

Bench:

Mr. Justice Md. Ali Reza

Civil Revision No. 661 of 2025

Din Islam Sikder

.....petitioner

-Versus-

Afroza Begum and others

.....opposite parties

Mr. Sheikh Saifuzzaman (Zaman) with
Mr. Md. Rois Uddin, Advocates

.....for the petitioner

Mr. Md. Mosharraf Hossain, Advocate

.....for opposite party 2

**Heard on: 24.06.2026, 05.07.2026,
12.07.2026 and 16.07.2026**

Judgment on: 30.07.2026

In the instant revision Rule was issued calling upon the opposite party 2 to show cause as to why the judgment and decree dated 09.01.2025 passed by the learned Additional District Judge, 6th Court, Dhaka in Civil Appeal Number 117 of 2024 dismissing the appeal thereby affirming the judgment and decree dated 07.03.20236 passed by the learned Joint District Judge, 3rd Court, Dhaka in Title Suit Number 17 of 2023 rejected the plaint under Order 7 Rule 11(A) and (D) read with Sections 11, 12 and 151 of the Code of Civil Procedure should not be set aside and/or such other or further

order or orders be passed as to this Court may seem fit and proper.

The facts of the case in brief are that the predecessor of the opposite parties named Abdur Rahman purchased the suit property by a registered kabala deed dated 20.06.1955. In 1987 he let out the suit property to Saifuzzaman as a tenant. Upon Saifuzzaman's default in payment of rent Abdur Rahman filed SCC Suit Number 4 of 1997 for eviction and recovery of arrears of rent. On the other hand Saifuzzaman instituted Title Suit Number 6 of 1997 for specific performance of contract. Both suits were heard analogously. SCC Suit Number 4 of 1997 was decreed on 22.06.1999 whereas Title Suit Number 6 of 1997 was dismissed. Challenging the said judgment and decree Saifuzzaman preferred Civil Revision Number 3696 of 1999 which was dismissed on 25.07.2001. Thereafter he filed Civil Petition for Leave to Appeal Number 60 of 2002 which was also dismissed on 05.05.2003.

In the meantime Abdur Rahman came to learn that Saifuzzaman in collusion with Shafiqul Islam and Muzibur Rahman fraudulently mortgaged the suit property to IFIC Bank. On the basis of an exparte decree passed in Artha Rin

Suit Number 41 of 1998 the property was put to auction in Artha Rin Decree Execution Case Number 13 of 2001. Upon noticing the auction notice published in a daily newspaper Abdur Rahman filed Miscellaneous Case Number 79 of 2003 for setting aside the exparte decree which was allowed on 09.10.2003. Thereafter Abdur Rahman entered appearance and filed a written statement in Artha Rin Suit Number 41 of 1998. Ultimately the suit was decreed against defendant 1 named Shafiqul Islam and defendant 3 named Muzibur Rahman but was dismissed against defendant 2 named Abdur Rahman.

Being aggrieved the Bank preferred Artha Rin Appeal Number 21 of 2004. By judgment and decree dated 23.03.2005 the appellate Court held that the Bank should first realise its dues from defendants 1 and 3 and only in the event of failure to realise the decretal amount from them it would be entitled to realise the outstanding dues from defendant 2 Abdur Rahman.

Being dissatisfied with the said judgment Abdur Rahman preferred Civil Revision Number 2581 of 2005 before the High Court Division. Upon an elaborate consideration of the materials on record the revisional Court categorically held that defendant 2 Abdur Rahman was under no liability for the loan

in question. Accordingly the finding of the appellate Court imposing liability upon defendant 2 was set aside and expunged and the Rule was made absolute by judgment and order dated 04.06.2008.

The Bank thereafter preferred Civil Petition for Leave to Appeal Number 2306 of 2009. After full hearing the Appellate Division by judgment and order dated 08.04.2012 dismissed the leave petition thereby affirming the judgment of the High Court Division.

Thereafter the present plaintiff-petitioner filed Writ Petition Number 16567 of 2012. The Rule issued therein was by judgment and order dated 12.03.2020 discharged upon detailed consideration of and by specifically referring to the aforesaid judgment of the Appellate Division.

Subsequently the present plaintiff-petitioner filed the present Title Suit Number 1192 of 2021 which was later renumbered as Title Suit Number 17 of 2023. In the said suit the heirs of late Abdur Rahman as defendants filed an application under Order 7 Rule 11 read with sections 11 and 151 of the Code of Civil Procedure praying for rejection of the plaint. The said application was allowed by the trial Court by order dated 07.03.2023.

Being aggrieved the plaintiff preferred Civil Appeal Number 117 of 2024 which was transferred to the Court of the Additional District Judge, Sixth Court, Dhaka. By judgment and decree dated 09.01.2025 the appellate Court dismissed the appeal affirming the order of the trial Court rejecting the plaint. Being further aggrieved the plaintiff has preferred the instant civil revision in which Rule was issued on 09.03.2025.

It is pertinent to note that the records do not disclose that the plaintiff filed any written objection to the application for rejection of the plaint. It further appears that even in the Memorandum of Civil Appeal Number 117 of 2024 no substantial or specific ground has been taken challenging the decision of the Appellate Division.

The learned Advocate for the plaintiff-petitioner Mr. Saifuzzaman by producing before the Court a photocopy of a legal notice dated 14.01.1992 issued by the learned Senior Advocate Mr. Rafiqul-ul-Haq of Haq & Company Law Firm in favour of Abdur Rahman strenuously submitted that Abdur Rahman himself had mortgaged the suit property to International Finance Investment and Commerce Bank Limited for obtaining a loan. He further produced another photocopy purporting to be a letter dated 22.10.1992

addressed by Abdur Rahman to the Manager of the said Bank wherein Abdur Rahman allegedly denied having created any mortgage over the suit property which is Annexure-B to the original revisional application. Referring to the said documents the learned Advocate contended that Abdur Rahman had long been aware of the allegation relating to the mortgage. Nevertheless by suppressing the true facts and practicing fraud upon the Court he falsely pleaded that he had first come to know of the auction sale through a newspaper publication and on the basis of such false cause of action succeeded in obtaining an order setting aside the exparte decree passed in Artha Rin Suit Number 41 of 1998. It was therefore submitted that as the said proceedings had been procured by fraud the entire proceeding stood vitiated and the courts below committed error of law resulting in an error in such decree occasioning failure of justice in rejecting the plaint upon fanciful consideration.

The learned Advocate further forcefully submitted that after SCC Suit Number 4 of 1997 had been decreed the present plaintiff filed Title Suit Number 43 of 2006 seeking a declaration that the judgment and decree passed in the said SCC suit are not binding upon him. In the said suit the present

opposite parties filed an application under Order 7 Rule 11 of the Code of Civil Procedure for rejection of the plaint which was allowed by order dated 05.03.2015. Against the said order the plaintiff preferred First Appeal Number 197 of 2015. The said appeal was allowed by judgment dated 13.11.2024 on the ground that Civil Petition for Leave to Appeal Number 2306 of 2009 contained no adjudication with regard to the auction sale or the auction purchase and therefore the application for rejection of the plaint ought not to have been allowed. He further submitted that Title Suit Number 43 of 2006 is still pending for trial and disposal. On the aforesaid premises the learned Advocate prayed that the Rule be made absolute. In support of his submission he refers to the cases of Sree Chandra Ranjan Sarker Vs. Government of Bangladesh reported in 3 ALR 92, Md. Darul Islam being dead his heirs: 1. Most. Parul Bewa and others Vs. Md. Tamijul Islam and others reported in 5 ALR 346, Bangladesh Telecommunication Company Ltd. (BTCL) Vs. Bangladesh Telecommunication Regulatory Commission and others reported in 13 ALR 66, Al-Haj Ruhul Amin and others Vs. Bangbandhu Sheikh Mujib Medical University (BSMMU) and others reported in 2 ALR 99, British American Tobacco

Bangladesh Company Ltd. Vs. Begum Shamsun Nahar reported in 4 ALR(AD) 44 and Jahangir Kabir Chowdhury Vs. Government of Bangladesh reported in 8 ALR(AD) 283.

On the other hand learned Advocate Mr. Md. Mosharraf Hossain appearing for the defendant-opposite parties submitted that both the Courts below upon due consideration of all the relevant documents and after carefully examining the judgments and orders passed by the superior Courts arrived at concurrent findings which suffer from neither any illegality nor any error occasioning failure of justice. He further submitted that the judgments of the superior Courts are binding upon all subordinate Courts and the final decision of the Appellate Division cannot be reopened in the absence of any legal foundation such being a well-settled principle of law and the courts below did not commit any wrong or error of law occasioning failure of justice in allowing the application for rejection of plaint. It was therefore contended that the Rule is devoid of merit and is liable to be discharged.

I have heard the learned Advocates appearing for the respective parties at length and have carefully examined the entire records and materials on record.

It appears from the records that SCC Suit Number 4 of 1997 was decreed on 22.06.1999. The said judgment and decree were thereafter affirmed in Civil Revision Number 3696 of 1999 by judgment dated 25.07.2001 and again in Civil Petition for Leave to Appeal Number 60 of 2002 by judgment and order dated 05.05.2003. Thereafter the present petitioner filed Title Suit Number 43 of 2006 on 22.03.2006 seeking a declaration that the judgment and decree passed in SCC Suit Number 4 of 1997 are not binding upon him. In the said suit the present opposite parties filed an application under Order 7 Rule 11 of the Code of Civil Procedure for rejection of the plaint. The said application was allowed by judgment and order dated 05.03.2015. Against the said judgment and order the present petitioner preferred First Appeal Number 197 of 2015. By judgment and order dated 13.11.2024 the High Court Division held that since the Appellate Division in Civil Petition for Leave to Appeal Number 2306 of 2009 had not entered into any discussion regarding the auction sale or auction purchase of the suit property the plaint could not be rejected solely on that ground. The learned Advocate for the petitioner has stated in his written argument that Title Suit Number 43 of 2006 is still pending for hearing. The records

however disclose that the present opposite parties preferred Civil Miscellaneous Petition for Leave to Appeal Number 838 of 2024 before the Honourable Judge-in-Chambers against judgment dated 13.11.2024. By order passed therein the operation of the judgment and order dated 13.11.2024 has been stayed. It further appears that Civil Petition for Leave to Appeal Number 1017 of 2025 is presently pending before the Appellate Division for final disposal.

It is therefore evident that the matter relating to Title Suit Number 43 of 2006 is now sub-judice before the highest Court of the country. It further appears that the subject matter was earlier considered and finally determined by the said Court in Civil Petition for Leave to Appeal Number 60 of 2002 by judgment and order dated 05.05.2003. It is true that the present petitioner was not a party in SCC Suit Number 4 of 1997 but Saifuzzaman under whom he is claiming in the instant suit was party to SCC Suit Number 4 of 1997 from which Civil Petition for Leave to Appeal Number 60 of 2002 arose and finally decided. While deciding First Appeal Number 197 of 2015 the High Court Division referred to the judgment delivered in Civil Petition for Leave to Appeal Number 2306 of 2009 wherein it was conclusively held that the predecessor

of the present opposite parties namely Abdur Rahman was under no liability whatsoever in respect of the loan in question. That finding has attained finality. Consequently the issue whether Abdur Rahman incurred any liability in relation to the said loan cannot be reopened in any collateral or subsequent proceeding.

The learned Advocate for the petitioner has further strenuously argued that since Abdur Rahman was served with a legal notice issued by Haq & Company Law Firm in the year 1992 regarding the alleged mortgage of the suit property and also replied thereto he had knowledge of the allegation from the very beginning. According to the learned Advocate when Abdur Rahman subsequently sought setting aside of the exparte decree passed in Artha Rin Suit Number 41 of 1998 by asserting that he had first come to know about the auction through a newspaper publication he practised fraud upon the Court.

This court does not subscribe to this point of proposition. Fraud is never to be presumed. It must be specifically pleaded and established by clear cogent and convincing evidence. Mere prior knowledge of an allegation or dispute does not by itself amount to fraud. Fraud in the eye of law consists of a

deliberate deception or intentional concealment of a material fact practised with the object of misleading the Court or another person so as to secure an unlawful advantage. The records show that upon obtaining definite knowledge of the *exparte* decree and the consequential auction proceedings Abdur Rahman filed Miscellaneous Case Number 79 of 2003 whereupon the *exparte* decree was set aside. Thereafter the dispute travelled through Artha Rin Suit Number 41 of 1998, Artha Rin Appeal Number 21 of 2004, Civil Revision Number 2581 of 2005, Civil Petition for Leave to Appeal Number 2306 of 2009 and Writ Petition Number 16567 of 2012. At no stage of any of the aforesaid proceedings was any allegation of fraud raised or adjudicated upon or found to have been established on that particular point. In the facts and circumstances of the present case the allegation now advanced by the petitioner does not constitute fraud in the legal sense nor does it turn over the earlier proceedings void or vitiated.

It is a settled principle of law that issues which have been finally adjudicated upon by the highest Court of the country become past and closed and cannot thereafter be reopened by instituting a fresh proceeding except in a manner recognised by law. The principle of finality of litigation is

founded upon public policy and the administration of justice. The decision in Abdul Jalil Vs. Islami Bank Bangladesh Limited reported in 7 MLR(AD) 258 is directly applicable to the facts of the present case. Accordingly the decisions cited by the learned Advocate for the petitioner are distinguishable on facts and have no application to the present case. Rather the ratio laid down in the decision reported in 53 DLR(AD) 12 as relied upon by the trial Court is applicable to the present case considering the controversy involved herein.

Having regard to the entire facts and circumstances this Court is also of the view that in exercise of its inherent jurisdiction under Section 151 of the Code of Civil Procedure the plaint is liable to be rejected in accordance with law. The learned Courts below upon proper appreciation of the pleadings and the documents on record and the binding effect of the judgments of the superior Courts have arrived at correct findings. I find no illegality or misapplication of law in the impugned judgments and orders nor do they occasion any failure of justice warranting interference by this Court in revisional jurisdiction.

Accordingly the Rule is discharged.

The orders of stay and status quo if any stand vacated.

Let a copy of this judgment be communicated to the Courts below forthwith and the lower Courts' Records be sent down at once.

Md. Ali Reza, J:

Naher-B.O