

Present:

Mr. Justice Md. Kamrul Hossain Mollah

Civil Revision No.2420 of 2021

IN THE MATTER OF:

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

- AND -

IN THE MATTER OF:

Md. Mosherof Hossan

...Defendant-Petitioner

-Versus -

Md. Solaiman Ali and others

... Plaintiff-Opposite Parties

Mr. Md. Bazlur Hasan, Advocate

..... For the petitioner

Mr. Md. Harunur Rashid, Advocate

..... For the Opposite Parties

**Heard on 06.11.2023, 20.11.2023
and Judgment on 27.11.2023**

Md. Kamrul Hossain Mollah, J:

On an application filed by the petitioner, under Section 115(1) of the Code of Civil Procedure, this Rule was issued calling upon the opposite parties to show cause as to why the judgment and decree dated 12.01.2021 (decree signed on 21.01.2021) passed by the learned Additional District Judge, 1st Court, Cumilla in Title Appeal No.01 of 2018 dismissing the appeal and affirming the judgment and decree dated 28.09.2017 (decree signed on 08.10.2017) passed by the learned Assistant Judge, Brahmanpara, Cumilla in Title Suit No.17 of 2016, decreeing the suit

should not be set-aside and/or pass such other or further order or orders passed as to this Court may seem fit and proper.

At the time of issuance of the Rule this Court directed the parties to maintain status-quo in respect of the post of Assistant Teacher (English), Zahidul Hossain High School, Nagaish, Police Station-Brahmanpara, District-Cumilla till disposal of the Rule.

Facts necessary for disposal of the Rule, in short are that on 01.11.2014 the plaintiff joined in the post of Assistant Teacher in Jahidul Hossain High School. Thereafter, upon satisfaction of his teaching and to digitalized the education system, school authority gave the plaintiff a mobile set to take class. On 29.10.2015 at 11:00 a.m. the plaintiff on demand of the defendant No.3-petitioner gave two signature in Bengoli and English in blank-paper as receipt for the said mobile set in witness of 3 persons. On 12.12.2015 the plaintiff was informed by defendant No.3 that he has resigned from service and told him not to come to the school further and on the following day he find out from the concerned Upazila Education Officer that a resignation letter dated 12.11.2015 was produced making by the said signed in blank-paper. So the plaintiff filed this case praying for declaration that the resignation letter dated 12.11.2015 was null and void, and mandatory injunction directing defendants to allow the plaintiff to join in the service in Jahidul Hossain High School.

The suit was contested only by defendant No.3 by filing written statement denying all material allegations contending inter alia that on 12.11.2015 the plaintiff willfully given the resignation letter in the context

of certain incidents by the plaintiff leading to complaints against the plaintiff from villagers and parents, subsequent admission by the plaintiff and formation of inquiry committee. The plaintiff has the burden of prove his case by adducing evidence in Court on strict rules of evidence. The suit is defective for non-joinder of necessary party being the employer institution.

At the time of hearing the trial Court recorded deposition of 3 P.Ws and 5 D.Ws and marked some documents as exhibits. Upon hearing the parties the learned Assistant Judge, Brahmanpara, Cumilla decreed the title suit No. 17 of 2016 vide his judgment and decree dated 28.09.2017.

Being aggrieved by and dissatisfied with the judgment and decree dated 28.09.2017 (decree signed on 08.10.2017) passed by the learned Assistant Judge, Brahmanpara, Cumilla in Title Suit No.17 of 2016 decreeing the suit, the defendant-petitioner filed Title Appeal No.01 of 2018 before the learned District Judge, Cumilla. Thereafter, the said appeal was transferred to the learned Additional District Judge, 1st Court, Cumilla for disposal. After hearing both the parties and upon scrutiny the materials on record the learned Additional District Judge, 1st Court, Cumilla dismissed the Title Appeal No.01 of 2018 and thereby affirmed the judgment and decree dated 28.09.2017 (decree signed on 08.10.2017) passed by the Assistant Judge, Brahmanpara, Cumilla in Title Suit No.17 of 2016 decreeing the suit by his judgment and decree dated 12.01.2021 (decree signed on 21.01.2021).

Being aggrieved by and dissatisfied with the judgment and decree dated 12.01.2021 (decree signed on 21.01.2021) passed by the learned Additional District Judge, 1st Court, Cumilla in Title Appeal No.01 of 2018 dismissing the Appeal the petitioner filed this revisional application under section 115(1) of the Code of Civil Procedure and obtained the present Rule and status-quo.

Mr. Md. Bazlur Hasan, the learned Advocate appearing for the petitioner submits that the provision of Order XLI Rule 31 enjoins that whether reversing or affirming the decision of the trial Court it is incumbent upon the appellate Court as a final Court of fact to consider and assess both oral and documentary evidence in order to come to its own independent findings and decision, but in the instant case the Court of appeal below having failed to comply with the said mandatory provision of law arrived at a wrong decision in dismissing the appeal, which is an error of law resulting in error in decision occasioning failure of justice and as such liable to be set-aside.

He further submits that the Court of appeal below as final Court of fact did not at all discuss and assess the evidence on record and did not give its own independent reason/finding for its decision rather dismissed the appeal observing in the following terms: “মূল মামলার নথি বিশদ পর্যালোচনায় বিত্ত বিচারিক আদালতের উক্ত বিচার্য বিষয়ে গৃহীত সিদ্ধান্ত সঠিক মর্মে প্রতীয়মান হয়। মূলে মামলার নথির সামিলে থাকা আরজি ও জবাব সহ উভয় পক্ষের মৌখিক ও দালিলিক সাক্ষ্য বিশদ পর্যালোচনায় উপরোক্ত ২,৩ ও ৪ নং বিচার্য বিষয় সমূহে বিত্ত বিচারিক আদালত কর্তৃক গৃহীত সিদ্ধান্ত যথাযথ বলে প্রতীয়মান হয়।—মূল মামলার নথি পর্যালোচনায় বিত্ত বিচারিক আদালতের সর্বশেষ বিচার্য বিষয়ে গৃহীত সিদ্ধান্ত সঠিক বলে প্রতীয়মান হয়।” which is in violation of mandatory provision of

Order XLI Rule 31 and 33 of the Code of Civil Procedure 1908 and as such the said judgment and decree is liable to be set-aside.

He next submits that the Appellate Court failed to apply its judicial mind and dismissed the appeal on surmise and conjecture in as much as the Appellate Court observes that- “আপীল্যান্ট বিবাদীপক্ষ নতুন কোন সাক্ষ্য প্রমাণ উপস্থাপন করেনি।” whereas the appellant examined a teacher of the school Mrs. Selina Akhter as D.W-6 before the same learned Judge who produced documentary evidence marked as exhibit-‘ঝ’ and the learned Additional District Judge failed to consider the said oral and documentary evidence.

The learned Advocate lastly submits that the impugned judgment is a non-speaking judgment written in a perfunctory manner without applying judicial mind and the same is not a judgment in the eye of law and as such, the same is liable to be set-aside. Accordingly, he prays for making the Rule absolute.

On the other hand Mr. Md. Harunur Rashid, the learned Advocate appearing for the opposite parties submits that on 01.11.2014 the plaintiff joined in the post of Assistant Teacher in Jahidul Hossain High School. Thereafter, the school authority upon satisfaction of his teaching and to digitalized the education system gave the plaintiff a mobile set to take class. On 29.10.2015 at 11:00 a.m. the plaintiff on demand of the defendant No.3-petitioner gave two signature in Bengali and English in blank-paper as receipt for the said mobile set in witness of 3 persons. On 12.12.2015 the plaintiff was informed by defendant No.3 that he has resigned from service and told him not to come to the school further and on the following day he

find out from the concerned Upazila Education Officer that a resignation letter dated 12.11.2015 was produced making by the said signed in blank-paper. So the plaintiff filed this case praying for declaration that the resignation letter dated 12.11.2015 was null and void, and mandatory injunction directing defendants to allow the plaintiff to join in the service in Jahidul Hossain High School. After hearing both the parties the learned Judges of the Courts' below rightly passed the judgment and decree dated 12.01.2021 (decree signed on 21.01.2021) and judgment and decree dated 28.09.2017 (decree signed on 08.10.2017). Therefore, he prays for discharging the Rule.

I have perused the revisional application, the impugned judgment and decree of the Courts' below, the submissions of the learned Advocates for the parties, the papers and documents as available on the record.

On perusal of the signatures of appointment letter and designation letter shows that the plaintiff's signature on the resignation letter is actually slightly crooked, as a person would normally sign on a blank piece of paper. Also, a closer look at the resignation letter reveals some inconsistencies. For instance, the date of receipt of resignation letter by the Headmaster is written as 12.11.2016 which should have been 12.11.2015, though the petitioner claimed it was a slip of pen. Again, the word “প্রধান শিক্ষক” is handwritten at the beginning of the resignation letter. If the resignation letter is given voluntarily by the plaintiff, the said “প্রধান শিক্ষক” should also be in the handwriting of the plaintiff-opposite party. But, it appears that, the handwriting of the “প্রধান শিক্ষক” written in reply to the

plaintiff's show cause does not match the handwriting of the said “প্রধান শিক্ষক” which written in the resignation letter and appears to have been written by someone else. Therefore, it appears that the plaintiff-opposite party did not voluntarily sign in the resignation letter.

Considering the above facts and materials on record, I think that the learned Additional District Judge, 1st Court, Cumilla rightly passed the judgment and decree dated 12.01.2021 (decree signed on 21.01.2021) in Title Appeal No.01 of 2018 dismissing the appeal and thereby affirming the judgment and decree dated 28.09.2017 (decree signed on 08.10.2017) passed by the learned Assistant Judge, Brahmanpara Assistant Judge Court, Cumilla in title Suit No.17 of 2016 decreeing the suit is maintainable in the eye of law and I do not find any substance to interference into the said judgment and order and I find substance in the submission of the learned Advocate for the opposite parties.

Accordingly, I do not find any merit in the Rule.

In the Result, the Rule is discharged.

The judgment and decree dated 12.01.2021 (decree signed on 21.01.2021) passed by the learned Additional District Judge, 1st Court, Cumilla in Title Appeal No.01 of 2018 dismissing the appeal and thereby affirming the judgment and decree dated 28.09.2017 (decree signed on 08.10.2017) passed by the learned Assistant Judge, Brahmanpara Assistant Judge Court, Cumilla in title Suit No.17 of 2016 decreeing the suit is hereby upheld and confirmed.

The order of status-quo granted at the time of issuance of the Rule by this Court is hereby recalled and vacated.

Let a copy of this judgment and order with L.C.R be sent to the concerned Court below at once.

Md. Anamul Hoque Parvej
Bench Officer