

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.4019 OF 2022

In the matter of:

An application under Section 115(1) of the Code of Civil Procedure.

And

Azad Ali Chowdhury being dead his heirs- Mst.
Forjahan Begum Gini and others

... Petitioners

-Versus-

Military Family Rehabilitation Officer, Bogura and
others

... Opposite parties

Mr. Sikder Mahmudur Razi, Advocate

... For the petitioners.

Mr. Md. Abdullah Al Mamun, Advocate

....For the opposite party No.1.

Heard 12.08.2025 and 14.08.20025.

Judgment on 17.08.2025.

This Rule was issued calling upon the opposite party No.1 to show cause as to why the impugned order No.39 dated 03.07.2022 passed by the learned Additional District Judge, Gaibandha in Other Appeal No.30 of 2012 allowing the application for amendment of the written statement dated 27.06.2011 submitted by the defendant No.1 of the original suit 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 in short are that the petitioners as plaintiffs instituted above suit for declaration of title for 555 acres land on the basis of settlement from the Government.

Defendant No.1 contested above suit by filing written statement but at trial the plaintiffs did not adduce any evidence and but above suit was decreed on contest against defendant No.1.

Challenging the legality and propriety of above judgment and decree of the trial Court above defendant preferred Other Appeal No.30 of 2012 to the District Judge, Gaibandha which was heard by the learned Additional District Judge who dismissed above appeal ex-parte and affirmed the judgment and decree of the trial Court. Being aggrieved by above judgment and decree of the Court of Appeal below above appellants as petitioners moved to this Court and preferred Civil Revision No.1074 of 2014 and this Court on hearing the learned Advocates for the respective parties discharged above Rule on 07.02.2008.

Being aggrieved by above judgment and order of this Court above petitioner preferred Civil Petition for Leave to Appeal No.2264 of 2018 to the Appellate Division which was allowed and the judgment and order of this Court and the Court of Appeal below were set aside and above appeal was remanded to the Court of Appeal for rehearing on merit within 6(six) months.

In above appeal appellant No.1 submitted two petitions on 28.03.2022 for amendment of the written statement and amendment of the Memorandum of appeal and the learned Additional District Judge allowed above petition for amendment of the written statement.

Being aggrieved by and dissatisfied with above judgment and order of the learned Judge of the Court of Appeal below above respondents as petitioners moved to this Court and obtained this Rule.

Mr. Sikder Mahmudur Raz, learned Advocate for the petitioners submits that the Appellate Division has remanded above appeal to the Court of Appeal below with a direction for hearing of the appeal on merit within 6(six) months. The Appellate Division did not issue a direction upon the Court of Appeal below to consider any petition for amendment of the pleading or adducing further evidence. As such the learned Judge of the Court of Appeal below has deliberately exceeded the limit of jurisdiction and most illegally allowed above petition for amendment of written statement which is not tenable in law. The learned Advocate further submits that by above amendment of written statement the defendant has brought a new defense case which was already within their knowledge and by above amendment the defendant has departed from their original defense taken at trial. The plaintiffs have suffered irreparable loss and injury due to above order of amendment of the written statement. The defendants have tried by above amendment of the written statement to fill up the

lecuna which they are not entitled to do in an appeal remanded the Appellate Division for rehearing on merit.

On the hand Mr. Md. Abdullah Al Mamun, learned Advocate for the opposite party No.1 submits that the Office of the Military Family Rehabilitation Officer was situated in Bogura and recently above office has been shifted to Rangpur and due to above relocation of above Office important documents and files could not be found at the time of preparation of the written statement and same important facts and documents were not reflected in the written statement. After getting some documents from above Office opposite party No.1 amended their written statement on 27.06.2011. But subsequently some errors and mistakes were found in above written statement and some important facts and documents were not mentioned in above amended written statement. After remand of above appeal to Court of appeal below respondent No.1 produced above facts and documents to his appointed Advocate who submitted a petition for amendment of written statement on 03.07.2022. On hearing the learned Advocates for the respective parties the learned Judge of the Court of Appeal below rightly allowed above petition for amendment of the written statement which calls for no interference.

Mr. Md. Asaduzzaman, learned Attorney General entered appearance in this case and stated that 555 acres land of the Government is subject matter of this Civil Revision. At the time of

filing of the written statement all relevant documents and facts were not available due to relocation of the relevant Government Office. The Appellate Division remanded the appeal for rehearing on merit and above remand was open remand. The appeal is a continuation of the trial proceedings and amendment of the pleadings and production of additional evidence is available in a Court of Appeal. On consideration of above legal and factual aspects of the matter the learned Additional District Judge rightly allowed above petition for amendment of the written statement which calls for no interference.

I have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record.

As mentioned above the petitioners as plaintiffs instituted above suit for declaration of title for 555 acres land on the basis of settlement from the Government and defendant No.1 Military Family Rehabilitation Officer contested above suit by filing written statement.

Above defendant amended above written statement on 27.07.2011. After remand of above appeal to the Court of Appeal below by the Appellate Division respondent No.1 submitted a petition on 28.03.2022 for amendment of written statement in order to incorporate some new facts and make mention of some documents.

The petitioners claim title in 555 acres land on the basis of settlement from the Government. The nature, terms and quantity of

land of above settlement by the Government are disputed issues of above suit.

Opposite party No.1 is a Government Officer who claims that due to relocation of his office all relevant documents and facts could not be found and reflected in the written statement which required further amendment of the written statement.

It turns out from order of the Appellate Division that above appeal was remanded to the Court of Appeal below for rehearing on merit within 6(six) months. The learned Attorney General rightly points out that above remand was open remand without any restriction on amendment of the pleading or adducing further evidence. An Appeal is considered as continuation of the trial and the Code of Civil Procedure allows amendment of the pleadings and adducing further evidence in a Court of Appeal.

Defendant No.1 could not contest the suit in the trial Court and the appeal in the Court of Appeal below. An amendment of the pleading can be allowed at any stage of the proceedings provided the proposed amendment does not defeat any right already accrued in favour of the opposite party. The petitioners could not show that proposed amendment of the written statement has defeated any right already accrued to the plaintiffs/petitioners. The plaintiffs be at liberty to amend their plaint in view of above amendment of the written statement.

In above view of the facts and circumstances of the case and materials on record I am unable to find any illegality or irregularity in the impugned judgment and order passed by the learned Judge of the Court of Appeal below nor I find any substance in the Civil Revisional Application under Section 115(1) of the Code of Civil Procedure and the Rule issued in this connection is liable to be discharged.

In the result, this Rule is hereby discharged.

However, there will be no order as to costs.

MD. MASUDUR RAHMAN
BENCH OFFICER