

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION

(CIVIL REVISIONAL JURISDICTION)

**Civil Revision No. 488 of 2023**

**In the matter of:**

Mahbubul Islam.

...Petitioner.

**-Vs-**

**Present**  
Mr. Justice Mamnoon Rahman

Alhaj Md. Faruk and others.

....Opposite parties.

Mr. N.K.M Nazmul Hassan, Adv.

...For the petitioner.

Mr. Md. Lokman Hossain, Adv.

...For the opposite party Nos. 1 & 2.

Heard on: **06.12.2023**

& Judgment on: **The 3<sup>rd</sup> March, 2024**

In an application under section 115(1) of the Code of Civil Procedure, 1908 rule was issued calling upon the opposite party Nos. 1-15 to show cause as to why the order No. 51 dated 22.11.2022 rejecting the petitioner's applications dated 08.09.2022 under Order-VI, Rule 17 for amendment of written statement and recalling the defendant witness No.1 for additional deposition passed by the learned Joint District Judge, 3<sup>rd</sup> Court, Noakhali in Title Appeal No. 29 of 2017 preferred against the judgment and decree dated 26.02.2017 passed by the learned Senior Assistant Judge (Sadar), Noakhali in Title Suit No. 32 2012 dismissing the suit, should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

I have heard the learned Advocates for the petitioner as well as opposite party Nos. 1 and 2. I have perused the revisional application,

ground taken thereon as well as necessary papers and documents annexed herewith.

Ono perusal of the same, it appears that during pendency of the appeal before the lower appellate court the defendant respondent filed an application for amendment of the written statement under Order-VI, Rule 17 of the Code of Civil Procedure, 1908. It further appears that the lower appellate court after hearing the parties and considering the facts and circumstances rejected the same. Against which the present petitioner moved before this court and obtained the present rule. However, on perusal of the papers and documents, it appears that during pendency of the appeal the appellant-plaintiff filed several applications for amendment of plaint which were duly allowed by the lower appellate court. When an application for amendment of plaint is being allowed a right accrued upon the defendant to amend the written statement in the light of the amendment made in the plaint.

At this stage, the learned Advocate for the opposite party submits that he has no objection if a direction be given upon the lower appellate court to hear and dispose of the appeal expeditiously, as possible, by allowing the amendment of the written statement.

Accordingly, the impugned judgment and order passed by the court below is hereby set aside and the application for amendment of the written statement is hereby allowed. The lower appellate court is directed to hear and dispose of the appeal being Title Appeal No. 29 of 2017 expeditiously, as possible, not later than 3(three) months from the

date of receipt of the instant judgment and order without fail. However, the court below is further directed to allow the application of the petitioner to recall the D.Ws. and by giving due opportunity to the respondent to cross-examine the same.

The court below is further directed to inform this court about the disposal of the appeal as directed, in writing, through the Registrar of the High Court Division within 7(seven) days from the date of disposal of the appeal.

With this observation and direction, the instant rule is disposed of.

The office is directed to communicate the order to the concerned court below with a copy of the judgment, at once.

(Mamnoon Rahman,J:)