

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

Present:

**Mr. Justice Md. Bashir Ullah**

**Civil Revision No. 1363 of 2009**

Rokeya Begum alias Joshna Begum

... Plaintiff-Petitioner.

-Versus-

Mohammad Akter Hossain Khan

... Defendant-Opposite party.

No one appears for either party.

**Judgment on: 14.08.2023**

This Rule was issued on 04.05.2009 calling upon the opposite party No.1 to show cause as to why the judgment and order dated 05.03.2009 passed by the learned District Judge, Barishal, in Transfer Miscellaneous Case No. 08 of 2009 arising out of Petty Suit No. 01 of 1990, pending in the Court of 1<sup>st</sup> Joint District Judge, Barishal should not be set aside and/or 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, all further proceedings of Petty Suit No.01 of 1990, pending in the Court of 1<sup>st</sup> Joint District Judge, Barishal were stayed for 4(four) months. The period of stay was lastly extended on 23.11.2009 for three months. After the expiry of three months, no step was taken for further extension.

Facts, relevant for the purpose of disposal of the Rule, in short, are that the petitioner as plaintiff instituted Petty Suit No. 01 of 1990 in the

Court of the then Sub-ordinate Judge, at present Joint District Judge, 1<sup>st</sup> Court, Barishal for a decree for ejection of tenant, realization of arrear rent, compensation and recovery of khas possession against the defendant/opposite party. The defendant- opposite party contested the suit. The date was fixed for the examination of D.Ws. on 03.11.2008. On that occasion, the defendant/opposite party filed three applications. One was under Order 14 Rule 2 read with Section 151 of the Code of Civil Procedure, another one was under Order 13 Rule 10 read with Section 151 of the Code of Civil Procedure and the rest was for acceptance of additional written statement. Then the next date was fixed on 18.02.2009 for hearing of the aforesaid 03(three) applications. The learned lawyer for the plaintiff was not prepared for the hearing and, for such reason filed an application for adjournment, but the trial court rejected the application. Thereafter, two more consecutive applications were filed on the same ground, but the learned Joint District Judge, 1<sup>st</sup> Court, Barishal rejected those. The plaintiff-petitioner observing such rejection got the impression that she would not get justice from the Joint District Judge, 1<sup>st</sup> Court, Barishal.

It is further stated that the 1<sup>st</sup> Joint District Judge, Barishal, earlier disposed of two other Title Suit Nos. 05 of 1998 and 93 of 1989, by a single Judgment wherein the plaintiff-petitioner was party and the suit failed against which the petitioner has filed two separate appeals before

the Court of District Judge, Barishal. If Petty Suit No. 01 of 1990 is tried by the 1<sup>st</sup> Joint District Judge, Barishal, she would be deprived of justice.

Feeling aggrieved, the plaintiff filed a miscellaneous case under Section 24 of the Code of Civil Procedure being Miscellaneous Case No.08 of 2009 before the District Judge, Barishal on 20.02.2009 with a prayer for withdrawing the Petty Case No. 01 of 1990 from the Court of 1<sup>st</sup> Joint District Judge, Barishal and transferring the same to any other Court of the same status for disposal. The said miscellaneous case was fixed on 05.03.2009 for admission hearing. Upon hearing the parties the learned District Judge, Barishal dismissed the same on 05.03.2009.

Being aggrieved by the judgment and order dated 05.03.2009 passed by the learned District Judge, Barishal passed in Transfer Miscellaneous Case No. 08 of 2009, the plaintiff-petitioner preferred the instant Civil Revision and obtained the Rule and stay.

It is submitted in the revisional application that the learned District Judge, Barishal failed to consider the legal aspect of the case thus committed an error of law occasioning failure of justice in not allowing the Transfer Miscellaneous Case and as such the impugned judgment is liable to be set aside.

None appears on behalf of either side.

The instant Civil Revision was preferred on 03.05.2009, Rule was issued on 04.05.2009 but unfortunately, no one came forward to support

or opposes the Rule. Meanwhile, 14 years passed but the case is still pending.

The period of stay expired long ago on 23.02.2010. Thereafter, no step was taken for extension of the period of stay. It seems the parties lost their interest in disposing of the case. Hence, the matter is taken up for disposal on merit.

It is divulged from the records that there is no reasonable apprehension of injustice on the part of the plaintiff-petitioner. It is not contended that the Judge is biased and discriminatory. The reasons mentioned in the application for transferring the case are not satisfactory at all and hence the learned District Judge, Barishal rightly dismissed the Miscellaneous Case.

Section 24 of the Code of Civil Procedure deals with the jurisdiction for the transfer of a suit. This section allows for the exercise of the power of transfer by the District Judge. However, the transfer should be based on valid and justified reasons considering both the law and specific facts of the case. The Court should consider the circumstances and merits of the case as a whole when deciding whether a transfer is necessary.

The learned District Judge, Barishal rightly held:

“Section 24 of the Civil Procedure Code confers a general power to transfer suit or appeal at any stage on the application of a party. But it is well settled

principle that such transfer should not be done for reason of sentimentally or more because the same Presiding Officer had given a findings on an identical question of fact or law in a previous case.

In such view of the matter, I find no merit in the submission of the learned advocate and accordingly, the present Miscellaneous Case stand dismissed.”

The District Judge, Barishal committed no error of law occasioning failure of Justice in dismissing the Miscellaneous Case No. 08 of 2009.

As 14 years have passed, the then Joint District Judge, 1<sup>st</sup> Court, Barishal might have been transferred by now, so the petitioner’s grievances no longer exist. I find that there is no cogent reason to transfer Petty Suit No. 01 of 1990 to any other Court as prayed by the plaintiff.

Regard being had the above facts and circumstances of the case, I do not find any ground to interfere with the impugned judgment and order. The rule is devoid of any merit for consideration.

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

The order of stay granted earlier by this court at the time of issuance of the Rule is hereby recalled and vacated.

Communicate this judgment at once.

**(Justice Md. Bashir Ullah)**