

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Civil Revisional Jurisdiction)

Present:

Mr. Justice Md. Khairul Alam

Civil Revision No. 869 of 2024.

Md. A. Rahim and others.

..... Petitioners.

-Versus-

Md. Abdul Kuddus and others.

..... Opposite parties.

Mr. Abdul Hye Fakir, along with

Mr. Md. Towhidul Islam, Advocates.

..... For the petitioners.

Mr. Md. Nazmul Huda, Advocate

..... For the opposite parties.

Heard on: 27.08.2025 and

Judgment on: 28.08.2025.

This Rule was issued calling upon the opposite parties No. 1-16 to show cause as to why the impugned judgment and order dated 23.11.2023 passed by the learned Additional District Judge, 1st Court, Gaibandha in Miscellaneous Appeal No. 25 of 2015 dismissing the appeal and thereby affirming the order dated 25.05.2015 passed by the learned Senior Assistant Judge, Sundarganj, Gaibandha in Miscellaneous Case No. 08 of 2013 rejecting the Miscellaneous Case filed under Order IX rule 13 read with section 151 of the Code of Civil Procedure (shortly, the Code) should not be set aside and/or pass such other or further order or orders as to this court may seem fit and proper.

The facts of this case, so far as relevant for the purpose of the disposal of the Rule herein, are that the present opposite parties No. 1-16 as plaintiffs instituted the suit impleading the present petitioners and others as defendants praying, inter alia, for partition of the suit property.

On 14.01.2013, the suit was decreed ex parte as against the present petitioners and on compromise as against the defendant No. 39. Against the said ex parte judgment and decree, the petitioners filed Miscellaneous Case No. 08 of 2013 under Order IX, Rule 13 of the Code for setting aside the ex parte decree stating, inter alia, that no summons was served upon them and as such they had no knowledge of the proceeding. The opposite parties No. 1-16 contested the miscellaneous case by filing a written objection denying the material allegations made in the application contending inter alia that summons were duly served upon the petitioners and that the petitioners deliberately abstained from contesting the suit. During the trial, both parties adduced evidence to prove their respective claims. The learned Assistant Judge, after hearing the said Miscellaneous Case by the judgment and order dated 25.05.2015, rejected the same, holding inter alia, that the summons notice was duly served. Against the said judgment and order the petitioners filed Miscellaneous Appeal No. 25 of 2015 in the Court of District Judge, Gaibandha which was transferred to the Court of Additional District Judge, Gaibandha who by the judgment and order dated 23.11.2023 dismissed the Appeal and thereby affirmed the judgment and order passed by the trial Court.

Being aggrieved thereby, the petitioners moved before this Hon'ble Court and obtained the Rule and an order of stay.

Mr. Abdul Hye Fakir, learned Advocate appearing for the opposite parties submits that the summons was not properly served upon the defendants, but both the courts without considering the said aspect of the case passed the impugned judgment and order; hence, the same is liable to be set-aside.

Per contra, Mr. Md. Nazmul Huda, learned Advocate appearing for the petitioners submits that the summons was duly served, but the petitioners deliberately abstained from contesting the suit. He next submits that no sufficient cause for setting aside the ex parte decree was shown and thereby both the courts below rightly passed the impugned judgment and order which should not be interfered with by this Court in its revisional jurisdiction.

I have considered the submissions of the learned Advocates for the contending parties perused the impugned judgment and order, and other materials on record.

Before addressing the contentions of the contending parties it will be advantageous to quote the provision of Order IX Rule 13 of the Code of Civil Procedure, which runs as follows:-

“13. Setting aside decree ex parte against defendant. (1)

In any case in which a decree is passed ex parte against a defendant, he may apply to the Court by which the decree was passed for an order to set it aside: and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit:

Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or any of the other defendants also.

(2) The defendant shall, for service on the opposite party, present along with his application under this rule either-

(i) as many copies thereof on plain paper as there are opposite parties, or

(ii) if the Court by reason of the length of the application or the number of opposite parties or for any other sufficient reason grants permission in this behalf, a like number of concise statements.

(3) Provisions of section 5 of the Limitation Act, 1908 shall apply to the applications under rule 13 (1) of this order.”

As per the said provision, if any suit is decreed ex parte, the defendants may apply for an order to set it aside, and if he satisfies the Court that summons was not duly served, or that there was sufficient cause for his non-appearance when the suit was called on for hearing, the court shall make an order setting aside the decree, and shall appoint a day for proceeding with the suit.

The only question that falls for determination in this Rule is whether the courts below committed any error of law in holding that the summons had duly been served upon the defendant and thereby in rejecting the application under Order IX Rule 13 of the Code.

It appears that one Md. Nurunnabi was the process server of the original suit and he was examined in this case as OPW 3 who in his deposition stated that as a process server, he served the summons in the presence of the witnesses. OPW 2, Sree Binoy Krishna Barman was the witness of the service who deposed that in his presence summons was served, and he proved his signature on the summons. From the said evidence it reveals that the summons was issued and the same was served upon the petitioners at their residence duly. No rebuttal evidence was produced by the petitioners to disprove the service.

Considering the evidence, both the courts below concurrently found that the summons had been duly served. On careful scrutiny of the

materials on record, I find that the courts below based their findings on evidence and proper appreciation of law. No error of law or perversity has been pointed out that would justify interference under section 115 of the Code.

Therefore, I do not find any reason to interfere with the impugned judgment and order.

Hence, the Rule is devoid of any merit and the same is discharged without any costs.

The order of stay passed at the time of the issuance of the Rule is hereby vacated.

Let a copy of this judgment and order be communicated at once.

Kashem, B.O