

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(CIVIL REVISIONAL JURISDICTION)

*Present:*

*Mr. Justice S M Kuddus Zaman*

**CIVIL REVISION NO.4894 OF 2023**

In the matter of:

An application under Section 115(1) of the Code of Civil Procedure.

And

Md. Saiful Alam Bhuiyan  
... Petitioner

-Versus-

Md. Shahnour Bhuiyan being dead his legal heirs-  
Rashida Begum and others

... Opposite parties

Ms. Sagorica Islam, Advocate

...For the petitioner.

Ms. Shipra Rani Dey, Advocate

... For the opposite party Nos.2-10.

**Heard on 10.02.2025 and Judgment on 12.02.2025.**

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and order dated 10.08.2023 passed by the learned District Judge, Munshigonj in Chani Miscellaneous Suit No.04 of 2023 rejecting the restoration of Civil Appeal No.7 of 2017 which was rejected by an order dated 10.03.2021 passed by the learned District Judge, Munshigonj arising from the judgment and decree dated 06.09.2016 passed by the learned Sadar Senior Assistant Judge, Munshigonj in Civil Suit No.147 of 2008 decreeing the suit of the plaintiff should not be set aside and or pass

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

Facts in short are that the opposite parties as plaintiffs instituted Civil Suit No.147 of 2008 in the Court of Senior Assistant Judge, Munshigonj and petitioner was defendant No.13 of above suit which was decreed on contest on 06.09.2016.

Being aggrieved by and dissatisfied with above judgment and decree defendant No.13 as appellant preferred Civil Appeal No.7 of 2017 to the learned District Judge, Munshigonj which was dismissed for default on 27.03.2019.

The appellant for setting aside above order of dismissal filed a petition under Order 41 Rule 19A on 25.04.2019 which was dismissed for default on 10.03.2021 due to absence of the petitioner.

Being aggrieved by above judgment and order of the learned District Judge appellant filed a petition for setting aside above order of dismissal and the learned District Judge rejected above petition vide impugned order dated 10.08.2023.

Being aggrieved by above judgment and order of the learned District Judge above petitioner as petitioner moved to this Court with this petitioner under Section 115 of the Code of Civil Procedure and obtained this Rule.

Ms. Sagorica Islam, learned Advocate for the petitioner submits that the learned District Judge committed serious illegality in rejecting

Miscellaneous Case under Order 41 Rule 19A of the Code of Civil Procedure for setting aside the order of dismissal for default passed in Civil Appeal No.7 of 2017 on 27.03.2019. The learned District Judge should have restored above Miscellaneous Case under Order 41 Rule 19A of the Code of Civil Procedure and readmit above appeal. On consideration of above facts and circumstances of the case and materials on record this Court should exercise his power and authority provided under Section 115 of the Code of Civil Procedure and direct the learned District Judge for readmission of above appeal.

On the other hand Ms. Shipra Rani Dey, learned Advocate for the opposite party Nos.2-10 submits that the petitioner did not come before this Court challenging the legality and propriety of order dated 10.03.2021 passed by the learned District Judge in Civil Appeal No.7 of 2017 but they have challenged the legality and propriety of order dated 27.03.2019 passed by the learned District Judge in Chani Miscellaneous Suit No.4 of 2023. Since above Chani Miscellaneous Suit was outside of the periphery of the Order 9 of the Code of Civil Procedure and the petitioner is not entitled to get any remedy. There is no substance in this Civil Revision and the Rule issued in this connection is liable to be discharged.

I have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record.

It is true that the petitioner have challenged the legality and propriety of order of rejection passed by the learned District Judge on 27.03.2019 in Chani Miscellaneous Suit No.04 of 2023 and the petitioner did not challenge the legality and propriety of order of dismissal dated 27.03.2019 passed by the learned District Judge in Civil Appeal No.07 of 2017 rejecting the petition of the appellant filed under Order 41 Rule 19A of the Code of Civil Procedure.

It turns out from the record that the grievance of the petitioner arose out of the order dated 10.03.2021 passed by the learned District Judge passed in Civil Appeal No.07 of 2017 rejecting the petition of the appellant for readmission of above appeal under Order 41 Rule 19A of the Code of Civil Procedure.

If an appellant submits a petition for readmission of an appeal which has been dismissed for default within 30 days of the passing of the order of dismissal then the Appellant Court shall re-admit the appeal directly without receiving or considering any evidence. Above provision does not provide for issuance of any notice upon the respondent of above petition. The Court shall issue notice upon the respondent after re-admission of the appeal. Rule 19A was introduced to the Code of Civil Procedure by Act No.VIII of 2006 for direct re-admission of an appeal which has been dismissed for default for reduction of delay and expediting the disposal of the appeal on merit. But the learned District Judge did not re-admit above appeal

immediately after receipt of above petition and rejected above petition on the ground of absence of the appellant on 10.03.2021 after about two years.

This is unfortunate that the learned District Judge utterly failed to understand the true spirit and meaning of Order 41 Rule 19A of the Code of Civil Procedure and most illegally rejected above petition after about two years and the ends of justice demands that this Court shall take notice of above facts and set aside above unlawful order of the learned District Judge and pass a direction for direct readmission of above appeal and proceed with the disposal of above appeal in accordance with law.

In above view of the facts and circumstances of the case and materials on record I find substance in this Civil Revision under Section 115(1) of the Code of Civil Procedure and the Rule issued in this connection deserves to be made absolute.

In the result, the Rule is hereby made absolute.

The impugned judgment and order dated 10.08.2023 passed by the learned District Judge, Munshigonj in Chani Miscellaneous Suit No.04 of 2023 is set aside. The learned District Judge is directed to reconsider the petition filed by the appellant under Order 41 Rule 19A of the code of Civil Procedure afresh and readmit Civil Appeal No.07 of 2017 and dispose of above appeal on merit in accordance with law within a period of 6(six) months from the date of receipt of this order.

The petitioner shall pay a cost of Taka 5,000/- to the opposite parties within 30 (thirty) days from the date of receipt of this judgment and if he fails to pay above cost this order shall stand vacated.

*MD. MASUDUR RAHMAN*  
*BENCH OFFICER*