

District: Satkhira

In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)

Present:-

Mr. Justice Md. Zakir Hossain

Civil Revision No. 3437 of 2022

With

Civil Revision No. 2786 of 2023

Abdus Salam Gazi

... Defendant No.1-Petitioner-Petitioner
(In C.R No. 3437 of 2022)

Md. Shahin Iqbal

... Plaintiff-Opposite Party-Petitioner
(In C.R No. 2786 of 2023)

-Versus-

Md. Shahin Iqbal and others

... Defendant-Contesting Opposite Party-Opposite Parties
(In C.R No.3437 of 2022)

Abdus Salam Gazi and others

... Defendant-Petitioner-Opposite parties
(In C.R No. 2786 of 2023)

Mr. Md. Sheikh Habib-Ul-Alam, Advocate

.....for the petitioner
(In C.R No. 3437 of 2022)

and

.....for the opposite parties
(In C.R. No. 2786 of 2023)

Mr. Mridul Datta, Advocate,

.....for the opposite party No. 1
(In C.R No. 3437 of 2022)

and

.....for the petitioner
(In C. R. No. 2786 of 2023)

Heard on:25.07.2023

Judgment on: 23.04.2024

Both the Rules are taken for hearing together and be disposed by this common judgment.

At the instance of the defendant No. 1 of the Title Suit No. 101 of 2020, leave was granted and Rule was issued to examine the legality

and propriety of the judgment and order dated 23.02.2022 passed by the learned Additional District Judge, Second Court, Satkhira in Civil Revision No. 09 of 2021 and thereby affirmed the judgment and order dated 29.10.2020 passed by the learned Joint District Judge, Second Court, Satkhira in rejecting the petition for rejection of the plaint of Title Suit No. 101 of 2020.

At the instance of the plaintiff-opposite party of the aforesaid suit, leave was also granted and Rule was issued to examine the legality and propriety of the judgment and order passed by the learned Additional District Judge, Fifth Court, Satkhira in Civil Revision No. 41 of 2022 allowing the Revisional Application rejecting the application for personal appearance of the plaintiff Nos. 2-8 in the aforesaid suit.

Facts leading to the issuance of the Rule are inter alia that the defendant No. 1 filed an application before the learned Joint District Judge, Second Court, Satkhira for rejection of the plaint of Title Suit No. 61 of 2018 renumbered as Title Suit No. 101 of 2020. Upon hearing, the learned Joint District Judge was pleased to reject the same. The Revisional Court rejected the Revisional Application No. 09 of 2021 and thereby affirmed the Judgment and order of the learned Joint District Judge. The defendant No. 1 also filed an application for issuance of the direction upon the plaintiff Nos. 2-8 to remain present in the Court in person with their respective Identity Cards. Upon hearing, the learned Joint District Judge, First Court, Satkhira was pleased to reject the said

application by his Order No. 15 dated 19.07.2022. Impugning the judgment and order of the learned Joint District Judge, the petitioner preferred Revisional Application No. 41 of 2022 before the Court of the learned District Judge, Satkhira. After admitting the Revisional Application, the learned District Judge was pleased to transmit the record to the learned Additional District Judge, Fifth Court, Satkhira for disposal of the same. After hearing, the learned Additional District Judge was pleased to allow the Revisional Application by his judgment and order dated 02.03.2023.

Heard the submissions advanced by the learned Advocates of the petitioner and the opposite parties at length and perused the materials on record with due care and attention and seriousness as they deserve. The convoluted question of law embroiled in this case has meticulously been waded through.

The learned Joint District Judge rightly rejected the petition for rejection of the plaint holding the view that the dispute cannot be settled down without taking evidence. The learned Additional District Judge by assigning cogent reason rejected the Revisional Application. No illegality has been spelt out therein, therefore, the concurrent findings of the Courts below do not warrant for any interference.

The learned Joint District Judge rejected the petition for appearance of the plaintiff Nos. 2-8 in person holding the view that the application of the defendant may be considered at the time of hearing the

suit. The learned Additional District Judge was pleased to allow the Revisional Application with the following observation:

“*The Code of Civil Procedure, 1908 এর Order-1, Rule 1-3 অনুযায়ী কোন কোন ব্যক্তি মামলার পক্ষ হবেন তা উল্লেখ আছে। তবে কাউকে পক্ষভুক্ত করার মূলনীতি হলো মামলার বিষয়ে উক্ত ব্যক্তির স্বার্থ জড়িত আছে এমন ব্যক্তিকে পক্ষ করতে হবে এবং Rule-9 অনুযায়ী কাউকে মামলার পক্ষভুক্তির বিষয়ে অপর পক্ষ কর্তৃক আপত্তি উত্থাপনের আইনানুগ সুযোগ রয়েছে। বিবাদী পক্ষ ২-৮ নং বাদীগণের মামলার বাদী শ্রেণীভুক্ত হবার বিষয়ে তদরূপ আপত্তি উত্থাপন করেছেন। যেহেতু ১নং বাদী, ২-৮ নং বাদীর নাম ব্যবহার করে ২২/০৫/২০১৬ খ্রিঃ তারিখের ৯৩৪৪ নং আমমোক্তারনামা দলিল সৃজন করেছেন মর্মে আপত্তি উত্থাপিত হয়েছে এবং ১নং বাদী উক্ত আমমোক্তারনামা বলে মামলা পরিচালনা করেছেন, সেহেতু ২-৮ নং বাদীগণ ব্যক্তিগতভাবে আদালতে উপস্থিত হলে বিবাদী পক্ষের উক্তরূপ আপত্তির চূড়ান্ত নিষ্পত্তি হয়ে যাবে এবং এর দ্বারা কোন পক্ষের Prejudice হওয়ার কোন কারণ নেই বলে আমি মনে করি। সুতরাং বিজ্ঞ বিচারিক আদালত তর্কিত আদেশ দ্বারা বিবাদীপক্ষ কর্তৃক আনীত দরখাস্ত না-মঞ্জুর করে যে আদেশ প্রদান করেছেন তা আইনানুগ হয় নি বলে আমি মনে করি।”*

The Court at any stage of the proceeding may direct any party to appear before it for doing substantial justice. The learned Additional District Judge rightly turned down the order of the learned Joint District Judge assigning cogent reason; therefore, I do not find any illegality in the aforesaid judgment and order. Hence, both the Rules shall fall flat.

In the result, the Rules are discharged, however, without passing any order as to costs. The earlier order of stay granted by this Court thus stands recalled and vacated. The learned Joint District Judge is directed

to dispose of the original suit with utmost expedition preferably within 01 (one) year from the date of receipt of the copy of this judgment.

Let a copy of the judgment be transmitted to the Courts below at once for taking necessary step.

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Md. Zakir Hossain, J

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