

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

Present:

Mr. Justice Md. Khairul Alam

Civil Revision No. 6569 of 2024

Biplob Guha and another

-Petitioners.

-Versus-

Bipul Dey and another.

..... Opposite parties.

Mr. Khan Nahid Hassan, Advocate

..... For the petitioner.

Mr. Moshiur Rahman, Advocate

..... For the opposite parties.

Heard on: 20.08.2025, 27.08.2025 and

Judgment on: 28.08.2025.

This Rule was issued calling upon the opposite parties to show cause as to why the judgment and order dated 21.09.2023 passed by the learned District Judge, Sherpur in Civil Revision No. 09 of 2020 allowing the revision and thereby affirming the order dated 10.11.2020 passed by the learned Senior Assistant Judge, Sadar, Sherpur in Other Class Suit No. 162 of 2019 rejecting the application filed by the petitioners under Order VII Rule 11 along with section 151 of the Code of Civil Procedure for rejection of the plaint 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 are that the opposite parties herein, being the biological parents of the minor Angshuman, instituted the suit impleading the present petitioners as defendants praying for a declaration that the claim of the defendants that Angshuman was given in

adoption to them was illegal and not binding upon the plaintiffs. The case of the plaintiffs, in short, is that on 19.02.2017, the petitioners being the maternal uncle and aunt of Angshuman, had taken him to their house for a few days but did not return him thereafter and subsequently, claimed that the plaintiffs had given Angshuman adoption to them. It has also been alleged that they filed Writ Petition No. 4579 of 2018 to hold the custody of Angshuman by the defendants without lawful authority. In the said writ petition, the Hon'ble High Court Division held that the civil Court is the appropriate forum to adjudicate the issue and the petitioners are at liberty to take recourse to that forum, if so advised, hence they were constrained to file the Suit.

In the said suit, the defendants filed an application under Order VII, Rule 11 of the Code of Civil Procedure (shortly, the Code), contending that the plaintiffs had given the minor to them in adoption, so the suit was devoid of any cause of action and liable to be rejected at the limini. The petitioners further contended that the matter of the minor's welfare had already been settled in a writ petition, and thus the present suit was barred by the principle of res judicata.

The learned Senior Assistant Judge, Sadar, Sherpur, after hearing the parties, by the order dated 10.11.2020 rejected the application, observing that the plaint disclosed a cause of action and that the question of adoption and res judicata was the matter to be determined at trial. Against the said order, the petitioners filed Civil Revision No. 09 of 2020 in the Court of District Judge, Sherpur. The learned District Judge, Sherpur by the impugned judgment and order dated 21.09.2023 dismissed

the same and thereby affirmed the judgment and order passed by the trial court.

Being aggrieved thereby the petitioner filed this civil revisional application and obtained the Rule.

Mr. Khan Nahid Hassan, the learned Advocate appearing for the petitioners submits that the validity of the adoption and custody has already been determined by the High Court Division in Writ Petition No. 4579 of 2018, so the civil suit lacks a fresh cause of action and, therefore, the plaint does not disclose any new or maintainable cause of action and the plaint is liable to be rejected. He next submits that a plaint with untrue facts does not constitute a cause of action of a suit and therefore, the plaint is liable to be rejected.

Mr. Moshir Rahman, the learned Advocate appearing for the petitioners submits that the real question in controversy between the parties cannot be adjudicated without evidence, so the courts below rightly rejected the application for rejection of the plaint.

Heard the learned Advocate for the contending parties and perused the revisional application and other materials on record.

Admittedly, the impugned order was passed under Order VII rule 11 of the Code which runs as follows:

“11. The plaint shall be rejected in the following cases:-

(a) where it does not disclose a cause of action:

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so:

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so:

(d) where the suit appears from the statement in the plaint to be barred by any law.”

On a plain reading of the provision, it appears that a plaint can only be rejected if (1) the plaint does not disclose a cause of action; (b) the plaintiff failed to correct the valuation of the suit within a time fixed by the Court; (c) the plaintiff failed to pay the deficit stamp-paper within the time allowed by the Court; and (d) the suit appears from the statement in the plaint to be barred by any law.

As per the above provision of law, the plaint shall be rejected where the plaint does not disclose a cause of action. The plea that there is no cause of action for the suit or that the cause of action for the suit is false or baseless is not the same as to say that the plaint does not disclose any cause of action.

On perusal of the plaint, it is clear that the opposite parties alleged that the minor was taken by the petitioners and did not return. This, on the face of it, constitutes a cause of action for the suit, which is triable by the Court of civil jurisdiction. The petitioners' claim of adoption is a factual matter that requires adjudication by adducing evidence in a trial. It cannot be adjudicated in an application under Order VII, Rule 11 of the Code.

It appears that the writ petition in question relates to the unlawful custody of the minor, does not conclusively determine the civil rights of the parties with respect to adoption under the present suit. Hence, the bar

of res judicata is not attracted. Besides that, our apex Court in the Case of Mahbubul Haq v. A. Kader Munshi, reported in 2000 BLD (AD) 82 held that the question of res judicata cannot be decided from a reading of the plaint and should be decided at the time of trial. In the Case of Shahabuddin v. Habibur Rahman, reported in 50 DLR (AD) 99 our apex Court also held that the question of limitation and bar of res judicata involves the determination of facts and law necessitating investigation and no such plea of limitation or res judicata, a plaint should not be rejected.

In view of the above, this Court finds no illegality or infirmity in the impugned judgment and order. This Rule is devoid of any merit.

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/BO