

Present:-

Mr. Justice Mahmudul Hoque

Civil Revision No. 4365 of 2023

Samuda Real Estate Limited, represented by its authorized attorney Md. Sobuj, son of Abdul Mottaleb and Fokhrunnessa of Tk Bhabon, 10th Floor, 13, Kawran Bazar, Tejgaon, Dhaka.

... Petitioner

-Versus-

Sujauddaula and others

...Opposite-parties

Mr. Ahmed Nowshed Jamil with
Mr. Muhammad Ahsan Habib, Advocates

...For the petitioner

Mr. Mohammad Nurul Huda Ansary with
Mr. Ehsanul Hoque, Advocate

...For the opposite-party Nos. 2-8.

Heard and Judgment on 11th June, 2024.

In this application under Section 115(4) of the Code of Civil Procedure, by granting leave to revision to the petitioner, Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and order dated 24.07.2023 passed by the learned District Judge, Dhaka in Civil Revision No. 153 of 2023 disallowing the same and thereby affirming the judgment and order dated 07.05.2023 passed by the learned Joint District Judge (Arbitration Court), Dhaka in Title Suit No. 266 of 2017 rejecting the application under Order 7 Rule 11 for rejection of plaint should

not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

Shorn of unnecessary details, fact of the case lies in a very narrow compus. The opposite parties, as plaintiff, instituted Title Suit No. 984 of 2011 in the Court of First Joint District Judge, Dhaka subsequently, renumbered as, Title Suit No. 266 of 2017 on transfer to the Court of Joint District Judge, Arbitration Court, Dhaka against the present petitioner, as defendant, praying for decree of declaration in the following terms;

“(ক) নালিশী তফসিল বর্ণিত সম্পত্তিতে বাদীগণের স্বত্ব রয়েছে মর্মে বাদীগণকে তফসিল বর্ণিত সম্পত্তির ১ ষোল আনার মালিক ঘোষণা করিয়া বিবাদীর বিরুদ্ধে বাদীগণের পক্ষে এক ঘোষণামূলক রায় ও ডিক্রী প্রচার করিতে;

(খ) নালিশী তপসিল বর্ণিত সম্পত্তিতে বিবাদীর জবর দখলকে অবৈধ ও বেআইনী ঘোষণা করিয়া বিবাদীকে নালিশী তফসিল বর্ণিত সম্পত্তি থেকে উচ্ছেদ করিয়া আদালত যোগে বাদীগণকে তফসিলে বর্ণিত সম্পত্তির দখল বুঝাইয়া দিতে তৎমর্মে এক রায় ও ডিক্রী দিতে;”

The petitioner, as defendant No. 3, appeared in suit and filed written statement. After long time in the year 2017, the present petitioner filed an application under Order 7 Rule 11 of the Code of Civil Procedure for rejection of plaint. Among other dates hearing of the application was fixed on 07.05.2023. On the date fixed the

petitioner, as defendant, filed an application praying for adjournment. The trial court after hearing rejected the same and also rejected the application for rejection of plaint. Against the order of the trial court dated 07.05.2023, the petitioner filed Civil Revision No. 153 of 2023. The revisional court fixed the matter on 24.07.2023 for hearing admissibility of the revision and after hearing the parties the revisional court rejected the revision by its judgment and order dated 24.06.2023. At this juncture, the present petitioner moved this Court by filing this application under Section 115(4) of the Code seeking leave to revision and obtained the present Rule and order of stay.

Mr. Ahmed Nowshed Jamil with Mr. Muhammad Ahsan Habib, learned Advocates appearing for the petitioner submits that when an application for rejection of plaint filed by the defendant on the ground of barred by law, the court giving priority ought to have heard the application and disposed of the same before proceeding with the suit. He candidly submits that the application was filed on 08.03.2022, but on several dates the defendant took adjournments and finally fixed for hearing on 07.05.2023. On the date fixed the

defendant prayed for an adjournment which was rejected by the trial court and the application for rejection of plaint which was also rejected without giving opportunity to the defendant to get the application heard and disposed of on merit. The revisional court also without going through the fact and law in this regard summarily rejected the revision, thus, committed an error of law in the decision occasioning failure of justice.

Mr. Mohammad Nurul Huda Ansary with Mr. Ehsanul Hoque, learned Advocates appearing for the opposite-party Nos. 2-8 submits that, this is a case of the year 2011. The present petitioner, as defendant, entered into appearance and filed written statement after about 12 years and then the defendant came with an application under Order 7 Rule 11 of the Code of Civil Procedure praying for rejection of plaint without any specific reason. However, the court took the matter for hearing on several occasions, but the defendant did not come forward to press the application and on all the dates of hearing took adjournment on this and that pleas. Finally, on 07.05.2023, when the matter was fixed for hearing, the defendant again filed an application praying for adjournment which was

rejected by the court and after rejection of the application they did not take any other step, resultantly, the trial court rejected the application for rejection of plaint. Thereafter, they preferred the revision which was also summarily rejected. He finally submits that in the absence of any definite assertion in the application for rejection of plaint in suit both the courts below in rejecting the application have committed no illegality or error in law in the decision occasioning failure of justice.

Heard the learned Advocates of both the sides, have gone through the revisional application, plaint in suit, written statement, application for rejection of plaint, written objection thereto and the impugned judgment and order passed by both the courts below.

This is a suit for declaration of title and recovery of possession. The defendant filed written statement in suit and also filed an application for rejection of plaint on the same day on 08.03.2022. In the application for rejection of plaint among others, the defendant stated that the plaintiff earlier filed another suit for declaration of title which is pending for disposal. Therefore, for pendency of an

earlier suit plaintiff in subsequent suit cannot be rejected, as there are other provisions in law.

From perusal of application for rejection of plaintiff, I find nothing as to why the suit is barred by law and why the plaintiff in suit is liable to be rejected under Order 7 Rule 11 of the Code of Civil Procedure. The statement whatever, made in the application for rejection of plaintiff are matters of fact to be decided at the time of hearing of the suit on evidence. When any allegation or fact stated by defendant in suit requires evidence and adjudication of the dispute on merit, plaintiff in suit cannot be rejected in limine without trial. In the instant case, all the facts and circumstances of the case, statements made in the application for rejection of plaintiff requires hearing of the suit and as such, not called for rejection of plaintiff summarily under any provisions of law.

In view of the above, I find that both the courts below though did not dispose of the application for rejection of plaintiff on merit, but committed no illegality or error in the decision occasioning failure of justice.

Taking into consideration the above, this Court finds no merit in the Rule as well as in the submissions of the learned Advocate for the petitioner.

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

Order of *stay* granted at the time of issuance of the Rule stands vacated.

The trial court is hereby directed to dispose of the suit within shortest possible time giving top most priority in accordance with law.

Communicate a copy of the judgment to the Court concerned at once.