

Present:

***MR. JUSTICE S.M. EMDADUL HOQUE***

CIVIL REVISION NO. 5843 OF 2022.

IN THE MATTER OF:

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

- AND -

IN THE MATTER OF:

Hashem Fokir.

...Plaintiff-appellant-petitioner.

-Versus –

Deputy Commissioner, Faridpur and others.

...Defendant-respondent-opposite parties.

Mr. Mohammad Shamiul Huq, Advocate with

Mr. Savan Mahmud, Advocate

..... For the petitioner.

No one appears.

..... For opposite parties.

**Heard on: 12.05.2024 and Judgment on 13.05.2024.**

On an application of the petitioner Hashem Fokir under section 115(1) of the Code of Civil Procedure the Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and order dated 08.08.2022 passed by the learned Special District Judge, Faridpur in Miscellaneous Appeal No. 23 of 2021 dismissing the appeal and thereby affirming the judgment and order dated 15.02.2021 passed by the Assistant Judge, Chorbhodrashon, Faridpur in Miscellaneous Case No. 03 of 2021 should not be set-aside and/or such other or further order or orders passed as to this court may seem fit and proper.

Facts necessary for disposal of the Rule, in short, is that the present petitioner as plaintiff instituted Title Suit No. 27 of 2019 before the

Assistant Judge, Sadar, Faridpur for a simple declaration of title. Thereafter, the suit was transferred to the Assistant Judge, Chorbhodrashon, Faridpur.

The defendant No.1 appeared in the suit and filed written objection.

The suit was fixed for pre-emptory hearing on 19.03.2020 and for depositing the cost of Tk. 300/-. But the plaintiff side did not file Hajira and also did not pay the cost, but the defendant Nos.1-7 filed Hajira, accordingly the trial court dismissed the suit for none appearance and non-payment of the cost by the plaintiff by its judgment and order dated 19.03.2020.

Against the said judgment and order of the trial court the plaintiff filed Miscellaneous Case No. 03 of 2020 for setting-aside the said dismissal order under Order IX Rule 9 of the code of civil procedure.

The case was fixed for hearing on 15.02.2021 and the plaintiff side filed Hajira and also filed an application for adjournment but the trial court rejected the said application for adjournment by its order No. 46 dated 15.02.2021 taking view that the plaintiff side earlier took several adjournment and also directed to ready the case for hearing.

Thereafter, at about 4:30 P.M. the court took the matter for hearing and since none appearance the court rejected the Miscellaneous Case No. 03 of 2021 by its order No. 47 dated 15.02.2021.

Against the said order of the trial court the plaintiff petitioner filed Miscellaneous Appeal No. 23 of 2021 before the learned District Judge, Faridpur.

The appeal was heard and disposed of by the learned District and Special District Judge, Faridpur, who after hearing the parties and considering the facts and circumstances of the case dismissed the Miscellaneous Appeal by its judgment and order dated 08.08.2022.

Being aggrieved by and dissatisfied with the impugned judgment and order of the courts below the plaintiff petitioner filed this revisional application under section 115(1) of the Code of Civil Procedure and obtained the present Rule.

Mr. Mohammad Shamiul Huq, the learned Advocate along with Mr. Savan Mahmud, Advocate appearing on behalf of the plaintiff-petitioner submits that the trial court dismissed the suit on a technical ground that the plaintiff did not file Hajira and also for non-payment of the cost. He submits that thereafter the petitioner filed Miscellaneous Case No. 03 of 2020 under Order IX Rule 9 of the code of civil procedure and ultimately the said miscellaneous case was also rejected on technical point. He further submits that initially at the morning the plaintiff petitioner filed Hajira along with an application for adjournment but the trial court rejected the same and subsequently at about 4:30 p.m. the court took the said matter for hearing and since none appearance of the petitioner the court rejected the said Miscellaneous Case.

He further submits that as per C.R.O. Part-I, Chapter-I the court hours as under:

*“1. (i) The ordinary hours of sitting for all courts on week days except Saturdays, shall be from 10-30 a.m. to 4-30 p.m. and on Saturdays from 10-30 a.m. to 1-30 p.m.”*

The learned Advocate submits that the court took the said matter at 4-30 p.m. whereas in the Mofossal area normally the court should not be continuing up to 4:30 p.m, furthermore at that time the whole country has affected by the Covid-19 and all the court always sited for a limited period but the trial court without considering the said material facts and at the ends of the court hour i.e. 4-30 p.m. took the said matter and dismissed the case, which was purely an harsh order and the same should be set-aside. He further submits that even the appellate court also did not consider the said vital facts and passed the impugned order dismissing the Miscellaneous Appeal and thus both the courts committed serious error in law resulting in an error in the decision occasioning failure of justice. He further submits that there is no fault of the petitioner since the petitioner filed Hajira and also filed an application for adjournment but the appellate court without considering the material facts of the case dismissed the appeal. He prayed for making the Rule absolute.

I have heard the learned Advocate of the petitioner, perused the impugned judgment and the order of the courts below and the papers and documents as available on the record.

It appears that the plaintiff petitioner filed the Suit for simple declaration of title. The trial court dismissed the suit on a technical ground for non-payment of cost. It also appears that against which the plaintiff petitioner filed Miscellaneous case under Order IX Rule 9 of the code of civil procedure. But it appears that the trial court again rejected the said Miscellaneous case though the petitioner filed Hajira and also filed an application for adjournment and at the end of the court hours i.e. at 4-30 p.m. he took up the matter and dismissed the case and which is purely a harsh order and in such a case the appellate court ought to have considered the said facts that only on the technical ground the suit or case should not be dismissed.

Furthermore, it appears that the petitioner took several adjournment but the learned Advocate submits that at that time the whole country has been affected by Covid-19.

Having considered the aforesaid facts and the provision of C.R.O. Rule-I of Chapter-I, it is my view that both courts erroneously passed the impugned judgment and order.

Considering the aforesaid facts and circumstances of the case I find merit in the Rule.

In the result the Rule is made absolute. The impugned judgment and order dated 08.08.2022 passed by the learned Special District Judge, Faridpur in Miscellaneous Appeal No. 23 of 2021 dismissing the appeal and thereby affirming the judgment and order dated 15.02.2021 passed

by the Assistant Judge, Chorbhodrashon, Faridpur in Miscellaneous Case No. 03 of 2021 is hereby set-aside and the case is restored to its original file and number subject to payment of the cost of Tk. 2,000/- to be paid within 30 days from the date of receipt of this order.

The trial court is directed to dispose of the Miscellaneous case as early as possible preferably within 6 (six) months from the date of receipt of this order giving the parties opportunities to prove their respective cases in accordance with law.

Communicated the order at once.

M.R.