

District-Bhola.

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

Present:

Mr. Justice Md. Toufiq Inam

Civil Revision No. 6074 of 2024.

Md. Abul Kalam Master and another.

----Defendant-Appellant-Petitioners.

-Versus-

Md. Abu Bakar Siddique and others.

---- Opposite Parties.

Mr. Md. Saifur Rahaman, Advocate

----For the Defendant-Appellant-Petitioners.

Mr. Md. Humayun Bashar, Advocate

----For the Opposite Parties.

Heard On: 23.10.2025.

And

Judgment Delivered On: 10.11.2025

Md. Toufiq Inam, J.

This Rule, under section 115(1) of the Code of Civil Procedure, was issued at the instance of the petitioner calling upon the opposite parties to show cause as to why the judgment and order dated 10.09.2024 passed by the learned Senior District Judge, Bhola in Civil Appeal No. 09 of 2023, rejecting the petitioner's application for restoration of the said appeal, should not be set aside.

The opposite party No.1, as plaintiff, had instituted Title Suit No. 178 of 2022 before the Court of Senior Assistant Judge, Charfashion,

Bhola seeking a declaration of title and further declaration that Miscellaneous Case No. 274 F/21-22 and Memo No. 31.10.0925.001.03.01221-310 dated 03.04.2022 were illegal and void. The suit, having been contested by the present petitioner, was decreed by judgment dated 25.01.2023, decree signed on 29.01.2023.

Aggrieved by the decree, the petitioner preferred Title Appeal No. 09 of 2023 before the learned District Judge, Bhola. While the appeal was pending, the petitioner filed an application on 07.06.2023 stating that the parties had reached a local settlement and accordingly prayed for withdrawal/non-prosecution of the appeal.

The record shows that the appellate Court examined the petitioner himself regarding the voluntariness and correctness of the said statement. Being satisfied upon such verification, the learned Senior District Judge allowed the prayer and dismissed the appeal as withdrawn by order dated 03.08.2023. Subsequently, the petitioner filed an application contending that the alleged settlement was incomplete, conditional, and ultimately did not materialize, and further asserting that the withdrawal was procured under fraudulent circumstances. On such grounds he prayed for restoration of the appeal. The learned Senior District Judge, however, rejected the application by a non-speaking order dated 10.09.2024.

Mr. Md. Saifur Rahaman, learned Counsel for the petitioner, submits that the earlier withdrawal was conditional and based on a fraudulent or misconceived mediation effort which ultimately collapsed. He argues that the impugned order contains no reasoning, fails to examine whether the compromise actually existed or failed, and thereby deprives the petitioner of his valuable right of appeal. It is his submission that the rejection of the restoration prayer by a cryptic order amount to a material irregularity causing failure of justice.

Conversely, Mr. Md. Humayun Bashar, learned Counsel for the opposite parties, opposes the Rule contending that the petitioner was personally examined before the withdrawal was accepted and therefore the dismissal of the appeal was a voluntary and conclusive act. In such circumstance, according to him, restoration is legally impermissible and the only possible recourse could be an application for readmission under the appropriate provision, but not restoration of an appeal withdrawn on the appellant's own verified statement.

The principal questions that arise for determination are: (i) whether the dismissal of the appeal as withdrawn after the appellant's personal examination constituted a final and voluntary act or was vitiated by fraud or conditionality; (ii) whether, in the given circumstances, the appeal can be restored or whether the proper remedy lies in seeking

readmission; and (iii) whether the impugned non-speaking order rejecting the restoration application is legally sustainable.

It is not in dispute that the petitioner himself prayed for withdrawal and was examined and verified by the Court. Prima facie this suggests a conscious and voluntary act on his part, and a dismissal on withdrawal cannot ordinarily be equated with dismissal for default. Even so, a party may still seek revival where it is demonstrated that the withdrawal was conditional, the condition subsequently failed, and such failure occurred without negligence or mere change of mind. Whether these elements exist in this case is a factual matter requiring judicial determination, which the appellate Court was duty-bound to address.

This Court finds that the impugned order contains no reasons whatsoever. A judicial order which affects the substantive right of appeal must disclose application of mind and must reflect consideration of the grounds urged. The learned Senior District Judge did not determine whether the alleged settlement was genuine or had failed, nor whether sufficient cause was established for revival, nor whether restoration or readmission was the legally correct procedural avenue. The failure to record reasons amounts to a material irregularity in the exercise of jurisdiction. Consequently, the impugned order cannot be sustained and the matter requires

reconsideration by the appellate Court upon proper judicial evaluation of the issues involved.

For the foregoing reasons, **the Rule is made absolute.**

The impugned judgment and order dated 10.09.2024 passed by the learned Senior District Judge, Bhola in Civil Appeal No. 09 of 2023 are hereby set aside.

The learned Senior District Judge is directed to rehear and dispose of the petitioner's application afresh within 3 (three) months of receipt of this judgment, upon recording clear and reasoned findings on: (i) whether the earlier withdrawal was conditional and, if so, whether the condition failed; (ii) whether sufficient and bona fide cause exists for revival of the appeal; and (iii) whether restoration or readmission is the proper procedural remedy. Both parties shall be afforded adequate opportunity of hearing.

There shall be no order as to costs.

Let this judgment be communicated at once.

(Justice Md. Toufiq Inam)

