

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION

(CIVIL REVISIONAL JURISDICTION)

**Civil Revision No. 1720 of 2024**

**In the matter of:**

Uttara Club Limited represented by its President  
House No. 6, Road No. 9, Sector-1, Uttara Model  
Town, Dhaka-1230.

...Petitioner.

**-Vs-**

Md. Yousuf Kapadia son of Hatiam Kapadia, of  
Apartment No. 4-7, House No. 113, Road No. 3,  
Block-F, Banani, Dhaka-1213 and others.

....Opposite parties.

**Present**

Mr. Justice Mamnoon Rahman

Ms. Fatema S. Chowdhury, Adv.

...For the petitioner.

Mr. M.A. Hannan, Senior Adv.

...For the opposite parties.

Heard on: **21.01.2025 & 22.01.2025**

Judgment on: **The 30<sup>th</sup> January, 2025**

In an application under section 115(1) of the Code of Civil Procedure, 1908 rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 14.01.2024(degree being signed on 16.01.2024) passed by the learned Additional District and Sessions Judge, Bankruptcy Court, Dhaka in Civil Appeal No. 68 of 2023 disallowing the appeal and thereby affirming the judgment and decree dated 27.11.2022 (decree signed on 30.11.2022) passed by the learned Senior Assistant Judge, Dohar Court, Dhaka in Title Suit No. 55 of 2014 decreeing the suit, 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 short facts relevant for the disposal of the instant rule, is that, the opposite party No. 1 become the member of Uttara Club on 02.07.1996 by paying all the statutory dues and enjoying the club facilities regularly by paying monthly bill and other charges being permanent Member Account No. K55. Subsequently, on 16.08.2011 the Club issued a notice for settlement of Tk. 2535/- against which the opposite party No. 1 on 05.09.2011 paid an amount of Tk. 5000/- vide money receipt No. 0000112708. Subsequently, again the club issued another notice on 17.09.2011 for payment of Tk. 685/- pursuant to which on 08.10.2011 the opposite party No. 1 paid another Tk. 2500/- .But subsequently the petitioner's name was removed from the membership list of the Club for violation of Article 27 of the Articles of Association. Finding no other alternative the opposite party being plaintiff instituted Title Suit No. 203 of 2012 in the Court of Senior Assistant Judge, 2<sup>nd</sup> Court, Dhaka impleading the petitioner club and the then Executive Committee Members as defendants. The defendant contested the suit by filing written statement denying all the material allegations made in the plaint. The main contention as raised by the petitioner-defendant, is that, since the plaintiff-opposite party failed to adjust the cumulative demand already accrued/dues in his account and as such the club has rightly removed the name of the opposite party from the roll of the member pursuant to the provisions as laid down in Article 27 of the Articles of Association of the said club.

The trial court proceeded with the suit wherein the trial court framed as many as four Issues. The plaintiff-opposite party adduced two oral evidences while the petitioner-defendant adduced two oral evidences. Both the parties adduced evidences both oral and documentary. The trial court after hearing the parties, considering the facts and circumstances, provisions of law and especially the provisions as laid down in the Articles of Association decreed the suit. Being aggrieved by and dissatisfied with the aforesaid judgment and decree passed by the trial court the present petitioner-defendant preferred appeal being Title Appeal No. 68 of 2023 in the court of District Judge, Dhaka and the same was heard and disposed of by the Additional District Judge, Dhaka who vide the judgment and decree dated 14<sup>th</sup> January, 2024 dismissed the appeal and thereby affirmed the judgment and decree passed by the trial court. Being aggrieved by and dissatisfied with the same the present petitioner moved before this court and obtained the present rule. The plaintiff-opposite party contesting the rule by filing an application for vacating the order of stay as well as counter-affidavit.

Ms. Fatema S. Chowdhury, the learned Advocate for the petitioner submits that both the courts below without applying their judicial mind and without considering the facts and circumstances, most illegally and in an arbitrary manner passed the impugned judgment and decree which requires interference by this court. She submits that in the present case in hand the courts below failed to notice

or consider the calculation which is to be applied strictly as per the provisions of Article 27 of the Articles of Association of the club in question and thus the courts below committed an error which requires interference by this court. She further submits that admittedly the opposite party paid a substantial amount but as per the provisions as laid down in Articles 27(a) and 27(b) of the Articles of Association the member has to clear off all dues on the date mentioned in the posting of the notice board of the club in question, but in the present case hand after making payment still certain amounts were dues for which the courts below ought to have dismissed the suit.

Mr. M.A. Hannan, the learned senior Advocate for the opposite party-plaintiff vehemently opposes the rule. By placing the counter-affidavit as well as the application for vacating the order of stay he submits that in the instant case in hand both the courts below after proper appreciation of the facts and circumstances materials on record evidence both oral and documentary as well as considering the very provisions as laid down in the Articles of Association has rightly decreed the suit which requires no interference by this court. He further submits that there is no denial regarding the claim/issuance of notices and other aspects as well as posting of the name of the opposite party in the board but on the basis of the posting the opposite party paid more amount than the amount posted in the notice board and as such as per the provisions of Article 27 his membership cannot be terminated in any circumstances. He further submits that both the courts below on

concurrent finding of facts as well as law has rightly passed a decree which requires no interference by this court.

I have heard the learned Advocates for the petitioner as well as opposite parties. I have perused the impugned judgment and decree passed by the trial court as well as lower appellate court, revisional application, ground taken thereon, counter-affidavit, application for vacating the order of stay, L.C. Records as well as relevant provisions of Articles of Association of the Club in question.

On perusal of the same, it transpires that there is no denial regarding the acquisition of the permanent membership by the opposite party in the year 1996. It is also admitted by both the parties that after becoming the member of the club the opposite party using the same and paying the dues and other charges regularly. However, it transpires that ultimately there was certain dues for which the club, namely the petitioner issued several notices. It further transpires from the record as well as evidences led by the parties that the opposite party made payment time to time. Article 27(a) and 27(b) of the Articles of Association of the Club runs as follows;

*27(a) The Membership subscription shall become due on the first day of each month and all club dues of the preceding month including membership subscriptions must be settled within 30 days from the day of the dispatch of the bill.*

*(b) At the expiry of 30 days a reminder under certificate of posting shall be sent to the defaulting member(s) to clear off their dues immediately. If the said dues are not cleared off by such member(s) within 30 days from the date of the first reminder, a second reminder shall be sent, also under certificate of posting, requesting them to clear off the dues within 15 days to avoid the posting of their names in the Notice Board of the Club.*

*(c) Any Advance(s) drawn by an Executive Committee Member or a member of the Club for a particular purpose, shall adjust the same within forty five days from the date of such drawing, failing which disciplinary action will be taken as per Article-54.*

*(d) Notwithstanding anything elsewhere contained in these Articles, the Executive Committee may generally, or in a particular case, restrict the credit of members, or a particular member, as the case may be in order to safeguard the finances of the Club.*

Also Article 28 of the Articles of Association runs as follows;

*28 Any member whose name is posted shall be debarred from use of all Club facilities and a letter to this effect shall be sent to him, if the amount due is not paid within 30 days of such posting, his name shall be struck off the Membership Register of the Club.*

So, as per the aforesaid provisions of the Articles, especially Article 27 (a) of the Articles of Association all membership subscriptions and dues is to be settled within 30 days from the day of the despatch of the bill. As per Article 27(b) after expiry of 30 days a reminder under certificate of posting shall be sent requiring the member to clear off their dues immediately and if such dues are not cleared within 30 days from first reminder, a second reminder shall be sent giving 15 days time. As per Article 27(c) the Executive Committee reserved the right to adjust any advance with the dues. The provisions of Article 27(b) further speaks that if the member failed to adjust the dues within 15 days from the receipt of the second reminder his name will be posted in the notice board of the Club. As per Article 28 if the member failed to adjust the amount within 30 days of such posting his membership shall be struck off from the Membership Registrar of the Club.

So, it is apparent from the aforesaid provisions that the subscription and dues accrued in a month shall be forwarded to the member by a bill and the member is obliged to adjust the same within 30 days from the dispatch/received of the bill in question. The aforesaid articles also stipulated that if the member failed to do so as mentioned above a reminder will be sent to him enabling him to adjust the amount within 30 days and on the failure of the same a second reminder will be issued allowing 15 days time. The provisions further provides that in the event of any default to comply the reminder the

name will be posted and if the member failed to adjust the amount within 30 days he will be lost his membership. In the present case in hand it transpires that the learned Advocate for the petitioner mainly submits that the opposite party failed to adjust the previous dues which accumulated in due course and as he failed to adjust the previous accumulated dues the club committed no illegality in removing his name from the membership list of the club in question.

The languages of Articles are very much clear and it stipulates the steps and procedures to be followed by the club and the performance to be made by the member in question. In the present case in hand, it transpires that pursuant to the provisions of Article 27(a) the petitioner issued the bill on 16.08.2011 intimating the opposite party about the dues of Tk. 2525/- against which the opposite party on 05.09.2011 paid an amount of Tk. 5000/-. Subsequently on 17.09.2011 the club again issued a notice pursuant to the provisions of Article 27(b) regarding due of Tk. 685/- and the opposite party on 08.10.2011 paid an amount of Tk. 2500/- though in the written statement and evidence that the petitioner's club demanded that till from January, 2011 to May, 2011 total due was Tk. 11302. However, on perusal of the provision it clearly transpires that after exhausting the second reminder the club has no option but to force the name of the member in the notice board with the due amount and as per the said provision if the member failed to adjust the same within 30 days the club has the right to invoke the provision as laid in Article 28 of the Articles of



Association. The letter dated 05.09.2011 issued by the club, namely the petitioner it revealed that the club posted the name of the opposite party in the notice board so far it relates to permanent membership number PMK00055 showing a due amount of Tk. 1802/- which also referred the provision of Article 28 of the Articles of Association. So it is very much crystal clear from the aforesaid letter that the final notice was published/posted in the notice board of the club intimating the opposite party about the dues of Tk. 1802/-. It further transpires that subsequently the opposite party after receiving the said notice and since the name of the opposite party appearing in the posting list the opposite party deposited an amount of Tk. 5000/- against the claim amount of Tk. 1802/- on 05.09.2011 it has not been denied by the petitioner-defendant during trial. It has been mentioned earlier that the claim of the petitioner based upon previous dues and calculation but as a normal practice a person is liable to adjust the amount following the provisions laid down in the relevant law or rules or the procedure of the respective institution.

In the present case in hand, it is crystal clear that the governing rules are incorporated in Article 27 and 28 of the Articles of Association of the Club in question and as per Article 27(d) after second notice and after expiry of the period stipulated thereon the name of the defaulting member has to be posted with the due amount enabling him to adjust the same within 30 days from such post. Article 28 of the Articles of Association categorically stated that in the event of

failure on the part of the member to adjust the amount mentioned in the posting his membership will be seized or struck down from the roll of membership. In the present case in hand both the courts below came to a conclusion that in the posting/final demand it has been stated that the due is Tk. 1802/- and admitted by the petitioner that the member has made a payment of Tk. 5000/- which is more than the amount as claimed in the said notice and as such it cannot be said that the opposite party defaulted as failed to follow/adjust the notices given by the club pursuant to the provisions of Articles 27(a), 27(b), 27(c) and 27(d) of the Articles of Association of the Club in question. Both the courts below on concurrent findings of fact and law came to a conclusion to that effect.

It is now well settled proposition of law is that by exercising the power conferred under section 115 of the Code of Civil Procedure, 1908 this court cannot go into the factual aspects even if in a case of reversal of judgment and decree. On perusal of the revisional application and the grounds taken thereon, I do not find any materials point of law or gross misreading of evidence raised by the petitioner in the case in hand.

To believe or disbelieve a witness as well as documentary evidence is within the jurisdiction of the Court's below and this Court sitting in a revision cannot interfere in such jurisdiction unless there is gross non-consideration of material evidence affecting the ultimate decision of the Courts below. On perusal of the application, it appears

that the petitioner would not show any non consideration of material evidence by the Courts below. The finding arrived at and the decisions as made by the Courts below do not call for any interference by this court under section 115 of the Code of Civil Procedure, 1908. The findings of the Courts' below having been based on proper appreciation of evidence on record as well as calculation and ultimately based on the final demand made by the club in the posting list do not call for any interference and as such I find no reason to interfere with the same.

Accordingly, the instant rule is discharged without any order as to cost. The impugned judgment and decree passed by the Courts below are hereby affirmed.

The office is directed to communicate the judgment to the concerned court below with a copy of the judgment and send down the LCR at once.

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(Mamnoon Rahman,J:)

*Emdad.B.O.*