

**In the Supreme Court of Bangladesh  
High Court Division  
(Civil Revisional Jurisdiction)**

Present:

**Mr. Justice Md. Riaz Uddin Khan**

**Civil Revision No. 3005 of 2024**

**IN THE MATTER OF :**

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

-And-

In the Matter of:

Sardar Md. Aminul Ehsan Hasan alias Serdar  
Md. Amimul Ehsan

...Defendant-Petitioner

Versus

Sardar Md. Mahmudul Hasan

...Plaintiff-Opposite Party

Mr. S.M. Mahbubul Islam, Advocate

...For the petitioner

Mr. Md. Abu Turab, Advocate

...For the Opposite Party

**Judgment on: 10.02.2026**

**Md. Riaz Uddin Khan, J-**

At the instance of the defendant petitioner Rule was issued asking the plaintiff opposite party to show cause as to why the judgment and decree dated 04.03.2024 (decree signed on 06.03.2024) passed by the District Judge, Joypurhat in Money Appeal No. 01 of 2023 dismissing the appeal and thereby affirming the judgment and decree dated 26.09.2023 (decree signed on 01.10.2023) passed by the Senior Assistant Judge, Sadar, Joypurhat in Money Suit No. 08 of 2021 decreeing the suit should not be set aside and/or such other or further order or orders should not be passed as to this Court may deem fit and appropriate.

At the time of issuance of the Rule the operation of the impugned judgment and decree was stayed initially for a period of 1(one) year on condition of payment of taka 3,00,000/-(three lac) to the trial court through chalan within 3(three) months which the petitioner complied.

The facts in a nutshell for disposal of this Rule is that the opposite party as plaintiff instituted Money Suit No. 08 of 2021 in the court of Senior Assistant Judge, Sadar, Joypurhat against defendant-petitioner for realization of Tk. 24 lac along with the compensation. The defendant purchased the scheduled land vide Registered Deed No. 7588 dated 16.08.2004 and after purchase he mutated the land vide Misc. Case No. 588(1-1)13-14 and opened separate Khatian being No. 9763. While the defendant had been owning and possessing the land, both the plaintiff and the defendant executed a contract for sale deed (bainanama) of the said land at the consideration of Tk. 41,00,000/- and as per the contract the defendant received Tk. 24,00,000/- on 30.12.2020 and both the plaintiff and defendant went to local Sub-Registry Office and completed all the necessary formalities of the registration of the bainanama. It was mentioned in the said bainanama that the defendant received Tk. 24,00,000/- and the rest amount would be paid within the next 5 months and after that the sale deed would be executed and registered. But the defendant mortgaged the land to Islami Bank and obtained loan of Tk. 12,00,000/- by executing

mortgage deed being No. 3906 dated 10.06.2014. One of the terms of the said mortgage deed was that in case of failure of payment of loan, the bank authority is entitled to sale out the mortgaged land to adjust the loan liability. The defendant at the time of entering the contract for sale did not disclose to the plaintiff about the loan he took from the bank mortgaging the land. The defendant committed fraud in entering into a contract for sale without disclosing the liability of the property to Islami Bank and took Tk. 24,00,000/- on 30.12.2020. For that reason the bainanama dated 30.12.2020 would be considered as fraudulent and not binding. The plaintiff suffered loss and damage by paying Tk. 24,00,000/- as advance and for that he is entitled to get back Tk. 24,00,000/- along with compensation, the defendant refused to pay, hence the suit.

The defendant contested the suit by filing written statement contending *inter alia* that he lawfully purchased the land and had been possessing the same. To meet urgent business need he mortgaged the land to Islami Bank, Joypurhat Branch within the knowledge of the plaintiff on 10.06.2014 by executing mortgage deed No. 3905 and power of attorney deed No. 3906 and took Tk. 12,00,000/- as loan. After withdrawing the money, the defendant invested in his business but due to loss sustained, he closed his business and joined into a job at Dhaka. As the defendant could not pay the installments, the loan amount was increasing. Both the plaintiff and the defendant

are brothers. As per the instruction of the plaintiff, the defendant took decision to adjust the loan on selling the mortgaged property. The plaintiff himself expressed interest to purchase the land and the defendant thought that his land would remain to his brother and entered into a contract for sale at the consideration price of Tk. 41,00,000/-. Accordingly both the parties mutually decided to execute a registered contract for sale deed and the plaintiff would pay Tk. 24,00,000/- to the defendant. It was also agreed upon that the plaintiff would pay the money of the bank and also would take registration of the land on payment of the rest amount of Tk. 17,00,000/-. The plaintiff never paid Tk. 24,00,000/- to the defendant either cash or in cheque prior, after or on the date of registration. As the plaintiff is his full brother, the defendant in good faith registered the land in his name. Subsequently the plaintiff denied to adjust the money of the bank on various pretexts. Then the defendant requested the plaintiff to cancel the contract for sale deed dated 30.12.2020 lawfully but the plaintiff fraudulently filed this suit without paying the amount mentioned in the contract for sale deed. Since the plaintiff did not pay the amount mentioned in the deed to the defendant, the plaintiff is not entitled to get the relief as prayed for and the suit is liable to be dismissed.

In the trail Court The plaintiff examined 4 witnesses while the defendant examined 2 witnesses in support of their respective cases. After

consideration of the evidence on record adduced by the parties the learned Senior Assistant Judges, Sadar Court, Joypurhat decreed the suit by the judgment and decree dated 26.09.2023.

Against the aforesaid judgment and decree, the defendant as appellant preferred Money Appeal No. 01 of 2023 before the learned District Judge, Joypurhat who after hearing the appeal by the impugned judgment and decree dated 04.03.2024 dismissed the appeal.

Being aggrieved by and dissatisfied with the said judgments and decrees the defendant-petitioner filed the instant Civil Revision.

Mr. S.M. Mahbubul Islam, the learned Advocate appearing on behalf of the petitioner submits that PW-1 in his cross-examination admitted that there are shops and some lands in front of the disputed land and their dwelling hut situated at the east side of the shop and both the plaintiff and the defendant reside in the same premises and in the same house. PW-1 also admitted that there is also a suit pending between the parties over 1 decimal of land and also admitted that the defendant earlier was involved with business and at present he worked in Dhaka having a job. Although PW-1 denied the suggestion that there was a sign board established by Islami Bank notifying about the mortgage but other evidence shows that the facts of mortgage was within the knowledge of the plaintiff but both the courts below ignored the admitted facts and passed decree.

The learned advocate then submits that DW-2 in his evidence stated that he was present at the time of conversation of sale of the disputed land and it was agreed between two brothers that the plaintiff would adjust the loan of Islami Bank. DW-2 was present at the Registry Office and no transaction took place in the said premises of the said office. As both the plaintiff and the defendant reside in the same house, it is also improbable that such a huge amount of cash money would be carried to the Registry Office. The court of appeal below did not consider that the findings of the trial court is wrong to that effect. The plaintiff did not adduce any witness to prove the oral agreement between the parties.

Mr. Islam also submits that the plaintiff entered into a contract with the defendant for purchasing 5 decimals of commercial plot at the price of Tk. 41,00,000/- which is a very low price and the defendant entered into that contract relying upon the words of his brother to adjust the loan in good faith. Further the disputed land was mortgaged before the execution of the contract for sale deed which is an illegal contract creates no legal and penal liability in the eye of law.

The learned advocate for the petitioner further submits that placing reliance over the unregistered mortgage deeds (Exhibits- 5 and 7) even not executed over non judicial stamp rather yellow demi paper shows complete non application of judicial mind by the trial court and by believing the plaintiff's claim of collecting Tk.

8,00,000/- and Tk. 9,00,000/- respectively from the PWs by the plaintiff by mortgaging his land has been created for the purpose of this suit endorsing back date the trial court committed error of law resulting in an error in decision occasioning failure of justice.

Mr. Islam lastly submits that the dispute is in between two brothers and though the petitioner did not receive any money from the plaintiff but signed on the bainapotro in a bonafide intention having full trust on his brother that he would pay the loan money. However, since both the court below did not believe it, this Court may asked the petitioner to pay the decretal amount in installments on humanitarian ground considering his present financial condition and further urged that the payment of interest should not be imposed upon the petitioner since the judgment and decree of the trial court was stayed by the appellate court as well as by this Court.

On the other hands Mr. Md. Abu Turab, the learned advocate for the opposite party submits that both the courts below concurrently found that the defendant received taka 24 lac from the plaintiff but is totally unable to give registry of the suit land because it has already been mortgaged in bank. These concurrent findings of the fact should not be interfered by this Court sitting in a revision. The learned advocate supporting the findings of the court below further submits that the petitioner make payment of taka 24(twenty four) lacs on 30.12.2020 and meanwhile

more than 5 (five) years have been passed but received only taka 3(three) lacs. So, the direction given by the courts below to pay the interest in accordance with law and equity should be maintained by this Court.

I have heard the learned advocates of both the parties, perused the revisional application, lower court records including the plaint, written statement, depositions of both the parties and documents adduced by them.

It appears from the record that the plaintiff claimed that the defendant received taka 24(twenty four) lacs from the plaintiff on the date of registration of agreement for sale deed at the office of the registrar and to prove this claim the plaintiff himself as PW-1 and PW-2 deposed that at the office of the registry the plaintiff give taka 24(twenty four) lacs to the defendant. The plaintiff further claimed that for the payment of that money he took loan from two persons (PWs-3 & 4) by mortgaging his land. To prove this contention he adduced PWs-3 and 4. On perusal of their depositions it appears that both of them categorically deposed that they paid taka 8 lac and 9 lac respectively and submitted documents marked as exhibits-5 and 7 respectively. PW-3 also submitted bank statements in this connection which has been marked as exhibit-6. On the other hand the defendant (DW-1) as well as DW-2 deposed that in the office of the registrar the defendant did not receive any money from the plaintiff. When both parties resorted to prove their

claim by oral evidence in that case the legal position is that in view of the conflicting evidence by the parties with regard to their claim, the court should give emphasis on documentary evidence. In the present case in the registered agreement for sale (bainapotra) itself stated that the defendant took taka 24 lac from the plaintiff and the trial court as well as the court of appeal below found that fact in favour of the plaintiff. The depositions of the DWS-2 to 4 also strengthen that fact.

On the question of revisional jurisdiction under section 115 of the Code of Civil Procedure in 43 DLR (AD)-82 their lordships held that a revisional court acts beyond its jurisdiction in setting aside concurrent finding of fact, when there is no misreading and misappreciation of the evidence on record. in 70 DLR (AD) 168 it was held: "The jurisdiction under section 115 of the Code of Civil Procedure is very limited. It has not empowered the revisional court to sit on appeal and take into consideration new facts placed before it through affidavit. It has the power to interfere with the judgment only when there appears error of law apparent on the face of the record occasioning failure of justice". In 73 DLR (AD) 156 their Lordships observed that *to believe or disbelieve a witness is within the domain of the Courts below and the High Court Division in exercise of its revisional jurisdiction cannot interfere in such domain unless there is misreading or non-reading of evidence on record by the Courts below.* In the present case in our scrutiny we also found that the

plaintiffs has proved his case of payment of taka 24 lac to the defendant which admittedly has not been repaid. Since both the courts believed the evidence of the plaintiff sitting in revisional jurisdiction, I do not find any reason to interfere with the concurrent findings of fact as apparently there is no misreading of evidence on record.

The learned advocate for the petitioner raised the question of law that whether the direction of payment of interest should be calculated for the whole period or should be excluded from the time the execution of payment was stayed by the Appellate Court as well as by the Supreme Court (High Court Division). In my opinion since at the instance of the defendant the Appellate Court as well as the Supreme Court (HCD) stayed the operation of the judgment and decree the period should not be excluded. Hence, I do not find any reasons to interfere with the judgment and decree passed by the courts below.

However, on considering humanitarian ground the judgment-debtor defendant is at liberty to pay the rest of the amount of decretal money by 3(three) installments within 1(one) year with interest as decreed.

In the facts and circumstances the registered agreement for sale (bainanama) dated 30.12.2020 has no effect/validity as the plaintiff has already forgo his right on the land on the basis of that agreement for sale.

With this observation the Rule is **discharged** with cost. The order of stay earlier passed by this Court stands vacated.

Send down the Lower Court Records along with a copy of this judgment at once.