

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

Civil Revision No. 5756 of 2022

IN THE MATTER OF

Md. Zaher Ali Pramanik and another

.....Plaintiffs-Petitioners

-Versus-

1. Mst. Manwara Begum

.....Defendant No.1-Opposite party

2. Md. Gulzar Ali and others

.....Pro-forma opposite parties

Mr. Chandan Chandra Sarker, Advocate

.....For the petitioner

Mr. Md. Zahedul Haque Zahid with

Ms. Mahfuza Akter, Advocates

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

Heard on 29.03.23, 22.05.23, 23.05.23

and judgment passed on 25.05.2023

Present:

Mr. Justice Kazi Md. Ejarul Haque Akondo

Kazi Md. Ejarul Haque Akondo, J.

This Rule, under section 115(4) of the Code of Civil Procedure, 1908, was issued in the following terms:

“Record need not be called for. Leave is granted.

Let a Rule be issued calling upon opposite party No. 1 to

show cause as to why the impugned judgment and order

dated 26.10.2022 passed by the learned Additional District Judge, 3rd Court, Naogaon in Civil Revision No. 66 of 2018 rejecting the said revision and thereby affirming the judgment and order dated 31.07.2018 passed by the learned Senior Assistant Judge, Manda, Naogaon in Miscellaneous Case No. 24 of 2014 allowing the miscellaneous case filed by the present opposite party No. 1 under Order IX, rule 13 of the Code of Civil Procedure for setting aside the ex-parte decree dated 03.09.2014 passed in Other Class Suit No. 84 of 2014 and for reviving the suit to its file and number should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.”

The predecessor of the present petitioners as the plaintiff filed Other Class Suit No. 84 of 2014 before the learned Senior Assistant Judge, Manda, Naogaon imp leading the present opposite party Nos.1 and 2 as defendant No.1 and 2 for cancellation of a registered deed of Heba-Bil-Ewaj No. 11156 dated 04.10.1993. The plaintiff and defendant No. 2 compromised the suit by filing a solenama and obtained a compromised decree between them and ex-pate against

defendant No. 1 on 03.09.2014 against which defendant No. 1 filed Miscellaneous Case No. 24 of 2014 under Order IX, Rule 13 of the Code of Civil Procedure, 1908 for setting aside the aforesaid judgment and decree and revive the suit to its original file and number on the ground that the summons of the suit was not duly served upon her. The plaintiffs contested the miscellaneous case by filing a written objection contending, inter alia, that the summons of the suit was duly served upon defendant No. 1 but she did not appear before the Court deliberately to contest the suit. After hearing the said miscellaneous case the learned Senior Assistant Judge, Manda, Naogaon by his judgment and order dated 31.07.2018 allowed the miscellaneous case on the contest with cost and restored the suit to its original file and number. Being aggrieved by the said order the plaintiffs filed Civil Revision No. 66 of 2018 before the learned District Judge, Naogaon, and after hearing the same the learned Additional District Judge, 3rd Court, Naogaon by his judgment and order dated 26.10.2022 rejected the revision by affirming those of the Trial Court. Against which the plaintiffs as the petitioners had preferred this civil revision before this Court and obtained the instant Rule.

Mr. Chandan Chandra Sarker, the learned Advocate appearing for the plaintiffs-petitioners submits that though the Court of Revision

below found from the summons report that defendant No. 1 herself received the summons by putting her signature but erroneously rejected the revision, and both the Courts below failed to understand the purport and scope of Order IX Rule 13 of the Code of Civil Procedure and allowed the miscellaneous case and thus, committed an error of an important question of law resulting in an erroneous decision occasioning failure of justice.

Conversely, Mr. Md. Zahedul Haque Zahid, the learned Advocate appearing with Ms. Mahfuza Akter, Advocate on behalf of the defendant opposite party No. 1 submits that both the Courts below considering the facts and circumstances of the case on concurrent findings allowed the miscellaneous case filed under Order IX Rule 13 of the Code of Civil Procedure and restored Other Class Suit No. 84 of 2014 to its original file and number and thereby committed no illegality as no summons of the suit was duly served upon defendant No. 1, but defendant No. 2 in collusion with the plaintiff obtained the ex-parte decree.

Heard the learned Advocates of the contending parties and perused the materials on record. On going through the impugned judgment and order it appears that the learned Judge of the Revisional

Court below on elaborate discussions rightly rejected the civil revision by affirming those of the Trial Court and thereby committed no illegality occasioning failure of justice. In the premises, there is no reason to interfere with the concurrent findings of the Courts below.

Given the above, I find no substance in the submissions made by the learned Advocate for the petitioners, and merit in the Rule. Accordingly, the Rule fails.

As a result, the rule is discharged.

The impugned judgment and order dated 26.10.2022 passed by the learned Additional District Judge, 3rd Court, Naogaon in Civil Revision No. 66 of 2018 rejecting the same by affirming the judgment and order dated 31.07.2018 passed by the learned Senior Assistant Judge, Manda, Naogaon in Miscellaneous Case No. 24 of 2014 allowing the case by restoring the suit to its original file and number are thereby upheld.

Send a copy of this judgment to the Court concerned at once.