

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Civil Revisional Jurisdiction)

Present:

Mr. Justice Md. Khairul Alam

Civil Revision No. 6167 of 2022.

Manos Kumer Mukhopadday and others.

..... Petitioners.

-Versus-

Akram Hossain Khondoker and others.

..... Opposite parties.

Mr. Md. Hekam Ali, Advocate.

..... For the petitioners.

Mr. Muhammad Ashraf Ali, Advocate

..... For the opposite parties.

Heard on: 09.07.2025 and

Judgment on: 24.07.2025

This Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and order dated 21.09.2022 passed by learned District Judge, Madaripur in Civil Revision No. 09 of 2021 dismissing the Civil Revision and thereby affirming Order No. 28 dated 08.02.2019 passed by the learned Assistant Judge, Rajoir, Madaripur in Miscellaneous Case No. 06 of 2019 allowing the Miscellaneous Case and thereby restoring Title Suit No. 179 of 2018 to its original file and number after setting aside the ex-parte judgment and decree dated 01.01.2019 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 facts of this case, so far as relevant for the purpose of the disposal of the Rule herein, are that the present petitioners as plaintiffs instituted a suit impleading the present opposite parties as defendants praying, inter alia, a decree for declaration of title over the suit property.

On 29.11.2018, the suit was decreed ex parte. Against the said ex parte judgment and decree, the defendants filed Miscellaneous Case No. 06 of 2019 under Order IX, Rule 13 of the Code of Civil Procedure for setting aside the ex parte decree stating, inter alia, that no summons was served upon the defendants. The petitioner contested the miscellaneous case by filing a written objection denying the material allegations made in the miscellaneous case contending inter alia that summons were duly served upon the defendants of the suit. During the trial, both parties adduced evidence to prove their claim. The learned Assistant Judge, after hearing the said Miscellaneous Case by the judgment and order dated 27.20.2022, allowed the same holding, inter alia, that summons notice was not served properly and thereby set aside the ex parte judgment and decree and restored Title Suit No. 179 of 2018 to its original file and number. Against the said judgment and order the petitioners filed Civil Revision No. 09 of 2021 before the Court of District Judge, Madaripur. The learned District Judge, Madaripur by the judgment and order dated 21.09.2022 dismissed the Civil Revision and thereby affirmed the judgment and order passed by the trial Court.

Being aggrieved thereby, the petitioners moved before this Hon'ble Court and obtained the Rule and an order of stay.

Mr. Md. Hekam Ali, learned Advocate appearing for the petitioners submits that the summons was duly served, but the courts below, without considering the same passed the impugned judgment order and thereby committed an error of law resulting in an error in the decision occasioning failure of justice. He next submits that no sufficient cause for setting aside the ex parte decree was shown despite of that

the courts below passed the impugned judgment and order restoring the suit to its original file and number after setting aside the ex parte judgment and decree which required to be interfered.

Per contra, Mr. Muhammad Ashraf Ali, learned Advocate appearing for the opposite party submits that the summons was not properly served upon the defendants, hence the court below rightly passed the impugned judgment and order. Since both the courts below concurrently found that no summons was served, this Court, in its revisional jurisdiction should not interfere with the said finding. He next submits that non-service of summons is a sufficient cause within the meaning of Order IX rule 13 of the Code of Civil Procedure, therefore, the Courts below rightly passed the impugned judgment order and hence the Rule is liable to be discharged.

I have considered the submissions of the learned Advocates for the contending parties perused the impugned judgment and order, and other materials on record.

Before addressing the contentions of the contending parties it will be advantageous to quote the provision of Order IX Rule 13 of the Code of Civil Procedure, which runs as follows:-

“13. Setting aside decree ex parte against defendant. (1)

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 it 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 costs, 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 defendant only it may be set aside as against all or any of the other defendants also.

(2) The defendant shall, for service on the opposite party, present along with his application under this rule either-

(i) as many copies thereof on plain paper as there are opposite parties, or

(ii) if the Court by reason of the length of the application or the number of opposite parties or for any other sufficient reason grants permission in this behalf, a like number of concise statements.

(3) Provisions of section 5 of the Limitation Act, 1908 shall apply to the applications under rule 13 (1) of this order.”

As per the said provision, if any suit is decreed ex parte, the defendants may apply for an order to set it aside, and if he satisfies the Court that summons was not duly served, or that there was sufficient cause for his non-appearance when the suit was called on for hearing, the court shall make an order setting aside the decree, and shall appoint a day for proceeding with the suit.

In the present case, both the court below found that the summons was not duly served. The learned Advocate for the petitioner failed to show that the said finding of fact is based on without considering any material evidence. Therefore, I do not find any reason to interfere with the impugned judgment and order.

Hence, the Rule is devoid of any merit and the same is discharged without any costs.

The order of stay passed at the time of the issuance of the Rule is hereby vacated.

Let a copy of this judgment and order be communicated at once.

Kashem, B.O