

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

Present:

Mr. Justice Md. Riaz Uddin Khan

Civil Revision No. 3255 of 2024

IN THE MATTER OF :

An application under section 115(4) of the Code of
Civil Procedure

-And-

In the Matter of:

Md. Mamunur Rashid

...Plaintiff-Petitioner

-Versus-

Mst. Rupali Khatun

...Defendant-Opposite Party

Mr. Md. Ashraf Uz-Zaman, Advocate

... For the petitioner

Mr. Md. Zainul Abedin, Advocate

... For the opposite party

Judgment on: 25.02.2026

Md. Riaz Uddin Khan, J-

Rule was issued under section 115(4) at the instance of the plaintiff to show cause as to why the judgment and order dated 09.05.2024 passed by the Additional District Judge, First Court, Jhenaidah in Civil Revision No. 16 of 2023 dismissing the Civil Revision and thereby affirming the order dated 10.04.2023 passed by the Senior Assistant Judge, Sadar, Jhenaidah in Title Suit No. 34 of 2023 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 Rule the operation of the impugned judgment and order dated 09.05.2024 passed by the Additional District Judge, First Court,

Jhenaidah in Civil Revision No. 16 of 2023 was stayed for a period of 06(six) months.

Succinct fact for disposal of this Rule is that the present petitioner as plaintiff filed a suit for cancellation of a registered Hiba deed stating *inter alia* that the plaintiff was the owner of the scheduled suit land. The defendant is his second wife. The plaintiff was suffering in various diseases for which the defendant often misbehaved with him. All of a sudden on 10.12.2022 the defendant declared that she was the owner of the suit land and proposed to sell the same. The plaintiff being surprised made a search in the local sub-registry office and obtained a certified copy on 18.12.2022 and came to know that a Hiba deed has been created in his name being Hiba deed no. 14839 dated 04.12.2022. The plaintiff further claimed that he did not gift the property to the defendant and did not execute the said deed, hence, he filed the instant suit for cancellation of the same being forged.

On 25.01.2023 the plaintiff filed an application for withdrawal of the suit before the trial court and he was examined on the same date. However, the trial court fixed 10.04.2023 as next date and on that date i.e. 10.04.2023 the trial court by its order allowed the withdrawal application filed by the plaintiff.

Being aggrieved by the order dated 10.04.2023 the plaintiff filed a revision before the learned District Judge, Civil Revision No. 16 of 2023 stating *inter alia* that the defendant with the help of her brother along with some other muscle-men took the plaintiff in an unknown place and applied intoxicated medicine upon him for which he lost his memory partially and thereafter

by an unknown advocate an application was filed before the trial court on 25.01.2023 for withdrawal of his suit. On 25.01.2023 as he was not in a sound mind, he cannot remember what he did on that day as such the order of withdrawal should be set aside. After hearing the revisional application the learned Additional District Judge, 1st Court, Jhenaidah by the impugned judgment and order dated 09.05.2024 rejected the revision.

Being aggrieved by and dissatisfied with the impugned judgment and order this revision has been filed before this Court and the plaintiff-petitioner obtained Rule and order of stay as stated at the very outset.

Mr. Md. Ashraf-Uz-Zaman, the learned advocate appearing for the petitioner submits that the application for withdrawal was filed by an advocate with a fresh Vokalatnama on behalf of the plaintiff but the application was not supported by separate affidavit and filed in the absence of knowledge of the lawyer of the plaintiff. Hence the trial court should not have passed the order permitting the withdrawal of the suit as the application is not an application in the eye of law. The learned advocate further submits that the revisional court failed to understand the said position of the law and facts as stated above as such the impugned judgment and order is liable to be set aside.

The defendant-opposite party entered appearance by filing counter affidavit and a supplementary affidavit of the counter affidavit was filed by the petitioner.

Mr. Md. Zainul Abedin, the learned advocate appearing for the defendant-opposite party submits that

the plaintiff himself by a registered Hiba deed gifted the property to his wife, the defendant-opposite party but out of misunderstanding the plaintiff filed the instant suit. When the plaintiff realise the same filed an application for withdrawal of the suit before the trial court. The trial court after examining the plaintiff fixed the matter for order after about 02(two) months i.e. 10.04.2023 and finally passed the order allowing that application for withdrawal by order dated 10.04.2023 but the plaintiff did not appear before the trial court with any allegation.

The learned advocate further submits that even before the revisional court the plaintiff-petitioner failed to prove that he was intoxicated or was not in a sound mind when the application for withdrawal was filed, hence, the lower revisional court rightly rejected the revision. The learned advocate next submits that sitting in revision under section 115(4) of the Code of Civil Procedure this Court should not interfere with the finding of facts of the lower revisional court unless there is any error of important question of law occasioning failure of justice. Since the petitioner failed to raise any important question of law the instant rule is liable to be discharged.

The learned advocate lastly submits that the instant application has been filed under section 115(1) of the Code of Civil Procedure which is not maintainable as such liable to be rejected outright.

I have heard the learned advocates for both the parties, perused the application, supplementary affidavit, counter affidavit, and the annexure annexed there with.

It appears from the record so available before this Court that the plaintiff filed the instant suit on 17.01.2023 for cancellation of a deed of gift which he has executed in favour of the defendant gifting the scheduled property. It further appears from record that an application for withdrawal was filed on 25.01.2023 by a new advocate with a fresh vokalatnama. The trial court on that date i.e. on 25.01.2023 examined the plaintiff and fixed for order on 10.04.2023. The trial court allowed the application for withdrawal on 10.04.2023. The petitioner alleged in the revision that on 25.01.2023 he was kidnapped and intoxicated by the brother of the defendant and cannot remember anything what he did on 25.01.2023. During long period of time between 25.01.2023, the date of application for withdrawal and 10.04.2023, the date of allowing the same by the trial court, the plaintiff did not appear before the trial court to address his grievance what he alleged in the revision. As such the story propagated by the plaintiff before the revisional court that he was kidnapped by the brother of the defendant and other musclemen has no legs to stand. The trial court who examined the petitioner was the appropriate court to address his grievance as the trial court had the first hand and direct knowledge who could remember the demeanour of the petitioner when he was examined. In the long 2(two) months he could have come to the trial court and state the facts that he was not willing to withdraw the suit instead he filed civil revision before the learned District Judge, which was ultimately heard by the learned Additional District Judge, First

Court, Jhenaidah who did not have any first hand knowledge about the fact.

I have also gone through the revisional judgment passed by the Additional District Judge wherein the revision was rejected on the finding that the petitioner could not prove his allegation by adducing any oral or documentary evidence. On scrutiny I find that the lower revisional court rightly observed that the petitioner failed to prove his case by adducing any oral or documentary evidence, hence there is no reason to interfere with the judgment passed by the lower revisional court. The instant Rule has no merits.

In the result the Rule is **discharged**. However, without any order as to cost.

The order of stay granted earlier by this Court stands vacated.

Communicate the judgment and order at once.