

Bench:

Mr. Justice Bhishmadev Chakrabortty

And

Mr. Justice Murad-A-Mowla Sohel

Civil Revision No. 5770 of 2024

Alhaz Mizanur Rahman ..... petitioner

-Versus-

Md. Abdul Ali and others

..... opposite parties

Mr. Subrata Chowdhury, Senior Advocate with

Mr. Mominul Islam Chowdhury, Advocate

..... for the petitioner

Mr. M.A. Muntakim, Senior Advocate

..... for opposite party 3

Judgment on 13.11.2025

Bhishmadev Chakrabortty, J:

At the instance of the plaintiff this Rule was issued calling upon the opposite parties to show cause as to why the judgment and order of the Joint District Judge, Court 1, Dhaka passed on 29.08.2024 in Title Suit 42 of 2013 allowing the application under Order 1 Rule 10 of the Code of Civil Procedure (the Code) for addition of party should not be set aside and/or such other or further order or orders passed to this Court may seem fit and proper.

At the time of issuing the Rule operation of the impugned order was stayed for a limitation period which was subsequently extended and still subsists.

Facts relevant for disposal of this Rule, in brief, are that the plaintiff instituted the suit for specific performance of contract stating facts that original owner of the suit land was Mohammad Isa who got

it lease from the concerned authority. He took earnest money and entered into an agreement with Abdul Malek to sell the suit plot but subsequently did not execute and register the *kabala*. Consequently, Abdul Malek instituted Title Suit 436 of 1985 in Dhaka Court against the original owner and obtained a decree. The Court then registered the deed to him on 08.04.1987. Subsequently record was prepared in his name and he entered into an agreement with the plaintiff through a *bainapatra* dated 04.04.2012 to sell the suit land at a consideration of Taka 60 corer. Abdul Malek received total Taka 59 corer and 50 lac in cash and cheques on different dates but did not execute and register the *kabala*, hence the suit for specific performance of contract.

During pending of the aforesaid suit a third party (opposite party 3 herein) Sayed Al Faruk filed an application under Order 1 Rule 10 of the Code for adding him as defendant in the suit stating grounds therein that Abdul Malek who got a decree in a suit for specific performance of contract entered into an agreement with the applicant on 07.02.1996 to sell the suit land at a consideration of Taka 64,00,000/-. Abdul Malek received Taka 63,95,000/- from him and handed over the possession of the land. The vendor through a registered power of attorney on same day gave power to the applicant to do all acts in respect of the suit land. The applicant approved a plan from RAJUK in his name for constructing a multistoried building in the suit land. He came to learn about filing the instant suit against one Abdul Malek for specific performance of contract. If the suit is

disposed of in his absence he would suffer irreparable loss and injury. He is a necessary party in the suit and requires be added as defendant.

The plaintiff contested the application by filing written objection. In the objection he reiterated the facts as stated in the plaint. He further stated that the applicant filed Title Suit 720 of 2011 against Abdul Malek for specific performance of contract. The applicant is neither a necessary party nor his presence is required for effective disposal of the suit and the application, therefore, would be rejected.

However, the Joint District Judge upon hearing the parties allowed the application which prompted the plaintiff to approach this Court with this revisional application under section 115(1) of the Code upon which this Rule was issued.

Mr. Mominul Islam Chowdhury, learned Advocate for the petitioner taking us through the materials on record submits that the petitioner as plaintiff has filed the instant suit for specific performance of contract against the son of one Abdul Malek and others. It has been alleged there that Abdul Malek executed a *bainapatra* in the name of the plaintiff on 04.04.2012. In a suit for specific performance of contract only parties to the agreement are necessary parties. The presence of a third party is not required in a suit for specific performance of contract. Neither the applicant's presence in the suit is necessary for its disposal nor he is a proper party in the suit. The trial Court in a non speaking order allowed the application for addition of

party. He refers to the judgment passed in Civil Revision No. 3614 of 2018 by a bench of this Division and submits that earlier one Md. Abdul Malek filed an application in the suit for adding him as defendant which was allowed by the trial Court and Rule issued by this Court against it was discharged. But the subject matter of that Rule was whether Abdul Malek impleaded in the suit as defendant 1 and the person wanted to be added as Abdul Malek were same, i.e., whether opposite party 4 Abdul Malek of that Rule was an imposter. The decision taken in the aforesaid Rule shall not apply here because the fact stated in the present application is quite distinguishable. Since the presence of this applicant (opposite party 3 herein) is not required for disposal of the suit for specific performance of contract, therefore, the Rule would be made absolute and the impugned order be set aside.

Mr. M. A. Muntakim, learned Senior Advocate for opposite party 3 on the other hand opposes the Rule and supports the impugned order of addition of party. He takes us through the materials on record and submits that this opposite party 3 filed the application for adding him as defendant in the suit on the strength of a registered *bainapatra* and a power of attorney both dated 07.12.1996. By the power Abdul Malek appointed this applicant as attorney to act on his behalf. Since the original suit has been filed against Abdul Malek for specific performance of contract and this opposite party 3 is also claiming that he got a *bainapatra* and power of attorney from Abdul Malek, therefore, his presence is necessary in this suit to resolve the claim of

the parties. He refers to the judgment passed in Civil Revision No. 3614 of 2018 and submits that in the aforesaid Rule, a third party namely Abdul Malek has been made party to the suit. This applicant claimed the suit land through *bainapatra* and power of attorney from Abdul Malek and as such he is a necessary party to the suit. The trial Court on correct assessment of fact and law allowed the application for addition of party which may not be interfered with by this Court in this Rule. The Rule, therefore, would be discharged.

We have considered the submissions of both the sides and gone through the materials on record.

It transpires that the plaintiff-petitioner instituted the suit against the son of one Abdul Malek and others for specific performance of contract. In the suit the plaintiff stated that Abdul Malek took earnest money from him to sell the suit land and executed a *bainapatra* on 04.04.2012 but did not execute and register the *kabala* and as such he instituted the suit for specific performance of contract. Opposite party 3 herein as third party filed an application for adding him as defendant claiming that Abdul Malek executed and registered a *bainapatra* and appointed him as attorney through registered power of attorney both dated 07.02.1996 for the same suit land. He acted on behalf of Abdul Malek and approved a plan from RAJUK for constructing a six storied building therein. It is found that both the plaintiff and this opposite party 3 claimed that Abdul Malek executed and registered a *bainapatra* in their favour. The plaintiff

claimed that Abdul Malek executed and registered *bainapatra* on 04.04.2012 and this opposite party 3 claimed that Abdul Malek executed and registered a *bainapatra* and power of attorney for him both on 07.12.1996. On perusal of the judgment and order passed in Civil Revision 3614 of 2018, we find that although son of Abdul Malek was impleaded as defendant 1 in the suit but Abdul Malek himself filed application for adding him as defendant claiming him as alive. The order passed by the Joint District Judge adding him as defendant in the suit was affirmed by this Division in the aforesaid revision. On perusal of the record and in the submissions of the learned Advocate for both the sides, it is found that in fact existence of two Abdul Malek is found in the suit. Since the third party applicant (opposite party 3 herein) brought allegation that Abdul Malek executed and registered a power of attorney and a *bainapatra* to him on 07.12.1996 which are prior then that of the plaintiff, we therefore find that this suit is to be disposed of in presence of the applicant third party to resolved the dispute between the parties and to avoid multiplicity of the suits and proceedings.

Although in a suit for specific performance of contract the general principle is that the parties to the agreement are the necessary parties and presence of a third party is not required in a suit of such nature. But considering the facts and circumstance of this case that Abdul Malek executed two *bainapatras* and power of attorney in favour two different person for the same suit property, we hold that

the suit is to be disposed of in presence of applicant third party who claimed him as attorney of Abdul Malek and a *bainapatra* was executed and registered to him in 1996. The Joint District Judge although passed the judgment and order in a *slipshod* manner adding the third party as defendant to the suit but his ultimate decision was correct.

In the premises above, we find no merit in this Rule. Accordingly, the Rule is discharged. No order as to cost. The order of stay stands vacated.

However, the trial Court is directed to dispose of the suit expeditiously, preferably within 06 (six) months from the date of receipt of this judgment and order.

Communicate this judgment and order to the concerned Court.

Murad-A-Mowla Sohel, J:

I agree.

*Rajib*