

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.5571 OF 2023

In the matter of:

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

And

Aminul Haque

... Petitioner

-Versus-

Abdus Salam and others

... Opposite parties

Mr. Mohammad Redwanul Karim, Advocate

... For the petitioner.

Ms. Jobaida Gulshan Ara , Advocate

....For the opposite parties.

Heard and Judgment on 01.07.2025.

This Rule was issued calling upon the opposite party No.1 to show cause as to why the impugned order No.03 dated 03.04.2023 passed by the learned District Judge, Chattogram in Civil Revision No.62 of 2023 dismissing the revision and thereby affirming the order No.13 dated 19.01.2023 passed by the learned Senior Assistant Judge, 3rd Court, Chattogram rejecting the petitioners application for dismissing the Miscellaneous Case No.05 of 2023 and staying operation of the ex-parte decree dated 30.05.2007 passed by the learned Senior Assistant Judge, 3rd Court, Chattogram in Other Suit No.126 of 1999 till disposal of the Miscellaneous Case No.05 of 2023

under Order 9 Rule 13 of the Code of Civil Procedure 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 the petitioner as plaintiff instituted Title Suit No.126 of 1999 for declaration of title and correction of B. S. Khatian. Defendant No.3 Ahmedur Rahman the predecessor of the opposite party contested above suit by filling a written statement who was found absent and above suit was decreed ex-parte 04.10.2000.

The heirs of defendant No.3 as petitioners filed Miscellaneous Case No.5 of 2023 under Order 9 Rule 13 of the Code of Civil Procedure for setting aside above ex-parte judgment and decree alleging that in above suit heirs of deceased defendant No.3 Ahmedur Rahman were not substituted and above deceased defendant was prevented by sufficient cause from appearing in the Court when above suit was taken up for hearing.

In above case opposite party filed a petition for outright rejection of above plaint alleging that since defendant No.3 died after submission of written statement there was no legal requirement for substitution of his heirs and the learned Senior Assistant Judge rejected above petition.

Being aggrieved by above judgment and order of the trial court above opposite party as petitioner preferred Civil Revision No.62 of

2023 to the learned District Judge, Chattogram who rejected above Civil Revision and affirmed the 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 Court with Civil Revisional application under Section 115(4) of the Code of Civil Procedure and obtained this Rule.

Mr. Mohammad Redwanul Karim, learned Advocate for the petitioner submits that admittedly defendant No.3 Ahmedur Rahman filed a written statement and thereafter died. As such the plaintiff of above suit was not required to substitute the heirs of above defendant. It was the duty of the heirs of above defendant to be added as defendants in above suit. The learned advocate further submits that the petitioners of Miscellaneous Case No.05 of 2023 were not defendants of Title Suit No.126 of 1999 as such the petitioners they had no locus standi to file and maintain above Miscellaneous Case under Order 9 Rule 13 of the Code of Civil Procedure. The learned Advocate lastly submits that since summon of above suit was properly served upon defendant No.3 and he entered appearance in above suit above Miscellaneous Case was not tenable in law. But the learned District Judge utterly failed to appreciate above materials on record and most illegally rejected above Civil Revision and affirmed the unlawful judgment and order of the trial Court which is not tenable in law.

On the other hand Ms. Jobaida Gulshan Ara, learned Advocate for the opposite parties submits that on consideration of facts and circumstance of the case and materials on record the learned District Judge rightly rejected above Civil Revision and affirmed the lawful judgment and order of the trial Court which calls for no interference.

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

It is admitted that Ahmedur Rahman was defendant No.3 of Title Suit No.126 of 1999 and the contested above suit by submitting a written statement and above suit was ultimately decreed ex-parte against above defendant. It is admitted that the opposite parties are heirs of deceased defendant No.3 and they as petitioners filed Miscellaneous Case No.05 of 2023 under Order 9 Rule 13 of the Code of Civil Procedure for setting aside above ex-parte judgment and decree.

It is true that opposite parties were not defendants of Title Suit No.126 of 1999 but they are the legal heirs of deceased defendant No.3 of above suit and above judgment and decree is binding upon the opposite parties. As such opposite parties have locus standi to take legal recourse to set aside above ex-parte judgment and decree. An ex-parte judgment and decree can be set aside by a Miscellaneous Case under Order 9 Rule 13 of the Code of Civil Procedure on two grounds, firstly, no summon was served upon the defendant or secondly the

defendant was prevented by sufficient cause from appearing in Court on the date when the suit was taken up for hearing. The opposite party has the opportunity to prove the second cause as mentioned above that defendant No.3 was prevented by sufficient cause from appearing in Court when above suit was taken up for hearing.

The learned Senior Assistant Judge on correct appreciation of materials on record rightly admitted above Miscellaneous Case and stayed operation of the impugned ex-parte judgment and decree till disposal of above Miscellaneous Case which suffers from no illegality and the learned District Judge rightly rejected above Civil Revisional application of the petitioner and affirmed the lawful judgment and order of the trial Court which calls for no interference.

I am unable to find any substance in this Civil Revisional application under Section 115(4) of the Code of Civil Procedure and the Rule issued in this connection is liable to be discharged.

In the result, the Rule is hereby discharged.

The learned Senior Assistant Judge is directed to dispose of above miscellaneous case expeditiously preferably within a period of 06 (six) months from the date of receipt of this order.

However, there will be no order as to costs.