

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

Present:

Mr. Justice Md. Riaz Uddin Khan

Civil Revision No. 3151 of 2025

IN THE MATTER OF :

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

-And-

In the Matter of:

Md. Anisur Rahman and others

... Plaintiff-Petitioners

Versus

Md. Newaj Ahmed and others

... Defendant-Opposite parties

Mr. Md. Ataur Rahaman, Advocate

... For the petitioners

Mr. Tushar Kanti Das, Advocate

... For the Opposite Party No.1

Judgment on: 05.05.2026

Md. Riaz Uddin Khan, J:

At the instance of the plaintiffs this Rule was issued calling upon the defendant-opposite party No.1 to show cause as to why the impugned judgment and order dated 10.07.2025 passed by the Additional District Judge, 1st Court, Natore in Civil Revision No. 32 of 2024 dismissing the revision and thereby affirming the order dated 29.07.2024 passed by the Senior Assistant Judge, Gurudaspur, Natore in Title Suit No.81 of 2023 allowing an application under Order XL Rule 1 of the Code of Civil Procedure in a modified form 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 this Court stayed the operation of the impugned judgment and order.

Succinct facts for disposal of this Rule are that the plaintiffs filed Title Suit No.81 of 2023 against the opposite party Nos.1-3 for partition of the suit property. At one stage of the suit the defendant opposite party No.1 filed an application under Order-XL Rule-1 of the Code of Civil Procedure for appointment of a receiver. The plaintiff-petitioners filed written objection against that application. After hearing both the parties the learned Judge of the trial court was pleased to allow the application on consent considering that if a 3rd person is inducted in the suit property as a receiver both the parties will be prejudiced. Hence the learned trial Judge was pleased to allow the application for receiver considering the possession in a modified form appointing the plaintiffs as the receivers vide order dated 29.07.2024 asking them to pay Tk-17000/- per month to the defendant no.1. Being aggrieved by the order dated 29.07.2024 the plaintiff filed civil revision before the learned District Judge, Natore which was ultimately heard by the Additional District Judge, 1st Court, Natore. After hearing both the parties the Additional District Judge by his impugned judgment and order dated 10.07.2025 rejected the revision and thereby affirmed the order passed by the trial court.

Being aggrieved by and dissatisfied with the said judgment and order dated 10.07.2025 the plaintiffs filed this Civil Revision before this Court and

obtained the Rule and order of stay as stated at the very outset.

The opposite party No.1 entered appearance and filed counter affidavit.

Mr. Md. Ataur Rahaman, the learned advocate appearing for the petitioners submits that the rent of the shops is not collected equally every month and on average the monthly rent of Tk.70,000/- (seventy thousand) is not collected from the 14 shops. The monthly income and the maintenance and management of the building and the renovation of the mosque in the building cost Tk.15,000/- per month and the entire amount excluding expenses are to be divided into four parts and the learned courts below made a wrong decision by ordering the plaintiffs to pay Tk. 17,000/- (seventeen thousand) per month to the defendant No.1. The courts below without considering the facts and circumstances of the case and without any inquiry into the matter passed the impugned judgment and order and thus committed an error of law resulting in an error in the decision occasioning failure of justice.

The learned advocate next submits that the plaintiffs and the defendant No.1 are the owners of the Schedule land jointly and rented out shops and houses and received rents in the joint estate but the defendant No.1 fraudulently transferred the valuable land adjoining the paved road in the north-east corner of plot to his wife, the defendant No.2 but has not handed over any possession despite creating the deed of gift and after knowing this, the plaintiffs filed the suit for declaration and partition. The defendants did not come with clean hand for appointment of receiver

and cannot get remedy from the court but the courts below without considering the facts and circumstances of the case passed the impugned judgment and order. The learned advocate for the plaintiff-petitioners finally submits that both the courts below committed wrong in not considering that from the suit property the income is less than as stated by the defendant No.1.

On the other hand Mr. Tushar Kanti Das, the learned advocate appearing for the defendant-opposite party No.1 submits that the Courts below upon hearing both the parties observed that the Opposite Party No.1 filed the application under Order-XL, Rule 1 of the Code of Civil Procedure for securing his interest in the suit property as well as securing the interest of all the parties and hence rightly allowed the said application. He next submits that a receiver is liable to duly account for the income and the properties which come into his hand. But the receivers of the instant Case are not properly doing that. They are disregarding the Court's order actuated by their own interest and as such they are liable to be removed and a impartial/neutral person be appointed as the receiver of the suit property for securing the interest of the opposite Party No.1.

The learned advocate then submits that the appointment of receiver is a protective relief. The object is preservation of the property in dispute pending judicial determination of the rights of the parties to it but, in the present case, the receivers are depriving the opposite Party No.1 from his legal rights as to get equal shares of collected rents of suit property. The entire Suit property is under

control of the Petitioners and they are renting the shops favouring the tenants by their own decisions, they are collecting the rents without maintaining any register and are not giving the share of it to the opposite Party No.1. The Petitioners till date did not make any payment according to the order of the Courts below. They have filed this Civil Revision before this Court only to deprive the Opposite Party from his legal dues from the suit property.

The learned advocate for the defendant opposite party finally submits that he has annexed some documents showing that the income from the suit property is more than Taka 01(one) lac per month. Hence the order passed by the trial court directing the plaintiffs to pay Tk-17000/- per month is much less than his due shares.

I have heard the learned advocates of both the parties, perused the application, supplementary affidavits, counter affidavit along with the documents annexed thereto.

I have minutely examined the order passed by the trial court as well as the judgment and order of revisional courts below. The defendant-opposite party no.1 filed the application for appointment of a receiver under Rule-1 of Order-XL of the Code of Civil Procedure.

This Rule-1 of Order-XL confers wide jurisdiction of the Court and appointment of receiver cannot be claimed as a matter of course. The discretion of the Court is not absolute, arbitrary or unregulated and it must be exercised on sound judicial principles after taking all the circumstances of the case for the

purpose of serving the ends of justice and protecting the rights of all the parties interested in the controversy. Such discretion must be exercised very sparingly as it takes away certain property out of possession of parties litigating against each other. A receiver should not be appointed unless the circumstances are of such an exceptional character that refusal might entail a risk of clear abuse of the process of the Court or some gross injustice. Appointment of receiver must not be a mere weapon of coercion and the Court should not exercise the discretionary power in the absence of a strong case.

The object and purpose of appointment of receiver, in general, is to preserve the subject-matter of the suit pending judicial determination of the rights of the parties. The dominant object is to prevent the ends of justice from being defeated. In that view in taking any action under the instant Rule, the Court is to look into that the rights of the parties are not jeopardized and the ends of justice not defeated. Generally under this Rule, receiver can be appointed for the proper management of any property which is subject-matter of the suit. The provision of appointing receiver is to be considered as one of the harshest remedies for the enforcement of rights to property and should be exercised in extreme cases where there is not merely apprehension of possible danger, but the peril or danger to the property in question appears to be great and imminent. Mere apprehension that the property in question will be transferred by the defendants, offer no justification for appointment of receiver. This view has been expressed by the

Appellate Division in the case of Faiz Ahmed Vs. Bakhtear Ahmed reported in 36 DLR (AD) 97. A receiver is not to be appointed unless there is some substantial background for such an interference, such as, a well-founded apprehension that the suit property will be dissipated or other irreparable injury may be done, unless the Court appoints a receiver. If there is no fear that the property in question is going to be destroyed or dissipated, the Court should be reluctant to extend the relief of appointment of receiver. However, in a very rare and exceptional circumstance, a receiver can be appointed even of properties which are not the subject-matter of the suit in which the appointment is made.

These are the principles governing appointment of receiver decided by the superior Courts of this sub-continent including Bangladesh. In this regard in the case of Krishnaswami Vs. Thangavelu reported in AIR 1955 Mad 430 following principles have been laid down:

- (a) The appointment of receiver is discretionary with the court.
- (b) It is a protective relief. The object is preservation of the property in dispute pending judicial determination of the rights of the parties to it.
- (c) A receiver should not be appointed unless the plaintiff prima facie proves that he has very excellent chance of succeeding in the suit.
- (d) It is one of the harshest remedies which the law provides for the enforcement of the rights, and therefore, should not be lightly resorted to. Since it deprives the opposite

party of possession of the property before a final judgment is pronounced, it should only be granted for the prevention of manifest wrong or injury. A court will never appoint a receiver merely on the ground that it will do no harm.

- (e) Generally, an order appointing a receiver will not be made where it has the effect of depriving the defendant of a *de facto* possession, since that might cause irreparable loss to him. But if the property shown to be in medio, that is to say, in enjoyment of no one, it will be the common interest of all the parties to the suit to appoint a receiver.
- (f) The court should look at the conduct of the party who makes an application for appointment of a receiver. He must come with clean hands and should not have disentitled himself to this equitable relief by laches, delay or acquiescence.

Now, in the light of the catena of decisions of the superior Courts of this sub-continent cited above let us consider the instant case. The facts of the instant case suggest that the plaintiffs who are brothers of the defendant no.1 are in possession of the suit land which is joint property inherited by their father. Upon hearing both the parties and on the submissions of the learned advocates on consent the trial court allowed the application of the defendant in a modified form appointing the plaintiffs as the receivers with direction to pay Tk-17000/- per month by

them to the defendant no.1 which is to be increased Tk-1000/- per month from every January of the year and with further direction to maintain the suit property and not to obstruct the defendant no.1 from entering the suit property as per his convenient. Against this order the defendant did not file any revision rather the plaintiffs who are appointed as receivers preferred revision before the learned District Judge. Both parties submitted documents regarding the income from the suit property which is admittedly a market place and both the courts below after considering all the aspects passed the order as above.

Both parties by filing supplementary affidavits annexed some documents regarding the income and expenditure of the suit property before this Court for the first time which is highly disputed question of facts. Since it is a disputed question regarding the per month income from the suit property, sitting in a revisional jurisdiction this Court should not assess those documents which have been submitted before this Court for the first time. Be that as it may, considering the prima facie evidence and submissions of the parties the courts below passed the impugned order as such I do not find any reason to interfere with the concurrent findings of the courts below. The learned advocate for the plaintiff-petitioners could not raise any point of law or error occasioning failure of justice by the impugned judgment and order. Hence, the instant Rule is liable to be discharged.

In the result the Rule is **discharged** with cost.

The plaintiff-petitioners are directed to pay immediately the dues which are unpaid as per order of the trial court.

The trial court is directed to conclude the trial expeditiously as early as practicable without allowing any adjournment to the parties unless dire necessity.

Communicate this judgment and order at once.