

Present:
Mr. Justice Md. Salim

CIVIL REVISION NO.6124 OF 2023

Md. Zalal Uddin Bhuiyan
..... *Plaintiff-Petitioner.*

-VERSUS-

Md. Samim Uddin Bhuiyan and others
..... *Defendants-Opposite parties.*

Mr. Al Ahasan Lasker, Advocate
..... *For the petitioner.*

Mr. Md. Faruque Hossain, Advocate
..... *For the opposite parties*

Heard on 04.12.2025

Judgment on 18.12.2025

By this Rule, the opposite parties were called upon to show cause as to why the judgment and order dated 30.08.2023 passed by the learned Joint District Judge, 3rd Court, Sirajgonj in Miscellaneous Appeal No.35 of 2022 set aside ex parte decree in allowing the appeal and reversing the judgment and order dated 19.06.2022 passed by the learned Assistant Judge Kazipur, Sirajgonj in Miscellaneous Case No. 12 of 2015 rejecting the Miscellaneous case 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.

Facts, in a nutshell, for disposal of the Rule, are that the petitioner herein, as plaintiff, instituted Other Class Suit No.136 of 2011 before the Assistant Judge, Kazipur, Sirajgonj, for cancellation of the deed described in the schedule of the plaint. The defendant entered an appearance in the suit and filed a written statement, denying all material allegations against him. Subsequently, the learned Assistant Judge of Kazipur, Sirajgonj, decreed the suit by an ex parte judgment and decree dated 4th June, 2015.

Thereafter, the defendant, as petitioner, filed Miscellaneous Case No. 12 of 2015 before the Assistant Judge, Kazipur, Sirajgonj, under Order IX, Rule 13, read with Section 151 of the Code of Civil Procedure, for the restoration of the suit after setting aside the ex parte judgment and decree.

The decree-holder, as the opposite party, contested the case by filing a written objection denying all the material allegations.

Subsequently, the learned Assistant Judge, Kazipur, Sirajgonj, by the judgment and order dated 19th June, 2022, dismissed the Miscellaneous Case.

Being aggrieved by and dissatisfied with the above judgment and order dated 19.06.2022, the defendant-appellant preferred Miscellaneous Appeal No.35 of 2022 before District Judge, Sirajgonj.

Eventually, the learned Joint District Judge of the 3rd Court, Sirajgonj, by the judgment and order dated 30.08.2023, set aside the ex parte judgment and decree, allowed the appeal, and reversed those passed by the trial court below.

Being aggrieved by and dissatisfied with the above, the plaintiff-opposite party as petitioner filed this Civil Revision under section 115(1) of the Code of Civil Procedure before this court and obtained the present Rule and the order of status quo, which has been extended from time to time.

Mr. Al Ahasan Lasker, the learned advocate appearing on behalf of the petitioner, submits that before the pronouncement of the ex parte judgment

and decree, the summons was duly served upon the defendants and the learned assistant judge while rejected the Miscellaneous Case considering the same reasonably but the appellate court below disbelieving the same and misconstrued the above facts and circumstances set aside the ex parte judgment decree and allowed the appeal.

Mr. Md. Faruque Hossain, the learned advocate appearing on behalf of the opposite parties, submits that the appellate court below, having considered the material evidence on record very judiciously, found that the summons was not duly served upon the defendant. Therefore, the court of appeal below very justifiably allowed the appeal and set aside the ex parte judgment and decree.

It appears that the opposite party herein, as the petitioner, filed the instant Miscellaneous Case for setting aside the ex parte judgment and decree under Order IX Rule 13 of the Code of Civil Procedure.

The Order IX Rule 13 of the Code of Civil Procedure provides that an ex parte 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, it appears that the learned Assistant Judge rejected the Miscellaneous Case on the ground that the judgment-debtor petitioner failed to prove that he was reasonably apprehended when the suit was called on for hearing of the ex parte judgment. The application under Order IX Rule 13 was not filed within the period of limitation.

On the contrary, the appellate court below, while setting aside the judgment of the trial court below, observed that:-

"বিজ্ঞ নিম্ন-আদালত তার আদেশে সমন জারীর বিষয় আলোচনা না করে পি.ডব্লিউ-১ এর সাক্ষ্য প্রদত্ত বিষয়ের উপর সিদ্ধান্ত প্রদান করেন। আদেশ অনুযায়ী, পি.ডব্লিউ-১ এর জেরার বক্তব্য, "মূল অপর প্রকার ১৩৪/১১ নং মোকদ্দমায় ডিক্রি প্রাপ্ত হয়ে নালিশী দলিলের ভলিয়ম সংশোধন করেছে কিনা জানি না, দলিলগুলি সম্পর্কে আমার ব্যক্তিগত ধারণা নাই। প্রতিপক্ষ তিনটি দলিল মূলে ডিক্রি পেয়েছে। ঐ দলিলগুলি জাল বলে আদালত ডিক্রি দিয়েছে। জাল দলিলের মামলায় আমি আসামী ছিলাম।" উক্ত বক্তব্য

দ্বারা প্রতিপক্ষের উপর সমন জারী হয়েছিল কি হয় নাই এ বিষয়টি প্রতিষ্ঠিত হয়নি বরং নথি পর্যালোচনায় দেখা যায় যে, সমন রিপোর্ট অনুযায়ী, "১-১১ ও ১৩-১৪ নং বিবাদীগণের পদাতিক সমন একটি সমন ফরমে জারীর জন্য প্রেরণ করা হলে ১-৩, ৫ ও ৭-১৪ নং বিবাদীগণকে হাজির পেয়ে সমনের বিষয় অবগত করাই। ৭-৯ নং বিবাদীগণকে বাসস্থানে সাময়িকভাবে গড় হাজির পাই। বাসস্থানে ৬ নং বিবাদীকে হাজির পাইয়া সমনের মর্ম বিষয়ে জ্ঞাত করাই। ৬ নং বিবাদী সমনের বিষয় জ্ঞাত হয়ে নিজ নাম স্বাক্ষর করে। ৭-৯ নং বিবাদীপক্ষে ৭/৮ নং বিবাদীর ভাই এবং ৯ নং বিবাদীর ছেলে নকল সমন গ্রহণ করেন। ১-৩ ও ১০-১৪ নং বিবাদীগণ সমন গ্রহণ করতে অস্বীকার করায় তাদের ঘরের বেড়ার সাথে নকল সমন লটকিয়ে জারি করেন।"

In the instant case, it appears from the record that the ex parte judgment was pronounced on 04.06.2015, and the applicant came to know about the judgment and decree on 22.07.2015 and filed the Miscellaneous Case on 26.07.2015. Moreover, considering the materials on record, it appears that the appellate court below considered the evidence correctly held that the summons was not duly served upon the defendant. Therefore, it seems that the defendant was reasonably prevented when the suit was called on for an ex parte hearing.

Considering the above facts and circumstances, I am of the firm view that the appellate court very judiciously considered the material evidence on record and set aside the judgment and order of the learned Assistant Judge. On the contrary, the learned Assistant Judge did not at all construe the material evidence on record and erroneously rejected the Miscellaneous Case. Thus, I do not find merit in the Rule.

Resultantly, the Rule is discharged with cost.

The order of stay and status-quo granted when this Court issued the Rule is vacated.

Communicate this judgment at once.

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(Md. Salim,J).