

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

Present:

Mr. Justice Md. Lutfor Rahman

Civil Revision No. 2508 of 2025

In the matter of:

Md. Abul Kalam.

..... Defendant-Petitioner.

-Versus-

Md. Kawsar Amir Ali

..Plaintiff-Opposite party

Mr. Md. Quamrul Islam, Advocate

..... for the petitioner.

Mrs. Salina Akter, Advocate. With

Mrs. Samia Afroz Khan, Advocate

..Plaintiff-Opposite party.

**Heard on 21.10.2025, 05.11.2025, and judgment
on: 23.11.2025.**

Md. Lutfor Rahman, J.:

This Rule was issued calling upon the opposite party to show cause as to why the judgment and decree dated 24.03.2025 (decree signed on 24.03.2025) passed by the learned Judge, Small Cause Court, Bogura in S.S.C. Suit No. 17 of 2020 decreeing the suit filed by the plaintiff opposite party for evicting the defendant petitioner from the suit land should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

Material facts relevant for disposal of the Rule, briefly, are that the opposite-party as plaintiff filed S.C.C. Suit No. 17 of 2020 praying for evicting the defendant-petitioner from the suit premises i.e the shop described in the schedule of the plaint and also for getting back the possession of the scheduled

shop alleging inter alia that the scheduled shop of District and Police station- Bogura, Mouza-Sutrapur, J.L. No. 82 Khatian No. 758, 759/1 Plot No. 1589 and 1590, Bogura Pourashava Ward No. 5, Holding No. $\frac{1964}{2076}$ Aziz Mansion Market, Shop No. 9/1, North side of Kazi Nazrul Islam Road (Satmatha, Bogura) along with other properties originally belonged to father of the plaintiff. The plaintiff and other co-sharing owners of the Aziz Mansion Market jointly executed a Power of Attorney in favour of A.A.M. Wares Ali for maintenance of the property. The defendant (herein petitioner) took the scheduled shop on rent on 07.05.2003 and has been running his business.

Thereafter the owners of Aziz Mansion Market demarcated their respective portions by an amicable settlement and the plaintiff obtained the right and title of the scheduled shop vide registered Partition deed No. 23860 dated 25.11.2011 among the co-sharers. That Wazed Ali, one of the executants of Power of Attorney died on 18.05.2017 and for that the said power of Attorney deed became inoperative. The plaintiff as the landlord served a notice on 28.01.2019 and another notice along with A/D on 02.02.2019 to the defendant-tenant requesting him to execute a fresh deed of agreement with him but the defendant-tenant did not respond to the said notices.

On the contrary, the defendant-tenant filed H.C.R.Suit No. 15 of 2019 as plaintiff before the learned Senior Assistant Judge, 1st Court, and Small Cause Court, Bogura impleading all the owners of Aziz Mansion Market as defendants after hearing, the said suit was dismissed vide order dated 16.09.2019. Thereafter the defendant tenant preferred Mis. Appeal No.120 of

2019 before the District Judge, Bogura which was disallowed vide judgment and order dated 12.04.2022. Then the defendant-tenant filed Civil Revision No. 4025 of 2022 in the High Court Division and got a Rule which was discharged on contest on 30.05.2023 and Hon'ble High Court Division was pleased to impose a penalty/fine of Tk.50,000/- on the defendant-tenant. The defendant-tenant thereafter filed C.P. No. 3710 of 2023 before the Hon'ble Appellate Division which was also dismissed on 26.04.2024.

The plaintiff-landlord filed the instant SCC suit No. 17 of 2020 on 14.12.2020 against the defendant tenant praying for a decree of eviction of the defendant tenant from the scheduled premises of the shop and recovery of possession in his favour.

That the defendant-tenant contested the suit by filing written statement denying all material averments made in the plaint and stating inter alia that the owners of all the shops of Aziz Mansion Market executed a Power of Attorney in favour of A.A.M Wares for maintenance of the said property and subsequently the said Power of Attorney holder executed a tenancy deed with him and received Tk. 1,50,000/- (one lac and fifty thousand taka) in advance on 03.09.2003. But from January, 2019 the said Attorney wilfully denied to receive rent of the said shop from him. Thereafter the defendant-tenant sent the rent money of the month of January, 2019 by Money Order through Bogura Post Office and filed H.R.C Suit No. 15 of 2019 in the Court of Senior Assistant Judge, 1st court and Small Cause Court, Bogura and also had been paying money vide challan in accordance with law. Subsequently the said

H.R.C. Suit No. 15 of 2019 was dismissed on 16.09.2019 and thereafter the defendant-tenant preferred Miscellaneous Appeal No. 120 of 2021 before the District Judge, Bogura. The said Miscellaneous appeal was also disallowed vide judgment and order dated 12.04.2022 against which the defendant-tenant preferred Civil Revision No. 4025 of 2022 before the Hon'ble High Court Division and obtained Rule and stay. The said revisional application was then pending before this Hon'ble Division for hearing and the petitioner had been paying all rents and managing his business and he is not a habitual defaulter at all and as such the suit is liable to be dismissed.

During trial 6 (Six) issues were framed which are as follow:

1. Whether the suit is maintainable
 2. Whether the defendant is the tenant of the plaintiff
 3. Whether notice under section 106 of the Transfer of Property Act, 1882 was given
 4. Whether the defendant is a habitual defaulter
 5. Whether the plaintiff requires the shop for his own use
 6. Whether the plaintiff is entitled to get any relief as prayed for.
- All these issues were decided in the affirmative on elaborate discussions.

The plaintiff landlord adduced himself as a single witness and exhibited documents as Exhibit Nos. 1-6 series. The defendant-tenant cross examined the plaintiff but adduced none as witness. Thereafter on 24.03.2025, after conclusion of the trial, the learned Judge, Small Cause Court, Bogura was pleased to pass a judgment decreeing the suit for evicting the defendant-tenant from the suit property vide judgment and decree dated 24.03.2025. The

defendant-tenant as the petitioner filed the instant Civil Revision against the judgment and decree of the trial court and obtained the Rule and the interim order of stay.

I have heard the learned advocates from both the sides, perused the civil revisional application and other materials on records.

Mr. Md. Quamrul Islam, the learned advocate for the defendant petitioner submits that the court below without proper appreciation of the facts, law and materials on record came to the erroneous decision of decreeing the suit occasioning failure of justice. Learned counsel further submits that the defendant-petitioner is not a habitual defaulter tenant at all. That in spite of death of Wazed Ali, one of the executants of Power of Attorney, the said Power of Attorney is still in force as it has not been cancelled in accordance with law. He added that AAM Wares Ali, the holder of the Power of Attorney denied to receive rent of the shop in question from January, 2019 and then the petitioner sent the rent money by Money Order through post office and filed H.R.C. Suit No. 15 of 2019 and had been paying rent money vide challan in accordance with law. Thus he prays for making the Rule absolute.

Mrs. Salina Akter along with Mrs. Samia Afroz Khan, the learned advocate on behalf of the opposite party submits that the defendant-petitioner was a tenant under the plaintiff through a constituted attorney. The Power of Attorney became ineffective since the death of Wazed Ali, one of the executants of the Power of Attorney on 18.05.2017. Moreover Power of Attorney holder AAM Wares Ali due to old age relinquished his power on

18.01.2019 and terminated the tenancy agreement and told the defendant tenant by sending registered notice in writing on 28.01.2019 to enter into tenancy agreement directly with the owner and the said notice was received by the tenant on 29.01.2019. Thereafter the plaintiff-opposite party as the owner of the shop requested the defendant tenant on 02.02.2019 and several times onwards to enter into tenancy agreement with him afresh and to pay his arrear rents but the tenant abstained from making any response. Thereafter the plaintiff-landlord again sent him a notice by registered post on 19.02.2019 inviting him to execute a tenancy agreement with him within 15 days from the date of receipt of the said notice. The defendant-tenant received the said notice on 20.02.2019 and by ignoring the notice, he filed H.R.C suit No. 15 of 2019 in the court of Senior Assistant Judge, 1st court, and Small Cause Court Bogura. The said suit was dismissed on contest on 16.09.2019. In the mean time, the defendant-petitioner became a defaulter tenant. Thereafter the plaintiff-opposite party sent him a notice on 04.11.2020 under section 106 of the Transfer of Property Act, 1882 to quit the suit premises which was received by him on 05.11.2020. But the tenant did not quit the suit premises and continued legal fight in that suit upto the Apex court of Bangladesh but he had been defeated at every stage.

Learned counsel submits that it was earlier found by the Hon'ble High Court Division that the defendant-petitioner is a habitual defaulter in depositing the rent to the Rent Controller The Hon'ble High Court Division in its

judgment and order dated 30.05.2023 passed in Civil Revision No. 4025 of 2022 observed as hereunder:

"The Petitioner is a habitual defaulter in depositing the rent to the Rent Controller. Section 18 (5) (ka) of the Premises Rent Control Act, amongst other stipulates that no tenant shall be entitled to the benefit of section 18 unless he pays the rent within the time fixed in the contract with his landlord and section 18 (5) (Kha) stipulates that in the case provided for in section 19 he shall also not be entitled to such benefit unless he deposits rent to the Rent Controller within the time specified therein. Section 19(1) (2) (3) and (4) stipulate that the tenant can only be allowed to deposit the rent to the rent controller within 15 days from the date fixed thereunder, respectively. Since the Petitioner did not pay or deposit the rent to the Rent Controller within the said fixed time he was not allowed by law to deposit the rent at his sweet will or at any time."

Thus it was decided by the Hon'ble High Court Division that the petitioner-tenant Party is a habitual defaulter in depositing his rent within the stipulated time and accordingly the Hon'ble High Court Division discharged the rule issued in the said Civil Revision by judgment and order dated 30.05.2023.

She further submitted that the defendant-petitioner did not come before the Hon'ble High Court Division with clean hands rather he has filed the aforesaid Civil Revision to disguise his own misdeeds and to obtain undue advantage from the Hon'ble Court. It is pertinent to mention in this regard that defendant-petitioner declined to enter into any tenancy agreement with an ulterior motive to deprive the plaintiff-opposite party of his lawful rights and

that he was found a defaulter tenant by the Hon'ble High Court Division in a previous suit and as such, the instant rule is liable to be discharged.

I have heard the learned advocates for both the parties and perused the materials on records.

From discussions made above, it appears that the essence of the plaintiff's suit is that he had filed the suit for evicting the tenant from his suit property for three consecutive reasons. The first reason is that the tenant declines to enter into a tenancy agreement with him, the second reason is that the tenant is a tenant at sufferance and he is a habitual defaulter, the third reason is that the landlord is in bonafide requirement of his suit premises for his own use and purpose.

The trial court properly framed necessary issues for arriving at a correct decision in respect of a suit for eviction. All the issues were decided in the affirmative in favour of the plaintiff-landlord on elaborate discussions. In *Md. Fazlur Rahman Shah Vs. Md. Arifur Rahman @ Badshah* reported in 48 DLR(AD)128 and also in 1 MLR(AD)258, the Supreme Court of Bangladesh established that for a rent controller (Small Cause Court) to have jurisdiction, there must be an established landlord-tenant relationship and the tenant must be a defaulter or the premises must be required for landlords bonafide use. A legal Notice in writing under Section 106 of the Transfer of Property Act, 1882 is required to be served upon the tenant prior to file an eviction petition. In this suit, there is no dispute regarding the existence of landlord and tenant relationship between the parties. Moreover, it has been established that the tenant is a habitual defaulter and that the landlord requires the premises for his

bonafide use. Moreover a notice under section 106 of the Transfer of Property Act, 1882 to quit the suit premises had been served properly.

That defendant petitioner as tenant earlier instituted Rent Control Case No.15 of 2019 in the Court of Senior Assistant Judge, 1st court, and Small Cause Court Bogura against the landlord-instant opposite party. The trial court took up the case for a hearing on its maintainability and upon such hearing the trial court by the judgment and order dated 16-9-2019 dismissed the suit. Being aggrieved by the said judgment and order of the trial court, the petitioner as appellant preferred Miscellaneous Appeal No 120 of 2021 in the court of learned District Judge, Bogura. The appellate court after hearing both the parties dismissed the appeal and thereby affirmed the judgment and the order of trial court. The petitioner filed Civil Revision being No. 4025 of 2022 against the Judgment and order of the appellate court before the Hon'ble High Court Division and the Hon'ble High Court Division dismissed the said Civil Revision with the finding that

"the Petitioner is a habitual defaulter in depositing the rent to the Rent Controller. Section 18 (5) (ka) of the Premises Rent Control Act, amongst other stipulates that no tenant shall be entitled to the benefit of section 18 unless he pays the rent within the time fixed in the contract with his landlord and section 18 (5) (Kha) stipulates that in the case provided for in section 19 he shall also not be entitled to such benefit unless he deposits rent to the Rent Controller within the time specified therein. Section 19(1) (2) (3) and (4) stipulate that the tenant can only be allowed to deposit the rent to the rent controller within 15 days from the date fixed thereunder, respectively. Since the Petitioner did not

pay or deposit the rent to the Rent Controller within the said fixed time he was not allowed by law to deposit the rent at his sweet will or at any time.

Thereafter the defendant petitioner filed Civil Petition for Leave to Appeal No. 3710 of 2023 against the judgment and order dated 30 May, 2023 passed by the Hon'ble High Court Division in Civil Revision No. 4025 of 2022 and the Hon'ble Appellate Division dismissed the Civil Petition for Leave to Appeal for default by an order dated 28.04.2024. Thus it appears that the petitioner is a habitual defaulter in depositing the rent has finally been settled in the eye of law.

It appears that the plaintiff is admittedly the owner of the Shop No. 9/1 of Aziz Mansion Market described in the schedule of the plaint. The defendant-petitioner took the said shop on rent in 2003 by an agreement through their agent namely AAM Wares Ali, Power of Attorney holder. The said Power of Attorney became ineffective since the death of one wajed Ali, one of the executants of the said Power of Attorney on 18.05.2017. Moreover, Power of Attorney holder AAM Wares Ali voluntarily relinquished his Power and terminated the tenancy agreement on 18.01.2019 due to his old age and physical infirmity and informed the defendant-petitioner of this termination by sending a registered notice in writing by post on 28.01.2019 and the said notice was received by the tenant on 29.01.2019. Thereafter the plaintiff-opposite party as the landlord (the owner of the scheduled suit premises i.e the shop) requested the defendant-petitioner, the tenant on 02.02.2019 and several times onwards to enter into a tenancy agreement with him afresh and to pay his arrear rents but the defendant petitioner abstained from making any response.

Thereafter the plaintiff again sent him a notice by registered post on 19.02.2019 inviting him to execute a tenancy agreement within 15 days and it was received on 20.02.2019 but ignored by the defendant-petitioner, rather he filed the H.R.C suit No. 15 of 2019 in the court of Senior Assistant Judge, 1st court, Bogura. The said suit was dismissed on contest and subsequently he moved upto the Apex court of the country, i.e the Hon'ble Appellate Division but he lost the suit at every stage on the finding and observation that he is a habitual defaulter in depositing the rent to the rent-controller and thus he is not entitled to the benefit of section 18 of the Premises Rent Control Act, 1991. In the meantime, the defendant-petitioner became a tenant in default and the plaintiff opposite party sent him a notice to quit the premises under section 106 of the Transfer of Property Act, 1882 by registered post on 04.11.2020 and it was received on 05.11.2020. Thereafter he filed the instant suit on 14.12.2020 for eviction of the tenant and recovery of the suit premises.

I observe that since the defendant denied or declined the invitation or request of the plaintiff-opposite party to come under the purview of his tenancy by way of executing an agreement or entering into a contract in writing, he cannot at all be said a valid tenant under the plaintiff-opposite party, let alone the habitual defaulter. The defendant-petitioner is merely a tenant at sufferance and also the tenancy itself is at sufferance. The defendant-petitioner had been a regular tenant in the eye of law since 2003 till 18.01.2019. The Power of Attorney initially became inoperative on 18.05.2017 with death of one of the executants namely Wazed Ali and finally it became ineffective on the

voluntary relinquishment by AAM Wares Ali of his Power as Attorney on 18.01.2019 and serving a notice dated 28.01.2019 by registered post upon the tenant terminating the tenancy which was received by the tenant on 29.01.2019.

Thereafter the defendant-petitioner declined to execute a tenancy agreement afresh and became a tenant at sufferance as he has been continuing to occupy the suit premises after the expiry of his lease without a new agreement in place and also without consent and against the wishes of the landlord. As a tenant at sufferance the defendant-petitioner after rightfully being in possession of rented premises continuing after his right has terminated such tenant has no entitlement of tenancy but only naked possession without right and stands in no privity to landlord. In spite of that the landlord is not entitled to evict the tenant at sufferance as well as a defaulter tenant without due process of law and accordingly the plaintiff-opposite party gave him notices times and again to execute-a-tenancy agreement with him which the defendant ignored and defied and at last the plaintiff-opposite party finding no other alternative issued a notice of termination under section 106 of the Transfer of Property Act, 1882 on 04.11.2020 in accordance with law prevailing in Bangladesh. Moreover, the plaintiff-opposite party served notice to quit the suit premises under section 106 of the Transfer of Property Act, 1882 stating that the defendant-petitioner was a defaulter tenant and also stating that the plaintiff required the suit premises i.e shop for his own use. So suit for eviction of a tenant on the ground of being habitual defaulter tenant and

on the ground of bonafide requirement of the suit premises by the landlord for his own use is maintainable.

The trial court found that plaintiff was successful in proving his case by sufficient oral and documentary evidence. On the contrary, the defendant-petitioner though cross-examined the plaintiff, but he did not adduce any oral or any documentary evidence and failed to prove any case in his favour.

So, it is clear from the abovementioned facts and circumstances that the plaintiff-opposite party being the admitted landlord of the suit premises is entitled to the rents of the same and the defendant-petitioner by declining to enter into any agreement of tenancy with the landlord lost his entitlement as a tenant under the plaintiff since 18.01.2019, on the voluntary relinquishment of Power as Attorney of the landlord and termination of tenancy agreement on 28.01.2019 by the Power of Attorney holder. The defendant though an illegal possessor of the suit premises, he claims himself as a tenant under the plaintiff and has been found and declared as a defaulter tenant by the High Court Division in Civil Revision No. 4045 of 2022 by judgment and order dated 30.05.2023. Moreover, the plaintiff-landlord has successfully been able to prove his bonafide necessity of the suit premises for his own cause.

I am of the view that the defendant petitioner is not only a habitual defaulter tenant, but also a tenant at sufferance as well as the tenancy itself is at sufferance and thus the defendant-petitioner is not entitled to any protection of

law as tenant in respect of holding over the suit premises and liable to be evicted.

For all these reasons, I find that the trial court has arrived at a correct finding and decision in decreeing the suit in favour of the plaintiff-opposite party.

Considering the facts and circumstances stated above I find no substance in this Rule.

Accordingly, the rule is discharged without any order as to costs.

The judgment and decree dated 24.03.2025 (decree signed on 24.03.2025) passed by the learned Judge, Small Cause Court, Bogura in S.S.C. Suit No. 17 of 2020 decreeing the suit filed by the plaintiff opposite party for evicting the defendant petitioner from the suit premises described in the schedule of the plaint is hereby affirmed and upheld.

The petitioner is directed to handover the possession of the suit premises i.e. the shop described in the schedule of the plaint along with all arrear rents, if any to the opposite party within 30 (thirty) days from the date of receipt of this order passed by this court.

The order of the stay granted earlier by this Court is hereby vacated.

Send down the Lower Court records with a copy of the Judgment to the courts below at once.

(Md. Lutfor Rahman)