

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.09 OF 2025

In the matter of:

An application under Section 115(1) of the Code of Civil Procedure.

And

Md. Azahar Ali

... Petitioner

-Versus-

Md. Akramul Kabir Khan

.... Opposite party

Mr. Sheikh Habib-Ul Alam with

Mr. Mohammad Mehedhi Hassan, Advocates

....For the petitioner.

Mr. Taposh Dutta with

Mr. Shuvrojit Chakrabarty and

Mr. Arpan Chakraborty, Advocates

.... For the opposite party.

Heard and Judgment on 12.02.2025.

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued calling upon the opposite party to show cause as to why the impugned judgment and order dated 29.08.2024 passed by the learned Additional District Judge, 5th Court, Satkhira in Civil Revision No.07 of 2023 dismissing the same and affirming the order dated 09.01.2023 passed by learned Joint District Judge, 1st Court, Satkhira in Money Suit No.03 of 2019 rejecting the application of the petitioner filed under Order 7 Rule 11 read with Section 151 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 short are that opposite party as plaintiff instituted above money suit for a decree for Taka 64,00,000/- alleging that the defendant sitting in the Dhaka residence of his brother Monirul Islam contracted to sale his apartment to the plaintiff for Taka.1,07,00000/-(one crore seven lac) and on receipt of Taka 35,00,000/- defendant executed and signed an agreement on 25.03.2009 and subsequently by several installments the defendant received Taka 40,00,000/- by cheque. But concealing all above facts the defendant transferred above flat to Sumona Rahman by registered kobla deed on 20.11.2009.

In above suit the defendant submitted a petition under Order 7 Rule 11 of the Code of Civil Procedure for rejection of plaint alleging that for the selfsame cause the plaintiff filed C.R. Case No.43 of 2019 and the defendant was sent to prison and for the same cause the plaintiff has filed above false suit to subject the defendant to unnecessary sufferings.

On consideration of submissions of the learned advocate for the respective parties the learned Joint District Judge, 1st Court rejected above petition.

Being aggrieved by above judgment and order of the learned Judge of the trial Court above defendant as petitioner preferred Civil Revision No.07 of 2023 to the District Judge, Satkhira which was heard by the learned Additional District Judge,1st Court who rejected above revision and affirmed the judgment and order of the trial Court.

Being aggrieved by and dissatisfied with above judgment and order of the Court of revision below above petitioner as petitioner moved to this with this petition under Section 115(4) of the Code of Civil Procedure and obtained this Rule.

Mr. Sheikh Habib-Ul Alam, the learned Advocate for the petitioners submits that the cause of action of this suit arose at the Dhaka residence of the brother of the defendant namely Monirul Islam and money was paid to the defendant at Dhaka but the plaintiff has instituted above suit for recovery of above money in the Court of Joint District Judge, Satkhira which is not tenable in law.

On the other hand Mr. Taposh Dutta, learned Advocate for the opposite party submits that admittedly both the plaintiff and defendant are permanent residents of Satkhira and the plaintiff has rightly instituted above suit in the Court of Joint District Judge, Sathkira under Section 20A of the Code of Civil Procedure, 1908 and on correct appreciation of materials on record the learned Judge of the Court of revision below rightly dismissed the revision and affirmed the lawful judgment and order of the trial Court which calls for no interference.

I have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record.

It is well settled that a plaint is subject to rejection under Order 7 Rule 11 of the Code of Civil Procedure if from a plain reading of the plaint it appears that the same is barred by any law or the plaint does not disclose any cause of action or the plaint was undervalued and

insufficient Court fees were paid and despite a direction from the Court the plaintiff fails to make proper valuation and supply deficit court fees.

Section 16 of the Code of Civil Procedure provides that if the subject matter is immovable property then that suit must be filed in the Court within whose territorial limits above immovable property is situated.

But the subject matter of above suit is not immovable property but money and the plaintiff filed above suit for recovery of Taka 64,000,00/-. Section 20 of the Code of Civil Procedure provides that such a suit shall be filed in the Court where the defendant resides or carries on business or works for gain. There is no claim that the defendant does not reside or does business or works for gain in Satkhira. Even if the defendant claims that he does not live or carries on business or works for gains in the district of Satkhira that would be a contentious fact and on the basis of such contentions facts no plaint can may be rejected. In fact no plaint is liable to rejection for presentation in a Court without jurisdiction, pecuniary or territorial. Above plaint be returned to the concerned Advocate for presentation in the proper Court of law.

In above view of the materials on record I am unable to find any illegality or irregularity in the impugned judgment and order of the learned Additional District Judge nor I find any substance in this Civil Revision under Section 115(1) of Code of Civil Procedure and the Rule

issued in this connection is devoid of the substance and liable to be discharged.

In the result, the Rule is hereby discharged. The order of stay granted at the time of issuance of the Rule is vacated.

MD. MASUDUR RAHMAN
BENCH OFFICER