

Present:

Mr. Justice A.K.M. Asaduzzaman

Civil Revision No.147 of 2024

Saleh Ahmed Chowdhury.

.....Petitioner.

-Versus-

Md. Younus Miah @ Younus Ali

Chowdhury and another.

.....Opposite parties.

Mr. Sardar Abul Hossain, Adv. with

Mr. Musa Kalimullah, Advocate.

.....For the petitioner.

Mrs. Jobaida Parvin, Advocate

.....For the Opposite parties.

Heard and Judgment on 09.06.2024.

A.K.M.Asaduzzaman,J.

Petitioner as plaintiff filed a suit being Title Suit No. 72 of 2021 for declaration that the cancellation of the power of Attorney deed No. 1512/20 dated 13.02.2020 is not binding upon him.

Opposite party contested the suit by filing written statement but on a consecutive date i.e. on 23.03.2022 to 18.09.2023, since he was found absent, Trial Court after examining the 02(two) P.Ws fixed up the case for exparty hearing on 19.11.2023. But on an off day i.e. on 16.11.2023, defendant no. 1 by filing an

application prayed for withdrawal of the suit from the list of exparte hearing and to fixed up a date for hearing and deciding the suit on merit.

By the order dated 19.11.2023, Joint District Judge, 2nd Court, Sylhet allowed the said application, which was challenged in Civil Revision No. 102 of 2023 and the District Judge, Sylhet rejected the revisional application and affirmed the said order.

Challenging the legality of the said order, plaintiff petitioner filed this revisional application under section 115(4) of the Code of Civil Procedure and obtained the instant leave.

Mr. Sardar Abul Hossain, the learned advocate appearing for the petitioner although try to make his submission in support of this application for leave but drawing my attention to the impugned judgment and order of the court below submits that practically it was an innocent order passed by the court below and the defendants has rightly been allowed to contest the suit on merit upon giving a cost, contains passed no illegality and as such he prays that leave petition may be disposed of and a direction may be given to the trial court to decide the suit expeditiously as early as possible.

Mrs. Jobaida Pervin, the learned advocate appearing for the opposite party although opposed the leave petition but considering the submission of the learned advocate of the petitioner found it difficult to stand to oppose the leave petition.

Heard the learned Advocate of both the parties and perused the documents annexed to the application and the impugned order.

It appears that in a suit for declaration, the defendant-petitioner filed a written statement but subsequently on some dates failed to appear before the court to contest the suit and accordingly trial court took the deposition of the plaintiff's witnesses and fixed up the suit for exparte hearing of the suit. Before that date defendant no. 1 filed an application for withdrawal of the suit exparte disposal and sought for hearing of the suit afresh. Court allowed the same on imposing a cost of Tk. 1,000/- upon the defendants, which was also been affirmed, by the Revisional Court. This order appears to be passed in accordance with law. No suit be decided without affording any opportunity to a party, who wants to contest the suit. Courts below thus committed no illegality in allowing the defendants to contest the suit. I thus find no merits in this leave petition.

Accordingly I accept the submission of the learned advocate for the petitioner and dismissed the leave petition upon affirming the order passed by the Court below.

Accordingly leave petition contains no merits, which is hereby disposed of.

However, since by this time a good number of days have been elapsed, the trial court is hereby directed to decide the suit expeditiously as early as possible.

The order of stay granted earlier by this court is hereby recalled and vacated.

Communicate the judgment to the court below at once.