

Present:-

Mr. Justice Mahmudul Hoque

Civil Revision No. 319 of 2021

Md. Ruhul Alam

... Petitioner

-Versus-

Md. Mustakim Rahman Pollob

...Opposite-party

No one appears

...For the petitioner

Mr. A.K.M. Faiz, Senior Advocate with

Mr. Mohammad Parvez Rana, Advocate

...For the opposite-party.

Judgment on 27th November, 2024.

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued at the instance of the petitioner calling upon the opposite party to show cause as to why the impugned judgment and order dated 15.12.2020 passed by the learned Senior Assistant Judge (In charge), Joypurhat in Small Causes Court (SCC) Suit No. 01 of 2017 decreeing the 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.

Shorn of unnecessary details, fact of the case lies in a very narrow compus. The opposite-party, as plaintiff, instituted Small Causes Court (SCC) Suit No. 01 of 2017 against the petitioner, as

defendant, in the Court of Senior Assistant Judge (In charge), Joypurhat praying for a decree of eviction of tenants and recovery of arrear rents stating that one Surat Ali was the owner of the disputed land. He transferred his 22.75 sataks land to the plaintiff's father vide Deed No. 2159 dated 25.02.1988. R.S. khatian stands recorded in the name of the plaintiff's father. Plaintiff's father and respondent No. 1 entered into an agreement of tenancy for a period of 20(twenty) years on the conditions as contained therein. The petitioner set up a saw mill on the land and after 6(six) years started to pay monthly rents to father of the plaintiff @ Tk. 500/- per month. Thereafter, transferred the land to the plaintiff vide Deed No. 3836 dated 19.06.2012. The petitioner failed to pay monthly rents to the plaintiff, resultantly, became a defaulter. The plaintiff served notice under Section 106 of the Transfer of Property Act determining tenancy and asked the defendant tenant to surrender vacant possession and pay arrear rents to the plaintiff, but the defendant failed to comply with the demand, hence, the present suit.

The present petitioner, as defendant, contested the suit by filing written statement denying all the material allegations made in the plaint, contending inter alia, that the plaintiff filed the instant suit by bringing false and baseless allegation, the defendant is not a defaulter. He is paying rents to the plaintiff regularly by depositing the same in H.R.C. Case No. 02 of 2017. The plaintiff filed this suit with malafide intention to harass the defendant for illegal gain, hence, the suit is liable to be dismissed. At this juncture, the petitioner moved this Court by filing this revisional application under Section 115(1) of the Code of Civil Procedure instead of filing the same under Section 25 of the Small Causes Courts Act and obtained the present Rule and order of stay.

This matter is appearing in the daily cause list as heard in part with the names of the learned Advocates of both the sides. On repeated calls learned Advocate for the petitioner found absent. Consequently, heard the learned Advocate for the opposite-party, have gone through the revisional application, plaint in Small Causes Court (SCC) Suit No. 01 of 2017, written statement, evidences both oral and documentary available in the lower court

records and the impugned judgment and decree passed by the Small Causes Court.

The petitioner is a tenant in the suit premises. The plaintiff in suit claimed that he has failed to pay monthly rents to the plaintiff regularly. The trial court by the impugned judgment and order dated 15.12.2020 decreed the suit. As per Small Causes Courts Act against the decree passed by the Small Causes Court revision lies under Section 25 of the Act, but the instant revision has been filed under Section 151 of the Code of Civil Procedure. The trial court observed that the petitioner as tenant failed to pay regular monthly rents to the landlord and the petitioner failed to prove that in H.R.C. Case No. 02 of 2017 he deposited regular monthly rents by calling the records in H.R.C. Case No. 02 of 2017 or by filing any challan or order sheets in the court in support of his such claim.

Therefore, I find no illegality or error in the decision occasioning failure of justice. Moreover, this revision is incompetent under Section 151(I) of the Code of Civil Procedure.

In the result, the Rule is discharged, however, without any order as to costs.

The order of stay stands vacated.

Communicate a copy of the judgment and order to the Court concerned and send down the lower court records at once.

Helal/ABO