

District: Cumilla

In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)

Present

Mr. Justice Md. Zakir Hossain

Civil Revision No. 4114 of 2023

Arfanul Haque Rifat and others

.....Defendant-Petitioners

-Versus-

Principal Afjal Khan being dead his heirs:

Mosammat Nargis Sultana and others

..... Plaintiff-Opposite Parties

Mr. Md. Shakhawat H. Khan, Advocate

..... For the petitioners

Mr. M. M. Shafiullah, Advocate

.....For the opposite parties

Heard & Judgment on: 09.07.2024

At the instance of the petitioners, the *Rule* was issued by this Court with the following terms:

“Leave is granted.

Records of the case need not be called for.

Let a Rule be issued calling upon the opposite party Nos. 1(a) to 1(d) and 3(a)-2(c) to show cause as to why the impugned judgment and order dated 29.05.2023 passed by the learned District Judge, Cumilla in Civil Revision No. 08 of 2023 affirming the Order No. 30 dated 05.01.2023 passed by the learned Assistant Judge, Burichong, Cumilla in Title Suit No. 114 of 2022 rejecting application under Order 7 Rule 11 of the Code of Civil Procedure, 1908 shall not be set aside and/ or

such other or further order or orders passed as to this Court may seem fit and proper.”

Facts leading to the issuance of the Rule are *inter alia* that the predecessor of the opposite party Nos. 1a-1d and the opposite party No. 2 being plaintiffs instituted Title Suit No. 114 of 2022 before the Court of the learned Joint District Judge, First Court, Cumilla with the following prayer:

“(ক) বাদীগণ অদ্যাবধি নালিশী কুমিল্লা মডার্ন হাই স্কুলের প্রতিষ্ঠাতা ও দাতা সদস্য হিসেবে বহাল আছে এবং তাহারাই উক্ত হাই স্কুলের আজীবন প্রতিষ্ঠাতা ও দাতা সদস্য মর্মে ঘোষণা করিতে;

(খ) সম্যক আদালত ব্যয় ডিক্রিতে;

আদালতের ন্যায় বিচারে বাদীগণ অপর যে যে উপকার ও প্রতিকার পাইতে পারে তাহা পাওয়ার ডিক্রি দিতে মর্জি হয়।”

The defendant entered appearance in the suit and by filing written statement denied the materials allegation set forth in the plaint contending *inter alia* that the suit is not maintainable in its present form and barred by the doctrine of *res judicata*. The defendant also filed an application under Order 7 Rule 11 for rejection of the plaint. Upon hearing, the learned Joint District Judge was pleased to reject the petition for rejection of the plaint. Impugning the judgment and order of the learned Joint District Judge, the petitioners preferred Civil Revision No. 08 of 2023 before the Court of the learned District Judge, Cumilla. Upon hearing, the learned District Judge was pleased to reject the aforesaid revisional application and thereby, concurred with the decision of the learned Joint District Judge. Questioning the legality and propriety of the

judgment and order of the learned District Judge, the petitioners moved this Court and obtained the aforesaid leave, Rule and stay therewith.

Heard the submissions advanced by the learned Advocates of the parties at length and considered the materials on record with due care and attention and seriousness as they deserve. The convoluted question of law embroiled in this case has meticulously been waded through.

The learned Joint District Judge after considering the facts and circumstances of the case held that the dispute of the suit cannot be settled down without taking evidence and the learned District Judge delving into the facts concurred with the decision of the learned Joint District Judge holding the view that the dispute of the suit cannot be finally adjudicated without taking any evidence. No illegality has been spelt out within the bounds of the impugned judgment and order.

My penultimate decision is that the dispute cannot be settled down without a full-pledged trial; therefore, the petition for rejection of the plaint is not maintainable in view of the Order 7 Rule 11 of the Code of Civil Procedure. Accordingly, this Court finds no substance in the Rule. Hence, the Rule shall fall through.

In the result, the Rule is discharged without, however, without passing any order as to costs. The learned Joint District Judge, Second Court is directed to dispose of the Original Suit with utmost expedition preferably within 06(six) months for the date of receipt of the copy of

this judgment. No unnecessary adjournment petition shall be entertained from either side.

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

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Md. Zakir Hossain, J

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