

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

Present:

Mr. Justice Md. Riaz Uddin Khan

Civil Revision No. 955 of 2025

IN THE MATTER OF :

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

-And-

In the Matter of:

Md. Abul Kalam Azad

... Petitioner

Versus

Mohsin Ali and another

... Opposite parties

Mr. Sanjoy Kumar Kundu, Advocate

... For the petitioner

Mr. Md. Bakibillah, Advocate with

Mr. Shibli Nomani, Advocate

... For the Opposite Parties

Judgment on: 21.07.2026

Md. Riaz Uddin Khan, J:

Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and order dated 26.10.2023 passed by the Joint District Judge, 2nd Court, Dinajpur in Miscellaneous Appeal No.28 of 2019 dismissing the appeal and thereby affirming the judgment and order dated 29.04.2019 passed by the Senior Assistant Judge, Chirirbandar, Dinajpur in Miscellaneous (violation) Case No.03 of 2013 disposing the case thereby acquitting the opposite parties 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.

Facts for disposal of this Rule in a nutshell are that the present petitioner as Applicant filed

Miscellaneous (violation) Case No.03 of 2013 under Order-XXI, Rule-32 of the Code of Civil Procedure before the Senior Assistant Judge, Chirirbandar, Dinajpur against the present opposite parties alleging, *inter alia* that earlier the petitioner as plaintiff instituted Other Suit No.52 of 2010 against the present opposite parties and their father as defendants for perpetual injunction in respect of the case shop; the suit property is a shop and the present opposite parties are the owners of the suit land by way of inheritance on which the case shop was erected; the father of the opposite parties rented the shop to the petitioner with a condition that if the suit land is required for the purpose of the land owner the tenant would give up possession, not otherwise; after taking rent of the suit property, applicant developed it by filling earth and set up a restaurant investing huge amount of money worth of Taka Five lakh at least; however, by violating the said condition when the opposite parties tried to transfer the suit land to the third party, petitioner instituted the suit and all the defendants contested the suit by filing written statement and ultimately the petitioner got the decree of permanent injunction on 17.07.2012 and till date the petitioner was paying rent to the opposite parties and enjoying the same by continuing hotel business; all of a sudden on 26.04.2013 at about 11 am, opposite parties dumped two trolleys of sands in front of the restaurant and asked the petitioner to give up possession as they would make construction thereon but on resistance by the petitioner the opposite parties left the place showing willful disregard to the Court's decree; as

such the opposite parties have violated the decree of perpetual injunction for which they ought to be punished and hence, the case.

The present opposite parties contested the case by filing written objection denying all material assertions as set out in the application contending *inter alia* that the petitioner was a tenant of the predecessor of the opposite parties and as per clause-6 of the tenancy agreement, it was agreed upon by the parties that as and when the landlord feels it necessary for his own purpose, the tenant will give up possession; now the case property is required for their own purpose and accordingly the petitioner were conveyed but he refused to handover possession; therefore, the opposite parties by serving a notice under section 106 of the Transfer of Property Act requested him to hand over possession and getting no positive response, the opposite parties instituted a suit, SCC No.03 of 2013 for evicting the tenant which is pending for hearing; the opposite parties being the landlords did not try to evict the petitioner forcefully or by any illegal means; the petitioner has stopped paying rent and as such, he is a defaulter tenant; the present case is filed on false accusation which is liable to be rejected.

During trial the petitioner adduced 3 witnesses and produced documents which were exhibited as Exhibits 1 to 7. The opposite parties neither cross-examined the petitioner's witnesses nor adduced or produced oral or documentary evidence. On conclusion of hearing, the trial court by its judgment and order dated 29.04.2019 discharged the opposite parties and thereby rejected

violation miscellaneous case. Against that judgment and order dated 29.04.2019 the petitioner preferred Miscellaneous Appeal No.28 of 2019 before the District Judge, Dinajpur which eventually was heard by the Joint District Judge, 2nd Court, Dinajpur who dismissed the appeal by his judgment and order dated 26.10.2023.

Being aggrieved by and dissatisfied with the said judgment and order dated 26.10.2023 the petitioner filed the instant Civil Revision before this Court and obtained the Rule as stated at the very outset.

Mr. Sanjoy Kumar Kundu, the learned advocate appearing for the petitioner submits that the courts below committed error of law by making observation contrary to the evidence on record by misreading of evidence and also on misconception of law. Due to non cross examining the PTW by the opposite parties the testimonies of PTW have remained intact, and the petitioner has been able to prove the cause of action of the case mentioning the date and time and also been able to mention the names of those persons who have violated the decree of injunction by the oral and documentary evidences, but the Trial Court failing to understand the same most erroneously dismissed the case. By dumping sands in front of the restaurant of the petitioner, the opposite parties have violated the decree of injunction, but the Court of Appeal below failing to understand the purport and scope of the decree of permanent injunction it most erroneously held that- "দোকানের সামনে বালি ঢালা দ্বারা নালিশী হোটেল হতে উচ্ছেদ করা বুঝায় না। এখানে আদালতের ডিক্রি ভায়োলেশন বলতে ডিক্রির আদেশ তথা "উচ্ছেদ কার্য" কে বুঝায়।" and thereby committed error of law, which resulted in an error in the

impugned judgment and order occasioning failure of justice.

The learned advocate lastly submits that the Appellate Court below being the final court of fact failed to follow the procedure as contemplated in Order XLI, rule 31 of the Code of Civil Procedure as it is incumbent on the appellate court to raise the point for determination to clear up the pleading and focus the attention of the court and of the parties to the specific and rival contentions which raise the decision, however, without doing so it passed the impugned judgment and order.

On the other hand Mr. Md Bakibillah, the learned advocate appearing for the opposite parties submits that this Miscellaneous Case is not at all maintainable because after getting the decree without filing decree execution case, the petitioner had no scope to file such a Misc case which was firstly filed under Order-XXXIX, Rule-2(3) of the Code of Civil Procedure, thereafter though an amendment was made in the cause title mentioning the provisions under Order-XXI, Rule-32 read with section 151 of the Code but it was not amended in other place of the application including the prayer portion. In support of his contention the learned advocate cited the decision of Kad Banu & others Vs. Hajera Khatun and others reported in 36 DLR (AD) 183 and the case of Sashi Mohan Sen Vs. Ain Ullah reported in 1992 BLD (AD) 08.

The learned advocate then submits that both the Courts below rightly found on merit after evaluating the evidence on record that the petitioner failed to prove that the opposite parties violated the decree

passed by the court and these concurrent findings of fact should not be interfered with in civil revision under section 115 of the Code of Civil Procedure by this Court.

The learned advocate finally submits that the opposite parties being the owners of the suit shop issued notice under section 106 of the Transfer of Property Act requesting him to hand over possession and getting no positive response, the opposite parties instituted a suit, SCC No.03 of 2013 for evicting the tenant which is pending for hearing and the petitioner on false allegation filed the instant violation misc case. It is totally unbelievable that the opposite parties would take an unlawful step when they already have taken recourse of law as mentioned above.

I have heard the learned advocates for both the parties, perused the application along with the annexures. I have also perused the lower courts record including the petition, written objection, depositions and exhibited documents. I have examined the judgment and order passed by the trial court and the court of appeal below as well.

The petitioner got a decree of permanent injunction against the present opposite parties. Thereafter, the petitioner filed an application under Order-XXXIX, Rule-2(3) of the Code of Civil Procedure which was registered as Miscellaneous Case No. 03 of 2013. However, at one stage the petitioner amended the said application in cause title filing it under Order-XXI, Rule-32 read with section 151 of the Code of Civil Procedure. However, it appears from examining the petition of said Miscellaneous Case that though in the

cause title the section was amended but in other two places including the prayer portion it remains as under Order-XXXIX, Rule-2(3) of the Code.

When a decree holder got a decree of permanent injunction and the judgment debtor violates the decree of the court, the decree can be enforced by detaining the judgment debtor in civil prison or by attachment of his properties or both. Under the law a petition under Order-XXI, Rule-32 of the Code of Civil Procedure is no doubt maintainable independently inasmuch as the Rule-32(1) provides an independent remedy to the decree holder in the case the judgment debtor violated the order of prohibitory injunction given in a decree by a Court. However, in that case it must be proved that the party concerned willingly disobeyed the court's order of injunction despite knowledge of the court's order by adducing evidence.

In the present case admittedly the opposite parties are the owners of the disputed shop and land. Both the Courts below observed that the evidence did not show that the opposite parties in violation of the decree of the court tried to evict the petitioner from the suit shop. Both the courts below found that the petitioner failed to prove the case of violation of court's order by the opposite parties by producing sufficient evidence. The sands were dumped on the land of the opposite parties, even if true, that does not mean violation of the injunction order of the court. On perusing both the judgments of the courts below I do not find any reason to interfere with the concurrent findings of the courts below. The instant Rule has no merit as such is liable to be discharged.

In the result, the Rule is **discharged**. However, there will be no order as to cost.

Send down the lower court records along with this judgment and order at once.