

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISIONAL IN CONVENIENCE ON
(Civil Revisional Jurisdiction)

Present

Madam Justice Kashafa Hussain

Civil Revision No. 3138 of 2022

Alamgir and others

.....petitioners

-Versus-

Md. Nurul Huda and others

..... Opposite parties

Mr. Mohammad Osman Chowdhury, Adv.

..... For the petitioners

Mr. Md. Sumon Ali with

Md. Selim Hossen, Advocates

..... For the Opposite Parties

Heard on: 16.01.2024, 29.01.2024 and
Judgment on 30.01.2024

Rule was issued calling upon the opposite parties to show cause as to why the order No. 34 dated 01.03.2022 passed by the learned Additional District Judge, 2nd Court, Noakhali in Title Appeal No. 76 of 2017 arising out Title Suit NO. 222 of 2009 rejecting the applications 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 instant opposite parties as plaintiff filed Title Suit No. 222 of 2009 for cancellation of preliminary deed impleading the instant petitioners as defendants in the suit. The trial court upon hearing the parties allowed and decreed the suit by its judgment and decree dated 31.07.2017. Being aggrieved by the judgment and decree of the trial court the defendants in the suit filed Title

Appeal No. 76 of 2017 which was pending before the court of Additional District Judge, 2nd Court, Noakhali. During pendency of the appeal the defendants as appellants in the suit inter alia filed an application for amendment of the written statement under the provisions of Order 6 Rule 7 of the Code of Civil Procedure. The plaintiff respondent in the suit raised objection to the application for amendment of the written statement. The appellate court after hearing both parties rejected the application for amendment of the written statement filed by the defendant by its judgment and order dated 01.03.2022. Being aggrieved by the judgment and order No. 34 dated 01.03.2022 passed by the appellate court the defendant in the suit being appellant in the appeal filed civil revisional application which is instantly before this court for disposal.

Since the instant civil revision was filed challenging the impugned the Order No. 34 dated 01.03.2022 against rejection of application of amendment of written statement therefore there I find no necessity to enter into the factual merits of the suit here.

Learned advocate Mr. Mohammad Osman Chowdhury appeared for the petitioner while Learned Mr. Md. Sumon Ali along with Mr. Md. Selim Hossen represented the opposite party.

Learned Advocate Mr. Mohammad Osman Chowdhury for the petitioner submits that the court upon total disregard of the

law and upon non compliance of Order 41 Rule 31 rejected the application and therefore such order is not sustainable. He draws this Bench's attention upon the impugned order No. 34 dated 01.03.2022 and points out to the observation and finding of the appellate court. He submits that the appellate court while issuing the order did not comply inter alia with the provisions of Order 41 Rule 31 of the code given that it is crystal clear from the impugned order that it is a nonspeaking order. He continues that the appellate court made its observation on the application for amendment of written statement that the nature and character of the suit will change. He contends that the court however did not give reasons for arriving at such a finding. He submits that therefore such order in noncompliance with the provisions of the Code of Civil Procedure is not sustainable and ought to be set aside.

He next contends that the application of amendment of written statement filed by him did not consist anything which may change the nature and character of the suit land. He concludes his submissions upon assertion that the impugned order passed by the appellate court ought to be set aside and the Rule bears merits and ought to be made absolute for ends of justice.

On the other hand learned advocate Mr. Md. Sumon Ali for the opposite party vehemently opposes the Rule. He argues on same factual matters including that although the defendants in their original written statement did not take any claim of adverse possession but subsequently by way of the application for amendment of written statement they took claim of adverse possession. He submits that it is clear that taking a plea of adverse possession will change the nature and character of the suit. He submits that therefore the appellate court did not commit any illegality and the impugned order needs no interference and the Rule bears no merit and ought to be discharged for ends of justice.

I have heard the learned Advocates from both sides, also perused the application and materials. I have particularly examined Order No. 34 dated 01.03.2022. Learned advocate for the opposite party raised an argument that although the defendants in the suit instant petitioner did not take any ground of adverse possession in the original written statement but however by way of an application of amendment of written statement they attempted to take a plea of adverse possession and which will change the nature and character of the suit. I am inclined to observe that in this civil revision I am not in a position to enter into the facts of the written statement nor the

application for amendment of written statement primarily since the lower court records are not before this Bench. Moreover the instant Rule arises out of an Order No. 34 dated 01.03.2022. Therefore I am inclined to examine the relevant portion of the impugned Order. The relevant portion of the order is reproduced here under:

“বর্ননা সংশোধনের দরখাস্ত দ্বারা মামলার
আকৃতি পরিবর্তন হবে মর্মে প্রতীয়মান হয়।”

The appellate court found that the nature and character of the suit will be changed if the application for amendment of written statement is allowed. However for reasons best known to it the appellate court did not give or cite any reason for such finding. Needless to state that while giving a judgment and order whatsoever it is the duty of the court to give its reasons for its finding. By the impugned order it is clear that in this case the appellate court did not give reasons and therefore gave a nonspeaking order in non compliance of Order 41 Rule 31 of the Code of Civil Procedure. Consequently the impugned order No. 34 dated 01.03.2022 is an incomplete order and is not sustainable. Since I am not inclined to enter into the factual merits of the suit, therefore I am of the opinion that ends of justice would be best served if the impugned order is set aside and the matter is sent back to the appellate court. Therefore I am

inclined to make the Rule absolute with some directions and observations.

In the result, the Rule is made absolute and the impugned order No. 34 dated 01.03.2022 is hereby set aside. The matter is hereby sent to the appellate court and the appellate court is directed to afford a chance to the parties for hearing afresh regarding the application for amendment of written statement under Order 6 Rule 7 of the Code of Civil Procedure. After hearing the parties the appellate court shall give its judgment and order stating reasons for its finding whatsoever inter alia following the provisions of Order 41 Rule 31 of the Code of Civil Procedure.

The Order of stay granted earlier by this court is hereby recalled and vacated.

Communicate the order at once.

Shokat (B.O)