

Present:
Mr. Justice Md. Salim

CIVIL REVISION NO.1953 OF 2022

Motahar Hosen
..... *Petitioner.*

-VERSUS-

Abdul Wadud and another
..... *Opposite parties.*

No one appears
..... *For the petitioner.*
Mr. Md. Abdul Malek, Advocate
..... *For the opposite party, No. 1*

Judgment on 31.10.2024

This revision by leave is directed against the judgment and order dated 12.01.2022 passed by the learned District Judge, Bhola, in Civil Revision No. 02 of 2018, dismissed the Civil Revision and affirmed the judgment and order dated 30.10.2017 passed by the Senior Assistant Judge, Bhola in Miscellaneous Case No. 10 of 2007 under Order 9 Rule 13 read with section 151 of the Code of Civil Procedure.

Facts, in a nutshell, for disposal of the Rule, are that the petitioner as plaintiff instituted Title Suit No.102 of 1993 before the Senior Assistant Judge, Bhola Sadar, Bhola, for Specific Performance of Contract against the opposite parties. Subsequently, the suit was decreed in ex-parte by the judgment and decree dated 06.10.1994. Accordingly, Title Execution Case No. 03 of 1994 was filed. The learned Assistant Judge, Bhola Sadar Bhola, executed the sale deed in favor of the plaintiff-petitioner on 29.11.1994, and the same was registered on 15.02.1995 vide sale deed No. 1150 in favor of the petitioner.

The defendant-opposite party No. 1 as petitioner filed Miscellaneous Case No. 10 of 2007 on 21.03.2007 under Order 9 Rule 13 read with Section 151 of the Code of Civil Procedure and prayed for the restoration of the Title Suit No. 102 of 1993 by setting aside the ex-parte judgment and decree dated 15.10.1994.

Eventually, the learned Senior Assistant Judge, Sadar Court, Bhola allowed the Miscellaneous Case No. 10 of 2007 on 30.10.2017 and set aside the ex-parte judgment and decree dated 15.10.1994 passed in Title Suit No. 102 of 1993 and also restored the suit in its original file number and stage.

Being aggrieved by and dissatisfied with the above judgment and order dated 30.10.2017, the plaintiff-petitioner preferred Civil Revision No.02 of 2018 before District Judge Bhola. Eventually, the Civil Revision was dismissed, and those passed by the Trial Court were affirmed.

Being aggrieved by and dissatisfied with the judgment and order dated 30.10.2017 passed by the learned District Judge, Bhola, the plaintiff-petitioner filed this Civil Revision under section 115(4) of the Code of Civil Procedure before this court and obtained the present Rule.

Before I advert to the contentions raised from the Bar, it will be appropriate to quote the relevant provision of Order 9 Rule 13 of the Code of Civil Procedure:

13-“(I) In any case in which a decree is passed ex parte against a defendant, he may apply to the court by which the decree was passed for an order to set aside; and if he satisfies the court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the court shall make an order setting aside the decree as against him upon such terms as to cost, payment into court or otherwise as it thinks fit and shall appoint a day for proceeding with the suit.

Provided that where the decree is of such a nature that it cannot be set aside as against such defendants only it may be set aside as against all or any of the other defendants.”

It manifests from the above provisions that an ex parte decree can be set aside on two grounds: (I) that the summons was not duly served or (II) that any sufficient cause prevented him from appearing when the suit was called on for hearing.

In the instant case, after scanning the order sheet of the record, it manifests that the plaintiff petitioner is to serve summons and notice upon the defendant-petitioner-opposite party having been signed by a local representative and a headmaster of a local school and in this regard the defendant-petitioner-opposite party adduced two P.Ws, and On the other hand, the plaintiff-opposite party petitioner adduced four P.Ws. to prove their respective case.

I have also anxiously considered the evidence adduced and produced by both parties. In view of the above, it manifests that the service of processes was not duly served upon the defendant-petitioner-opposite party complying with the court's order.

From the above facts and circumstances of the case and materials on record, it is safely proved that the summons was served collusively upon the defendant-petitioner-opposite party so he was unaware of the date the court fixed for the hearing. Rather, the plaintiff petitioner failed to show anything contrary to this aspect of the materials. The court should not be overly strict on this matter as the defendant petitioner's prayer is to hear the matter on merit. It will be an injustice to debar him from hearing the matter on merit. All these circumstances were sufficient cause for the defendant-petitioner-opposite party to appear before the court when the suit was called on for hearing.

In the light of the above facts and circumstances of the case having regard to the materials on record, it manifests that the defendant-petitioner-opposite party had succeeded in proving the cogent and convincing reasons that he was prevented by sufficient

cause from appearing before the court when the suit was taken up for hearing.

In the light of the above facts and circumstances of the case, it appears to me that the learned District Judge and the learned Assistant Judge have justifiedly held that the summons was not duly served upon the defendant-petitioner-opposite party therefore, he was prevented by sufficient cause from appearing before the court. Hence, the suit was justifiedly restored upon setting aside the ex parte judgment and decree.

On examination of the above decisions, reasons, and conclusions reached by both the courts below, it cannot be said that those decisions suffer from patent illegality, legal infirmity, and flagrant error of law warrant any interference by this court.

In view of the above reasons, it manifests that the Rule has no merit.

Resultantly, the Rule is discharged with cost.

Communicate this judgment.

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(Md. Salim,J).