

Present:
Mr. Justice Md. Salim

CIVIL REVISION NO.2407 OF 2024

Md. Ala Boxh Khan, being dead, his
legal heirs:
Mst. Rahela Begum @ Raihela Begum @
Rahela Bewa and others
..... *Petitioners.*

-VERSUS-

Md. Mojnur Rahman
.....*Opposite Party.*

Mr. Md. Faruk Hossain, Advocate
----- For the petitioners.
Mr. Md. Nahid Hasan, Advocate
----- For the opposite party.

Heard on 08.05.2025 and 29.05.2025

Judgment on 25.06.2025

By this Rule, opposite parties were called upon to show cause as to why the Judgment and order dated 23.10.2023 passed by the learned Additional District Judge, 2nd Court, Rajshahi, in Miscellaneous Appeal No.68 of 2022 dismissing the appeal and affirming the Judgment and order dated 26.04.2022 passed by the learned Senior Assistant Judge, Bagmara, Rajshahi in Miscellaneous Case No.34 of 2019 rejecting the application under Order IX 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.

The facts in a nutshell for the disposal of the Rule are that the opposite party herein, as plaintiff, instituted Other Class Suit No. 51 of 2011 for the partition of the land described in the schedule. The defendant contested the suit by filing a written statement and praying for shaham.

Subsequently, the learned Senior Assistant Judge, Bagmara, Rajshahi, by the Judgment and decree dated 16.05.2019, decreed the Suit No.51 of 2011 ex-parte for non-appearance of the defendant.

After that, the defendant-petitioner instituted Miscellaneous Case No. 34 of 2019 before the Senior Assistant Judge, Bagmara, Rajshahi, under Order IX, Rule 13 of the Code of Civil Procedure for setting aside ex parte Judgment and decree.

The plaintiff, as the opposite party, contested the Miscellaneous Case by filing a written objection, denying all the material allegations made in the said application.

Subsequently, the learned Senior Assistant Judge, Bagmara, Rajshahi, by the Judgment and order dated

26.04.2022, disallowed the Miscellaneous Case ex parte against which the plaintiff as appellant, preferred Miscellaneous Appeal No.68 of 2022 before the District Judge, Rajshahi. Eventually, the learned Additional District Judge of the 2nd Court, Rajshahi, by the Judgment and order dated 23.10.2023, disallowed the appeal and affirmed those passed by the Trial Court.

Being aggrieved, the plaintiff petitioner filed the present Civil Revision before this court and obtained the instant Rule.

Mr. Md. Faruk Hossain, the learned advocate appearing on behalf of the petitioner, submits that the predecessor of the defendant petitioner i.e. father was an older man who on 06.11.2018 has committed on stroke and caused paralyzed and died on 19.04.2020 and due to his severe illness, he could not take necessary step before the court. At the same time, on 26th April 2019, when the Miscellaneous Case was called for an ex parte hearing, he was unable to take steps because his lawyer, whom he had engaged, was unable to inform him of the case's hearing date; thus, the Miscellaneous Case was rejected for his non appearance.

Mr. Md. Nahid Hasan, the learned advocate appearing on behalf of the opposite party, submits that the instant suit was filed in 2011. Thereafter, the suit was fixed for hearing on several dates, but the defendant petitioners prayed for time on several occasions without being heard by the court. Moreover, the petitioner failed to furnish any medical certificate, including the illness of the petitioner's predecessor, as well as the death certificate, to the court below. Moreover, the Miscellaneous case was fixed for hearing on several dates, but he did not take steps to hear the matter. Finally, on 26.04.2022, the Miscellaneous Case was rejected by the learned Assistant Judge.

I have considered the submission of the learned advocate and perused the impugned Judgment and other materials on record. In order to appreciate the submission advanced by the Bar, the relevant law may be quoted as follows:-

"Order IX Rule 13 of the Code of Civil Procedure provided that 13-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 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 defendants only it may be set aside as against all or any of the other defendants also."

It manifests from the above provisions that an ex parte judgment and decree can be set aside on two grounds: (I) that the summons was not duly served or (II) that any sufficient cause prevented him from appearing when the suit was called on for hearing.

In the instant case, after scanning the record, it appears that the petitioner claims his father, who was the petitioner in the suit, was severely ill and unable to contest the proceedings. The father, aged approximately 75 years, had paralysis since 06.11.2018 and eventually passed away on 19.04.2020 due to illness. Notably, the

suit was decreed ex parte on 16 May 2019, during the period of his alleged incapacitation. However, the petitioner failed to submit any medical documents, death certificate, or other relevant evidence before the courts below or in this revision to substantiate the claims regarding his father's illness and subsequent demise. Moreover, the learned Assistant Judge, when rejecting the miscellaneous case, says that: --

“অদ্য সাক্ষীর জন্য দিন ধার্য আছে। বিবাদীপক্ষ এডভোকেট হাজিরা দিয়েছেন। অন্যদিকে বাদীপক্ষ একটি দরখাস্ত দাখিল করে বাদী অসুস্থ মর্মে সময় আবেদন করেছেন। উভয়পক্ষের বিজ্ঞ কৌশলির বক্তব্য শ্রবণ করলাম এবং নথি পর্যালোচনা করলাম। পর্যালোচনায় দেখা যায় যে, অত্র মিস মোকদ্দমাটি গত ২৫/০৯/২০১৯ ইং তারিখে দায়ের করা হয় এবং তা গত ১৩/১০/২০২০ ইং তারিখে সাক্ষীর পর্যায়ে আসে। এরপর হতে অদ্য পর্যন্ত মোট ৫ টি ধার্য তারিখ অতিবাহিত হলেও দরখাস্তকারীপক্ষ সাক্ষ্য সমাপ্ত করেন নি। বরং নানা অজুহাতে সময় প্রার্থনা করেছেন। গত ১৩/১০/২০২০ ও ২৪/০৯/২১ ইং তারিখের দরখাস্ত দ্বারা দরখাস্তকারী মারা গেছেন মর্মে দাবী করা হয় অথচ অদ্যকার দরখাস্তে উল্লেখ করা হয়েছে যে দরখাস্তকারী অসুস্থ। একজন মৃত মানুষ কিভাবে অসুস্থ তা আদালতের কাছে বোধগম্য নয়। দরখাস্তকারীপক্ষ একদিকে কায়মোকাম করছেন না অন্যদিকে অসুস্থতার সমর্থনে কোন এম সিও দাখিল করছেন না। ফলে দরখাস্তকারীপক্ষ যে প্রতিপক্ষকে মূল মামালার ফল ভোগ হতে বঞ্চিত করছেন তা বলার অপেক্ষা রাখে না। সার্বিক বিবেচনায় অদ্যকার সময়ের দরখাস্ত না-মঞ্জুর

করা হলো। মোকদ্দমাটি দরখাস্তকারীপক্ষের অনুপস্থিতি জনিত কারণে
থারিজযোগ্য।”

Upon reviewing the Judgment and order of both courts below, it appears that the petitioner failed to establish sufficient cause for his non-appearance before the court; therefore, the Miscellaneous case was rejected for his non-appearance with sound reasons. On the other hand, the appellate court below considered the Judgment of the court below and, after properly evaluating it and considering the submissions of both parties very judiciously and on sound reasons, affirmed the findings of the court below.

Considering the above facts, circumstances of the case, and discussions made herein above, I am of the firm view that both the courts below correctly appreciated and construed the documents and materials on record in accordance with the law in passing the judgment and order. Consequently, it appears that the impugned judgment and order do not suffer from any legal infirmity, so the impugned Judgment is well founded in accordance with law and based on the materials on records, which cannot be interfered with by this court exercising revisional power under Section 115(1) of the code.

Resultantly, the Rule is discharged with cost.

The Judgment and order dated 23.10.2023 passed by the learned Additional District Judge, 2nd Court, Rajshahi, in Miscellaneous Appeal No.68 of 2022 dismissing the appeal and affirming the Judgment and order dated 26.04.2022 passed by the learned Senior Assistant Judge, Bagmara, Rajshahi in Miscellaneous Case No.34 of 2019 is hereby affirmed.

Communicate this Judgment at once.

.....
(MD. SALIM, J).