

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

**Present:**  
**Mr. Justice Md. Moinul Islam Chowdhury**

**CIVIL REVISION NO. 1148 OF 2011**

**IN THE MATTER OF:**

An application under section 115(1) of the  
Code of Civil Procedure. (Against Order)

-And-

**IN THE MATTER OF:**

Emdadul and others

--- Plaintiff-Appellant-Petitioners.

-Versus-

Md. Bellal Khalipha and others

--- Defendant-Opposite Parties.

No one appears

--- For the Plaintiff-Appellant-Petitioners.

Mr. A. S. M. Khalequzzaman, Advocate

---For the Defendant-O. P. Nos. 1 and 2.

**Heard on: 09.07.2023 and 13.07.2023.**

**Judgment on: 13.07.2023.**

At the instance of the present plaintiff-appellant-petitioners, Emdadul and others, this Rule was issued upon a revisional application filed under section 115(1) of the Code of Civil Procedure calling upon the opposite party Nos. 1 and 2 to show cause as to why the impugned Order dated 17.01.2011 passed by the learned Additional District Judge, Madaripur in Restoration Case No. 03 of 2010 allowing the same and *setting aside* the exparte judgment and decree dated 13.05.2010 passed

by the learned Additional District Judge, Madaripur in the Title Appeal No. 33 of 2009 allowing the appeal and reversing the judgment and decree dated 30.04.2002 passed by the learned Joint District Judge and Senior Assistant Judge (In-Charge), Sadar, Madaripur in the Title Suit No. 101 of 2002 should not be *set aside*.

The relevant facts for disposal of this Rule, *inter-alia*, are that the present petitioners as the plaintiffs filed the Title Suit No. 101 of 2002 for declaration of title and also a declaration that the settlement of the suit land obtained by the defendant No. 1 through the Settlement Case No. XII-M-11/99-2000/XII-MC-279/2000 which was illegal, collusive and fraudulent. The plaint further contains that the father of the plaintiff-petitioners purchased the suit land on auction on 11.08.1979 and the land was mutated to the father of the plaintiffs and on the basis of that the plaintiffs paid rent of the suit land and got the rent receipt. Subsequently, the suit land was recorded in the names of the plaintiffs in BRS Khatian. The suit property is not a khas land. The defendant No. 1 threatened to the plaintiffs on 10.08.2002 not to enter into the suit land by showing the above-mentioned

settlement from the government which had been obtained by practicing fraud.

Defendant No. 1 contested the suit by filing a written statement contending, *inter alia*, that the plaintiffs' case is false and subcontracted.

After hearing the parties the learned Joint District Judge and Senior Assistant Judge (In-Charge), Sadar, Madaripur dismissed the suit by the judgment and decree dated 30.04.2009.

Being aggrieved the present petitioners as the appellants preferred the Title Appeal No. 33 of 2009 in the court of the learned District Judge, Madaripur who transferred the matter to the learned Additional District Judge, Madaripur for hearing and disposal and immediately after receiving the file of the Title Appeal No. 33 of 2009 from the learned District Judge, Madaripur who took the matter for hearing on 13.05.2010. The present respondents appeared in the appeal and filed an application for adjournment. The said Additional District Judge, Madaripur took the appeal for hearing and the present petitioners as the respondents made their submissions. Therefore, the learned appellate court below only heard the respondents without considering the adjournment application filed by the defendant-

opposite parties, the learned appellate court below-passed the Order No. 19 dated 17.01.2011 allowing the said application by *setting aside* the exparte judgment and decree dated 13.05.2010.

Being aggrieved the present defendant-opposite party Nos. 1 and 2 filed an application under Order 41 (XLI) rule 21A of the Code of Civil Procedure for rehearing the Title Appeal No. 33 of 2010 afresh by restoring the original number of it dated 13.05.2010 passed the original Title Appeal No. 33 of 2009. The learned Additional District Judge, Madaripur allowed the said application by *setting aside* the exparte judgment and decree dated 13.05.2010 by his Order No. 19 dated 17.01.2011. Being aggrieved the present petitioners filed this revisional application under section 115(1) of the Code of Civil Procedure for challenging the legality of the said order of restoration and rehearing of the appeal and the Rule was issued thereupon.

This matter has been appearing in the daily cause list for a long period of time but no one appears to support the Rule despite several messages that have been given from this court as to the appearance and hearing of this matter. However, the petitioners took a ground in the revisional application that the learned Additional District Judge, Madaripur has committed an

error of law resulting in an error in the decision occasioning failure of justice in *setting aside* the judgment and decree dated 13.05.2010 inasmuch as the opposite party Nos. 1 and 2 have filed the application on 20.05.2010 for *setting aside* the order dated 13.05.2010 restoring appeal only but not the judgment and decree dated 13.05.2010 respectively passed in the Title Appeal No. 33 of 2009, as such, the impugned order is liable to be *set aside*.

The present Rule has been opposed by the present opposite party Nos. 1 and 2.

Mr. A. S. M. Khalequzzaman, the learned Advocate, appearing on behalf of the present opposite parties submits that the present petitioners as the plaintiffs failed to prove their own case in the learned trial court, therefore, preferred an appeal which was heard by the learned Additional District Judge, Madaripur who passed the judgment and decree *ex parte* disregarding the prayer for adjournment of the hearing of the appeal but the learned appellate court below without considering the application for adjournment/time on the same day already receipt of the appeal file sent from the learned District Judge, Madaripur, on the other hand, the learned appellate court below

upon receipt of an application under Order XLI (41) rule 21A of the Code of Civil Procedure and restored the appeal by passing the impugned judgment and order and thereby committed no error of law but the present petitioners obtained the present Rule by misleading the court.

The learned Advocate further submits that the provision of Order XLI (41) rule 21A of the Code of Civil Procedure gave authority to the learned appellate court below directly rehearing an appeal that was heard *ex parte*. Upon paying a cost not acceding Tk. 1000/- but the applicant must have failed such an application within 30 (thirty) days from the date of the order passed, as such, the learned appellate court below properly construed the provision of law by passing the impugned judgment and order, as such, this court does not need to interfere upon the said judgment and order.

Considering the above submission made by the learned Advocate appearing for the opposite parties and also considering the revisional application filed by the present petitioners under section 115(1) of the Code of Civil Procedure along with the annexures therein, in particular, the impugned Order No. 19 dated 17.01.2011, it appears to this court that the present

petitioners as the plaintiffs filed a title suit claiming title and cancellation of the Settlement Case which was ordered in favour of the present opposite parties. The suit was heard by the learned trial court and obtained all require evidence adduced and produced by the parties. The learned trial court after completing the long hearing of the said matter came to a conclusion and decision by dismissing the title suit.

The present plaintiff-petitioners preferred an appeal before the learned District Judge, Madaripur who transferred the same for disposal to the learned Additional District Judge, Madaripur who was pleased to allow the appeal on merit by the judgment and decree dated 13.05.2010 and thereby reversing the judgment and decree passed by the learned trial court. The learned Additional District Judge, Madaripur received the file of the appeal and stated hearing of the appeal. It further appears that the present opposite parties as the respondents filed an application for adjournment but the learned appellate court below took up the matter for hearing without allowing any adjournment and immediately allowed the said application by *setting aside* the exparte judgment and decree dated 13.05.2010 by his Order No. 19 dated 17.01.2011, as such, the present petitioners as the

appellants presented their own case. Finally, the learned appellant court below passed the judgment and order only to hear the appellants and without making any decision as to the application for adjournment submitted by the present opposite parties.

The settled principle of law is that a judgment should be passed after hearing both parties within a reasonable time. In the instant case, the learned appellate court below took an unreasonable step to hear only a party immediately after receiving the record of appeal from the learned District Judge, Madaripur. The learned appellate court below took up to rush hearing of the appeal within the same day of receiving the lower court records of the appeal which was sent from the learned District Judge, Madaripur. As the lower court record of this case has not been called for by this court at the time of Rule issuing order and generally lower court record does not call for when the revisional application is filed against the order, as such, I do not have a benefit to examine this fact.

The settled principle of law is that a case must be decided upon hearing both the parties and also after considering the evidence adduced and produced by the parties.



In the instant case, the present petitioners' case was dismissed by the learned trial court but the learned appellate court below hurried to take this matter on the same day on receipt of the record of the appeal which is not acceptable for applying judicial mind, as such, this is a case of non-consideration of evidence or documents adduced and produced by the parties before the court. However, the learned appellate court below passed the impugned judgment in the following manner:

...“অত্র আপীলের নথি পর্যালোচনায় দেখা যায় বিগত ১৩/০৫/২০১০ ইং তারিখ দেওয়ানী আপীল অত্রাদালতে বদনী হইয়া আসে এবং ঐ তারিখে একতরফাভাবে উক্ত আপীল শুনানী অত্র আদালত প্রদান করা হয়। দরখাস্তকারী বিবাদী রেসপনডেন্ট উক্ত ১৩/০৫/২০১০ ইং তারিখের একতরফা রায় ও ডিক্রী রদ ও রহিতক্রমে আপীল পুনঃ শুনানীর নিমিত্তে বিগত ২০/০৫/২০১০ ইং তারিখে দেঃ কাঃ বিঃ আইন ৪১ আদালতের ২১এ বিধি অনুসারে এফিডেভিটসহ অত্র দরখাস্ত আনয়ন করিয়াছে। দরখাস্তকারী বিবাদী রেসপনডেন্ট দেঃ কাঃ বিঃ আইন ৪১ আদেশের ২১এ বিধির সুবিধা ইতিপূর্বে অত্র আপীলে গ্রহণ করে নাই।”...

In view of the above decision taken under Order 41 (XLI) and rule 21A of the Code of Civil Procedure by the learned appellate court below and the principle laid down in the above provision of law of the Code of Civil Procedure, I am of the opinion that the learned appellate court below made decision on

the basis of law and upon application of judicial mind. As such, this is not a case for interference upon the impugned judgment and order. The main intention of the court is to apply a judicial mind in order to make a decision in a case by obtaining evidence in hearing the appeal for finalizing the decision of the matter on merit.

Accordingly, I do not find merit in the Rule.

In the result, the Rule is hereby discharged.

The interim order passed by this court at the time of issuance of this Rule staying the operation of the impugned and order dated 17.01.2011 passed by the learned Additional District Judge, Madaripur in the Restoration Case No. 03 of 2010 and all further proceedings of the Title Appeal No. 33 of 2009 now pending before the court of the learned Additional District Judge, Madaripur for a period of 6 (six) months and later on the same was extended till disposal of this Rule are hereby recalled and vacated.

The learned Additional District Judge, Madaripur is hereby directed to rehear the appeal after notifying the present petitioners, as no one appears before this court, without issuing

any notice upon the respondent-opposite parties' responsibility for informing the opposite parties.

The learned Additional District Judge, Madaripur is also directed to hear and conclude the trial for a decision within 8 (eight) months from the date of the receipt of this judgment and order.

The concerned section of this court is hereby directed to communicate this judgment and order to the learned Additional District Judge, Madaripur immediately.