

District: Chattogram

In the Supreme Court of Bangladesh

High Court Division
(Civil Revisional Jurisdiction)

Present

Mr. Justice Md. Zakir Hossain

Civil Rule No. 1214 of 2023

Mohammad Jashim Uddin and another
..... Defendant-Petitioners

-Versus-

Rajib Kumar Biswas and others
..... Plaintiff- Opposite Parties

Mr. A.M. Amin Uddin, Senior Advocate with
Mr. Md. Zainul Abedin, Advocate
..... For the petitioners

Mr. Muhammad Tawhidul Islam, Advocate
..... For the opposite parties

Heard on: 06.03.2024

Judgment on: 09.05.2024

At the instance of the petitioners, the leave is granted and the Rule was issued to examine the legality and propriety of the judgment and order dated 30.11.2022 passed by the learned Additional District Judge, Deulia Adalat, Chattogram in Civil Revision No. 117 of 2022.

Facts leading to the issuance of the Rule are *inter alia* that the opposite parties being plaintiffs filed Other Class Suit No. 43 of 2018 before the Court of the learned Joint District Judge, Second Court, Chattogram for specific performance contract in respect of land as mentioned in the schedule to the plaint impleading the petitioners as the defendants. The defendant Nos. 1-3 entered appearance in the suit and by filing a written statement denied the material allegations set out in the

plaint. The defendant Nos. 1-3 filed an application under Order 7 Rule 11 (d) for rejection of the plaint. The said application was resisted by the plaintiffs by filing a written objection. Upon hearing, the learned Joint District Judge was pleased to reject the application for rejection of the plaint. Challenging the chastity of the judgment and order of the learned Joint District Judge, the petitioners preferred Revisional Application No. 117 of 2022 before the Court of the learned District Judge, Chattogram. After accepting the revisional application, the learned District Judge was pleased to transmit the record to the learned Additional District Judge, Deulia Adalat, Chattogram for disposal. Upon hearing, the learned Additional District Judge was pleased to reject the revisional application. Impugning the judgment and order of the learned Additional District Judge, the petitioners moved this Court and obtained the aforesaid Rule and stay therewith.

Heard the submissions advanced by the learned Advocates of the petitioners and the opposite parties at length and considered the materials on record thoroughly. The convoluted question of law embroiled in this case has meticulously been waded through in order to reach a just decision.

The contention of the plaintiffs is that the entire amount of consideration of money has been paid to the defendant before filing the suit; therefore, the question of depositing any more money does not arise at all. The learned Joint District Judge considering the facts and circumstances of the held to the effect:

“আর্জি, লিখিত বর্ণনা ও নালিশী চুক্তিনামা পর্যালোচনায় দেখা যায় যে, বাদী পক্ষ নালিশী চুক্তির আন্দর সমুদয় টাকা বিবাদী পক্ষকে পরিশোধ করেছেন মর্মে দাবী করলেও বিবাদী পক্ষ তা অস্বীকার করেছেন। এক্ষেত্রে চুক্তি সম্পাদনকালে বাদী তার দাবী মতে বিবাদীকে চুক্তির আন্দর সমুদয় টাকা পরিশোধ করেছিলেন কিনা তা বাদীকে সাক্ষ্য-প্রমাণ উপস্থাপন করার মাধ্যমে প্রমাণ করতে হবে। একইভাবে বিবাদী চুক্তির আন্দর কোন টাকা গ্রহণ করেননি মর্মে যে দাবী উপস্থাপন করেছেন তাও বিবাদীপক্ষকে সাক্ষ্য প্রমাণ উপস্থাপন করার মাধ্যমে প্রমাণ করতে হবে। এক্ষেত্রে মোকদ্দমার এই পর্যায়ে চুক্তির আন্দর অপরিশোধিত টাকা চালানমূলে জমা প্রদান করা হয়নি এবং টাকা প্রদানের সমর্থনে বাদী পক্ষ কোন দালিলিক প্রমাণ উপস্থাপন করেননি মর্মে বিবাদীপক্ষের দাবী আমলে নিয়ে এই মোকদ্দমার আর্জি খারিজ করার কোন সুযোগ নেই বলে আদালত মনে করে।”

The Revisional Court after delving into the facts and considering the legal position critically involved in this case rightly rejected the revisional application and concurred with the decisions of the Court below. Therefore, the judgment and order of the Revisional Court do not warrant for any interference. No illegality has been spelt out within the bounds of the judgment of the Courts below. The dispute cannot be settled down without taking evidence and holding a full-pledged trial.

After considering the facts and circumstances of the case and legal position, I am constraint to hold that the dispute of the case cannot be settled down without taking evidence. Therefore, the Rule is devoid of any substance. Hence, the Rule shall fall through.

In the result, the Rule is discharged, however, without passing any order as to costs. The earlier order of stay granted by this Court thus stands recalled and vacated.

Let a copy of the judgment be transmitted to the Court below at once.

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Md. Zakir Hossain, J

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