

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)
CIVIL REVISION No. 3577 OF 2023.
Md. Nazrul Islam (Dulal)

...Petitioner

-Versus-

Aklima Akther and others .

....Opposite parties.

None appears

... For the petitioner

Mr. Mohammad Mehdi Hasan, Advocate

... For opposite party No. 1-3

Heard and judgment on: 17.12.2023.

Present:

Mr. Justice Md. Badruzzaman.

This Rule was issued calling upon opposite party Nos. 1-3 to show cause as to why judgment and order dated 02.04.2023 passed by learned District Judge, Munshigonj in Civil Revision No. 05 of 2023 dismissing the revision by affirming an order dated 02.01.2023 passed by learned Senior Assistant Judge, Sreenagar, Munshigonj in Title Suit No. 780 of 2021 closing the evidence of the plaintiff and fixing the next date for recording evidence of the defendant.

Facts relevant, for the purpose of disposal of this Rule, are that the petitioner as plaintiff instituted the title suit on 18.01.2009 for a decree of declaration of title and partition of the suit land and the suit was transferred to the Court of Senior Assistant Judge, Sreenagar, Munshigonj and renumbered as Title Suit No. 780 of 2021 and the date was fixed on 02.01.2023 for recording further evidence of the plaintiff and filing C.P cost. On that date the plaintiff deposited C.P cost and filed an application for adjournment for producing witness and the trial Court, after hearing, rejected the prayer and closed the evidence of the

plaintiff and fixed the next date on 02.03.2023 for recording the evidence of defendants.

Being aggrieved by order dated 02.01.2023 the plaintiff preferred Civil Revision No. 05 of 2023 before the learned District Judge, Munshigonj who, upon hearing the parties, dismissed the revision by order dated 02.04.2023.

Challenging the legality of said order dated 02.04.2023 the plaintiff has come up with this application under section 115 (4) of the Code of Civil Procedure and obtained the instant Rule.

None appears on behalf of the petitioner when the matter is taken up for hearing.

However, I have perused the grounds stated in the application wherein it has been pleaded that the Court of revision committed an error of important question of law resulting in erroneous decision in dismissing the revision because of the fact that the trial Court committed illegality in rejecting the time prayer and closing the evidence of the plaintiff and fixing the next date for defense witness.

As against the above contention Mr. Mohammad Mehdi Hasan, learned Advocate appearing for opposite party Nos. 1-3 submits that the Court of revision upon proper consideration of the materials on record rightly dismissed the revision having found no illegality in the order passed by the trial Court and as such, there is no ground to interfere with the order of the Court of revision.

I have heard the learned Advocate, perused the application, as well as other materials available on record. While dismissing the revisional application learned District Judge observed that the original suit was initiated in 2009 and the first date was fixed on 25.11.2010 for peremptory hearing (P.H) and at peremptory stage the plaintiff took eleven adjournments out of which two adjournments were granted

with cost and then the suit was dismissed for default on 23.09.2012 and on the prayer of the plaintiff, it was restored on 28.01.2013. The Court of revision also found that on 09.05.2013 and 03.06.2013 the P.W.1 was partly examined and thereafter, the plaintiff took several adjournments and lastly on 16.08.2018 filed an application for temporary injunction which was rejected and thereafter, the plaintiff filed F.M.A No. 170 of 2019 before the High Court Division and said miscellaneous appeal was also dismissed for default. The revisional Court also found that the suit was again fixed on 27.06.2022 for recording evidence of the plaintiff and on that date the plaintiff prayed for adjournment which was allowed and thereafter, next date was fixed on 26.09.2022 and on that date the plaintiff again prayed for adjournment which was allowed with cost of Tk. 300/- and on the next date on 10.11.2022 the plaintiff again sought for adjournment which was allowed by the trial Court and lastly the date was fixed on 02.01.2023 for recording evidence of the plaintiff and on that date the plaintiff filed application for adjournment and the trial Court rejected the application and closed the evidence of the plaintiff. Upon considering the above facts, the Court of revision came to the conclusion that with a view to delay the disposal of the suit, the plaintiff took different pleas and accordingly, dismissed the revision by upholding the order of the trial Court.

Proviso to sub-rule (2) of rule 1 of Order 17 of the C.P.C provides that when the hearing of evidence has once begun, the hearing of such suit shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the hearing beyond the following day to be necessary for reasons to be recorded. This proviso to sub-rule (2) of rule 1 makes it clear that hearing of evidence should continue without break and

adjournment in the midst of witnesses deposing should be sparingly granted with reasons.

On the other hand, sub-rule (4) of rule 1 of Order 17 of the Code prohibits any adjournment at the stage of hearing evidence with the proviso that such adjournment may be given only if it is required for the ends of justice and with cost. It has further provided that the Court shall not grant more than three adjournments to a party even with cost.

In the instant case, it appears that the plaintiff filed the suit in 2009 and it was fixed for peremptory hearing on 25.11.2010 and thereafter the plaintiff took more than three adjournments as has been found by the Court of revision. Since as per provision of sub-rule (4) of rule 2 of Order 17 of the Code of Civil Procedure the Court is not empowered to grant more than three adjournments to a party even with cost at peremptory hearing stage the trial Court committed no illegality in rejecting the application for adjournment of the plaintiff, which has been rightly held by the Court of revision.

In that view of the matter, I am of the view that Court of revision committed no illegality in dismissing the revision by affirming the order of the trial Court.

Accordingly, I find no merit in this Rule.

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

The order of stay granted earlier by this Court is hereby recalled and vacated.

Communicate a copy of this judgment to the Court below at once.

(Justice Md. Badruzzaman)