

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)**

Present:

Mr Justice Abdur Rahman

Civil Revision No. 3500 of 2024

In the matter of

The Mayor, Chalna Paurasava, Khulna

... Defendant 16/opposite party

Petitioner

-Versus-

Mst. Romisa Begum and others

... Plaintiffs-Petitioners

Opposite parties

Mr Tapan Kumar Bepary, Adv

....For the petitioner

Mr Rafiqul Islam (Hiru), Advocate

...for the opposite parties

Date of hearing and Judgment:

05.07.2026 A.D., Sunday, 21 Ashar 1433 B.S.

JUDGMENT

Abdur Rahman, J:

This Rule, by granting Leave, was issued at the instance of the petitioner under the authority of Section 115(4) of the Code of Civil Procedure, 1908, calling upon the opposite party Nos. 1 to 7 to show cause as to why the judgment and order dated 20.03.2024 passed by the learned District Judge (In-Charge), Khulna in Civil Revision No. 16 of 2024, whereby the learned District Judge set aside Order No. 196 dated 04.02.2024 passed by the learned Senior Assistant Judge, Fultola, Khulna in Title Suit No. 586 of 2007 rejecting the application for amendment of the plaint, so far as it related to striking out the name of defendant No. 16, should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

Simultaneously, this Court was pleased to stay further proceedings of Title Suit No. 586 of 2007 pending before the learned Senior Assistant Judge, Fultola, Khulna

for a period of 3 (three) months, which was subsequently extended from time to time.

The nucleus of facts, in brief, is that the plaintiff instituted Title Suit No. 586 of 2007 against the present petitioner as defendant No. 16, along with other defendants, seeking correction of the deed, recovery of khas possession, and a perpetual injunction. During the course of the trial, the plaintiff-opposite party Nos. 1 to 7 filed an application under Order VI Rule 17 of the Code of Civil Procedure, 1908, praying for amendment of the plaint, *inter alia*, by striking out the name of defendant No. 16 from the array of parties.

Upon hearing the parties, the learned Senior Assistant Judge, by Order No. 196 dated 04.02.2024, partly allowed the application for amendment but rejected the prayer for striking out the name of defendant No. 16, holding that his presence was necessary for the effective adjudication of the dispute.

Being aggrieved thereby, the plaintiff preferred Civil Revision 16 of 2024 before the learned District Judge, Khulna. Upon hearing the parties, the learned District Judge (In-Charge), by the impugned judgment and order dated 20.03.2024, allowed the revision and set aside the order of the trial Court to the extent of refusing deletion of defendant No. 16.

Feeling aggrieved by the said judgment and order, the petitioner has preferred this revisional application and obtained the present Rule.

The opposite parties entered appearance through learned Advocate by filing Wakalatnama and contested the Rule without filing any counter-affidavit.

Mr Tapan Kumar Bepary, the learned Advocate appearing on behalf of the petitioner, submits that the learned revisional Court below committed an error of law, resulting in an error in the decision, occasioning a failure of justice by allowing the revision without properly considering the facts and materials on record.

He further submits that the trial Court, upon proper appreciation of the pleadings and evidence, rightly found that defendant No. 16 was a necessary party to the suit and therefore correctly rejected the prayer to strike out its name. According to the learned Advocate, the revisional Court below reversed the well-reasoned order of the trial Court without assigning any convincing reason and passed a non-speaking order, thereby acting illegally and with material irregularity.

The learned Advocate further contends that defendant No. 16 had already entered an appearance, filed his separate written statement, cross-examined the plaintiff's witnesses and adduced evidence as a defence witness. The trial had practically concluded, and the suit had already been fixed for argument. At such a belated stage, deletion of defendant No. 16 from the array of parties would seriously prejudice his vested right to contest the suit and would amount to non-suiting him

without lawful justification. He therefore prays for the Rule to be made absolute.

Conversely, Mr Rafiquul Islam Hiru, the learned Advocate appearing on behalf of the opposite parties, contends that the learned District Judge committed no illegality in interfering with the order passed by the trial Court. He submits that it is a well-settled principle of civil jurisprudence that the plaintiff, being the *dominus litis* or master of the suit, enjoys the prerogative to determine the person or persons against whom relief is sought and against whom the action is intended to proceed. Consequently, where the plaintiff no longer claims any relief against defendant No. 16 and seeks deletion of his name from the array of parties, there exists no legal bar to allowing such a prayer, provided that the said defendant is not a necessary party for the effective and complete adjudication of the controversy involved in the suit.

The learned Advocate further submits that the plaintiffs, in their application for amendment, assigned

specific and cogent reasons in support of the proposed amendment, including the prayer for striking out the name of defendant No. 16. However, the learned trial Court, without properly appreciating or addressing those reasons, allowed the application only in part and refused the prayer for deletion of the said defendant without assigning any sustainable legal basis. The learned District Judge, upon a proper appreciation of the facts and the applicable principles of law, rightly corrected the error committed by the trial Court and passed the impugned judgment and order.

The learned Advocate, finally posits that the impugned judgment suffers from no illegality, infirmity, jurisdictional error, or material irregularity warranting interference by this Court in the exercise of its revisional jurisdiction. He, therefore, prays that the Rule be discharged.

I have considered the submissions of the learned Advocates for both sides, perused the revisional

application, the impugned judgment and the materials on record.

The records reveal that the evidence of both parties had already been concluded and the suit was fixed for final argument on 19.11.2023. Thereafter, the plaintiff filed an application under Order VI Rule 17 of the Code seeking amendment of the plaint, including deletion of the name of defendant No. 16.

Upon hearing the parties, the learned trial Court partly allowed the amendment but refused the prayer for deletion of defendant No. 16. In doing so, the learned trial Court observed:

"দরখাস্তে ১৬ নং প্রি়াদীর নাম কেন কর্তন হ়ে এই মর্মে সুস্পষ্টভাবে ালা নাই। াদীর দরখাস্তের ১৬ নং প্রি়াদীর নাম কর্তন াদে াকী অংশ সংশোধন করা হ়োক। ১৬ নং প্রি়াদীর নথি তল়, ২-৬/৯-১৪ নং প্রি়াদীর আরজি খারিজ দরখাস্ত দুইটি আপাতত নথিভুক্ত করা হ়লো। ইতিপূর্বে মোকদমার সাক্ষ্যগ্রহণ সমাপ্ত হ়য়েছে। অত্র মোকদমা াুক্তিতর্ক শুনানীর জন্য ধার্ক করা হ়োক।"

On the other hand, the learned District Judge observed as follows:

"নথি পর্যালোচনান্তে ১৬নং পিএদীর নাম কর্তনের প্রার্থনা সম্বলিত আরজী সংশোধনের দরখাস্তের ঐক্য সন্তোষজনক ও গ্রহণযোগ্য প্রতিপন্ন হওয়ায় মোকদমার সুষ্ঠু নিষ্পত্তির স্বার্থে উক্ত দরখাস্ত মঞ্জুরযোগ্য মর্মে প্রতিভাত হয়।"

A careful comparison of the above observations unmistakably demonstrates that the learned District Judge failed to address or dislodge the reasons assigned by the learned trial Court. The trial Court specifically found that the plaintiff had not furnished a satisfactory explanation as to why the name of defendant No. 16 should be deleted after completion of the trial. It also appears from the record that defendant No. 16 actively participated throughout the proceedings by filing a written statement, cross-examining the plaintiff's witnesses, and adducing counter evidence.

However, it is a settled canon of the common law adversarial system that the plaintiff is the *dominus litis*, or

master of the suit. This doctrine recognizes that the institution and conduct of civil litigation primarily rest with the plaintiff, who alone is entitled to determine the cause of action to be pursued, the reliefs to be claimed, and the persons against whom such reliefs are sought. As a general rule, no defendant can insist upon remaining a party to the litigation merely because he was originally impleaded, nor can the Court ordinarily compel the plaintiff to continue proceedings against a person from whom no relief is claimed. The only recognized exception to this rule arises where the Court is satisfied that the person sought to be excluded is a necessary party, whose presence is indispensable for an effective, complete and enforceable adjudication of the issues involved, or where the applicable statutory provisions mandate his continuance in the proceedings. Thus, the doctrine of ***dominus litis*** is not absolute, but it remains the governing code subject only to such limited exceptions as are provided by law.

However, in the case at hand, it is visualised that the defendant 16 has actively participated in the trial and the suit has reached the stage of final argument; his deletion from the array of parties cannot ordinarily be permitted absent compelling and legally sustainable reasons. The plaintiff cannot, at such an advanced stage of the proceeding, seek to nonsuit a contesting defendant without explaining the necessity thereof. Such deletion would not only prejudice the defendant's accrued right but also adversely affect the proper and effective adjudication of the dispute.

The learned Subordinate Revisional Court, without examining these material aspects and without meeting the findings recorded by the trial Court, merely observed that the amendment was necessary for proper disposal of the suit. Such a cryptic finding, unsupported by any independent reasoning, cannot be sustained in law.

It is a settled principle that a revisional Court, while interfering with a discretionary order passed by the trial

Court, must assign cogent reasons demonstrating that the discretion was exercised arbitrarily, illegally, or with material irregularity. In the absence of such reasons, interference with the order of the trial Court is wholly unwarranted.

In the aforementioned facts and circumstances of the case, I am of the considered view that the learned District Judge committed an error of law, resulting in an error in the decision, occasioning a failure of justice, by setting aside the well-reasoned order of the learned trial Court.

Accordingly, the Rule has merit.

In the result, the Rule is made absolute without any order as to costs.

The judgment and order dated 20.03.2024 passed by the learned District Judge (In-Charge), Khulna, in Civil Revision No. 16 of 2024 are hereby set aside.

Consequently, Order No. 196 dated 04.02.2024 passed by the learned Senior Assistant Judge, Fultola, Khulna, in Title Suit No. 586 of 2007 is hereby restored.

The learned Senior Assistant Judge, Fultola, Khulna, is directed to proceed with Title Suit No. 586 of 2007 from the stage at which it stood and dispose of the suit expeditiously, preferably within the shortest possible time, in accordance with law and without being influenced by any observations made in this judgment on the merits of the case.

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

The office is directed to communicate a copy of this judgment to the Court concerned forthwith.

(Abdur Rahman, J)