

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

Present:

Mr. Justice S. M. Saiful Islam

Civil Revision No. 6478 of 2024

IN THE MATTER OF:

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

And

IN THE MATTER OF:

Md. Hannan Sheikh.

---- Defendant-Petitioner.

-versus-

Md. Enamul Haque Mollah and others.

---- Plaintiff-Opposite Parties.

Mr. Ranjan Kumar Chakravorty, Advocate

---- For the Petitioner.

Mr. Muhammad Amirul Haq with

Mr. Mahbub Alam and

Mrs. Sharmin Sultana Neela, Advocates

--- For the Opposite Party No. 1.

Heard On: 27.01.2026, 28.01.2026,

29.01.2026 and 09.02.2026.

Date of Judgment: 16.02.2026.

S. M. Saiful Islam, J.

This Rule on leave was issued upon an application under section 115(4) of The Code of Civil Procedure 1908, calling upon the opposite party No. 1 to show cause as to why the

impugned judgment and order dated 24.06.2024 passed by the learned Additional District judge, 1st Court, Rajbari in Civil Revision No. 16 of 2023 disallowing the same and thereby affirming the order No. 57 dated 06.08.2023 passed by the learned Senior Assistant Judge, Baliakandi Court, Rajbari in Title Suit No. 96 of 2017 accepting the Advocate Commissioner's report dated 03.02.2022 shall not be set aside and/or such other or further order or orders passed as to this Court may deem fit and proper.

Facts relevant for the disposal of this Rule is that the opposite party No. 1 as plaintiff filed Title Suit No. 96 of 2017 against the petitioner and others for declaration of title and recovery of khas possession by demolishing the hut from the suit land as described in the schedule 'Kha' of the plaint. The plaintiff filed an application on 01.02.2021 for holding local investigation in the suit land by a survey knowing lawyer. Learned Assistant Judge, Baliakandi, Rajbari allowed the application and an Advocate Commissioner was appointed. The Advocate Commissioner submitted his investigation report on 03.02.2022. The defendant petitioner then filed a written objection against the Advocate Commissioner's Report. Thereafter the Advocate Commissioner was examined as Court witness and cross-examined by the defendant-petitioner.

Learned Assistant Judge accepted the Commissioner's report by his order No. 57 dated 06.08.2023.

Being aggrieved and dissatisfied with the order dated 06.08.2023, defendant-petitioner preferred Civil Revision No. 16 of 2023 before the learned District Judge, Rajbari. That Revision was heard by the learned Additional District Judge, 1st Court, Rajbari who was pleased to disallow the Civil Revision by the impugned judgment and order dated 24.06.2024. Being aggrieved and dissatisfied with the impugned order dated 24.06.2024 defendant-petitioner filed this revisional application and obtained the Rule.

At the time of issuance of the Rule on 28.10.2024, further proceedings of the Title Suit No. 96 of 2017 was stayed for a period of six months. However it was not extended further.

Learned Advocate Mr. Ranjan Kumar Chakravorty, appearing on behalf of the defendant-petitioner, submits that the prayer for local investigation was not maintainable because the subject matter of the local investigation was to ascertain possession of a party which was completely illegal. Learned trial court accepted the report illegally and the revisional court committed an error on an important question of law resulting in erroneous decision occasioning failure of justice. Trial court did not consider that the Advocate Commissioner failed to start

investigation from any fixed pillar and therefore the report lacks correctness and there is every possibility of committing wrong. Thus the trial court committed gross illegality in accepting the said report. For these reasons, learned advocate for the defendant-petitioner prays for making the Rule absolute.

On the other hand, learned Advocate Mr. Muhammad Amirul Haq along with learned Advocate Mrs. Sharmin Sultana Neela, appearing on behalf of the plaintiff-opposite party No. 1, submits that learned trial court has rightly accepted the Advocate Commissioner's report. Report of Advocate Commissioner is not conclusive proof of any fact and it is merely corroborative evidence. So the petitioner has no reason to be prejudiced by the report and it has not occasioned any failure of justice. The defendant-petitioner himself in his written statement stated the necessity of holding local investigation and accordingly the plaintiff prayed for local investigation. Defendant-petitioner is possessing the suit land illegally and has filed this revisional application only to delay the disposal of the suit. Revisional Court or the trial court has not committed any error of law in the impugned judgment and order and as such it has not occasioned any failure of justice. Hence he prays for discharge of the Rule.

Heard the learned Advocates for both the parties. Perused the impugned judgment and order, revisional application and annexures therewith.

Defendant-petitioner claims that the prayer for local investigation was not maintainable because the subject matter of the local investigation was to ascertain possession of a party which was completely illegal. But he did not seek any relief against the order by which the petition for local investigation on the specific subject matter was allowed. Advocate Commissioner conducted his investigation and submitted the report according to the writ issued by the court. Defendant-petitioner filed the revisional application against the order of acceptance of the commission report by the trial court. It is well settled principle of law that the report of the commissioner is not binding on the court and the court is free to come to its own conclusion at the time of trial. The Report of the commissioner is neither substantive nor conclusive evidence. The court is to consider the report in the light of other evidence that may be given by the contesting parties. So there is nothing to be worried by the acceptance of the commissioner's report and such acceptance of commissioner's report does not occasion any failure of justice. In the case of *Abul Qashem Vs. Lutfor Rahman* our Apex Court has held that, "the Commissioner's report is to be evaluated in the

facts of the case on evidence adduced and the court has wide discretion in such matter. Mere acceptance of the report should not give rise to any apprehension in the mind of the litigant.” [43 DLR (AD) 17]

Considering the facts and circumstances, I find no merit in the Rule and the Rule is liable to be discharged.

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

The order of stay passed earlier by this Court at the time of issuance of this Rule is hereby vacated.

Communicate this judgment and order to the concerned Court below at once.