

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.6244 OF 2023

In the matter of:

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

And

Md. Rafiqul Islam

.... Petitioner

-Versus-

Md. Akter Hossain and others

.... Opposite parties

Mr. Md. Nasir Uddin, Advocate

.... For the petitioner.

Mr. Md. Ali Haider, Advocate

....For the opposite party Nos.1-3.

Heard 19.08.2025 and 20.08.2025.

Judgment on 24.08.2025.

This Rule was issued calling upon the opposite party Nos.1-4 to show cause as to why the impugned judgment and order dated 01.11.2020 passed by the learned Additional District Judge, 2nd Court, Gazipur in Civil Revision No.56 of 2018 rejecting the revision and affirmed the order dated 13.09.2018 passed by the learned Joint District Judge, 2nd Court, Gazipur in Title suit No.67 of 2010 rejecting the application filed under Order 7 Rule 11 of the Code of Civil Procedure for rejection of plaint 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 opposite parties as plaintiffs instituted above suit for specific performance of registered deed of contract for sale dated 23.12.2019 executed by the defendants alleging that the defendants offered to sale 36 decimal land to the plaintiffs for Taka 6,80,000/- and on receipt of Taka 5,80,000/- executed and registered a deed of bainapatra on 13.12.2009. But the defendant refused to execute and register a sale deed on receipt of the balance consideration money.

Defendant No.1 contested above suit by filling a written statement alleging that she did not execute and register above deed of bainapatra voluntarily and she has transferred above 36 decimal land to his younger son Rafiqul Islam by registered deed of heba dated 13.01.2010 and delivered possession. During pendency of above suit above defendant died leaving two sons Rafiqul Islam and Lal Miah as heirs and above Lal Miah as defendant No.1Kha submitted a petition under order 7 rule 11 of the Code of Civil Procedure for rejection of above plaint alleging that the plaintiffs did not deposit balance consideration money of Taka 1,00,000/- of above registered deed of bainapatra at the time of filing above suit. As such above plaint was hit by section 21A(b) of the Specific Relief Act, 1877 and liable to be rejected.

On consideration of submissions of the learned Advocate for the respective parties and materials on record the learned Joint District Judge rejected above petition.

Being aggrieved by above judgment and order of the trial Court above defendant as petitioner preferred a Civil Revision under Section 115(2) of the Code of Civil Procedure to the District Judge, Gazipur which was heard by the learned Additional District Judge, 2nd Court who rejected above revision and affirmed the judgment and order of the trial Court.

Being aggrieved by and dissatisfied with above judgment and order of the Court of revision below above petitioner as petitioner moved to this with this civil revisional application under section 115(4) of the Code of Civil Procedure and obtained leave and this Rule.

Mr. Md. Nasir Uddin, learned Advocate for the petitioner submits that it has been in the plaint that now deceased defendant Khodeza on receipt of Taka 5,80,000/- executed above deed of bainapatra on 23.12.2009 and Taka 1,00,000/- of the consideration money remained not paid. The plaintiff filed above suit for specific performance of above bainapatra on 04.04.2010 but at the time of filing of above suit did not deposit above balance consideration money of Taka 1,00,000/-. As such above plaint was hit by Section 21A(b) of the Specific Relief Act, 1877. In support of above submission the learned

advocate referrers to the case law reported in 69 DLR (AD) (2017) Page-239.

On the other hand Mr. Md. Ali Haider, learned Advocate for opposite party Nos.1-3 submits that due to lack of skill and knowledge of law of the appointed Advocate the plaintiff mistakenly omitted to deposit balance consideration money of Taka 1,00,000/- at the time of filling of this suit. But as soon as the matter came to the knowledge of the plaintiffs he took leave of the Court and deposited balance consideration money Taka 50,000/- on 18.09.2018. As far as the remaining Taka 50,000/- of the balance consideration money is concerned the learned Advocate submits that the younger son of deceased Khodeza namely Rafiqul Islam on receipt of above Taka 50,000/- has executed and registered a kobla deed in favor of the plaintiffs. The learned advocate lastly submits that the plaintiff is a law abiding but law illiterate person and above omission has been committed due to the error of the Advocate and the plaintiff should not made to suffer for the same.

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

It is has been stated in the plaint that now deceased Khodeza entered into an agreement for sale of 36 decimal land to the plaintiff for Taka 6,80,000/- and on receipt of Taka 5,80,000/- she executed and registered a bainapatra on 23.12.2009. It is admitted that the plaintiff

did not deposit balance consideration money of Taka 1,00,000/- to the Court at the time of filing of above suit for Specific Performance of above contract on 04.04.2010.

Section 21A of the Specific Relief Act, 1877 was inserted in above Act by Act No.XX511 of 2004 and above new Section came into force on July, 2005 before filing of this suit on 04.04.2010. Section 21A of the Specific Relief Act, 1877 runs as follows:

“21A. Unregistered contract for sale not specifically enforceable- Notwithstanding anything to the contrary contained in this Act or any other law for the time being in force, no contract for sale of any immovable property can be specifically enforced unless-

- (a) the contract is in writing and registered under the Registration Act, 1908, whether or not the transferee has taken possession of the property or any part thereof; and
- (b) the balance amount of consideration of the contract is deposited in the Court at the time of filing the suit for specific performance of the contract.”

Above provision is clear and unambiguous. It has been provided that no contract shall be specifically enforced unless the balance consideration money, if any, has been deposited in Court at the time of filling of the suit.

The Appellate Division of the Supreme Court of Bangladesh held in the case as referred to above by the learned Advocate for the petitioner that unless deposit of balance consideration money has been made by the plaintiffs at the time of filling of the suit for specific performance of contract the plaint shall be liable to be rejected.

It has been admitted in the plaint that the balance consideration money of Taka 1,00,000/- of above bainapatra was not deposited in Court at the time of filing of this suit.

On consideration of above facts and circumstance of the case and materials on record I hold that the plaint of above suit was hit by Section 21A of the Specific Relief Act, 1877 and liable to be rejected.

Since the plaint was hit by Section 21A(b) of the Specific Relief Act, 1877 the trial Court had no jurisdiction to give permission to the plaintiff to deposit balance consideration money at a later date nor above subsequent deposit can cure above legal deficiency.

In above view of the facts and circumstance of the case and materials on record I find substance in this Civil Revisional application and the Rule issued in this connection deserves to be made absolute.

In the result, the Rule is made absolute. The impugned judgment and order dated 01.11.2020 passed by the learned Additional District Judge, 2nd Court, Gazipur in Civil Revision No.56 of 2018 dismissing the revision and affirming the judgment and order dated 13.09.2018 passed by the learned Joint District Judge, 2nd Court, Gazipur in Title Suit No.67 of 2010 is set aside and plaint of above suit is rejected under Order 7 Rule 11 of the Code of Civil Procedure. The opposite party may withdraw the money he has deposited in Court in connection of above suit.

However, there will be no order as to costs.

MD. MASUDUR RAHMAN
BENCH OFFICER