

Present:-

Mr. Justice Mahmudul Hoque

Civil Revision No. 201 of 2025

Syed Ashraful Haque (Rajon) and others
..... Petitioners

-Versus-

Syed Akhtarun Nessa

..... Opposite Party

Mr. M. Masud Alam Chowdhury, Advocate
with

Ms. Ainun Nur Chowdhury, Advocate

.... For the Petitioners

Mr. Syed Shahidur Rahman, Advocate with

Mr. Md. Humayun Kabir Manju,

Mr. Mohammad Alauddin-Al-Azad and

Mrs. Tania Sultana, Advocates

... For the Opposite Party

Judgment on 24.07.2025

In this revision Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 01.01.2025 passed by the learned Additional District Judge, 2nd Court, Dhaka in Title Appeal No. 162 of 2024, disallowing the appeal and thereby affirming the judgment and decree dated 15.02.2024 passed by the learned Senior Assistant Judge, 1st Court, Dhaka in Title Suit No. 318 of 2016 decreeing the suit ex parte should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

Facts relevant for disposal of this revision, in short are that, the plaintiff-respondent-opposite party filed Title Suit No. 318 of 2016 against the petitioners for declaration of title and recovery of possession claiming that the properties described in the schedule to the plaint originally allotted to one Ahmed Ali, son of late Abbas Ali who was a Non-Bengali. After Independence of Bangladesh in 1971 said Ahmed Ali opted to take citizenship of Pakistan and took shelter in Mirpur Bihari Camp, leaving the suit property in the possession of his son Danesh Ali. The schedule property declared abandoned and included in the list of abandoned property under President Order 16 of 1972 and vested in the Government. Said Danesh Ali while possessing the scheduled properties applied to the Government Authority for allotment of the same in his favour. After Considering his prayer and observing all necessary and legal formalities Housing Authority allotted the schedule properties to him for 99 years by a registered Lease Deed No. 3771 dated 01.08.1993.

Thereafter, said Danesh Ali transferred the scheduled property to the plaintiff by registered Deed No. 5508 dated 26.07.1995 and delivered possession of the suit land. After purchase the plaintiff got her name mutated in the khatian on 14.05.2014 and living in the house with her

husband Syed Shahidul Haque. Thereafter, the plaintiff allowed her brother-in-law Habibul Haque, father of the defendants to live therein as permission possessor and maintain the suit properties in the absence of the plaintiff in 2005. Said Habibul Haq died on 23.01.2015 and the defendants continued in possession of the suit land and tried to damage the properties, consequently, the plaintiff asked them to handover possession of the suit house to her withdrawing permission, but they did not comply with the demand. Thereafter, on 06.12.2015 the plaintiff served a legal notice through her appointed lawyer upon the defendants asking them to surrender possession of the suit land to her or to her attorney. But the defendants refused to hand over the possession of the property to the plaintiff. Hence the present Suit.

The defendant-appellant-petitioners contested the suit by filing written statement denying all the material statements made in the plaint and contended, inter alia, that the suit is not maintainable in its present form and also barred by limitation and defect of parties. Case of the defendants are that the schedule property described in the schedule originally belonged to one Ahmed Ali, a Non-Bengali through H.S 6550/C dated 19.06.1961 on H.S basis. After getting allotment of the

property Ahmed Ali paid lease money and the concerned authority registered the lease deed No. 1159 dated 31.01.1962 in his favour. Ahmed Ali used to live in the suit house. Due to his urgent need of money, he sold the property to the predecessor of the defendants, Syed Habibul Haque on 30.01.1972 and delivered possession of the suit property. Syed Habibul Haque used to work in Bangladesh Road Transport Corporation and he participated in the Great War of Liberation in 1971 and was captured by the Pakistani Army on 07.08.1971 while fighting and took him to the cantonment, subjected him to inhuman torture and sent him to jail. Syed Habibul Haque was released from jail on 16th December 1971. After that, Syed Habibul Haque continued to live in the suit house with family. While Syed Habibul Haque was in possession the concerned authorities conducted a local investigation on 15.11.1983 regarding possession of houses and in the investigation, they found Syed Habibul Haque is in possession of House since 30.01.1972, as mentioned in the investigation report.

Thereafter, Syed Habibul Haque applied for allotment/lease of the suit land in the prescribed form on payment of prescribed fees on 30.06.1986 which was duly received by the authority concerned. Syed

Habibul Haque got electricity, water and telephone connection/line in his name while living with his family in the suit house, Md. Atarul Haque, the father of Syed Habibul Haque, was immediately summoned during the survey held by Dhaka City Corporation and his name was recorded as possessor of the land. Syed Habibul Hoque applied for gas connection, Demand Note was issued in his name. The plaintiff is the wife of Syed Habibul Haque's younger brother. Plaintiff's husband was a wealthy person who had conniving hand in misappropriating other's property by creating documents. When the plaintiff's husband tried to evict Syed Habibul Haque from the house by creating forged documents and claiming the ownership of the suit property in the name of the plaintiff, Syed Habibul Haque filed a Petition Case No. 467 of 2010 against the plaintiff under section 145 of the Criminal Procedure in the court of the learned Executive Magistrate. Dhaka and the learned court passed an order to the O.C. Shah Ali Police Station to investigate the case and during investigation police found possession of Syed Habibul Hoque and submitted report in his favour.

Syed Habibul Hoque died on 28.08.2015. Thereafter, the defendants filed Title Suit No. 310 of 2015 for permanent injunction

against the plaintiff's husband wherein he contested the suit by filing written statement and admitted that he is not in possession of the suit property and also did not claim that he gave permission to the predecessor of the defendants to live therein. During pendency of the case, the defendants got an order of temporary injunction against the plaintiff's husband. After hearing, the application was rejected by the learned trial court and against the said rejection order defendants filed Misc. Appeal No. 300 of 2015 before the Learned District Judge, Dhaka and got an order of Status Quo. Thereafter, the case was abated due to the death of the plaintiff's husband. The plaintiff has no title and possession in the suit property, as such, the suit is liable to be dismissed with costs. During pendency of the suit defendant-appellant-petitioners got an order of temporary injunction in their favour restraining the plaintiff from disturbing with the possession of the defendants vide order dated 08.09.2019.

The learned Senior Assistant Judge, 1st Court, Dhaka framed issues for determination of the dispute and during trial, the plaintiff examined single witness as PW-1 and filed documents in support her claim which were duly marked as exhibits. The defendants did not file any document.

Thereafter, on 30.01.2024 the suit was fixed for cross examination of PW-1 (wrongly written PW-2). On the date fixed the engaged lawyer of the defendant-appellant-petitioners filed petition for time through his junior on the ground of his illness and prayed adjournment for 15 days, but the learned court allowed 9 days time only. The learned trial court while fixing very short date for this case than the other cases in his court such as, in November 2023 fixed 4 dates on 01.11.2023, 09.11.2023, 20.11.2023 and 28.11.2023 which was abnormal. On 30.01.2024, the defendants heard in the corridor of the court that the plaintiff telling his engaged lawyer that the judgment will be in his favour and he has already managed the court. Thereafter, the defendant-appellant-petitioner preferred Transfer Misc. Case No. 63 of 2024 before the learned District Judge, Dhaka for transferring the suit in any other court and the learned court fixed the matter for admission hearing on 25.04.2024.

On 15.02.2024 the trial court fixed the suit for ex parte hearing. The defendant filed petition praying for adjournment till disposal of the Transfer Misc. Case No. 63 of 2024, but the learned trial court rejected the prayer for time and decreed the suit ex-parte vide judgment and decree dated 15.02.2024 .

Being aggrieved by and dissatisfied with the judgment and order dated 15.02.2024 passed by the learned Court of Senior Assistant Judge, 1st Court, Dhaka, the defendant-appellant-petitioner preferred Title Appeal No. 162 of 2024 before the learned District Judge, Dhaka. The appeal was heard by the learned Court of Additional District Judge, 2nd Court, Dhaka on transfer who after hearing disallowed the appeal by affirming the judgment of the trial court by the impugned judgment and decree dated 01.01.2025.

The plaintiff-opposite party then put the decree in execution by filing Title Execution Case No. 12 of 2024 which is now pending. At this juncture, the petitioner moved this Court by filing this revisional application under section 115(1) of the Code of Civil Procedure and obtained the present Rule and order of stay.

Mr. M. Masud Alam Chowdhury, learned Advocate appearing for the petitioner submits that predecessor of petitioners Syed Habibul Haque admittedly was in possession of the suit property and after his death present petitioners as heirs has been possessing the same. The plaintiff claimed that Syed Habibul Haque was a permissive possessor under the

plaintiff who was entrusted with the task of management of the property, letting out the same to the tenant and to collect rents from them.

He argued that the defendant-petitioners in their written statement categorically stated that Syed Habibul Haque purchased the suit property from original lessee of the Government named Ahmed Ali by an unregistered deed dated 30.01.1972. On the basis of said deed right from predecessor, the petitioners have been possessing the suit property by enforcing their right and title by letting out the same to the tenants. In support of his submissions he has referred some annexures filed by a supplementary affidavit showing that Syed Habibul Haque was in possession and a survey made by the concerned authority found him in possession of the suit property from 1972 as reflected in the report dated 15.11.1983. Thereafter, Syed Habibul Haque being possessor of the suit property applied for lease of the same in his favour by an application dated 18.06.1986 pursuant to a decision of the Housing Authority dated 24.04.1986, wherein, the committee decided to allot the suit property to the possessor upon realization of arrear rent and penalty. Application of Syed Habibul Haque was pending for consideration, but Syed Habibul Haque continued in possession of the suit property, by obtaining gas,

electricity and water connection in the suit property in his name and municipal holding also stand in the name of his father Atahar Ali.

He submits that while the petitioners by filing written statement contesting the suit before the trial court, and reached to peremptory hearing stage allowed adjournment to the defendant-petitioners giving very very short time and in the month of November the trial court fixed as many as 4(four) dates which was abnormally short. Because of fixing hearing of the date giving very short time, the defendants had reasonable apprehension that they will not get justice before the trial court. Consequently, they filed transfer Miscellaneous Case No. 63 of 2024 before the District Judge, Dhaka under Section 24 of the Code praying for transfer of the suit from the trial court to any other court of competent jurisdiction for disposal. The fact was duly communicated to the trial court by filing application stating that the miscellaneous case has been fixed for hearing admission on 25.04.2024 and time may be allowed till that date to enable defendants to bring order from the higher court but the trial court ignoring ultimate order of the superior court rejected the time petition and took the suit for disposal ex parte, accordingly, by judgment and order dated 15.02.2024 decreed the suit ex parte without affording

any opportunity to the defendant to cross examine the P.W. and to adduce witness and exhibits document on their part.

He submits that when a miscellaneous case under Section 24 of the Code of Civil Procedure is filed before the District Judge for transfer of the suit from the concern court, the Presiding Officer ought to have awaited for order to be passed by the learned District Judge, but the trial court ignoring the fact that the learned District Judge fixed the matter for hearing on 25.04.2024 took the matter for hearing and passed the decree ex parte. Had the trial court allowed the petitioners to cross examine the P.W. and adduce evidence as D.Ws. the result of the suit would have been otherwise, but because of depriving the defendants from cross examining the P.W., adducing D.Ws. and exhibiting document on their behalf the petitioners denied to get justice.

He submits that the defendant preferred Title Appeal No. 162 of 2024 before the District Judge, Dhaka. Eventually, said appeal was heard and disposed by the Additional District Judge, 2nd Court, Dhaka on transfer who after hearing by the impugned judgment and decree dated 01.01.2025 disallowed the appeal affirming the judgment and decree of the trial court.

He argued that the appellate court committed error in the decision in not sending the suit back on remand to the trial court affording opportunity to the defendants to place their case and to pass the judgment on contest. The appellate court while allowing the appeal failed to appreciate the fact that the judgment passed by the trial court *ex parte* ignoring that the petitioners already filed an application under Section 24 of the Code of Civil Procedure for transfer of the suit from the said court.

Mr. Masud finally submits that the defendants admittedly did not file any document before the trial court as well as before the appellate court, but by a supplementary affidavit they filed some photocopies of documents in support of their respective claim, claiming their possession in the suit property, payment of some utility bills and application for allotment of the suit property in favour of Syed Habibul Haque along with some other annexures. He argued that if the document so have been submitted before this Court are taken into consideration affording an opportunity to the defendants to adduce evidence before the trial court even before the appellate court by sending the suit on remand, the defendants have chance to win the case and the result would be otherwise, as such, he prays for making the rule absolute.

Mr. Syed Shahidur Rahman with Mr. Md. Humayun Kabir Manju, learned Advocates appearing for the opposite party submits that the property in question originally allotted to one Ahmed Ali by a registered deed of lease No. 1159 dated 31.01.1962 who was admittedly a Non-Bengali. During liberation war in 1971 said Ahmed Ali took shelter in the Mirpur Bihari Camp and took option for leaving Bangladesh for Pakistan, leaving the suit property under the management and control of his son named Danesh Ali. After independence of Bangladesh the property by operation of law under P.O. 16/72 comes within the purview of abandoned property. Said Danesh Ali being possessor and one of the heirs of original allottee Ahmed Ali applied to the Housing Authority for allotment of the same in his favour. After observing all necessary and legal formalities, Housing Authority allotted the suit property in favour of Danesh Ali for 99 years and executed and registered lease deed No. 3771 dated 01.08.1993 in his favour.

He submits that husband of the plaintiff Syed Shahidul Haque used to possess the suit house under Danesh Ali long before 1986. Danesh Ali in need of money proposed to sell the property to the plaintiff, accordingly, she agreed to purchase the same. Danesh Ali for the purpose

of transferring the suit property to the plaintiff obtained necessary permission from the Housing Authority, paid transfer fees and by a registered deed No. 5508 dated 26.07.1995 sold the property to the plaintiff and delivered possession of the same. After purchase she got her name mutated in the khatian on 14.05.2014 and have been possessing by living therein with her husband Syed Shahidul Haque. While they were going abroad, entrusted her brother in law (elder brother of her husband Syed Habibul Haque) to maintain the suit house in their absence as permissive possessor. When they visited Bangladesh, used to live in the suit house and finally she asked Habibul Haque to surrender the suit property in her favour. Habibul Haque unfortunately filed a Petition Case No. 467 of 2010 against the plaintiff's husband under Section 145 of the Code of Criminal Procedure in the court of Executive Magistrate, Dhaka, the case was rejected as the petitioner died on 28.08.2015.

Thereafter, filed Title Suit No. 310 of 2015 for permanent injunction against the plaintiff's husband, wherein, the defendant contested the suit by filing written statement and claimed that the plaintiff Habibul Haque is a permissive possessor under the defendant. In the said suit, Habibul Haque filed an application for injunction which was rejected

then preferred Miscellaneous Appeal No. 300 of 2015 in which an order of status quo was passed. Subsequently, the case was abated due to death of the plaintiff's husband and the suit ultimately dismissed.

Mr. Rahman submits that from order sheets of the trial court, it would be found that P.W.1 Syed Aminul Haque deposed for the 1st time on 25.07.2023 then his evidence continued on 01.11.2023, 09.11.2023 and 20.11.2023 on which date the court fixed next date for cross examination, on 16.01.2024. On the date fixed the defendants filed an application praying for adjournment, trial court allowed the same and fixed on 30.01.2024 for cross examination of P.W. On the date fixed, the defendants again prayed for adjournment, the trial court allowed time and fixed on 08.02.2024 for cross examination of P.W. The defendants again on the date fixed in usual course of business prayed for adjournment. The trial court rejected the application and after rejection of application for time, the defendants did not take any step in the suit either filing hazira or by filing another application for time, consequently, the trial court fixed the suit on 15.02.2024 for ex parte order. On the date fixed the defendants again filed an application praying for time, on the ground that they filed miscellaneous case under Section 24 of the Code of Civil Procedure being

No. 63 of 2024 praying for transfer of the suit and the case has been fixed for admission hearing on 25.04.2025, but except an application, the defendant did not file any document in support of their such contention. Consequently, the trial court refused their prayer and took the matter for passing order, accordingly, on 15.02.2025, the trial court upon consideration of the evidences on record both oral and documentary decreed the suit ex parte.

He submits that the defendants though filed written statement, but did not file any document in support of their claim, moreover, when the matter of injunction was taken up by the trial court for hearing, the plaintiff filed an application for a direction on the defendant to file their document before the court, but before the trial court they have told that they have no document to be filed before the trial court as recorded in the order sheet of the trial court as well as in the judgment of the appellate court.

He finally argued that this is a suit for declaration of title and recovery of possession, admitting possession of the defendants in the suit land. The plaintiff by filing series of exhibits able to prove her case that the property legally allotted to her vendor Danesh Ali who in his turn

transferred the same to the plaintiff by a registered sale deed of the year 1995. In support of her ownership she also filed municipal holding, mutation khatian, installation of gas, electricity and other utilities in her name. The defendants only claimed that they have been possessing the suit land right from their father Habibul Haque which is admitted by the plaintiff in her plaint. Only possession in the property without any document of title cannot entitle the petitioners to continue possession and enjoy the suit property for eternity. The plaintiff being rightful owner of the property and Habibul Haque being a permissive possessor of the plaintiff and nearest relative (husband's elder brother) was entrusted to look after the suit house on her behalf, but with malafide intention, the defendants retained possession defying demand of the plaintiff.

Apart from this, the defendant did not take opportunity to file any document before the trial court though asked by the court to take part in the hearing by cross examining the P.W. or adducing D.W. Similarly before the appellate court they did not pray for affording any opportunity to them, by filing application or by filing any document to be exhibited in support of their claim. Therefore, neither the trial court nor the appellate

court committed any illegality or error of law in the decision occasioning failure of justice.

Heard the learned Advocates of both the sides, have gone through the revisional application under Section 115(1) of the Code of Civil Procedure, plaint in suit, written statement, evidences led by the plaintiff, the document submitted before the trial court and the judgment and decree of both the courts below.

Both the parties admitted that the property belonged to the Housing Authority of the government. One Ahmed Ali was allotted the suit house by a registered deed of lease in the year 1962, who was a Non-Bengali. The defendants claimed that their predecessor Syed Habibul Haque by an unregistered deed purchased possession of the house from Ahmed Ali in the year 1972. Since then Habibul Haque had been in possession of the house till his death leaving the present petitioners as heirs, thereafter, they continued in possession as before. They claimed that their father on the basis of unregistered document while in possession there has been an inquiry held by Housing Authority, wherein, the report dated 15.01.1983 reflects that Habibul Haque is in possession of the suit house, who pursuant to a decision of the government applied for allotment of the

house to him by application dated 18.06.1986. when the prayer of the petitioners predecessor pending for consideration, one Danesh Ali claiming him to be possessor of the suit house as son of original allottee Ahmed Ali in connivance with employees of the Housing Authority managed to get allotment of the house in his favour without knowledge of the predecessor of the present petitioners. Though Danesh Ali managed to obtain allotment and lease of the same in the year 1993 practically he was not delivered with the possession of the suit house. Being failed to take over possession he in connivance with the plaintiff managed to sell the same with the permission of Housing Authority in the year 1995. They also claimed that their father Syed Habibul Haque never took possession of the suit house as permissive possessor under the plaintiff and the plaintiff never got possession of the same from Danesh Ali, as such, the suit is not maintainable in its present form.

In support of their claim by a supplementary affidavit, the petitioners submitted photocopies of some documents those are lease deed of Ahmed Ali dated 28.02.1962. A photocopy of of possession sale deed dated 30.01.1972 alleged to have been executed by original allottee Ahmed Ali in favour of Syed Habibul Haque. This is not a sale deed or

duly registered with the registration authority, this is merely an agreement typed on one rupee stamp and signature of Ahmed Ali contain in original lease deed and the signature in unregistered agreement differs from each other. A survey report submitted by Assistant Engineer abandoned house circle, P.W.D, Dhaka showing that the disputed house belonged to Ahmed Ali son of late Abbas Ali and is in possession of Syed Habibul Haque on the basis of a deed dated 30.01.1972 with remark that as the present occupier failed to produce any registered document to establish his right or claim over the property it may be an abandoned property.

The Government by a decision dated 24.04.1986 decided to lease out the house under possession of the persons upon realization of rent and compensation on area basis. The petitioners predecessor Habibul Haque applied for allotment of the house in his favour as appearing from (annexure-K2), some tenancy agreements letting out the property to different tenants without any schedule. Electricity bill of the year 2014-2015, gas bill of the year 2014, municipality tax receipt of the year 2013 in the name of one Ataul Huda, all the ID cards of the present petitioners having address at Holding No. 14, but the suit property is Holding No.18. The petitioners failed to justify why they did not file all those documents

before the trial court even before the appellate court urging the appellate court to accept the document as additional evidence by filing an application or praying for adducing evidence in support of those documents. Moreover, order dated 29.07.2017 of the trial court clearly stated that when the plaintiff filed an application seeking direction upon the defendants to file the document before the trial court, the defendants unequivocally declared that they have no document to file before the court. On the other hand, the plaintiff examined P.W., exhibited as many as 15 exhibits maintaining chain of title right from Ahmed Ali upto plaintiff, those are deed of Ahmed Ali, application of Danesh Ali who is son of Ahmed Ali. The Housing Authority considered his prayer and allotted the house to him by a registered deed of indenture of the year 1993. The plaintiff claimed that she along with her husband used to live in the suit house under Danesh Ali much earlier than 1986 and when they were in possession her husband went abroad in the year 1986.

Subsequently, Danesh Ali by observing all required formalities obtained permission from Housing Authority to transfer the suit property to the plaintiff and in the year 1995 by a registered sale deed he transferred the same to the plaintiff. When they used to live in abroad,

Syed Habibul Haque being elder brother of her husband was permitted to look after the suit house and to manage the same or letting out to the tenant, accordingly, he used to look after the property on behalf of the plaintiff and never raised any objection. when they visited Bangladesh and used to live in the house with him, at a point of time when the plaintiff demanded vacant possession of the house, Habibul Haque at the first instance took shelter of the criminal court by filing petition case under Section 145 of the Code of Criminal Procedure, being failed filed another title suit for permanent injunction against the husband of the plaintiff which was ultimately dismissed. The plaintiff then served notice demanding possession of the suit house upon the present petitioners who refused to surrender the possession like their father, consequent, the plaintiff filed the instant suit. As appearing from “annexure-A” the suit was filed on 14.06.2016, after observing required formalities in accordance with law, the suit attained maturity for hearing in the year 2023.

After seven years of filing of the suit in usual course the suit was fixed for peremptory hearing and recording of evidence on 25.07.2023 on which date evidence of P.W.1 on behalf of plaintiffs was partly recorded,

then next date was fixed on 25.10.2023 on which date evidence was recorded in part. Then the case was further fixed on 01.11.2023, on that date also evidence was recorded in part then fixed on 09.11.2023 evidence was partly recorded and then on 20.11.2023 evidence of P.W.1 ended and fixed for cross examination by the defendant on 16.01.2024 after about 43 days. When the suit was fixed for cross examination of the P.W. the defendants on 16.01.2024, 30.01.2024 and 08.02.2024 again prayed for adjournment. The trial court rejected the application on 08.02.2024 and after rejection of application for time, the defendants ought to have taken step either by filing hazira or by filing another application seeking adjournment on a reasonable ground, but they did not take any step in the suit, consequently, in usual course the trial court had no other alternative but to fix the suit for ex parte order, accordingly, it was fixed on 15.02.2024 for ex parte order. On the date fixed the defendant ought to have prayed for withdrawing the suit from the list of ex parte order seeking opportunity to cross examine the P.W. When the suit already fixed for passing ex parte order, the defendants filed an application praying for time to bring stay order from learned District Judge in a Miscellaneous Case No. 36 of 2024 filed under Section 24 of Code for

transfer of the suit, but could not produce any supporting document whether they at all filed an application and when the case is fixed for hearing. In the absence of acceptance of miscellaneous case by the learned District Judge and passing any order either staying further proceeding of the suit or calling for the record, the trial court had no option but to proceed with the suit, accordingly, by judgment and order dated 15.02.2024 the suit was decreed ex parte.

To appreciate the submissions of the learned Advocate for the petitioners as to whether in the event of affording an opportunity to the defendants to cross examine the P.W. and to adduce D.W. there is any possibility of succeeding the suit. From perusal of judgment and order of the trial court dated 15.02.2024, it appears that the court in its order stated about the conduct of the defendants and case of the plaintiff as stated in the plaint, evidence both oral and documentary and giving a positive finding on the basis of the evidences both oral and documentary (exhibits 1-15) found title of the plaintiff in suit and on the other hand in the absence of any evidence or any document on the part of the defendants, the court held that the defendants utterly failed to defend the suit by

adducing any evidence both oral and documentary, consequently, decreed the suit ex parte.

The defendants had ample opportunity to file a miscellaneous case under order 9 Rule 13 of the Code of Civil Procedure giving sufficient reason seeking opportunity to place their case before the trial court for setting aside the ex parte decree, but they did not take recourse to such provision of law. However, they rightly preferred appeal before the appellate court against the judgment and decree passed by the trial court. At the appellate stage, the defendant-appellant had sufficient opportunity and scope to agitate the matter by filing documents to be taken as additional evidence praying for adducing D.W., but they did not even care for filing any document before the appellate court or prayed for allowing them to adduce evidence even they did not file an application praying for sending the case on remand to the trial court affording an opportunity to place their case. Consequently, the appellate court while disallowing the appeal held that the appellant though claimed possession in the suit property, but in support of their possession could not file single paper before the trial court or the appellate court.

Moreover, the appellate court in its judgment observed that;

“আহমেদ আলী বিবাদীদের পূর্ববর্তী হাবিবুল হক বরাবরে নালিশা তফসিল বর্ণিত বসতবাড়ি ৩০.০১.১৯৭২ইং বিক্রয় করে দখল অর্পণ করেন।

বিবাদীপক্ষ তাদের দাবীর সমর্থনে কোন দলিলপত্র উপস্থাপন করতে পারেনি। বরং মামলার বিচার চলাকালে আদালতকে বিবাদীপক্ষ জানায় বিগত ৩০.০১.১৯৭২ইং তারিখের বিক্রয় সংক্রান্ত দলিল বিবাদীদের নিকট নাই ও তারা উক্ত দলিল আদালতে দাখিল করতে পারবে না। (২৭.০৯.২০১৭ইং তারিখের আদেশ)”

However, at the time of hearing the petitioners by filing supplementary affidavit annexed some photocopies of documents to substantiate their claim that their predecessor was in possession of the shit house on the basis of certain document. Those are a survey report conducted by abandoned property cell dated 15.11.1983 and application praying for allotment, photocopies of some tenancy agreement executed by Syed Habibul Haque, few utility bills of the years 2013, 2014 and 2015 having no continuity at all.

To appreciate the claim of the defendant- petitioners, I have gone through all those documents submitted by supplementary affidavit and from those documents, I find no iota of title in favour of the petitioners to retain possession of the suit house. Moreover, they are found to be indolent in dealing with the case properly and the very conduct seems to be adopted only to drag disposal of the suit and to continue possession of the house for nothing. By the documents so have been annexed with the supplementary affidavit, the defendants are not at all entitled to retain

possession on any ground in accordance with law. Mere filing of an application before the Housing Authority praying for allotment does not create any right in favour of that person. Moreover, since 1986 till today, they could not satisfy the court why they have waited for long time with the hope to have consideration of said application filed by the predecessor in the year 1986 or why they did not challenge the allotment in favour of Danesh Ali, the lease deed executed in his favour and also the sale deed executed by Danesh Ali in favour of the present plaintiff. Unless the allotment or lease deed executed by Housing Authority in favour of Danesh Ali and the sale deed executed by Danesh Ali in favour of the present plaintiffs are declared to be illegal, void or without jurisdiction how the petitioners as defendant, only by claiming possession in the property entitled to get title in the suit property. Therefore, I find that though the petitioners humbly urged upon the court to send back this suit on remand to the trial court or to the appellate court affording an opportunity to cross examine P.W and adduce D.W. and produce the documents, I find that there will be a fruitless journey of the party which ultimately will fail even the court may award heavy cost to them for unnecessary harassment to the plaintiff.

Before parting with the case, I like to observe that normally when an application for transferring a suit from one court to another court is filed by any party to the proceeding, the trial court ought to have given minimum respect to the higher court adjourning the suit for next date enabling the party to bring order of stay. In the instant case order shows that the trial court was more vigilant and interested to get the suit disposed of without waiting for order of the superior court. Where, the court has other cases pending before it for hearing, it ought to have given a reasonable opportunity to the party to bring an order from the higher court, but it did not do so. On the other hand, when the miscellaneous case filed before the learned District Judge, it ought to have fixed the matter for hearing within a reasonable short date, but in the instant case for the reason best known to the learned District Judge, the miscellaneous case has been fixed after about $2\frac{1}{2}$ months which is usually abnormal. The learned District Judge should consider an application under Section 24 of the Code of Civil Procedure as urgent matter giving top most priority over other matters. In the instant case, it has failed to do, so, however, the petitioners had opportunity to file application before the learned District Judge praying for advancing the date considering urgency of the matter,

but they also did not take any step in this regard which also shows that they are not at all interested to get the matter urgently heard.

Taking into consideration the above, I find no merit in the rule as well as in the submissions of the leaned Advocate for the petitioners though they tried their level best to convince the Court.

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

The order of stay granted at the time of issuance of the Rule stands vacated.

Communicate a copy of this judgment to the court concerned and sent down the lower court judgment at once.