

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

Present:

**Mr. Justice Muhammad Abdul Hafiz**

**Civil Revision No. 5470 of 2023**

Kazi Ashfaq Shams  
Plaintiff- Petitioner

Versus

Kazi Ehsanul Haque and others  
Defendants-Opposite Parties

Mr. A. M. Amin Uddin, Senior Advocate  
Mr. Md. Nurul Amin, Senior Advocate  
Mr. S. M. Rezaul Karim,  
Senior Advocate  
Mr. Mohammad Mozibur Rahman,  
Advocate  
for the plaintiff- petitioner

Mr. A. J. Mohammad Ali, Senior  
Advocate  
Mr. Tanjib-ul Alam, Senior Advocate  
Mr. Kazi Ershadul Alam, Advocate  
for the defendant-opposite party No. 5

Mr. A. J. Mohammad Ali, Senior  
Advocate with  
Ms. Jamila Momtaz, Advocate  
for the defendant-opposite party No. 1

**Judgment on: 05.3.2024**

This Rule was issued calling upon the opposite parties to show cause as to why the Judgment and Order dated 11.10.2023 passed by the learned District Judge, Dhaka in Miscellaneous Case No. 32 of 2023 under Section 21 of the Mental Health Act, 2018

rejecting the plaint summarily as being not considerable should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

On 07.08.2023 the petitioner as plaintiff filed a Miscellaneous Case No. 32 of 2023 in the Court of learned District Judge, Dhaka against the opposite parties as defendants under Section 21 of the Mental Health Act, 2018 for appointment of the plaintiff as a guardian of the body and property of his father namely Kazi Shamsul Haque.

The Case of the plaintiff, in short, is that the plaintiff is the eldest son of Kazi Shamsul Haque and Kazi Momtaj Shireen who is the second wife of Kazi Shamsul Haque. The defendant Nos. 1-4 are the sons of Kazi Shamsul Haque and late Kazi Selina Begum and the defendant No. 5 is the youngest son of Kazi Shamsul Haque and Kazi Momtaj Shireen. Kazi Shamsul Haque and Kazi Momtaj Shireen are the age of 89 and 77 years respectively. Kazi Shamsul Haque has been the Chairman of Lake Shore Service Apartment (pvt) Ltd since its inception. He had actively managed the business of the hotels and had purchased many assets and properties for the welfare of his family and to secure a good future for all his children. Kazi Shamsul Haque and Kazi Momtaj Shireen have several properties registered in their name. Lake Shore

Service Apartment was also developed over a property registered in the name of Kazi Momtaj Shireen wherein Kazi Momtaj Shireen is the owner of 510 shares. Actually she is not enough educated to take care of the property. As a result she was never a part of the management of the day to day business of the family and business of Lake Shore Service Apartment. She was always dependent on her husband Kazi Shamsul Haque who has been suffering from various health conditions for the last 15 years due to old ages and work stress. However his condition started to deteriorate significantly since 2012. Subsequently he started to show symptoms of various mental health issues and in 2018 he was diagnosed with dementia. Thereafter Kazi Momtaj Shireen so concentrate on taking care of her husband and as a result she barely took care of her mental and physical health. She also has a family history of mental health issue. Kazi Ehsanul Haque one of the brother and the defendant lived with them, but they had never undertaken the role of their guardian. Thereafter Kazi Shamsul Haque day by day had reached the advanced stage of his dementia and as a result Kazi Momtaj Shireen was completely bed ridden and felt lonely and she confined herself within the wall of her Lalmatia residence. The plaintiff came to know that the defendant has bifurcated funds of Lake Shore Service Apartment to invest in

several other personal business investments without knowledge of other shareholders. The defendant would use the funds of the business for his personal gain while depriving his parents proper care, financial support manipulating them that he could not do more due to the financial loss that the business was suffering. Since 2013 Kazi Shamsul Haque has been suffering from dementia. As a result the defendant was able to manipulate, influence and convince her of the transfer of the schedule properties for his benefit and as such the plaintiff filed the instant case.

On 07.08.2023 the plaintiff filed the present case and the learned District Judge fixed the next date on 03.10.2023 for maintainability hearing and on the same day the learned District Judge directed the Administrative Officer, Judge Court, Dhaka to send a report from the Director and Professor, National Mental Health Institute, Sher-E- Bangla Nagar, Dhaka whether Kazi Shamsul Haque is a mental health patient or not and accordingly on 10.08.2023 vide memo No. 1392, Administrative Officer, District Judge, Dhaka wrote a letter to the Director and Professor, National Mental Health Institute, Sher-E- Bangla Nagar, Dhaka to send a report by 03.10.2023 after examining Kazi Shamsul Haque whether he is mental health patient or not.

On 16.09.2023 the Director and Professor, National Mental Health Institute, Sher-E- Bangla Nagar, Dhaka sent a letter vide memo No. 2224 to Kazi Shamsul Haque to appear on 20.09.2023 before 10.00 am with prescription, voter ID and photograph before the Forensic Medical Board. Finally on 23.09.2023 vide memo No. 2331 Director and Professor, National Mental Health Institute, Sher-E- Bangla Nagar, Dhaka sent second letter to Kazi Shamsul Haque to appear before the Forensic Medical Board on 26.09.2023 before 10.00 am.

While Kazi Shamsul Haque failed to appear before the Medical Board as per letter dated 16.09.023 and 23.09.2023, on 30.09.2023 vide Memo No. 2421 the Director and Professor, National Mental Health Institute, Sher-E- Bangla Nagar, Dhaka wrote a letter to learned District Judge, Dhaka requesting to grant further one month time for examining Kazi Shamsul Haque for proper adjudication of the matter.

Simultaneously on 30.09.2023 the Director and Professor, National Mental Health Institute, Sher-E- Bangla Nagar, Dhaka also wrote a letter to Kazi Shamsul Haque to appear before the Forensic Medical Board on 17.10.2023 before 10.00 am with Voter ID and photograph.

On 11.10.2023, in the maintainability hearing, the learned District Judge took deposition of the Kazi Momtaj Shireen and defendant No. 5 Kazi Tareq Shams and vide Order No. 4 dated 11.10.2023 rejected the case summarily and also directed the defendant No. 5 to file criminal case against the plaintiff and the concerned Doctor under section 23 of the Mental Health Act, 2018 and under section 195(c) of the Code of Criminal Procedure and hence the plaintiff-appellant as petitioner moved this application under Section 115 (1) of the Code of Civil Procedure 1908 before this Court and obtained Rule, Stay and Status-quo.

Against the interim order, the opposite parties as petitioner filed Civil Petition for Leave to Appeal No. 3445 of 2023 and after hearing Hon'ble Appellate Division did not stay over the interim order passed by this Court and directed this Court to dispose of the case.

Mr. A. M. Amin Uddin, learned Senior Advocate appearing with Mr. Md. Nurul Amin, learned Senior Advocate with Mr. Mohammad Mozibur Rahman, learned Advocate for the plaintiff-petitioner submits that the suit is very much maintainable since there is a provision in the Mental Health Act, 2018 to appoint a guardian by the Court. Section 21 of the Mental Health Act, 2018 provides that

“২১। (১) আপাতত বলবৎ অন্য কোনো আইনে যাহা কিছুই থাকুক না কেন, এই আইনের উদ্দেশ্য পূরণকল্পে, মানসিক অসুস্থতায় আক্রান্ত ব্যক্তির শরীর ও সম্পত্তির অভিভাবক হইবে তাহার পিতা বা মাতা।

(২) মানসিক অসুস্থতায় আক্রান্ত ব্যক্তির পিতা ও মাতার অবর্তমানে তাহার বা তাহার আত্মীয়ের আবেদনের পরিপ্রেক্ষিতে আদালত উপযুক্ত ব্যক্তিকে অভিভাবক নিযুক্ত করিবে :

তবে শর্ত থাকে যে, মানসিক অসুস্থতায় আক্রান্ত ব্যক্তির জন্য যৌক্তিক কারণে কল্যাণকর বিবেচিত না হইলে কোনো আত্মীয়কে অভিভাবক নিযুক্ত করা যাইবে না।

(৩) অভিভাবকের দায়িত্ব ও কর্তব্য সংক্রান্ত বিষয়াবলি বিধি দ্বারা নির্ধারিত হইবে।

(৪) অভিভাবক উপ-ধারা (৩) এ বর্ণিত দায়িত্ব পালনে অবহেলা করিলে বা অবহেলার প্ররোচনার সহিত জড়িত মর্মে প্রাথমিকভাবে প্রতীয়মান হইলে, স্থানীয় অধিক্ষেত্রের পুলিশ অফিসার বা স্থানীয় জনপ্রতিনিধি ম্যাজিস্ট্রেটকে লিখিতভাবে অবহিত করিবে।”

Hence, from a plain reading of this section it is clear that the Court can appoint a competent person as a guardian of a person having Mental Illness. The plaintiff rightly filed the case under section 21 of the Mental Health Act, 2018, which is very much maintainable. The learned District Judge erred in law in rejecting the case summarily.

He further submits that section 21 (2) of the Mental Health Act, 2018 provides that

“২১।(২) মানসিক অসুস্থতায় আক্রান্ত ব্যক্তির পিতা ও মাতার অবর্তমানে তাহার বা তাহার আত্মীয়ের আবেদনের পরিপ্রেক্ষিতে আদালত উপযুক্ত ব্যক্তিকে অভিভাবক নিযুক্ত করিবে:

In the said Act, section 2(15) provides the definition of

‘মানসিক অসুস্থতা (Mental illness) which is as follows:

২ (১৫) মানসিক অসুস্থতা (Mental illness) অর্থ দায়িত্বপ্রাপ্ত মেডিক্যাল অফিসার কর্তৃক নির্ণীত মাদকাসক্তি এবং মানসিক প্রতিবন্ধিতা ব্যতীত মানসিক রোগের একটি ধরন;

From the definition, it appears that মানসিক অসুস্থতা (Mental illness) will be determined by দায়িত্বপ্রাপ্ত মেডিক্যাল অফিসার

In the said Act, section 2(8) provides the definition of

‘দায়িত্বপ্রাপ্ত মেডিক্যাল অফিসার, which is as follows:

২ (৮) ‘দায়িত্বপ্রাপ্ত মেডিক্যাল অফিসার’ অর্থ মানসিক হাসপাতালে নিযুক্ত মানসিক চিকিৎসায় প্রশিক্ষণপ্রাপ্ত কোনো মেডিক্যাল অফিসার বা মানসিক রোগবিশেষজ্ঞ।”

Therefore, it appears from the above-mentioned section that whether a person is mentally ill or not is only determined by the Vested Medical Officer (‘দায়িত্বপ্রাপ্ত মেডিক্যাল অফিসার’). The learned Court cannot determine the state of mind of a mentally ill person by taking deposition or by any other doctor’s certificate. The learned Court has to determine the state of mind of a person whether he is mentally ill or not by taking report from the Vested Medical Officer (‘দায়িত্বপ্রাপ্ত মেডিক্যাল অফিসার’). In the impugned judgment and order, the learned District Judge committed error of law resulting in an error in the decision occasioning failure of justice in rejecting the case summarily by making opinion that the



person is not mentally ill by taking deposition from his wife Momtaj Shirin and his son the defendant No.5.

He further submits that the learned District Judge has the power to make a judicial inquiry as to whether the person is mentally ill or not, while a case has been filed before the learned Court under section 21 of the Mental Health Act, 2018 and the procedure of judicial inquiry as to whether the person is mentally ill or not is described in section 20 of the Mental Health Act, 2018. It is pertinent to mention here that the heading of section 20 is “মানসিক অবস্থার বিচারিক অনুসন্ধান”. Section 20 of the Mental Health Act is reproduced verbatim below:

“২০। (১) মানসিক অসুস্থতায় আক্রান্ত ব্যক্তির কোনো অভিভাবক বা আত্মীয় উক্ত ব্যক্তির মানসিক অবস্থা নিরূপণের জন্য আদালতে আবেদন করিতে পারিবে।

(২) উপ-ধারা (১) এর অধীন আবেদন প্রাপ্তির পর আদালত কোনো দায়িত্বপ্রাপ্ত মেডিক্যাল অফিসারকে সময়সীমা নির্ধারণপূর্বক মানসিক অসুস্থতায় আক্রান্ত হিসাবে অভিযুক্ত ব্যক্তির মানসিক অক্ষমতা চিহ্নিত ও যাচাই করিয়া প্রতিবেদন দাখিলের জন্য আদেশ প্রদান করিতে পারিবে।

(৩) উপ-ধারা (২) এর অধীন আদেশ প্রাপ্তির পর দায়িত্বপ্রাপ্ত মেডিক্যাল অফিসার অভিযুক্ত ব্যক্তিকে নির্ধারিত সময় ও স্থানে হাজির করিবার জন্য আবেদনকারীসহ সংশ্লিষ্টকে নোটিশ প্রদান করিবে :

তবে শর্ত থাকে যে, অভিযুক্ত ব্যক্তি মহিলা হইলে এবং ধর্ম বা প্রথানুযায়ী জনসম্মুখে উপস্থিত হইবার বাধা থাকিলে, আদালত সুবিধাজনক স্থানে তাহাকে পরীক্ষার ব্যবস্থা করিবে।

(৪) অনুসন্ধান সমাপ্তির পর দায়িত্বপ্রাপ্ত মেডিক্যাল অফিসার প্রতিবেদন দাখিল করিলে আদালত অভিযুক্ত ব্যক্তির মানসিক সুস্থতা এবং সম্পত্তি রক্ষণাবেক্ষণের সক্ষমতার বিষয়ে আদেশ প্রদান করিবে।

(৫) উপ-ধারা (৪) এর অধীন প্রদত্ত আদেশের বিরুদ্ধে সংস্কৃদ্ধ হইলে উচ্চতর আদালতে আপিল দায়ের করা যাইবে।

ব্যাখ্যা: এই ধারায় ‘মানসিক অক্ষমতা (Mental disability) বলিতে কোনো ঘটনা প্রবাহ সম্পর্কে কোনো ব্যক্তির ধারণা লাভের অসমর্থতাকে বুঝাইবে।’

From the aforesaid section, it is clear that the Court can make an judicial enquiry to determine as to whether the person is mentally ill or not by taking a report from Vested Medical Officer (‘দায়িত্বপ্রাপ্ত মেডিক্যাল অফিসার’) the learned District Judge at the outset of the suit followed the right procedure by calling a report from the Director & Professor, Mental Health Institute, Sher-e-Bangla Nagar, Dhaka, as to whether Kazi Shamsul Haque is mentally ill or not. But subsequently, the learned District Judge without taking any report from Vested Medical Officer (‘দায়িত্বপ্রাপ্ত মেডিক্যাল অফিসার’) declared Kazi Shamsul Haque as being not mentally ill by just taking deposition from his wife Momtaj Shirin and his son the defendant No.5 and rejected the case summarily, which is absolutely illegal. The learned District Judge ought to have taken medical report from Vested Medical Officer (‘দায়িত্বপ্রাপ্ত মেডিক্যাল

অফিসার’) and if the Vested Medical Officer (‘দায়িত্বপ্রাপ্ত মেডিক্যাল অফিসার’) reported Kazi Shamsul Haque as being not mentally ill, then the learned District Judge could have rejected the case summarily. In view of the above, committed error of law resulting in an error in the decision occasioning failure of justice in rejecting the case summarily.

He further submits that the learned District Judge cannot reject the case summarily only by taking deposition at the early stage. The Code of Civil Procedure, 1908 provides in its various Orders as to on what stage the Court can examine the parties.

Order 10 rule 1 of the Code of Civil Procedure, 1908 provides as follows:

At the first hearing of the suit the Court shall ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in the plaint or written statement (if any) of the opposite party, and as are not expressly or by necessary implication admitted or denied by the party against whom they are made. The Court shall record such admissions and denials.

Order 14 rule 1(5) of the Code of Civil Procedure, 1908 provides as follows:

At the first hearing of the suit the Court shall after reading the plaint and the written statements, if any and after such

examination of the parties as may appear necessary ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend:

Provided that in any case the issues shall be framed and recorded, subject to the provisions of rules 4 and 5, within fifteen days from the date of first hearing of the suit or the date of filing of the written statement, whichever is later.

Order 15 rule 1 of the Code of Civil Procedure, 1908 provides as follows:

Where at the first hearing of the suit it appears that the parties are not at issue on any question of law or of fact, the Court may at once pronounce judgment.

So, in Order 10 rule 1 and Order 14 rule 1(5) we find provisions for examination of witnesses at the first hearing. Order 15 rule 1 also mentioned the expression at the first hearing. Now the issue is on what stage it would be counted as “at the first hearing”.

In the case of Ved Prakash Wadhwa Vs Vishwa Mohan reported in AIR 1982 SC 816, Indian Supreme Court held as follows:

“What is "the first hearing of the Suit"? Certain decisions have been cited before us of the Allahabad High Court which indicate that "the first hearing of the suit" is when, after the framing of issues, the suit is posted for trial, that is, production of evidence. In the matters of State statutes where procedure has to be pronounced upon, the practice of the Court is the best guide to interpretation and the Allahabad High Court having pronounced upon the question we think we ordinarily accept such interpretation unless there is something revoltingly wrong about the construction. We see none here and, therefore, adopt as correct the decision of the High Court regarding the meaning of the expression "at the first hearing of the suit". We may however add that the expression "at the first hearing of the suit" is also to be found in Order X rule 1, Order XIV rule 1(5) and Order XV rule 1 of the Code of Civil Procedure, 1908. These provisions indicate' that "the first hearing of the suit" can never be earlier than the date fixed for the preliminary examination of the parties (Order X rule 1) and the settlement of issues (Order XIV rule 1(5))”.

So, it is crystal clear that the Court cannot reject the case summarily by examination of parties/witness on maintainability hearing.

He further submits that the Court has ample power to reject the plaint under section 7 rule 11 of the Code of Civil Procedure, 1908 in the following cases:

- a) Where it does not disclose a cause of action.
- b) Where the relief claimed is undervalued
- c) Where the plaint is written upon a paper insufficiently stamped.
- d) Where the suit appears from the statement in the plaint to be barred by any law.

In the instant case, the Court did not reject the plaint but reject the Miscellaneous Case summarily.

However, in the case of MR Trading Company Vs DCC (North) reported in 73 DLR 97, Hon'ble High Court Division held that in an application under Order VII rule 11 of the Code the statement made in the plaint has to be looked into to determine if the suit does not disclose any cause of action under Order VII, rule 11 of the Code, it is the statement of the plaint which is the determining fact and it cannot be applied in the case of maintainability of the suit.

Conversely, in the case of Shirajul Islam Vs Bangladesh Bank reported in 73 DLR 554, the Hon'ble High Court Division held that "in a proper case the plaint can be rejected immediately

after its registration and even before issuance of summons because of the fact the word 'shall' in the provisions under Order VII rule 11 of the Code makes it obligatory for the Court to reject a plaint if such plaint does not disclose any cause of action or if the suit is barred by law. ....(4.42)

A still born suit should be properly buried as its inception so that no further time is consumed on a fruitless trial and such burial also gives benefit to the plaintiff who then can have a chance to replace his steps at the earliest possible moment so that, if permissible under the law, he may find a properly constituted case. ....(4.40)”

But in the instant case, the learned District Judge did not reject the Miscellaneous Case on any ground as prescribed in Order 7 rule 11, rather rejected the case only on the examination of witnesses, which is absolutely illegal and as such the Rule may kindly be made absolute.

He further submits that the learned Advocate for the opposite party argued that a suit/case can be summarily rejected under section 151 of the Code of Civil Procedure. This argument has no legal basis at all. The petitioner filed the instant civil revision and obtained Rule, Stay and Status-quo. Against the interim Order, the opposite parties as petitioner filed Civil Petition

for Leave to Appeal and Hon'ble Appellate Division did not stay over the interim order and directed the High Court Division to dispose of the case. Where there are several provisions in the Code of Civil Procedure to reject a case, section 151 cannot be invoked for rejecting a case summarily. In the instant case, the learned District Judge rejected the case only on the basis of deposition of non-defendant Kazi Momtaj Shireen and the defendant No.5, which is highly illegal and as such the Rule may kindly be made absolute.

He further submits that the plaint can be rejected in view of the provision under Order 7 rule 11 of the Code of Civil Procedure, 1908 and also by exercising power under section 151 of the Code of Civil Procedure. But the learned District Judge did not reject the plaint under Order 7 rule 11 or by exercising under section 151 of the Code of Civil Procedure. The learned District Judge rejected the plaint mainly on the basis of evidence adduced by Kazi Momtaj Shireen and her son Kazi Tariq Shams. The evidence taken by the learned District Judge is illegal and without jurisdiction and as such the learned District Judge committed gross illegality in rejecting the case summarily.

He further submits that the plaintiff did not submit the medical certificate of Kazi Momtaj Shireen. That document is at best a prescription, but the learned District Judge held that the



plaintiff filed false medical certificate. Without examining the doctor the court cannot held that the certificate is false and the learned District Judge dismissed the suit summarily in holding that since the doctor issued false certificate, so directed to the defendants to file Criminal proceedings under section 195(1)(c) of the Code of Criminal Procedure against the doctor and plaintiff which is also illegal and without jurisdiction. If the order of penalty upon the doctor is not set aside, without giving any opportunity to defend himself is a violation of natural justice and as such the learned District Judge committed error of law and the impugned judgment is liable to be set aside.

He further submits that the learned District Judge most illegally directed the defendant No.5 to file a criminal case under section 23 of the Mental Health Act, 2018 against the plaintiff and the Doctor.

Section 23 (1) of the Mental Health Act, 2018 provides as follows:

২৩। (১) মানসিক স্বাস্থ্য সেবায় নিয়োজিত পেশাজীবী হিসাবে কোনো ব্যক্তি মানসিক অসুস্থতা সম্পর্কিত বিষয়ে উদ্দেশ্য প্রণোদিতভাবে মিথ্যা সার্টিফিকেট প্রদান করিলে অনধিক ৩ (তিন) লক্ষ টাকা অর্থদণ্ড বা ১ (এক) বৎসর সশ্রম কারাদণ্ডে বা উভয় দণ্ডে দণ্ডিত হইবে।

Section 2 (20) of the Mental Health Act, 2018 provides the definition of মানসিক স্বাস্থ্য সেবায় নিয়োজিত পেশাজীবী which is as follows:

২ (২০) ‘মানসিক স্বাস্থ্য সেবায় নিয়োজিত পেশাজীবী বা সাইকোলজিস্ট’ অর্থ স্বীকৃত বিশ্ববিদ্যালয় হইতে ডিগ্রিপ্ৰাপ্ত ক্লিনিক্যাল সাইকোলজিস্ট, এডুকেশনাল সাইকোলজিস্ট, কাউন্সেলিং সাইকোলজিস্ট এবং মানসিক স্বাস্থ্য বিষয়ে বিশেষজ্ঞ মনোবিজ্ঞানী, সাইকিয়াট্রি, ক্লিনিক্যাল সাইকোলজি, সাইকিয়াট্রিক সোশ্যাল ওয়ার্ক, অকুপেশনাল থেরাপি, এডুকেশনাল সাইকোলজি, কাউন্সেলিং, কাউন্সেলিং সাইকোলজি, সাইকোথেরাপি এবং সাইকিয়াট্রিক নার্সিং-এ নিয়োজিত স্বীকৃত বিশ্ববিদ্যালয় ও প্রতিষ্ঠান হইতে ডিগ্রি ও প্রশিক্ষণপ্ৰাপ্ত ব্যক্তি;

From the section 23(1) and 2(20) of the Mental Health Act, 2018, it transpires that under that section only a Professional engaged in mental health or Psychologist can be convicted under section 23(1) of the Mental Health Act, 2018. The Doctor issuing certificate is not a doctor as described in section 2(20) of the Mental Health Act, 2018 and so he cannot be prosecuted under section 23(1) of the Mental Health Act, 2018. Therefore, the direction given by the learned District Judge, Dhaka upon the defendant no. 5 to initiate criminal proceedings against the plaintiff and the Doctor is absolutely illegal.

He further submits that the learned Advocate for the opposite parties referred some decisions which are not relevant and applicable with the fact of the present case. The learned Advocate for the opposite parties mainly referred a decision reported in 53 DLR (AD) 12 where the Hon’ble Appellate Division held that “The present Suit cannot be allowed to be proceeded further. As

the ultimate result of the suit is as clear as day light such a suit should be properly buried at its inception so that no further time is consumed in a fruitless litigation". The learned Advocate for the opposite party also referred a decision reported in 73 DLR 554 where the Hon'ble High Court Division held that "the civil Court has obligation, at the very beginning, to examine the plaint to check if it is conforming to the legal requirements. If formal defects in the plaint are found, Court should give reasonable opportunity to the plaintiff to cure such defects. But if the defect goes to the very root of the suit, the Plaint should be rejected on the very averments of the plaint either for non-disclosure of cause of action or on the ground that the suit is barred by or under law. In such a case, it is the obligation of the Court to reject the plaint even before issuance of summons.

In the aforesaid two judgments, it appears that the Court can reject the plaint at the early stage if the Court finds grounds prescribed under Order 7 rule 11 of the Code of Civil Procedure, 1908 and in that case of rejection the Court can only examine the forecorner of the plaint. But in the instant case, the leaned District Judge rejected the case by examining two witnesses, which is highly illegal. The District Judge treating him as a Doctor and relying on the deposition of two witnesses illegally decided that

Kazi Shamsul Haque is not mentally ill. The learned District Judge should have conducted judicial inquiry by taking medical report from Vested Medical Officer (‘দায়িত্বপ্রাপ্ত মেডিক্যাল অফিসার’) under section 20 of the Mental Health Act, 2018 as to whether the concerned person is mentally ill or not. But the learned District Judge only by examining two witnesses decided that Kazi Shamsul Haque is not mentally ill and rejected the case summarily, which caused miscarriage of justice and as such the Rule may kindly be made absolute.

Mr. A. J. Mohammad Ali, learned Senior Advocate appearing with Mr. Tanjib-ul Alam, learned Senior Advocate for the defendant-opposite party submits that the instant Civil Revision filed by the Petitioner in relation to his father’s guardianship is not maintainable as in the current form as there is no cause of action to continue the current proceedings. From the plain reading of the plaint, it would appear that there is no averment made or documents produced calling for passing any order of admission let alone pass any order for appointment of the Petitioner as guardian of Kazi Shamsul Haque. The Petitioner alleged that Kazi Shamsul Haque is suffering from “mental illness” but failed to adduce any document recognized under the Mental Health Act, 2018 being a certificate from “ দায়িত্বপ্রাপ্ত মেডিকেল অফিসার” to support that Kazi

Shamsul Haque is indeed suffering from mental illness requiring admission of the Miscellaneous Case No. 32 of 2023.

The instant Civil Revision is not maintainable due to misapplication of Section 21 of the Mental Health Act, 2018:

The Petitioner as plaintiff filed the current suit under Section 21 of the Mental Health Act, 2018 and Section 21 of the Mental Health Act, 2018 only applies when the person already has diagnosed as a patient of mental illness or mental disorder. Section 21 of the Mental Health Act, 2018 states that-

- (১) আপাতত বলবৎ অন্য কোনো আইনে যাহা কিছুই থাকুক না কেন, এই আইনের উদ্দেশ্যে পূরণকল্পে মানসিক অসুস্থতায় আক্রান্ত ব্যক্তির শরীর ও সম্পত্তির অভিভাবক হইবে তাহার পিতা বা মাতা।
- (২) মানসিক অসুস্থতায় আক্রান্ত ব্যক্তির পিতা ও মাতার আবর্তমানে তাহার বা তাহার আত্মীয়ের আবেদনের পরিপ্রেক্ষিতে আদালত উপযুক্ত ব্যক্তিকে অভিভাবক নিযুক্ত করা যাবে না।  
তবে শর্ত থাকে যে, মানসিক অসুস্থতায় আক্রান্ত ব্যক্তির জন্য যৌক্তিক কারণে কল্যাণকর বিবেচিত না হইলে কোনো আত্মীয়কে অভিভাবক নিযুক্ত করা যাবে না।

Admittedly, the Petitioner did not produce any document/evidence to support that Kazi Shamsul Haque is suffering from “mental illness”. The whole case of the Petitioner is that Kazi Shamsul Haque is suffering from dementia as diagnosed by a Consultant of Internal Medicine of United Hospital. As such, since there is no evidence to support that Kazi Shamsul Haque is

suffering from mental illness, the application under section 21 of the Mental Health Act, 2018 is not maintainable.

He next submits that the Petitioner has stated in the plaint and Civil Revision Petition that his father is suffering from mental illness. Section 2(15) of the Mental Health Act, 2018 defines Mental illness which defines it as “দায়িত্বপ্রাপ্ত মেডিকেল অফিসার কর্তৃক নির্ণীত মাদকাসক্তি এবং মানসিক প্রতিবন্ধিতা ব্যতীত মানসিক রোগের একটি ধরন”।

The certificate provided by the Petitioner in support of their case obtained from a doctor named as Dr. Iqbal Hossain, Consultant, Internal Medicine, United Hospital. The definition of Medical Officer in charge (দায়িত্বপ্রাপ্ত মেডিকেল অফিসার) has been provided in section 2 (8) of the Mental Health Act, 2018 which states that “দায়িত্বপ্রাপ্ত মেডিকেল অফিসার অর্থ মানসিক হাসপাতালে নিযুক্ত মানসিক চিকিৎসালয় প্রশিক্ষণ প্রাপ্ত কোন মেডিকেল অফিসার বা মানসিক রোগ বিশেষজ্ঞ” the case summary of Shamsul Haque provided by Dr. Iqbal Hossain and he is a Consultant, Internal Medicine. He is not qualified to provide the above-mentioned certificate as his qualification does not comply with the requirements of law described in section 2(8) of the Mental Health Act, 2018. As such, the Miscellaneous Case No. 32 of 2023 was not maintainable and hence, the Civil Revision is not maintainable.

He further submits that the learned Senior Advocate for the Petitioner sought to argue that the Miscellaneous Case be sent back

for adjudication on the point of maintainability. In this regard, it is respectfully submitted that the question of maintainability, being a question of law can be raised at any time and this Hon'ble Court has ample power and jurisdiction to examine the question of maintainability. In the case of Joyanta Kumar Datta & Others VS Dilip Ranjan Datta and others reported in 13 BLC 376, the Hon'ble High Court held that if the objection with regard to maintainability of the suit even if not raised at any stage may be raised for the first time before the revisional court if a decision of the same may be reached on admitted facts or, in the other words, the issue with regard to maintainability of a suit may be decided by the revisional court on the basis of facts which are not disputed. Further, in the case of Ayezuddin Sheikh & Others VS Abdul Karim Sheikh and Others reported in 42 DLR 154, the Hon'ble High Court held that question of maintainability of the appeal though not raised in the appellate court below, can be raised in the Revisional Court as it is a question of law.

He further submits that it is the duty of the Hon'ble Court to bury a frivolous case in its inception in order to save precious public time and money. In the case of Abdul Jalil and Others Vs. Islamic Bank Bangladesh Ltd. and others reported 53 DLR (AD) 12 the Hon'ble Appellate Division held that: "The present Suit

cannot be allowed to be proceeded further. As the ultimate result of the suit is as clear as day light such a suit should be properly buried at its inception so that no further time is consumed in a fruitless litigation”. Similarly, it is evident as clear as daylight that the Miscellaneous Case is not maintainable, hence, there is no point in proceeding with the suit anymore and the same shall be buried in the early stage.

He further submits that Petitioner filed suit against his siblings not against his father in the Miscellaneous Case the Petitioner filed the Miscellaneous Case No. 32 of 2023 against his siblings and not against his father against whom the Petitioner seeking relief. It is a legal requirement to make the person a party to the legal proceeding against whom relief is being sought. Since, Kazi Shamsul Haque has not been made a party to the case, the case is not maintainable.

He further submits that the motive of the Petitioner is mala fide that the Petitioner initiated the Miscellaneous Case only to ensure his “right of inheritance” i.e. to prevent his father from disposal of the property which intention has been glaringly evident in the paragraph No. 14 of the Plaint which goes as follows:

14. That it is important to mention that although the plaintiff and the defendants are not entitled to the right, title or interest over



properties, however, Kazi Shamsul Haque and Kazi Momtaj Shireen had confirmed that they had no intention to deprive the plaintiff or any other children from their right of inheritance with respect of the scheduled properties. However, it is due to the mischief of one or more of the defendants that the plaintiff is being deprived of his right of inheritance to the scheduled properties and these transfers were all orchestrated after Kazi Shamsul Haque had his mental illness.

From the above quoted averment from the plaint, it is palpably clear that the Miscellaneous case is a mala fide proceeding initiated only to create pressure on the father to bend to his illegal demand and to ensure his “right of inheritance” and not for the wellbeing of Kazi Shamsul Haque.

Admittedly, Kazi Shamsul Haque and Kazi Momtaj Shireen live with Haque’s eldest son Kazi Ehsanul Haque and has been living with him for the last 30 years. However, in the whole plaint there is no single averment that Kazi Ehsanul Haque does not take care of his parents.

From the plain reading of the plaint, it would palpably evident that the Petitioner is concerned only about the properties and out of the 20 paragraphs in the plaint, more than 12 paragraphs

are about the properties of Kazi Shamsul Haque and Kazi Momtaj Shireen.

He further submits that even though in the original Miscellaneous Case there was no prayer on disposal of properties of the parents, the Petitioner obtained an order of status-quo by misleading the Hon'ble High Court. This also indicates that the Petitioner's sole objective is property and not wellbeing of his parents.

It would appear that the application under section 21 of the Mental Health Act, 2018 has been filed against both the parents on the same day. Further, the evidence that has been adduced by the Petitioner in the case of mother is a certificate from a doctor who has not diagnosed Kazi Momtaj Shireen and the said certificate was obtained just a week before filing of the case. This is also a glaring example of mala fide intention of the Petitioner for causing harassment to the parents and the intention of the Petitioner is to creating pressure on the parents to bend to his illegal demand.

Admittedly, the Petitioner is a citizen of Canada who spends most of his time in Canada. He does not have any intention to take care of his parents; the only intention is to cause harassment to their parents for not abiding to his illegal demands.

All of the above shows that the Petitioner does not have any concerns about the wellbeing of his parents; his only concern is property of them. In this regard, his mother Kazi Momtaj Shireen also furnished an affidavit confirming the events leading to the filing of plaint which clearly shows mala fide intention of the Petitioner to cause harassment to his parents.

He next submits that the Petitioner filed the instant Civil Revision for the purpose of obtaining property from his father illegally, forcefully and by any means. The Learned District Judge after taking deposition from Kazi Momtaj Shireen confirmed that father of the Petitioner Kazi Shamsul Haque has not been suffering from any mental illness but the Petitioner is trying to establish forcefully that his father is suffering from mental illness, so that the Court can declare his father as a patient of mental illness and the Petitioner can obtain the property of his father. If the Hon'ble Court allows the Civil Revision filed by the Petitioner against his father, the position of each and every parent will be severely vulnerable of this country. It will be a regular practice for the children, e.g., the instant Petitioner, to come to the Court with any falsifying document/medical certificate for the purpose of establishing mental illness and/or mental disorder against their parents and pray to the Court to declare them as the guardians of

the body and property of their parents. This will be the simplest way for the children who always carry the mala fide intention in their mind to obtain the property illegally and forcefully from their parents. The Hon'ble Court should consider the floodgate issue very seriously for ensuring the protection and best interests of every elderly parents of this country, otherwise their position will be more vulnerable.

In this regard he has referred several decision of this Court which states as follow:-

Shirajul Islam Mollah and Ors. Vs. Bangladesh Bank and Ors. (73 DLR (2021) 554): the Hon'ble High Court Division held that, "the civil Court has obligation, at the very beginning, to examine the plaint to check if it is conforming to the legal requirements. If formal defects in the plaint are found, Court should give reasonable opportunity to the plaintiff to cure such defects. But if the defect goes to the very root of the suit, the Plaint should be rejected on the very averments of the plaint either for non-disclosure of cause of action or on the ground that the suit is barred by or under law. In such case, it is the obligation of the Court to reject the plaint even before issuance of summons.

Nurul Abser Chowdhury Vs. Jesmin Akhter (51 DLR 352)  
"Error in the decision of the subordinate Courts do not by itself

justify interference in revision unless it is manifested that by the error substantial injustice has been rendered. The decision which is calculated to advance substantial justice, though not strictly regular, may not be interfered with in revision”.

Ajab Khan Vs. Karimi Industries and Others (PLD 1980 Peshwar 259):

Where there has been gross error of law, if it appears that the impugned order is just and proper or that substantial justice has been done.

Managing Director, Janata Bank Vs, Md Bazlur Rahman and Others (51 DLR (AD) (1999) 141:

In appropriate cases the revisional Court can consider additional evidence.

He next replies to the petitioner argument:

- a. The Petitioner referred a judgment contained in AIR 1982 SC 816 and stated that the “the first hearing of the suit” is when, after the framing of issues, the suit is posted for trial, that is, production of evidence. The said expression is also to be found in Order 10, rule 1, Order 14, rule 1 (5) and Order 15, rule 1 of the Code of Civil Procedure, 1908. These provisions indicate that “the first hearing of the suit” can never be earlier than the date fixed for the preliminary

examination of the parties. However, in rebuttal of the above-mentioned argument we have referred-

Shirajul Islam Mollah and Ors. Vs. Bangladesh Bank and Ors. (73 DLR) 554) case and which stated that-

The Court can reject the plaint even before issuance of summons.

- b. The Petitioner also submits that the two revisions being Civil Revision No. 5470 of 2023 and Civil Revision No. 5471 of 2023 should not be heard together. In the instant scenario it is not possible to see both the cases as isolated but have to see together. The plaint submitted by the Plaintiff-Petitioner in filing Miscellaneous Case No. 32 of 2023 against his father Shamsul Haque used a total of 20 paragraphs and out of 20 paragraphs they have used the name of Kazi Momtaj Shireen in 10 paragraphs. As such, both the petitions are connected.
- c. The Petitioner also submitted that the Hon'ble High Court Division does not have any power to consider additional evidence except the plaint and the revisional application. However, we have referred a judgment of Managing Director, Janata Bank vs. Md. Bazlur Rahman and Others (51 DLR (AD) (1999) 141, where it is stated that in

appropriate cases the revisional Court can consider additional evidence. Hence, the Hon'ble High Court Division has the power to consider additional evidence in exercising revisional power. The Hon'ble High Court Division has the power to consider the additional evidences e.g. Affidavit of Kazi Momtaj Shireen and G.D filed by Kazi Momtaj Shireen and Kazi Shamsul Haque.

Heard the learned Advocates for the both parties and perused the record.

The whole Case of the plaintiff-petitioner is that Kazi Shamsul Haque is suffering from mental disorder namely dementia but in this respect the plaintiff-petitioner did not produce any genuine document. So there is no reason to believe the plaintiff-petitioner's case. On the other hand, from the record it appears that the plaintiff-petitioner only filed a prescription to prove his case and for that prescription the concerned Doctor cannot be prosecuted under Section 195(1)(c) of the Code of Criminal Procedure.

Considering the facts and circumstances of the Case, I find no substance in this Rule.

**Accordingly, the Rule is discharged without any order as costs.**

The Judgment and Order dated 11.10.2023 passed by the learned District Judge, Dhaka in Miscellaneous Case No. 32 of 2023 under Section 21 of the Mental Health Act, 2018 rejecting the plaint summarily as being not considerable is hereby up-held.

The order of stay and status-quo granted earlier by this Court is hereby vacated.

Communicate the Judgment to the Courts below at once.