IN THE SUPREME COURT OF BANGLADESH

HIGH COURT DIVISION

(CIVIL REVISIONAL JURISDICTION)

Single Bench:

Mr Justice Abdur Rahman

Civil Revision No. 3407 of 2024

In the matter of:

Most. Ambia Khatun

... *Defendant-Appellant*

Petitioner

-Versus-

Mst. Halima Begum and others

... *Defendants/Respondents*

Opposite parties

Mr Bivash Chandra Biswas, with

Ms Dipali Rani Das, Advocates

.....*For the petitioner*

Mr Atique Towhidul Islam, Advocate

...For the opposite parties

Date of Hearing: 22.6.2026, 24.06.2026,

15.07.2026, 20.7.2026 and 10.08.2026 A.D.

Date of Judgment: 03.09.2026 **A.D., Thursday;**

১৯ ভাদ্র, ১৪৩৩ বঙ্গাব্দ।

JUDGMENT:

Abdur Rahman, J:

This Rule was issued at the instance of the petitioner under the authority of Section 115(1) of the Code of Civil Procedure, 1908, in the following terms:

> "Let a Rule be issued calling upon the opposite parties to show cause as to why the judgment and decree dated 29.04.2024 (decree being drawn on 05.05.2024) passed in Other Appeal No. 272 of 2005 by learned Additional District Judge, 1" Court, Chattogram affirming the judgment and decree dated 06.06.2005 (decree being drawn on 12.06.2005) passed in Other Class Suit No.76 of 1993 by Joint District Judge, 2nd Court, Chattogram decreeing the suit shall not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper."

At the time of issuance of the Rule, this Court was pleased to stay operation of the impugned judgment and decree dated 29.04.2024 (decree being drawn on 05.05.2024)

passed in Other Appeal No. 272 of 2005 by the learned Additional District Judge, 1" Court, Chattogram for a period of 03 (Three) months; subsequently, the aforesaid order was extended from time to time.

The central factual issue of the case is that the opposite party Nos. 1-4 being plaintiffs filed Title Suit No. 76 of 1993 against the petitioners and opposite party No.5 for a decree of specific performance of contract contending *inter alia* that defendant No.1 by virtue of two Kabalas deed dated 04.02.1981 and 02.12.1982 purchased the suit land and on the land in question she erected dwelling house and she has been living therein and during this stage she was in need of money for her daughter's marriage ceremony and accordingly she made a proposal to the plaintiffs for purchasing the case land and on discussion Tk.3,00,000/- (Taka three lacs) was settled as consideration and out of which the plaintiffs paid Tk.2,00,000/- (Taka two lacs) and an agreement was executed by the defendant No.1 on 14.10.1990 and in the agreement it was stipulated that within 3 (three) months the plaintiffs will pay the rest amount and after having the same the defendant

No.1 will execute and register the deed, but the defendant No.1 denied to execute and register the deed after having the rest money on 06.02.1994, hence the suit.

On the other hand, the defendant No.1 contested the suit by filing written statement contending *inter alia* pleaded that the marriage date of first daughter of the defendant 1 fixed on 15.10.1990 and for want of money she took loan Tk.50,000/- from the plaintiffs on 14.10.1990 and for security of money the defendant No.1 put her signature on some stamp papers and the deeds relating to the land was handed over to the plaintiff and it was in the agreement that after having payment of Tk.50,000/- then the plaintiffs will return the unwritten stamp papers to the defendants and the plaintiff in order to grab the suit land created the agreement that the plaintiffs served a notice upon the defendants through their Advocate and then the defendant No.1 replied against the notice on 24.02.1992 and it is not a fact that the defendant 1 wanted to sale the homestead land and in the year 1990, when the actual value of the suit land was at least Tk. 15,00,000/-; that though the defendant 1 wanted to repay

the loan money of Tk.50,000/-to the plaintiffs again and again, the plaintiff, for illegal gain, did not accept the money; accordingly that the suit is barred by limitation and the same will be dismissed with cost.

Thereafter, the learned trial Court, completing all the legal formalities, framed as many as 4 issues, and thereby the plaintiffs adduced P.W.1 to P.W.3 to prove their case; conversely, the defendant 1 adduced two witnesses, D.W.1 and D.W.2. After analyzing the evidence on record, the learned trial Court was pleased to decree the suit.

Thereafter, being aggrieved by and dissatisfied with the decree passed by the learned trial Court, the defendant preferred a Title Appeal No. 272 of 2005 before the Court of the District Judge, Chattogram, who transmitted the case record to the Additional District Judge, Chattogram, for hearing and disposal of the appeal. The learned Additional District Judge, after hearing the appeal, was pleased to dismiss the said appeal vide its judgment and decree dated 29.04.2024.

Thereafter, the defendant-appellant, being aggrieved by and dissatisfied with the aforesaid decisions of the Subordinate Courts, preferred the instant Civil Revision.

Mr Bivash Chandra Biswas, with Ms Dipali Rani Das, the learned Advocate appearing on behalf of the petitioner, at the outset, assailed the impugned judgments and decrees passed by both the learned Subordinate Courts, contending that the Courts below have grossly misread, misconstrued and failed to appreciate the oral as well as documentary evidence available on record in its true perspective. According to the learned Advocate, the Courts below arrived at their findings without properly evaluating the relevant materials and the surrounding facts and circumstances of the case, thereby committing a manifest error of law resulting in a serious miscarriage of justice.

Learned Advocate further submitted that the Court of Appeal below did not consider the evidence of P.Ws. and D.Ws., and as the trial Court misread and misconstrued the evidence of P.Ws. and D.Ws. and as such the learned Court of Appeal below violated the provision of Order 41 Rule 31 of the

Code of Civil Procedure and accordingly, the impugned judgment and decree is illegal which has resulted in an error in the decision occasioning failure of justice.

Learned Advocate has further submitted that P.W.2 who is the scribe of the Bainapatra and who is also a deed writer attached Sadar Sub-Registry Office, Chattogram admitted that he drafted the Bainapatra before 01 (one) week of alleged execution of Bainapatra and as there is no case about drafting of the Bainapatra before the date of execution then in that case a serious doubt as to genuineness of the Bainpatra then in that case the Courts below have ample jurisdiction to dismiss the suit which resulted in an error in the decision occasioning failure of justice.

Learned Advocate has further submitted that it has been proved from the evidence on record that the suit land is the homestead land of the defendant petitioner and as such, according to the provisions of Section 22 of the Specific Relief Act, the instant suit is liable to be dismissed as the defendant is of hardship which has been attached and as such the

impugned judgment and decree has resulted in an error of the decision occasioning failure of justice.

Learned Advocate for the petitioner referred to a decision as contained in 52 DLR(HC) 586 in respect of Section 22 of the Specific Relief Act and another decision as contained in 2 BLC (HC) 311 in respect of Hardship as per Section 22 of the Specific Relief Act, another decision as contained in 21 DLR(SC) 54 in respect of the Provision of Section 11 of the Contract Act, 1872.

Conversely, **Mr Atique Towhidul Islam**, learned Advocate appearing on behalf of the opposite parties, opposed the Rule and supported the impugned judgments and decrees passed by both the learned Subordinate Courts, taking a concurrent view upon the facts.

Learned Advocate has further submitted that the findings recorded by the Courts below are perfectly justified, being based on a proper appreciation of the evidence on record as well as the settled principles of law, and, as such,

call for no interference by this Court in the exercise of its revisional jurisdiction.

The learned Advocate further submitted that the plaintiffs sent a legal notice on 3.12.1991, failed to obtain a registered deed in time, and were finally compelled to file the instant suit to obtain the registered deed, and both the Subordinate Courts, after getting the foundation of the claims of the plaintiffs, decreed the suit as per law.

Learned Advocate further submitted that the story of personal hardships of the defendant was not liable, and there are more lands of the defendant, and considering this aspect, both the Subordinate Courts decreed the suit.

Learned Advocate finally submitted that the Bainapatra has been proved by the witnesses who deposed as P.W.2, who was the scribe and deed writer of the said Bainapatra, and P.W.3 also gave evidence in support of the Bainapatra, and thereby the plaintiff proved the case. In view of the foregoing submissions, the learned Counsel prayed for discharge of the Rule.

I have carefully perused the revisional application together with the judgments and decrees impugned therein, the documents annexed to the application, and the other materials available on record. I have also given my anxious consideration to the respective submissions advanced by the learned Counsel appearing for the contending parties.

On perusal of the judgment of the learned trial Court, it is found that the learned Court observed in the following way:

> "বিবাদী পক্ষ দাবী করেন যে, নালিশী জমিতে স্থিত বসত গৃহ বিবাদীর একমাত্র বসত গৃহ হয়। তদালোকে বাদী পক্ষ একটি ন্যায়পর প্রতিকার পাইতে অধিকারী নহেন। কিন্তু বাদী পক্ষের সাক্ষ্য হইতে ইহা স্পষ্ট হইয়া উঠে নালিশী জমি ছাড়াও বিবাদীনির একাধিক জমি ও দোকান রহিয়াছে। ডি, ডব্লিউ ১ জেরায় ঐ সকল বিষয় গোপন করিবার অপপ্রয়াস গ্রহণ করিয়াছে। ফলে বিবাদীনি পক্ষ **Hardship** সংক্রান্তে যে প্রশ্ন উত্থাপন করিয়াছেন তাহা আইনতঃ এবং ন্যায়তঃ গ্রহণ যোগ্য নহে।"

The learned Trial Court further observed that:

> "বিবাদী পক্ষের বিজ্ঞ কৌশুলী যুক্তিতর্কে আরও উল্লেখ করেন যে, ০২/৩/৪ নং বাদীগণ নাবালক হওয়া সত্ত্বেও উক্ত বিষয়টি বায়না পত্রে গোপন করা হইয়াছে। পি, ডব্লিউ-৩ সাক্ষ্যে উল্লেখ করেন যে, বায়না পত্রে নাবালক কথাটি উল্লেখ করার আবশ্যকতা নাই মর্মে দলিল লেখক

উক্তি করায় তাহা বায়না পত্রে উল্লেখ করা হয় নাই। অধিকন্তু নাবালক উল্লেখ না করিবার কারণে বায়নাপত্র অবিশ্বাস করিবার কোন হেতু নাই।”

However, on analyzing the judgment passed by the learned Appellate Court, it is found that it was observed as:

“বাদী ও বিবাদী উভয়পক্ষের মধ্যে টাকা লেনদেনের বিষয়টি স্বীকৃত। বাদী-রেসপন্ডেন্টপক্ষ বায়নাচুক্তি প্রমাণ করেছেন যা থেকে এটি প্রতীয়মান হয় যে বিবাদী-আপীলকারীপক্ষ বাদী-রেসপন্ডেন্টপক্ষের নিকট হতে বায়না বাবদ ২,০০,০০০/-টাকা গ্রহণ করেছেন। বাদী-রেসপন্ডেন্টপক্ষের এ দাবী তারা সাক্ষ্য ও দলিলাদি দ্বারা প্রমাণ করতে সক্ষম হয়েছেন। বিবাদী-আপীলকারীপক্ষের দাবী হলো, তারা মেয়ের বিয়ের জন্য ৫০,০০০/- টাকা ধার নিয়ে ফাঁকা স্ট্যাম্পে স্বাক্ষর করেন। তাদের দাবী অনুযায়ী, এটি সাক্ষ্য আইন, ১৮৭২ এর ১০২ ধারা অনুযায়ী তাদের উপর বর্তায়।”

Considering the above observations of both the Subordinate Courts, it is found that both Courts concurred on the point that a Bainapatra was signed between the parties, but failed to observe that the duration of the Bainapatra was only for 3 months and the plaintiff served a legal notice upon the defendant on 3.12.1991, whereas the contract was signed on 14.10.1990, and the suit was filed on 1.8.1993. When any

Bainapatta has specifically endorsed the period of execution in a case of an unregistered one, so far as it relates to said period, the aggrieved party must raise the cause of action within the stipulated period of the unregistered contract. In the instant case, the suit was filed after a long lapse of time; even the plaintiffs did not serve any legal notice within the said period, i.e. 3(three) months.

On sifting the records, it is found that the learned trial Court framed issues on four counts; thus, the Court failed to travel under the provisions of Order XIV of the Code of Civil Procedure, 1908, as the defendant specifically mentioned in her pleadings that, "বিগত ১৪/১০/৯০ ইংরেজি তারিখে বা অন্য কোন তারিখে বাদীর বরাবরে কোন বায়না নামা সম্পাদন করে নাই। বাদীর বায়না নামা মিথ্যা ফেরবী, জ্বাল যোগসাজসী, পনশুন্য, উদ্দেশ্যমূলক এবং তৎ ফেরবী বায়না নামার জন্য অত্র বিবাদী মোটেই বাধ্য নহে।" Moreover, it is evident from the unregistered Bainanama that the 1st Party, Halima Begum, included Reshma Begum, Mohammad Monzur, and Mohammad Foysol, who were made plaintiff Nos. 2-4, showing them as minors, whereas they were made parties to the contract without showing them as minors. During cross-

examination, PW1 stated that, “এই দানপত্র দলিলের গ্রহীতাদের মধ্যে নাবালক শব্দ লেখা নাই। তবে তাহারা নাবালক। আর্জি আমার এবং আমার স্বামীর বায়া লেখা হইয়াছে। ঐ আর্জি লেখার সময় আমি এবং আমার স্বামী উপস্থিত ছিলাম। পরে বলেন যে, আমার স্বামী জানে।” In this context, I need to examine the provision of the section 11 of the Contract Act, 1872, which is reproduced as under:

"**Who are competent to contract:**

11. Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject."

From a plain reading of the aforesaid provisions, it is crystal clear that the parties to the contract must be major in age and not disqualified by any means. So, it is manifest that the learned trial Court overlooked these important facts and legal aspects at the relevant time of framing the issues. It is settled that in the case of Specific Performance of Contract, a vital issue has to be taken that, **"Whether the contract is valid and enforceable in law."**

In the aforesaid context, I am of the opinion that in a civil suit, after the presentation of the plaint and the filing of the written statement, the framing and settlement of issues is undertaken, as the pleadings form the foundation of the issues, whereas the issues furnish the immediate guide for the parties in adducing evidence, and the issues constitute the very framework within which the controversy between the parties is required to be tried and adjudicated.

Therefore, the proper framing of issues constitutes one of the fundamental requirements of a fair and effective trial, since it determines the scope and extent of the controversy between the parties and provides the necessary framework within which the suit is to be tried and adjudicated. Accordingly, the Court is under a legal obligation to frame appropriate, precise and comprehensive issues so as to ensure that all material questions requiring adjudication are brought within the ambit of the trial.

Conversely, the Court ought not to frame an issue which does not arise out of the pleadings or which has no foundation in the material facts asserted by one party and

controverted by the other. The purpose of framing issues is not to introduce new controversies into the suit, but to ascertain and identify the precise questions of fact and law upon which the parties are at variance. Where a party seeks adjudication upon a particular matter arising out of the controversy, the Court is required to determine the same in accordance with law. Furthermore, where several distinct and independent questions of fact or law arise between the parties, separate issues should ordinarily be framed in respect of each such disputed question instead of combining them into a single or composite issue. This enables the parties to appreciate the precise nature of the controversy and facilitates the recording of clear, distinct and unambiguous findings by the Court.

Finally, where a suit proceeds to the appellate stage, the appellate Court is ordinarily required to examine and determine the controversy in the light of the issues settled for trial and the findings recorded thereon by the Court of first instance. The appellate jurisdiction is thus exercised with due regard to the framework of controversy established at the

trial, subject, of course, to the statutory powers of the appellate Court to determine additional issues, take additional evidence or otherwise deal with an issue which has been omitted or improperly determined, where the circumstances of the case and the applicable provisions of law so warrant.

Significance of the above: **I am of the firm view that properly framing issues is a substantive procedural safeguard essential to a fair trial, confining adjudication to the actual controversy, and ensuring an effective determination. Consequently, the Court cannot adjudicate beyond the scope of the pleadings, nor can parties introduce a new case through evidence. However, failing to frame a material issue does not absolve the Court from deciding the real controversy, provided no prejudice occurs to the opposing party. Finally, the appellate court must ensure these safeguards by verifying that the trial court's findings are fully supported by evidence tied directly to the settled issues.**

The case in hand endorsed that both the Subordinate Courts concurrently delivered judgments in favour of the plaintiffs and decreed the suit. Now, in exercising the

revisional jurisdiction under section 115 of the Code of Civil Procedure, this Court does not sit as a second Court of appeal, nor is it empowered to undertake a fresh appraisal of the evidence merely because another view of the facts may be possible. The revisional power is confined to correcting such errors as go to the lawful exercise of jurisdiction or have materially impaired the fairness and proper determination of the proceeding. Accordingly, concurrent findings of fact are ordinarily not open to interference unless they are shown to be affected by a jurisdictional error, material illegality or irregularity, or are perverse in the sense that they cannot reasonably be sustained on the evidence on record. Interference may also be justified where the findings have resulted from a material misreading of the evidence, or from the failure to consider evidence of decisive importance, and that defect has occasioned a failure of justice. A mere difference of opinion as to the weight or appreciation of the evidence, without more, does not warrant the exercise of revisional jurisdiction. In the absence of a demonstrated defect of this nature, interference with the concurrent findings is not called for.

In this context, I need to examine the evidence on the face of the record and its implications for the facts and the law. The learned trial Court observed that the defendants contend that the dwelling house situated on the suit land is the defendant's sole residence and that, in view thereof, the plaintiffs are not entitled to equitable relief. However, it is apparent from the plaintiffs' evidence that, apart from the suit land, the defendant has several other plots of land and shops. Thus, it is evident from the cross-examination of PW1 Halima Begum who deposed as, "বায়না নামার জায়গা ছাড়াও বিবাদীর আরও জায়গা আছে। তবে বিবাদীর কি পরিমাণ জায়গা আছে তাহা আমি অনুমান করিয়া বলিতে পারিব না। বায়না নামার জাযগা ছাড়া বিবাদী আম্বিয়া খাতুনের অপরাপর জায়গা আমি চিনি না তবে শুনিয়াছি যে তাহার আরও জায়গা আছে।" P.W.1 further admitted that, "যে জায়গা নিয়ে বায়না হইয়াছে সেই জায়গা ১নং বিবাদীর বসত ঘর সেখানে ১নং বিবাদী ছেলে মেয়ে নিয়ে বসত করে।" It is noticeable that the plaintiffs brought an assertion as to more land of the defendant without showing any evidence, so both the Subordinate Courts failed to observed the hardships of the defendant.

It is further evident from the cross-examination of PW1 that she provided Tk. 70,000/= and sold her gold ornaments near about 20 Vori, whereas PW3 Sona Mia stated in his cross-examination that her spouse provided Tk. 10,000/20,000/= by selling ornaments. PW2 Kanu Chowdhury stated in his cross-examination that, "বায়নানামা সম্পাদনের সপ্তাহ খানেক পূর্বে আমি উহার মুসাবিদা করিয়াছি। আমাকে দাতা ও গ্রহীতার স্বামী বায়নাপত্র লিখার জন্য নির্দেশ প্রদান করেন।", thus on examining the Bainanama, it is seen that stamps of the contract were purchased on 10.10.1990, and the alleged Bainanama was executed on 14.10.1990, and there are 6(six) witnesses excluding the typist, but none of them were produced by the plaintiffs to prove such an unregistered contract. Moreover, the Notary Public was not examined by the learned trial Court, and it is evident from the depositions of PW1 and PW2 that both the parties were unaware of the contents of the alleged contract. These vital aspects of the case have not been considered by the Subordinate Courts.

However, the other prime contention of the petitioner is that the suit land is the homestead land of the defendant, and

as such, according to the provisions of Section 22 of the Specific Relief Act, 1877, the instant suit is liable to be dismissed as the defendant is at hardship which has been attached to the suit land. In this regard, I need to examine the necessary provisions of the said Act, which are reproduced as under:

"Discretion as to decreeing specific performance:

22. The jurisdiction to decree specific performance is discretionary, and the Court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the Court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a Court of appeal.

The following are cases in which the Court may properly exercise a discretion not to decree specific performance: -

I. Where the circumstances under which the contract is made are such as to give the plaintiff an unfair

advantage over the defendant, though there may be no fraud or misrepresentation on the plaintiff's part.

II. Where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff.

III. Where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

From the above proposition of law, it is settled that even if the plaintiff successfully proves the existence of a valid legal contract and its subsequent breach, the Court is not automatically required to grant a decree for specific performance. The plaintiff must satisfy the court's conscience that granting the remedy is consistent with equity and justice. Because the remedy is discretionary and governed by principles of equity, the plaintiff must approach the court with "clean hands." The Court will rigorously evaluate the **conduct of both parties** at the time of execution and during the

litigation. Any predatory behaviour, concealment, or sharp practices by the plaintiff will likely result in the suit being dismissed. The Court operates as a Court of equity by weighing the practical consequences of its judgment. If executing the contract would drive the defendant into unexpected financial ruin or displacement, while denying it would merely leave the plaintiff seeking alternative properties or standard damages, the court will rely on Section 22 to deny specific performance and instead award monetary compensation or the return of earnest money.

However, the petitioner referred to a decision reported in 53 DLR (HCD) 535, where their Lordships, in the case of Abdur Razzak Mollah Vs Md. Qayum Mollah and others, were pleased to hold that-

> *"The relief of Specific Performance of Contract is a discretionary one. The Court, if it finds that it would be unconscionable to allow it, will not allow Specific Performance. ---(15)"*

The facts of the case in hand, specifically provided the defendant reside with the family members in the suit land, which has been admitted by the PW1, and nowhere of the evidence disclosed that the plaintiffs got possession of the suit land by dint of the alleged Bainanama, rather PW1 stated in in her deposition that, "নালিশী জমিতে ১নং বিবাদী গৃহ বন্ধনে দখলে ছিল। --- ১নং বিবাদী তার কন্যার বিয়ের খরচের জন্য এই জমি বিক্রী করিতে চায়।" The judgments of the Subordinate Courts also revealed that both the Courts failed to notice that the all the PWs provided uncorroborated and to some extents false evidence. The documents Ext. Nos. "Ka" to "Ga" have not been considered by the trial Court or the Appellate Court. The alleged contract executed on 14.10.1990, and Ext. 'Ga' i.e. the invitation card dated 15.10.1990, revealed the facts of the marriage of the daughter of the defendant. The trial Court analysed only the favourable evidence of the PWs and included one or two sentences from the DW1 and DW2, and the learned Appellate Court was wholly devoid of any independent discussion of the evidence, which is definitely termed as misreading and non-consideration of evidence, and thereby misconstruction of the settled principle of law.

However, on perusal of the judgment of the learned trial Court, it is found that the learned trial Court observed that the transaction was admitted by both the parties, but the amount was not admitted at all. P.W.1 admitted in her deposition that the property forming the subject matter of the agreement for sale is the homestead of Defendant No. 1, where Defendant No. 1 resides with their children. P.W.1 also admitted that her husband Sona Miah was not a witness of said Bainapatta, and another vital aspect is that three persons of the said Bainapatta were minors; it is settled as a principle of law that any minor can get a registered deed, and even they can obtain any property through any means for their interests, but they cannot make any contract without any legal guardian in their favour. In the instant case, on perusal of the Bainapatta, it is found that the Bainapatta was executed by themselves; where their mother was an independent party to the contract, whereas their father, Sona Miah, was not a party to that Bainapatta. These important matters have not been considered by the learned Subordinate Courts at all.

Considering the above facts and circumstances, it is found that both the Subordinate Courts erred in law and also failed to consider the facts relating to taking a loan of 50,000/- taka for the marriage ceremony of the daughter of the defendant and from the evidence of the P.W.1 it is found that the property relating to the schedule of Bainapatta includes the dwelling house and places of the defendant, but both the Subordinate Courts failed to consider those vital aspect and thereby committed an error of law and facts, thereby occasioning failure of justice.

However, it is noticeable that though the alleged Bainanama was not prepared lawfully and was not executable, the defendant admitted that she took Tk.50,000/=(Taka Fifty Thousand) only from the plaintiffs for conducting the marriage ceremony of her daughter as a debt by depositing the original deeds of her ownership, but the defendant did not take any endeavour to return the said money willingly to the plaintiffs even today. This type of negligence must be remediated by awarding equitable compensation.

In summation, I am of the view that the concurrent findings of fact of the instant case are liable to be interfered with as they are shown to be affected by error of law, material illegality in the sense that they cannot reasonably be sustained on the evidence on record. Moreover, interference is also justified because the findings have resulted from a material misreading of the evidence or from the failure to consider evidence and hardship of decisive importance, and the defect of framing the proper issues has occasioned a failure of justice. In the aforesaid demonstrated defects in consonance with misreading and non-consideration of evidence, and misconstruction of law, warranted interference with the concurrent findings.

Considering the above proposition of law and submission of the learned Advocates for both sides, I disagree with the submissions of the learned Advocate for the opposite parties, and decisions of the subordinate Courts altogether, and thereby find merit in the Rule.

Accordingly, the Rule is made Absolute. Thereby, there is no order as to costs.

Consequently, the judgment and decree dated 29.04.2024 (decree being drawn on 05.05.2024) passed in Other Appeal No. 272 of 2005 by learned Additional District Judge, 1" Court, Chattogram affirming the judgment and decree dated 06.06.2005 (decree being drawn on 12.06.2005) passed in Other Class Suit No.76 of 1993 by Joint District Judge, 2nd Court, Chattogram decreeing the suit is hereby set aside. Accordingly, the original suit is dismissed.

Concomitantly, the defendant-appellant-petitioner is hereby directed to return the admitted borrowed money to the tune of BDT 50,000/= (Fifty thousand) only with a simple interest of 2% (two per cent) per *mensem* from 14.10.1990 till to deposit before the learned trial Court, in favor of the plaintiffs-respondents-opposite parties, within 60(sixty) days from the date of receipt of this judgment and order by the learned trial Court, failing which, the plaintiffs can realize the said money with interests through execution as per law, and in that event, the defendant has to pay compound interest upon the said amount from 14.10.1990 till to realization.

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

The office is directed to send down the Subordinate Court's Record (SCR) with a copy of this judgment, forthwith.

Order accordingly.

(Abdur Rahman, J)