

District-Natore

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

Present:

Mr. Justice Md. Anowarul Islam

Civil Revision No. 3656 of 2025

IN THE MATTER OF :

An application under section 115(1) of the Code
of Civil Procedure

-And-

In the Matter of:

Md. Nazrul Islam

.....Petitioner

Versus

Md. Sukur Ali Sheikh and another

.....Opposite parties

Mr. Subrata Saha with

Mr. Md. Kamal Hossain, Advocates

.....For the petitioner

Mr. Md. Sydur Rahman, Advocate

.....For the opposite parties

*Heard on: 16.06.2026, 23.06.2026, 30.06.2026, and
15.07.2026*

Judgment on: 20.07.2026

Md. Anowarul Islam, J:

Rule was issued calling upon the opposite parties to show cause as to why impugned Judgment and order dated 10.08.2025 passed by the learned Senior Assistant Judge, Natore in S.C.C Suit No. 15 of 2021 should not be set aside and/or pass such other or further order or orders passed as to this court may seem fit and proper.

At the time of issuance of the Rule, all further proceedings of S.C.C Suit No. 15 of 2021, now pending before the Court of learned

Senior Assistant Judge, Natore, were stayed for a period of 6 (six) months from the date of issuance of the Rule.

The relevant facts, necessary for the disposal of the Rule, are that on 10.11.2021, the present opposite party No. 1, as plaintiff, instituted S.C.C. Suit No. 15 of 2021 before the learned Judge of the Small Causes Court and Senior Assistant Judge, Sadar, Natore, against the present petitioner and pro forma opposite party No. 2, seeking eviction of the defendants from the suit shop. The plaintiff alleged, inter alia, that he is the owner and possessor of several shops, including the suit shop situated at Khan Super Market, Alaipur, Natore; that defendant No. 1 was inducted as a monthly tenant in respect of the suit shop; and that, under the terms of the tenancy agreement, rent for each calendar month was payable within the first week of the succeeding month. Initially, defendant No. 1 paid the monthly rent regularly, but since April 2016 he had defaulted in payment of rent.

The plaintiff further alleged that on 10.10.2021 he served a notice upon defendant No. 1 under section 106 of the Transfer of Property Act through his learned Advocate, which was received by defendant No. 1 on 14.10.2021, requiring him to vacate and hand over vacant possession of the suit shop. The plaintiff also alleged that he subsequently came to know that defendant No. 1 had unlawfully sublet the suit shop to defendant No. 2, namely Md. Shohag Hossain, in violation of the terms and conditions of the

tenancy agreement. Accordingly, both defendant Nos. 1 and 2 became liable to be evicted from the suit premises. It was further stated that the cause of action arose on 01.11.2021 upon the expiry of the notice issued under section 106 of the Transfer of Property Act, giving rise to the institution of the suit.

On the other hand, defendant No. 1 contested the suit by filing a written statement denying the material allegations made in the plaint. He contended, inter alia, that the plaintiff was a habitual litigant who frequently instituted eviction suits against his tenants. Defendant No. 1 further stated that he had originally taken the suit shop on monthly tenancy from one Abdul Majid Khan in 2002 and had regularly paid rent to him. Subsequently, the plaintiff secretly purchased the suit shop from the previous landlord, Abdul Majid Khan. After learning of the transfer, defendant No. 1 entered into an oral tenancy agreement with the plaintiff and continued to pay rent to him regularly.

Defendant No. 1 further asserted that in April 2016, when he attempted to pay the monthly rent, the plaintiff refused to accept it. Thereafter, as 06.05.2016 and 07.05.2016 were weekly holidays (Friday and Saturday), he sent the rent by postal money order on 08.05.2016, but the plaintiff again refused to accept the same. Consequently, defendant No. 1 instituted Rent Control Suit No. 07 of 2016 and thereafter regularly deposited the rent in respect of the suit

shop in accordance with law. Accordingly, defendant No. 1 claimed that he was never a defaulter in the payment of rent.

Mr. Subrata Saha, learned Advocate, assisted by Mr. Md. Kamal Hossain, appearing on behalf of the petitioner, submits that the petitioner is not a defaulter tenant. He has been a tenant of the suit shop since 2002 under the previous landlord, Mr. Abdul Majid Khan, and regularly paid the monthly rent to him. After the ownership of the suit shop was transferred, the petitioner continued to pay rent regularly to the new owner, i.e. the plaintiff. However, in April 2016, the plaintiff abruptly refused to accept the rent tendered by the petitioner. Despite repeated attempts to pay the rent by various lawful means, the petitioner failed to persuade the plaintiff to accept the same. Consequently, having no other alternative, he was compelled to deposit the rent before the learned Judge of the Small Causes Court by instituting Rent Control Suit No. 07 of 2016 and has been depositing the rent regularly ever since.

He further submits that the plaintiff alleged that the defendant No. 1 failed to pay rent from April 2016 and thereby became a defaulter. However, the plaintiff instituted the present suit only on 11.11.2021, more than five years after the alleged cause of action arose, without furnishing any explanation for such inordinate delay. According to Order VII Rule 1(e) of the Code of Civil Procedure, every plaint must contain the facts constituting the cause of action and the date when it arose. The plaint is conspicuously silent

regarding the delay in filing the suit and, therefore, the plaintiff has failed to disclose and establish a valid cause of action.

He further contends that it is a settled principle of law that a cause of action must exist before the institution of a suit and comprises the bundle of material facts which entitles the plaintiff to seek judicial relief. Unless those facts are both pleaded and proved, no decree can legally be passed in favour of the plaintiff. In the instant case, the plaintiff has miserably failed to prove the cause of action, and as such the impugned judgment is liable to be set aside and the Rule deserves to be made absolute.

He again submits that the plaint specifically alleges that defendant No. 1 unlawfully sublet the suit shop to defendant No. 2, namely Md. Sohag Hossen. However, during his deposition as P.W.1, the plaintiff stated:

“উপরন্ত আমি অবগত হইতেছি যে, ১ নং বিবাদী তফসিলী বর্ণিত দোকান ঘরটি ২ নং বিবাদীর নিকট সাবলেট প্রদান করিয়াছে।”

On the other hand, the petitioner categorically denied the allegation of subletting both in his written statement and in his examination-in-chief, wherein he stated:

“আমি ২ নং বিবাদীকে কোন প্রকার সাবলেট দেই নাই। আমি নিজে তফসিল দোকানে রকমারি স্টোরের ব্যবসা করিতেছি।”

Despite such specific denial, the plaintiff failed to examine any independent witness or produce any cogent documentary

evidence to prove the alleged subletting. Nevertheless, the learned Senior Assistant Judge, on the basis of conjecture and without any legal evidence, erroneously concluded that the petitioner had sublet the suit shop to one Shahdat and thereby illegally decreed the suit. Such finding is wholly unsupported by the evidence on record and is liable to be set aside.

He further submits that since the institution of Rent Control Suit No. 07 of 2016, the petitioner has been depositing the rent regularly and without interruption before the competent Court. Therefore, the petitioner cannot, in any manner, be treated as a defaulter.

He further contends that the learned Senior Assistant Judge arrived at the impugned findings by misreading and non-reading the evidence of P.W.1 and D.W.1. The learned Judge failed to appreciate the evidence in its proper perspective and erroneously held that the petitioner was both a defaulter and guilty of subletting the suit premises. Consequently, the impugned judgment and decree suffer from serious errors of law and fact and are liable to be set aside.

He finally submits that it is a well-settled principle of law that where a landlord continuously accepts rent tendered by a tenant after the statutory period, such conduct amounts to waiver of the right to treat the tenant as a defaulter. The landlord's consistent acceptance of rent constitutes waiver and acquiescence, thereby precluding him

from subsequently alleging default. The learned Senior Assistant Judge failed to appreciate this settled principle of law as well as the facts and circumstances of the case and thereby passed the impugned judgment illegally. The impugned decision has thus occasioned a failure of justice and is liable to be set aside, and the Rule is liable to be made absolute.

Mr. Md. Sydur Rahman, learned Advocate appearing on behalf of the opposite party, submits that the petitioner has been a defaulter in payment of rent since April, 2016. Although the defendant No. 1 initially paid the monthly rent regularly to the plaintiff, he stopped paying rent from April, 2016. Consequently, the plaintiff, through his learned Advocate, served a legal notice dated 10.10.2021 under section 106 of the Transfer of Property Act upon defendant No. 1, which was received by him on 14.10.2021, requiring him to vacate the suit shop and deliver vacant possession to the plaintiff.

He further submits that defendant No. 1, in violation of the terms and conditions of the tenancy, unlawfully sublet the suit shop to defendant No. 2, namely Md. Shohag Hossain.

He also submits that even after the institution of the S.C.C. Suit, the petitioner failed to pay the rent regularly in the Small Causes Court.

I have heard the learned Advocates appearing for the respective parties, perused the revisional application, the impugned judgment and order, the pleadings, the oral and documentary evidence adduced by the parties and the materials on record.

The principal question in this Rule is whether the learned Senior Assistant Judge, Natore committed any error of law in decreeing S.C.C. Suit No.15 of 2021 on the grounds of default and unlawful subletting so as to warrant interference by this Court under section 115(1) of the Code of Civil Procedure.

At the outset, it is necessary to bear in mind that the revisional jurisdiction of this Court under section 115(1) of the Code is supervisory and not appellate. This Court does not ordinarily reassess the evidence merely because another view may also be possible. However, where the subordinate Court arrives at its findings by misreading the evidence, by omitting to consider material evidence or by applying incorrect legal principles, thereby rendering an erroneous decision occasioning a failure of justice, this Court is not only competent but duty bound to interfere.

The plaintiff instituted the present suit seeking eviction of the petitioner principally on two grounds. Firstly, that the petitioner had become a defaulter in payment of rent with effect from April, 2016. Secondly, that he had unlawfully sublet the suit shop to defendant

No.2. The learned trial Court accepted both grounds and decreed the suit.

So far as the allegation of default is concerned, the defence of the petitioner has throughout been consistent. His specific case is that after the plaintiff became the owner of the suit shop, he regularly tendered the monthly rent. When the plaintiff refused to accept the rent in April, 2016, he forwarded the same through postal money order, which was also refused. Having no other legal remedy, he instituted Rent Control Suit No.07 of 2016 and thereafter continued depositing the rent before the competent Court in accordance with law. These facts were specifically pleaded in the written statement and reiterated in his evidence.

The learned trial Court, however, appears to have proceeded on the mere allegation that the petitioner had become a defaulter from April, 2016 without examining the legal effect of the landlord's refusal to accept the rent or the subsequent deposits made before the Rent Controller. Whether those deposits were legally valid was undoubtedly an issue requiring judicial determination. The impugned judgment, however, contains no meaningful discussion on this vital aspect of the defence.

The evidence of P.W.1 also assumes considerable significance. During cross-examination, P.W.1 admitted that he had

not received rent from April, 2016 and that he served the statutory notice only in October, 2021.

He stated:

“২০১৬ সালের এপ্রিল মাস হতে আমি ভাড়া পাইনি। ২০২১ সালের অক্টোবরে ১ নম্বর বিবাদীকে Legal Notice প্রদান করি।”

Furthermore, P.W.-1 stated in his deposition that- “ ১ নং বিবাদী অভ্যাসগত ভাবে খেলাফী ভাড়াটিয়া হওয়ায় এবং তপশীল বর্ণিত দোকান ঘর আমার নিজের ব্যবসায়ের প্রয়োজনে খাস দখলে লওয়ার আবশ্যিকতা দেখা দেওয়ায় আমি সম্পত্তি হস্তান্তর আইনের ১০৬ ধারার বিধান মতে আমার নিযুক্ত বিজ্ঞ আইনজীবীর মাধ্যমে গত ১০/১০/২০২১ ইং তারিখে ১ নং বিবাদীকে লিগ্যাল নোটিশ প্রদান করতঃ তপশীল বর্ণিত দোকান ঘরটি ২০২১ সালের অক্টোবর মাসের শেষ তারিখে দখলে রাখিয়া উহার দখল আমার বরাবর ছাড়িয়া দেওয়ার জন্য নোটিশ প্রদান করি। বিবাদী তপশীল বর্ণিত দোকান ঘরের দখল আমার বরাবর ছাড়িয়া দেয় নাই। উপরোক্ত আমি অবগত হইতেছি যে, ১ নং বিবাদী তপশীল বর্ণিত দোকান ঘরটি ২ নং বিবাদীর নিকট সাব-লেট প্রদান করিয়াছে।”

The plaintiff in the aforesaid evidence further stated in his examination-in-chief that defendant No.1 had become a habitual defaulter, that he required the suit shop for his own business, that he served notice under section 106 of the Transfer of Property Act on 10.10.2021 requiring the tenant to vacate the premises and that he subsequently came to know that defendant No.1 had sublet the shop to defendant No.2.

The aforesaid evidence clearly demonstrates that although the plaintiff alleged default from April, 2016, he waited until October, 2021 to issue the statutory notice and instituted the present suit thereafter. Mere delay may not, by itself, defeat the plaintiff's claim. However, such prolonged inaction was undoubtedly a relevant circumstance requiring careful judicial consideration while appreciating the conduct of the parties and the defence that the tenant had tendered the rent, that the landlord had refused to accept it and that the tenant thereafter deposited the rent before the competent Court. The learned trial Court does not appear to have addressed this aspect at all.

The finding regarding unlawful subletting is equally unsatisfactory. The burden of proving subletting squarely rested upon the plaintiff. Except his own assertion that he subsequently came to know that defendant No.1 had sublet the shop, no independent witness was examined nor was any documentary evidence produced to establish that possession had actually been parted with in favour of defendant No.2.

On the contrary, D.W.1 categorically denied the allegation and deposed that he himself had been carrying on business in the suit shop.

D.W.-1 in his deposition stated as follows:

“ আমি নিজে তপশীল দোকানে রকমারী স্টোরের ব্যবসা করিতেছি। আমি তপশীল দোকানঘর মূল মালিক অধুনামৃত আব্দুল মজিদ খান এর নিকট হইতে মোট- ৮০,০০০/- টাকা সেলামী প্রদান অন্তে পজেশান খরিদ করি। চুক্তিনামায় উহা লিখিত আছে। সেলামী প্রদানের চুক্তিতে মূল মালিক ঘর লইতে চাহিলে বর্তমান বাজার মূল্য অনুযায়ী টাকা ফেরত প্রদানের বিধান আছে। আঃ মজিদ খানের নিকট হইতে বাদী তলস্থ ভূমি খরিদ করে এবং আঃ মজিদ খানের চুক্তির ফটোকপি আমি বাদীকে দেওয়ার পর বাদী আমাকে ভাড়াটিয়া স্বীকার করিয়া আমার নিকট হইতে ভাড়া নেয়। মোঃ আব্দুল মজিদ খানের সহিত আমার চুক্তিনামা বাদীর উপরে বাধ্যকরী বটে। বাদী একজন মামলাবাজ বিধায় বিষয়গুলি গোপন রাখেন। চুক্তি নামায় তিন মাসের ভাড়া বাকী থাকিলে ডিফল্টার হইবে মর্মে লিখিত ভাবে বর্ণনা আছে। আমি কাহাকেও sub-let প্রদান করি নাই। আমি নিজে ব্যবসা করি।”

The aforesaid evidence the D.W. 1 stated that he had originally become a tenant under the previous owner, Abdul Majid Khan, on payment of salami and had continued as tenant under the plaintiff after transfer of ownership. He specifically denied having sublet the shop to anybody. The learned trial Court, however, neither analysed this evidence nor assigned any convincing reason for rejecting the defence.

It is well settled that an allegation of subletting cannot be sustained merely upon suspicion or inference. There must be satisfactory evidence establishing that the tenant has parted with possession in favour of another person. The impugned judgment does not disclose any discussion demonstrating how the essential

ingredients of unlawful subletting stood established on the evidence available on record.

Having carefully examined the impugned judgment, I find that the learned Senior Assistant Judge failed to consider the defence regarding refusal of rent and subsequent deposits before the Rent Controller in their proper legal perspective. Likewise, the finding regarding unlawful subletting was recorded without proper appreciation of the oral evidence of P.W.1 and D.W.1 and without any satisfactory legal evidence establishing transfer of possession by the petitioner.

In my considered opinion, the findings recorded by the learned trial Court suffer from misreading and non-consideration of material evidence. Such omissions have materially affected the decision and have resulted in an erroneous judgment occasioning a failure of justice. Consequently, the statutory requirements for interference under section 115(1) of the Code stand fully satisfied.

I am, therefore, find merit in the Rule.

Accordingly, the Rule is made absolute.

The judgment and decree dated 10.08.2025 passed by the learned Senior Assistant Judge, Natore in S.C.C. Suit No. 15 of 2021 are hereby set aside.

Consequently, S.C.C. Suit No. 15 of 2021 is dismissed.

The order of stay granted by this Court at the time of issuance of the Rule stands recalled and vacated.

There shall, however, be no order as to costs.

Let a copy of this judgment, along with the Lower Court Records, be transmitted to the Court below forthwith.