

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

Present:

Mr. Justice Md. Riaz Uddin Khan

Civil Revision No. 3362 of 2023

IN THE MATTER OF :

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

-And-

In the Matter of:

Md. Zohar Ali

... Defendant-petitioner

Versus

Ebad Ali being dead his heirs Md. Sirajul Islam
and others

...Plaintiff-opposite parties

Mr. Md. Ekramul Islam, Advocate

... For the petitioner

Mr. Ali Imam Khaled Rahim, Advocate

...For the Opposite parties

Judgment on: 19.02.2026

Md. Riaz Uddin Khan, J-

Rule was issued at the instance of the defendant-petitioner calling upon the opposite party Nos.1-10 to show cause as to why the impugned judgment and order dated 03.05.2023 passed by the Additional District Judge, 4th Court, Jashore in Title Appeal No. 124 of 2016, rejecting an application for taking additional ground by way of amendment of the memo of appeal arising out of Title Suit No. 648 of 1976 shall not be set aside and/or such other or further order or orders shall not be passed as to this court may deem fit and appropriate.

At the time of issuance of Rule all further proceedings of Title Appeal No. 124 of 2016 was

stayed initially for a period of 06 (six) months which was extended time to time.

The predecessor of the Opposite Party No.1 to 10 as plaintiff instituted Tile Suit No.648 of 1976. During trial plaintiff and defendant nos.1-4 examined witnesses and exhibited documents in support of their respective cases.

The learned Assistant Judge after conclusion of trial was pleased to decreed the suit by his Judgment and decree dated 29.09.2016. The defendant No.08 being aggrieved by and dissatisfied with the Judgment and decree preferred title Appeal No. 124 of 2016 before the court of District Judge, Jashore. During pendency of the appeal the defendant appellant filed an application for amendment of the memorandum of appeal which was rejected by the impugned order dated 03.05.2023.

Being aggrieved by and dissatisfied with the said order the defendant no.8 appellant filed the instant civil revision before this Court and obtained Rule and stay as stated at the very outset.

Mr. Md. Ekramul Islam, the learned advocate appearing for the petitioner submits that the petitioner who was defendant no.8 did not appear to contest the suit as no notice was served upon him but was examined as DW on behalf of defendant nos.1-4. No notice was served upon the petitioner as the father's name of the petitioner has not been mentioned properly and the address given in the cause title of the suit was not correct and the defendantnos.1 to 4 fraudulently examined the appellant as witness keeping him in dark about the

suit against him. Since no notice was served upon him and he could not file any written statement at trial stage, on 29.11.2020 during pendency of the appeal the defendant appellant filed a written statement for the first time.

The learned advocate then submits that in the Memo of Appeal the appellant did not incorporate material grounds which is necessary for effective disposal of appeal and hence the petitioner filed an application on 12.04.2022 for amendment of Memo of Appeal for taking additional grounds so that the appellant can place it at the time of hearing of appeal. The appellant by way of amendment attempted to set forth additional grounds in the memorandum of appeal which is necessary for effective disposal of the appeal but the learned Additional District Judge has failed to consider it and arbitrarily rejected the same on misconception of law and thereby committed error of law resulting in an error in the decision occasioning failure of justice.

The learned advocate further submits that the Additional District Judge has failed to consider that the grounds taken by appellant in the application for amendment is not new grounds but all those are supported by evidence on record and which is required to consider for effective disposal of the appeal but arbitrarily rejected the application on a flimsy ground which is not sustainable in law.

On the other hand Mr. Ali Imam Khaled Rahim, the learned advocate appearing for the opposite parties submits that he has no objection if the

Rule is made absolute subject to direction of early disposal of the appeal.

I have heard the learned advocates for both the parties. Since, the learned advocate for the opposite parties has no objection to make the Rule absolute, hence, I think there is no need to examine the propriety of the instant Rule. In that view of the matter the **Rule is made absolute**, however without any order as to cost.

The impugned order dated 03.05.2023 passed by the Additional District Judge, 4th Court, Jessore is hereby set aside and the application for amendment of the memorandum of appeal dated 12.04.2022 is allowed.

The learned Judge of the Appellate Court is directed to dispose of the appeal as early as practicable preferably within 06(six) months from date of receipt of this judgment giving opportunity to the parties to adduce and produce their witness and documents in light of the amendment, if necessary, before the Appellate Court. The appellate court must not allow adjournment to the parties except in dire necessity keeping in mind that the appeal is of in the year of 2016.

The stay granted earlier by this Court stands vacated.

Communicate the judgment and order at once.