

District-Barishal.

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION,
(CIVIL REVISIONAL JURISDICTION)**

Present:

Mr. Justice Md. Toufiq Inam

Civil Revision No. 4378 of 2024.

Dilruba Islam Ruba.

.....Plaintiff-Appellant-Petitioner.

-Versus-

Md. Touhidul Islam and others.

.....Defendants-Respondents-Opposite Parties.

Mr. Rakibul Islam, Advocate with

Mr. Zahidur Rahaman Razib, Advocate

.....For the Plaintiff-Appellant-Petitioner.

Mr. Tushar Banik, Advocate

.....For the Defendant-Respondent-Opposite Party No.1.

Heard On: 26.06.2025.

And

Date of Judgment: 7th Day of July 2025.

Md. Toufiq Inam, J.

This Rule was issued calling upon the opposite party to show cause as to why Order dated 06.05.2024, passed by the learned Senior District Judge, Barishal in Miscellaneous Case No. 02 of 2024, should not be set aside on the ground that it was passed without jurisdiction by a court that had become *functus officio* after disposal of the appeal.

The facts relevant to the present Rule are that the plaintiff-petitioner instituted Title Suit No. 67 of 2020 seeking cancellation of a deed of heba (being Deed No. 4036 dated 09.04.2019, as described in Schedule-‘Kha’ of the plaint). The suit was dismissed *ex parte* by the trial court. Thereafter, the plaintiff, as appellant, preferred Title Appeal No. 79 of 2022, which was allowed *ex parte* in the absence of

the defendant-respondent, resulting in a decree in favour of the plaintiff.

Thereafter, the defendant filed Miscellaneous Case No. 02 of 2024 under Order XLI Rule 21 CPC, alleging that no notice of the appeal had been served on him, and that someone fraudulently appeared on his behalf using forged signatures and without lawful authority. In support, the defendant relied on his national ID card and passport, pointing out that the signatures on record differed materially from his own.

Upon preliminary examination, the appellate court provisionally admitted the Miscellaneous Case and passed the Order No. 3 dated 06.05.2024, noting material discrepancies in the signatures and directing issuance of notices to the plaintiff. As the plaintiff resides in New York, the court directed the defendant to provide her Email ID for the purpose of electronic service. Since the plaintiff's cousin, Ms. Sahana Begum, had deposed in court as PW-1 as her authorized attorney, the court further directed the defendant to take steps to implead Ms. Sahana Begum as a party and to serve notice of summons upon her as well.

The plaintiff-petitioner has challenged the said Order No. 3 dated 06.05.2024 in the instant revision, arguing that the appellate court, having disposed of the appeal and passed a decree, had become *functus officio* and thus lacked jurisdiction to entertain any further application, especially one that seeks to question the final judgment.

Mr. Rakibul Islam, learned Advocate appearing on behalf of the plaintiff, submits that the impugned Order No. 3 was passed without jurisdiction and constitutes an impermissible attempt to recall a concluded judgment. He contends that once the decree was passed, the

appellate court ceased to have seisin over the matter and, therefore, could not entertain a Miscellaneous Case under Order XLI Rule 21 of the Code of Civil Procedure, which, according to him, is inapplicable in the present circumstances.

He further argues that, pursuant to the appellate court's decree, the concerned Sub-Registry Office has already cancelled the deed of heba in question, as evidenced by Order No. 22 dated 06.03.2024. Therefore, the appellate court's judgment has already been acted upon, and as such, the appellate court no longer has jurisdiction to pass the impugned order.

In response, Mr. Tushar Banik, learned Advocate for the opposite party, submits that Order XLI Rule 21 CPC provides a specific statutory remedy to a respondent against whom an *ex parte* appellate decree has been passed. He contends that the court does not become *functus officio* in relation to such a respondent, and that the appellate court retains jurisdiction to consider such an application even after the final judgment.

Mr. Banik further argues that the impugned order does not decide any substantive rights, nor does it recall or alter the decree. It merely records a prima facie satisfaction that the matter deserves further inquiry and directs issuance of notices. The court acted within its jurisdiction and followed a proper procedural course. Allegations involving forgery and unauthorized representation strike at the root of the decree, and if proven, would render the judgment void for fraud.

Having heard the learned Advocates for both sides and upon perusal of the judgments and orders of the courts below, as well as other materials on record, this Court proceeds to render its decision.

Upon going through the materials on record together with the provisions of law, this Court finds that the application under Order XLI Rule 21 CPC is clearly maintainable. While the doctrine of *functus officio* ordinarily bars courts from revisiting final judgments, Order XLI Rule 21 is a recognized statutory exception to this principle. It allows a respondent, who was not heard in appeal due to sufficient cause, to seek re-hearing. The provision continues to operate even after the appeal is decided, and the appellate court retains jurisdiction to entertain such applications.

Moreover, in the present case, the defendant has raised serious allegations of impersonation and forgery. Fraud on the court is a grave matter that vitiates all judicial acts. A judgment obtained through fraudulent means is void *ab initio* and cannot enjoy the protection of finality. Courts are not only empowered but are duty-bound to investigate such allegations.

Importantly, impugned Order No. 3 does not amount to a recall of the appellate judgment. It is purely a procedural direction passed upon *prima facie* satisfaction of factual discrepancies, intended to ensure that both parties are heard before deciding the merits of the Miscellaneous Case. It does not adjudicate any rights nor alter the decree.

This Court is therefore of the view that the present revision petition has been filed on overly technical grounds and appears to be aimed at delaying adjudication of a serious and credible claim.

In view of the reasons stated above, this Court finds no merit in the civil revision.

Accordingly, **the Rule is discharged.**

Order No. 3 dated 06.05.2024, passed by the learned Senior District Judge, Barishal in Miscellaneous Case No. 02 of 2024, **stands affirmed.**

The appellate court is directed to proceed with the hearing and disposal of the Miscellaneous Case in accordance with law, preferably within six(6) months from the date of receipt of this judgment, ensuring both parties are afforded a fair and effective opportunity to be heard.

There shall be no order as to costs.

The office is directed to send down the record and communicate the order at once.

(Justice Md. Toufiq Inam)

Ashraf /ABO.