

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.3223 OF 2023

In the matter of:

An application under Section 115(4) of the Code of Civil Procedure.

And

Md. Ismail and another

.... Petitioners

-Versus-

Sirajul Islam and others

.... Opposite parties

Mr. Shamsul Huq, Advocate

....For the petitioners.

Mr. Md. Mubarak Hossain with

Mr. Mohammad Jamal Uddin, Advocates

.... For the opposite party No.1.

Heard on 25.02.2025.

Judgment on 05.03.2025.

On an application under Section 115(4) 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 27.03.2023 passed by the learned Additional District Judge, 7th Court, Chattogram in Civil Revision No.191 of 2022 and revising the order dated 04.01.2022 passed by the learned Joint District Judge, 1st Court, Sadar, Chattogram in Other Class Suit No.411 of 2010 allowing the application for cancellation of compromise petition dated 14.10.2022 filed by the defendant Nos.26 and 29 and on 16.11.2020 filed by the defendant Nos.2-4 and 7-14 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 above suit for declaration of title and correction of the B. S. Khatian. In above suit defendant Nos.26, 27 and 29 entered appearance and filed written statements and above defendants executed a solenama on 09.10.2014. On 16.11.2020 defendant Nos.26 and 29 submitted a petition for rejection of above solenama and the learned Joint District Judge allowed above petition and rejected above solenama and written statement of defendant Nos.26, 27 and 29.

Being aggrieved by above judgment and order above plaintiffs as petitioners preferred Civil Revision No.151 of 2010 to the District Judge Chattogram which was heard by the learned Additional District Judge, 7th Court who allowed above Civil Revision and set aside the impugned judgment and order dated 04.01.2022 passed by the learned Joint District Judge.

Being aggrieved by and dissatisfied with above judgment and order of the Court of revision below above opposite parties as petitioners moved to this Court with this Petition under Section 115(4) of the Code of Civil Procedure and obtained this Rule.

Mr. Md. Shamsul Huq, learned Advocate for the petitioners submits that defendant Nos.26 and 29 are illiterate persons and by

false representation and practicing fraud their signatures were obtained on above solenama and written statements and statements of above two documents are directly against the interest of defendant No.26 and 29. Above defendants did not willingly and knowingly execute above two documents and the learned Joint District Judge on correct appreciation of materials on record rightly rejected above two documents. But the learned Judge of the Court of revision below failed to appreciate above materials on record properly and most illegally allowed above Civil Revision and set aside the lawful judgment and order of the trial Court which is not tenable in law.

On the other hand Mr. Md. Mubarak Hossain, learned Advocate for the opposite party submits that the learned Judge of the Court of Revision below rightly pointed out that defendant Nos.26 and 29 although executed above solenama they did not give evidence in support of above solenama. As such the learned Judge of trial Court most illegally rejected above solenama and written statement on the basis of the submission of the learned Advocate who was appointed later on. On consideration of above materials on record the learned Additional District Judge rightly allowed the revision and set aside the flawed judgment and order of the trial Court which calls for no interference.

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

It is admitted that a written statement and a solenama were executed by defendant Nos.26, 27, and 29 and those were presented before the trial Court. But defendant Nos.26 and 29 submitted a joint petition to the above Court alleging that they did not submit above written statement nor they have executed above solenama but their Left Thump Impressions and signatures were obtained on above documents by fraud and misrepresentation.

It is a time tested practice that when a solenama is filed in a suit the learned Judge of the Court records a precise statement of the party or parties whose interests are affected by the terms of above solenama to ensure that the solenama was truly executed by the concerned plaintiff or defendant and the same is not an outcome of fraud or cheating. The terms of above solenama are against the interest of defendant Nos.26 and 29 but their precise statements were not recorded by the learned Judge of above Court in support of or against the due execution of above solenama. The learned Joint District Judge should have instead of outright rejection of above solenama on the basis of submission of the learned Advocate call upon defendant Nos.26 and 29 to make a precise statement as to

above solenama and pass an appropriated order on the basis of above statement.

If above defendants fail to turn up to make statement in support of or against above solenama the learned Judge must reject the solenama as being not supported by the executant plaintiff or defendant whose interest has been affected by above solenama.

As far as the written statement is concerned since a petitioner has been submitted by above defendants that they did not subscribe and submit above written statement the learned Judge should have called upon above defendants in the same way as stated above to give a precise statement to ensure that above written statement was not an outcome of fraud or cheating.

The learned Judge of the Court of Revision below should have after setting aside the impugned judgment and order passed a direction upon the learned Joint District Judge for recording of precise statements of defendant Nos.26 and 29 and pass an appropriate order as to above solenama and written statement on the basis of above statement but the learned Additional District Judge has failed to do so.

In above view of the facts and circumstances of the case and materials on record I find substance in this Civil Revisional

application under Section 115(4) 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 27.03.2023 passed by the learned Additional District Judge, 7th Court, Chattogram in Civil Revision No.191 of 2022 setting aside order dated 04.01.2022 passed by the learned Joint District Judge, 1st Court, Sadar, Chattogram in Other Class Suit No.411 of 2010 is set aside.

The learned Joint District Judge is directed to call upon defendant Nos.26 and 29 to make precise statements as to above solenama and written statement and pass fresh appropriate orders on the basis of above statements.

However, there will be no order as to costs.

MD. MASUDUR RAHMAN
BENCH OFFICER