

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

Present:

Mr. Justice Md. Khairul Alam

Civil Revision No. 6242 of 2024

Haidar Matubbar and others.

..... -Petitioners.

-Versus-

Shamsu Sheikh and others.

..... Opposite parties.

Mr. Md. Anamul Hossain, Advocate

..... For the petitioners.

Mr. Laxman Biswas, Advocate

..... For the opposite parties.

Heard on: 17.07.2025, 23.07.2025 &
Judgment on: 30.07.2025

This Rule was issued calling upon the opposite parties to show cause as to why the judgment and order dated 12.08.2024 passed by the learned Joint District Judge, 2nd Court, Gopalganj in Title Appeal No. 119 of 2022 rejecting the application for amendment of the written statement under Order VI rule 17 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.

Relevant facts for disposal of the Rule herein are that the present opposite parties as plaintiffs instituted Title Suit No. 132 of 2019 in the Court of Assistant Judge, Muksudpur, Gopalganj seeking declaration of title. The present petitioners as defendants contested the said suit by filing a written statement denying all material allegations made in the plaint. The learned Assistant Judge, Muksudpur, Gopalganj after hearing the parties by the judgment and decree dated 04.09.2022 decreed the suit. Against the said judgment and decree, the petitioner filed Title Appeal No. 119 of 2022 before

the Court of District Judge, Gopalganj. Subsequently, the suit was transferred to the Court of Joint District Judge, 2nd Court, Gopalganj for disposal. In the said appeal, the petitioners filed an application for the amendment of the written statements. The learned Joint District Judge, 2nd Court, Gopalganj after hearing the parties by the order dated 12.08.2024 rejected the application, holding inter alia, that the proposed amendment is already in the written statement and that a similar application was rejected earlier.

Against the said order the petitioner filed the civil revision and obtained the Rule and an order of stay of all further proceedings of the appeal.

Mr. Md. Anamul Hossain, the learned Advocate appearing for the petitioners submits that the proposed amendment is necessary for determining the controversy between the parties; therefore, the courts below can exercise it's discretion in respect of allowing a subsequent application for amendment. He next submits that the proposed amendment would not change the nature and character of the suit. In support of the submission, he refers to the case of Abul Hasnat vs. Md. Alauddin reported in 63 DLR(2011) 141.

Per contra, Mr. Laxman Biswas, the learned Advocate appearing for the opposite parties submits that the proposed amendment is already with the written objection, therefore, the Court below rightly passed the impugned order. He further submits that a similar application for amendment of the written objection was rejected by the Court earlier and the petitioners did not move before the higher forum against the same, therefore, the Court below rightly rejected the application.

I have considered the submissions of the learned Advocates for the contending parties perused the impugned order, and other materials on record.

It appears that the present opposite parties as plaintiffs filed a suit for declaration of title which was decreed. The defendants preferred an appeal and in the appeal filed an application for amendment of the written objection. The application was rejected. The defendants subsequently filed a similar application, which was rejected by the impugned order mainly on the ground that a similar application for amendment of the written objection was rejected earlier therefore, the subsequent application was barred by the principle of res judicata.

Now the question that calls for consideration is whether the court below was justified in rejecting the application on the ground of res judicata.

In the case of Emdaduddin v. Atiqur Rahman, reported in 42 DLR 416, this Division dealt with the issue of res judicata concerning the interlocutory orders of the proceedings and decided to the effect:

“The principle of res judicata applies also as between two stages of the same litigation to this extent that a court, whether the trial court or a higher court, having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceeding.”

I have gone through the case cited by the learned Advocate for the petitioners, and find that the facts and circumstances of the case are not the same and identical to those of the instant case and the principle laid down therein is also not applicable in the present case.

Considering the facts and circumstances of the present case in the light of the above-quoted view of this Division, I am of the opinion that the court of appeal below rightly passed the impugned order.

The learned Advocate for the petitioner failed to show that the court below committed any error of an important question of law resulting in an erroneous decision occasioning failure of justice.

Therefore, I do not find any reason to interfere with the impugned order.

Accordingly, the Rule is discharged.

However, there is no order as to costs.

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

Let a copy of this judgment and order be communicated at once.

Kashem, B.O