned judgment and decree allowed the appeal reversing the judgment and decree passed by the trial Court. Thereafter the defendant-petitioners obtained the Rule.

Learned Advocate Mr. Md. Haroon Ar Rashid, appearing on behalf of the defendant-petitioners, submits that the S.C.C Suit No. 21 of 2004 for eviction of the plaintiff from the suit shop was decreed and in execution of the decree, the plaintiffs were evicted from the suit shops and thereafter, the present suit on the same cause of action is not maintainable in law. Learned Advocate further submits that the judgment and order passed by the appellate Division in Civil Petition for Leave to Appeal No. 2931 of 2016 is not binding upon the trial Court and the trial Court is legally empowered to dispose of the application filed by the petitioners for rejection of the plaint and the trial Court legally allowed the application under Order VII Rule 11(a) and (d) of the Code of Civil Procedure, 1908 rejecting the plaint. He prayed for making the Rule absolute.

Learned Advocate Mr. Md. Ahia appearing on behalf of the plaintiff-opposite party Nos. 1 to 13 submits that earlier in Civil Petition for Leave to Appeal No. 2931 of 2016, the Appellate Division directed the trial Court to proceed with the trial and the Assistant Judge ignoring the said judgment and order passed by the Apex Court illegally rejected the plaint and the appellate Court below legally passed the impugned judgment and decree holding that the trial Court did not consider at all the judgment and order dated 02.03.2017 passed in Civil Petition for Leave to Appeal No. 2931 of 2016. He prayed for discharging the Rule.

I have considered the submissions of the learned Advocate Mr. Md. Haroon Ar Rashid, who appeared on behalf of the defendant-petitioners, and the learned Advocate Mr. Md. Ahia, who appeared on behalf of the plaintiff-opposite party Nos. 1 to 13, perused the revisional application, impugned judgments and decrees passed by the Courts below, and the records.

On perusal of the records, it reveals that the trial Court, by order No. 2 dated 15.10.2012, suo-motu dismissed the suit on the ground of maintainability, against which, the plaintiff moved up to the Hon'ble Appellate Division in Civil Petition for Leave to Appeal No. 2931 of 2016 and the Apex Court by order dated 02.03.2017 directed the trial Court to proceed with the suit in accordance with law. After disposal of the issue regarding maintainability of the suit by our Apex

Court, the trial Court is functus officio to reject the plaint again on the ground of maintainability and barred by law.

At this stage, it is relevant here to refer to the judgment and order passed by the Appellate Division in Civil Petition for Leave to Appeal No. 2931 of 2016 which is quoted below;

“We add that because of the filing of a suit for eviction and decree passed pursuant thereto, a suit at the instance of the tenant for specific performance will not be barred by any provisions of law. The High Court Division maintained the judgment of the lower appellate court mainly on the ground that in the suit the petitioner has prayed for injunction and this prayer would disentitle the respondent in obtaining possession pursuant to the decree passed by the S.C.C court. This is also not a legal ground in affirming the judgment of the lower appellate court. If the suit is otherwise found maintainable, it ought to have directed the trial court to proceed with the trial of the suit because of the fact that the trial court has dismissed the suit on the ground of maintainability.”

On perusal of the application filed under Order VII Rule 11(a) and (d) of the Code of Civil Procedure, 1908 by the defendants-petitioners for rejection of plaint further reveals that nothing has been stated in the application for rejection of plaint regarding the judgment and order dated 02.03.2017 passed by our Apex Court in Civil Petition for Leave to Appeal No. 2931 of 2016. I am of the view that the defendants-petitioners, suppressing the said judgment and order passed by the Appellate Division, filed the application under Order VII Rule 11(a) and (d) of the Code of Civil Procedure, 1908 in the trial Court for rejection of plaint and fraudulently obtained the order from the trial Court. The appellate Court below, considering the said judgment and order passed by our Apex Court, legally passed the impugned judgment and order.

On perusal of the order dated 21.11.2019 passed by the Senior Assistant Judge, Court No. 3, Dhaka, it transpires that the trial Court did not consider the judgment and order dated 02.03.2017 passed by our Apex Court in Civil Petition for Leave to Appeal No. 2931 of 2016.

Under Article 111 of the Constitution, the law declared by the Appellate Division shall be binding on all Courts, including the High Court Division. The defendant-petitioners intentionally and deliberately suppressed the judgment and order dated 02.03.2017 passed in Civil Petition for Leave to Appeal No. 2931 of 2016 by the Appellate Division and fraudulently obtained the order from the trial Court. Therefore, the petitioners are liable to pay costs.

As a result, the Rule is discharged with costs of Tk. 25,000(twenty five thousand).

The defendants-petitioners are directed to deposit the costs of Tk. 25,000 (twenty-five thousand) in the trial Court within 30(thirty) days from the date of receipt of this judgment and order.

The trial Court is directed to dispose of the suit within 6(six) months from the date of receipt of this judgment.

Send down the lower Court's records at once.