

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

Present:

**Mr. Justice S. M. Saiful Islam**

**Civil Revision No. 4186 of 2024**

IN THE MATTER OF:

An application under section 115(4) of the  
Code of Civil Procedure.

And

IN THE MATTER OF:

Shokina Begum

---- Defendant-Petitioner.

-Versus-

Nur Mohammad and others.

---- Plaintiff-Opposite Party.

Mr. Md. Moksud Sheikh with

Mr. Mridul Datta, Advocates

---- For the Petitioner.

Mrs. Saida Akter with

Mr. M. Mohiuddin Yousuf, Advocate

--- For the Opposite Party No. 1.

**Heard On: 29.01.2026 and 03.03.2026.**

**Date of Judgment: 09.03.2026.**

**S. M. Saiful Islam, J.**

This Rule was issued on leave upon an application under section 115(4) of The Code of Civil Procedure, 1908, calling upon the opposite party No. 1 to show cause as to why the

judgment and order dated 23.05.2024 passed by the learned Special District Judge, Noakhali in Civil Revision No. 06 of 2022 rejecting the revisional application and thereby affirming the order dated 18.01.2022 passed by the learned Senior Assistant Judge, Sadar, Noakhali in Title Suit No. 125 of 2016 rejecting the application under Order 7 Rule 11 along with section 151 of the Code of Civil Procedure shall not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

Facts relevant for the disposal of this Rule is that the opposite party No. 1 as plaintiff instituted Title Suit No. 125 of 2016 against the defendant-petitioner and others in the Court of Senior Assistant Judge, Sadar, Noakhali praying for setting aside the judgment and decree dated 11.03.2012 passed on compromise in the Title Suit No. 08 of 2012 in the Court of Senior Assistant Judge, Sadar, Noakhali, alleging that the decree was fraudulent, forged and inoperative.

Defendant Nos. 1-3 (present petitioner and others) are contesting the suit by filling written statement. They also filed an application under Order 7 Rule 11 read with section 151 of the Code of Civil Procedure praying for rejection of the plaint of that suit. In the said application for rejection of plaint, the defendant-petitioner contended that there was a compromise between the

parties in Title Suit No. 08/2012 through arbitration conducted by the local elites and a compromise deed (*aposhnama*) was executed. They further contended that the said suit was decreed in terms of the compromise and the said decree remains in force. It was also contended that the plaintiff had no subsisting cause of action in view of the said compromise and decree. On these grounds the defendant-petitioner prayed for rejection of the plaint.

Learned Trial Court after hearing the parties rejected the application by order dated 18.01.2022. Learned Trial Court held that the facts stated in the application cannot be decided without taking evidence in trial. Accordingly, learned trial Court disallowed the application for rejection of plaint. Being aggrieved by that order, defendant-petitioner filed Civil Revision No. 06 of 2022 in the Court of District Judge, Noakhali. That Revision on transfer was heard by the Learned Special District Judge, Noakhali who upon hearing the parties disallowed the revisional application and affirmed the order of the Trial Court by the impugned judgment and order dated 23.05.2024. In the impugned judgment and order learned Court held,

“ বাদী তার আরজীতে দেওয়ানী ০৮/২০১২ নং মোকদ্দমা দায়ের ও এডিআর মূলে আপোষ ডিক্রী পর্যন্ত যাবতীয় কার্যক্রম তৎক্ষণাত আশ্রয়ে করা হয়েছে মর্মে সুনির্দিষ্ট অভিযোগে দেওয়ানী ১২৫/২০১৬ নং মোকদ্দমা আনয়ন করেছেন। বাদীর আরজীতে উল্লেখিত উক্ত তৎক্ষণাত সংক্রান্ত অভিযোগ সমূহ

উপযুক্ত সাক্ষ্যাদি দ্বারা প্রমাণ সাপেক্ষ বিষয়। অপরদিকে উক্ত মোকদমার সমন জারী হয়েছে, যথাযথভাবে এডিআর হয়েছিল এবং কোনো প্রকার তৎপরতা ঘটেনি সেটিও সাক্ষ্য দ্বারা প্রমাণ সাপেক্ষ বিষয়। তাই দেওয়ানী ১২৫/২০১৬ নং মোকদমাটি দেওয়ানী কার্যবিধি ৭ আদেশ ১১ বিধির অধীন খারিজযোগ্য নহে। বিচারিক আদালত উক্ত মোকদমা খারিজ না করে বিবাদী প্রার্থী পক্ষের দরখাস্ত নামঞ্জুর করে কোন বেআইনী সংঘটন করেননি। তাই উক্ত আদেশ বিষয়ে হস্তক্ষেপ করার অবকাশ নেই।”

Being aggrieved by that impugned judgment and order, the defendant-petitioner filed this revisional application and obtained the Rule. At the time of issuance of the Rule, further proceedings of the Title Suit No. 125 of 2016 was stayed for a period of 6 (six) months. Subsequently by order dated 13/03/2025 the said stay was extended for a further period of 1 (one) year.

Learned Advocate Mr. Md. Moksud Sheikh along with the learned Advocate Mr. Mridul Datta, appearing on behalf of the defendant-petitioner, submits that the learned Courts below committed an error of law resulting an error in the decision occasioning failure of justice. He claims that the present suit is barred by the principles of *res judicata* and this suit has been filed only to harass the petitioner so that the petitioner cannot enjoy the decree of the Title Suit No. 08 of 2012. He further submits that the compromise deed of the Title Suit No. 08 of 2012 was signed by both the parties and both the parties were examined in open court regarding the execution of the compromise decree. He finally submits that both the courts

below failed to consider that the present suit is a fruitless suit which should be buried at its inception so that no further time is consumed in such fruitless litigation. In support of his submission, learned Advocate refers to the case of *Abdul Jalil Vs. Islami Bank* reported in 64 DLR (AD) 107.

On the other hand, learned Advocate Mrs. Saida Akter along with the learned Advocate Mr. M. Mohiuddin Yousuf, appearing on behalf of the opposite party, submits that the learned Appellate Court has rightly disallowed the revisional application filed by the defendant petitioner. She further submits that it is settled principles of law that the plea of *res judicata* cannot be decided without trial. She also asserts that the defendants obtained the compromise decree in Title Suit No. 08/2012 by practicing fraud upon the present plaintiff and such fraud will be proved by evidence at the time of trial. She finally submits that the learned Courts below have not committed any error of law in the impugned judgment and order and it has not occasioned any failure of justice. In support of her contention, the learned Advocate relied on the case of *BATB Co. Ltd. Vs. Shamsunnahar* reported in 66 DLR (AD) 80.

Heard the learned Advocates for both the parties. Perused the revisional application and annexures therewith and the impugned judgment and order.

On perusal of the record, it appears that the defendant-opposite party No. 2 Safik Ullah, filed Title Suit No. 08/2012 as plaintiff and he obtained the decree against the defendant Nos. 1-3 on compromise. The plaintiff of the present Title Suit No. 125/2016, Nur Mohammad, was defendant No. 1 in the Title Suit No. 08/2012. He has claimed in the plaint of the present suit that he never appeared in the Court in Title Suit No. 08/2012 and did not apply for any compromise in that suit. He further claims in the plaint that the signatures appearing in his name on the written statement, *Wokalatnama* and power of attorney in the said suit are forged and that he did not sign those documents. He further claims that the said documents in that suit have been created through fraud and forgery in collusion with his divorced wife Shakina Begum (present petitioner). Such allegations of fraud and forgery, as alleged in the plaint cannot be adjudicated without taking evidence and are matters to be determined at trial. In the application for rejection of the plaint, the defendants claimed that the compromise deed was duly executed in presence of the local elites and that the plaintiff has no possession over the suit land. These claims of the defendants in the application for rejection of plaint also require to be proved by evidence. Although the defendant- petitioner has contended that the present suit is barred by the principles of *res judicata* for an earlier

decree in Title Suit No. 08/2012, the plaintiff has filed the suit seeking to set aside the decree passed in Title Suit No. 08/2012 on the ground of fraud. No such issue has previously been adjudicated between the parties; therefore, the question of *res judicata* is not attracted in the present case. Moreover, in determining whether a plaint is liable to be rejected or not, the Court has to confine itself to the averments made in the plaint and documents filed therewith. Plaint cannot be rejected on the basis of the statement made by the defendant in a petition or in the written statement. In the instant case, upon a plain reading of the plaint, no lawful ground appears to exist for which plaint can be rejected. Learned Advocate for the petitioner has referred to the case of *Abdul Jalil Vs. Islami Bank* reported in 64 DLR (AD) 107. However, on perusal of the said decision, it appears that the facts and circumstances of the present case are distinguishable from those of the cited case; accordingly, the said decision is not applicable to the present case.

It is well settled principle of law that a revisional Court may exercise its power when there is an error of law resulting in an error which occasioned failure of justice. In view of the discussions made above, I am of the opinion that, in the instant case, first revisional court has rightly affirmed the order of the Trial Court by the impugned judgment and order. No error of law

or miscarriage of justice is found in the impugned judgment and order and accordingly the impugned judgment and order does not call for any interference.

In the facts and circumstances, I find no merit in the Rule.

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

Order of stay passed earlier by this Court at the time of issuance of this Rule is hereby vacated.

The learned trial Court is hereby directed to dispose of the suit as expeditiously as possible, preferably within a period of 1 (one) year from the date of receipt of this judgment and order.

Let a copy of this judgment and order be communicated to the Court concerned forthwith.