

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

Present:  
Mr. Justice Kazi Md. Ejarul Haque Akondo  
And  
Mr. Justice Mohi Uddin Shamim

F.A. NO. 19 OF 2021  
(Arising out of F.A.T. No. 717 of 2020)

IN THE MATTER OF

Shafiquddin Ahmed

.....Plaintiff-Appellant

-Versus-

1. General Certificate Officer, Moulvibazar and others

..... Defendants-Respondents

2. The Government of the People's Republic of  
Bangladesh

.....Proforma defendant-Respondent

Mr. Md. Faruque Ahmed, Advocate

..... For the appellant

Mr. Mohiuddin Dewan, D.A.G with

Mr. Prahlad Debnath, and

Mr. Kazi Elias-Ur-Rahman, A.A.Gs

.....For the respondents

Heard on 13.05.24 and judgment passed on 14.05.2024

*Kazi Md. Ejarul Haque Akondo, J:*

This appeal is directed against the judgment and order dated  
24.11.2020 passed by the learned Joint District Judge, 1<sup>st</sup> Court,

Moulvibazar in Title Suit No. 114 of 2020 rejecting the plaint under Order 7 Rule 11(a) read with section 151 of the Code of Civil Procedure, 1908.

At the time of the hearing of the appeal the learned Advocate for the plaintiff-appellant filed two applications before this Court one was for withdrawal of the instant first appeal along with Title Suit No. 114 of 2020 under Order 23 Rule 1 of the Code of Civil Procedure, 1908, and the other was for amendment of the plaint which was ultimately not pressed by the learned Advocate.

Anyway, Mr. Faruque Ahmed, the learned Advocate appearing on behalf of the plaintiff-appellant submits that based on the order dated 30.07.2019 passed by the Additional Deputy Commissioner, Moulvibazar in Miscellaneous Appeal No. 72 of 2017 the General Certificate Officer, Moulvibazar, that is to say, respondent No. 1 started L.A.C.C. Case No. 5 of 2019 for execution of the aforesaid order dated 30.07.2019 and to recover the money withdrawn by the plaintiff-appellant. But the learned Advocate of the plaintiff at the time of preparation of the plaint of the suit inadvertently challenged only the notice of aforesaid L.A.C.C. Case No. 5 of 2019 without

challenging the entire proceedings of L.A. Miscellaneous Appeal No. 72 of 2017 and L.A.C.C. Case No. 5 of 2019, which caused a formal and technical defect due to bonafide mistake which will not be cured in any way by amendment of the plaint and in the circumstances, the instant first appeal along with original Title Suit No. 114 of 2020 needs to be withdrawn to sue afresh for the ends of justice.

He further submits that the instant first appeal is the continuation of the original suit and as such, permission for withdrawal of the instant first appeal along with the original suit is required to sue afresh by setting aside the judgment and order of rejection of the plaint dated 24.11.2020 for the ends of justice otherwise, the appellant will be prejudiced and will suffer irreparable loss and injury.

Conversely, Mr. Md. Mohiuddin Dewan, the learned Deputy Attorney General appearing with Mr. Prahlad Debnath, A.A.G on behalf of the defendants-respondents finds it difficult to oppose the submissions so made by the learned Advocate for the appellant.

In view of the above, we find substance in the submissions so made by the learned Advocate for the appellant. Accordingly, the

application filed for withdrawal of the instant first appeal along with the original suit is allowed for the ends of justice.

As a result, the instant first appeal is disposed of without cost.

The impugned judgment and order dated 24.11.2020 passed by the learned Joint District Judge, 1<sup>st</sup> Court, Moulvibazar in Title Suit No. 114 of 2020 rejecting the plaint under Order 7 Rule 11(a) read with section 151 of the Code of Civil Procedure, 1908 is hereby set aside.

Accordingly, the plaintiff-appellant is hereby permitted to withdraw the instant first appeal along with the original Title Suit No. 114 of 2020 to sue afresh, if any.

Send a copy of this judgment along with the LCR to the Court below at once.

**Mohi Uddin Shamim, J:**

I agree.

