

**District: Chattogram**

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

**Present:-**

**Mr. Justice Md. Zakir Hossain**

**Civil Revision No. 5053 of 2022**

Mohammad Abu Siddique and another  
..... Pre-emptee-Appellant-Petitioners

-Versus-

Asma Khatun and others  
.....Pre-emptor-Respondent-Opposite Parties

Mr. Abdul Momen Chowdhury, Advocate  
..... For the petitioners

Mr. SK. Md. Jahangir Alam, Advocate  
...For the opposite parties

**Heard and Judgment On: 06.03.2024**

**Md. Zakir Hossain, J:**

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

*“Let a Rule be issued calling upon the opposite party No. 1 to show cause as to why the judgment and order vide No. 15 dated 06.08.2012 passed by the learned District Judge, Chattogram in Miscellaneous Case No. 115 of 2012 arising out of Other Miscellaneous Appeal No. 201 of 2011 rejecting an application under Order XLL Rule 19A of the Code of Civil Procedure 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 Pre-emption Case No. 17 of 2006 was allowed wherein the petitioners were

pre-emptees. The petitioners being aggrieved by and dissatisfied with the judgment and order of the Pre-emption Case preferred Miscellaneous Appeal No. 201 of 2011 before the Court of the learned District Judge, Chattogram which was dismissed for default. The petitioners preferred Miscellaneous Case No. 115 of 2012 before the Court of the learned District Judge for setting aside the dismissal order. Upon hearing, the learned District Judge was pleased to dismiss the Miscellaneous Case. Impugning the judgment and order of the learned District Judge, the petitioners moved this Court and obtained the Rule and status quo therewith.

Heard the submissions advanced by the learned Advocates of the petitioners and the opposite parties at length and perused 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.

It appears from the record that the appeal was fixed for hearing on 20.03.2012. The appellants of the Miscellaneous Case filed an application for adjournment. Since the Appellants appointing a lawyer did not appear while the adjournment petition was taken for hearing therefore, the learned District Judge dismissed the Miscellaneous Appeal for default. It also appears from the record that the Miscellaneous Case was filed within 30 (thirty) days invoking Order 41 Rule 19A of the Code of Civil Procedure, 1908, in short, 'the CPC'. If the Miscellaneous Appeal is dismissed for default, the Appellant has got two concurrent remedies. The appellant may file Miscellaneous Case for setting aside the dismissal order under Order 41 Rule 19 or he may file a simple

application invoking Order 41 Rule 19A of the CPC for setting aside the dismissal order directly.

In this case, the petitioners filed the Miscellaneous Case invoking Order 41 Rule 19A of the CPC. Misquoting of law does not *ipso facto* prevent anyone from getting appropriate remedy. It appears from the record that the petitioners explained the cause of delay of non appearance at the time while appeal was taken up for hearing sufficiently and reasonably. Nevertheless, the learned District Judge dismissed the Miscellaneous Case without applying his judicial mind. Consequently, I find substance in the Rule.

In the result, the Rule is made absolute, however, without passing any order as to costs. The impugned judgment and order dated 06.08.2012 is hereby set aside and the Miscellaneous Case is allowed. Accordingly, the Miscellaneous Appeal No. 201 of 2011 is restored in its original file and number. The learned District Judge is directed to dispose of the Miscellaneous Appeal No. 201 of 2011 on merit with utmost expedition preferably within 06 (six) months from the date of receipt of the copy of this judgment positively. No unnecessary adjournment petition from the either side shall be entertained.

The earlier order of *status quo* granted by this Court, thus, stands recalled and vacated.

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

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**(Md. Zakir Hossain, J)**