

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

Present:

Mr. Justice Md. Riaz Uddin Khan

Civil Revision No. 5276 of 2023

IN THE MATTER OF :

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

-And-

In the Matter of:

A.B.M. Anwarul Islam

... Defendant-Petitioner

Versus

Dilip Kumar Nath and others

... Plaintiff-Opposite parties

Mr. Maqbul Ahmed, with

Mr. Md. Saiful Quader Chowdhury, Advocates

.... For the petitioner

No one

... For the opposite party

Judgment on: 09.03.2026

Md. Riaz Uddin Khan, J:

At the instance of the defendant Rule was issued asking the opposite parties to show cause as to why the judgment and order dated 27.02.2023 passed by the learned District Judge, Chattogram in Civil Revision No. 12 of 2023 allowing the Civil Revision and reversing the judgment and order dated 24.11.2022 passed by the learned Senior Assistant Judge, 3rd Court, Chattogram in Other Suit No. 266 of 2011 should not be set aside and or such other or further order or orders should not be passed as to this Court may deem fit and appropriate.

At the time of issuance of the Rule all further proceedings of Other Suit No. 266 of 2011 pending in the court of Senior Assistant Judge, 3rd Court,

Chattogram was stayed initially for a period of 03(three) months which was extended time to time.

Short fact for disposal of this Rule is that opposite party No. 1 as plaintiff filed other suit No. 142 of 1998 (re numbered as other suit No. 266 of 2011) against the defendants including the present petitioner for declaration of title, recovery of khas possession and for permanent injunction. The defendant petitioner contested the suit by filing written statement denying all the material facts as alleged in the plaint. However, at one stage of the suit when it was for peremptory hearing the plaintiff filed an application for directing the defendant No. 1 to submit the power of attorney being deed No. 1418 dated 08.09.1998 and also to produce the executants of the power of attorney before the court along with their National Identity Cards. After hearing the parties the application was rejected by the trial court by order No. 204 dated 24.11.2022. Against that order the plaintiff filed Civil Revision No. 12 of 2023 before the District Judge, Chattogram. The learned District Judge fixed the matter for hearing of the maintainability/ admissibility and by order No. 2 dated 27.02.2023 the learned District Judge without admitting the same by the impugned judgment and order dated 27.02.2023 allowed the revision in part directing the defendant No.1 to produce the executants of the power of attorney before the trial court.

Being aggrieved by and dissatisfied with the said judgment and order dated 27.02.2023 passed by the District Judge, Chattogram the defendant No.1 as petitioner filed the instant civil revision before this

court and obtained the rule and order of stay as stated at the very outset.

Mr. Maqbul Ahmed along with Mr. Md. Saiful Quader Chowdhury, the learned Advocate appearing for the defendant-petitioner submits that the trial court giving reason rightly rejected the application while the learned District Judge without admitting the revision allowed the same without assigning any reason which is liable to be set aside.

Mr. Ahmed then submits that according to the plaintiff the executants reside in India and in that view of the fact the learned District Judge has exceeded his jurisdiction allowing such application while Rule 4 of Order-V of the Code of Civil Procedure clearly imposed embargo upon the court not to direct any party to appear in person before it unless he resides within the local limits of the court's ordinary jurisdiction subject to some conditions.

Mr. Ahmed lastly submits that the petitioner being the defendant is to prove his case by adducing and producing witness and documents at the trial but while he did not submit any power of attorney before the court, the plaintiff cannot pray to produce such documents along with the executants who according to the plaintiff resides out of Bangladesh.

No one appears to oppose this Rule.

I have heard the learned advocate for the petitioner, perused the application. I have also gone through the orders passed by the court below.

According to the learned advocate the court cannot pass any order directing the executants of the power of attorney to be present in person before the court who

are according to the plaintiff resides outside Bangladesh. Let us now see the provision of Order-5, Rule-3 and 4 which reads as follows-

Order-V, Rule 3- (1) Where the Court sees reason to require the personal appearance of the defendant, the summons shall order him to appear in person in Court on the day therein specified.

(2) Where the Court sees reason to require the personal appearance of the plaintiff on the same day, it shall make an order for such appearance.

Rule 4 - No party shall be ordered to appear in person unless he resides-

- (a) within the local limits of the Court's ordinary original jurisdiction or
- (b) without such limits but at a place less than fifty or (where there is railway or steamer communication or other established public conveyance for five-sixths of the distance between the place where he resides and the place where the Court is situate) less than two hundred miles distance from the court-house.

It appears from the above provisions of law that some limitations have been imposed upon the Court in regard to ordering the parties to be present in person but in the instant case admittedly the persons directed to be present before the Court is neither the plaintiff nor the defendants. For proper adjudication, the Code of Civil Procedure has given ample authority to the Court asking anyone to be present in person before the court or asking anyone to produce any documents which is producible as evidence. Section 30 of the Code of

Civil Procedure is the provision under which the Court can exercise such jurisdiction which reads as follows-

“30. Subject to such conditions and limitations as may be prescribed the Court may, at any time, either of its own motion or on the application of any party,-

(a) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence;

(b) issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid.

(c) order any fact to be proved by affidavit.

From plain reading of Section 30 as above it is apparent and obvious that subject to such conditions and limitations as may be prescribed, the Court may at any time either of its own motion or on the application of the party make such order as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts and the discovery inspection, production, impounding and return of documents or other material object producible as evidence can issue summons to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid and order any fact to be proved by affidavit. It is the Court's discretion in the given

facts to decide whether any one's presence in Court is required or not. This discretion is judicial discretion, not whimsical. So, the contention of the learned advocate, that Court cannot ask anyone to appear in person before it who resides outside the ordinary jurisdiction of the Court or beyond the two hundred miles from the Court-house, has no legs to stand.

Be that as it may, let me now examine whether in the present case the learned District Judge has rightly passed the order directing the executants of the power of attorney to be present before the trial court. In the application filed by the plaintiff for directing the defendant No. 1 to produce the power of attorney and the executants of the power of attorney along with their National Identity Cards, it appears that the plaintiff claimed some contradictory allegations: in the one hand he claimed that the executants of the power of attorney do not reside in Bangladesh rather they reside in India, on the other hand he claims that two of the three executants are dead. It is further claimed that at the time of so-called execution of the power of Attorney which is a forged one, the executants were not in Bangladesh and by false personation it was registered. The defendant claims the property on the strength of the power of attorney but yet to produce the same before the trial court.

As per sections 101 to 103 of the Evidence Act, the onus of proof of any fact lies upon the party who claim that fact. In the present case to proving the defendants case if the defendants produce or rely on any document such as the said Power of Attorney, then

the Court can examine that power of Attorney as to whether it is genuine or not and the plaintiff will get his opportunity to prove that the same is forged by adducing evidence and further to prove that at the time of execution the executants were not in Bangladesh or the same was created by false personation. The learned judge of the trial court has given the reasons for not accepting the application and according to Section 30 of the Code of Civil Procedure it is the trial court who has the discretion to allow such application or not. Even the Court at his own motion can ask any person to be present or to produce any document producible in evidence. The trial court thought it proper at this stage of the suit not to allow such application while the learned District Judge without assigning any reason at the time of hearing the admissibility of the revision allowed such revision directing the executants to be present in person before the trial court by his impugned judgment and order which is not only illogical but also without any basis. In the given facts at the stage of the case the order directing the defendants to produce the executants before the trial court in person has no reason to be sustained. In such view of the matter, I have no option but to interfere with the order passed by the learned District Judge, Chattogram.

In the result the Rule is made **absolute** and the judgment and order dated 27.02.2023 passed by the learned District Judge, Chattogram in Civil Revision no.12 of 2023 is hereby set aside and the order dated 24.11.2022 passed by the trial court is affirmed.

It is very unfortunate that the defendant petitioner obtained an order of stay of all further proceedings of the suit instead of stay operation of the impugned order. As such the trial of the suit could not be held for more than two years. However, the order of stay granted earlier by this Court stands vacated.

The trial court is directed to proceed with the case expeditiously keeping in mind that the original suit was filed in the year 1998.

Communicate the judgment and order at once.