

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

*Present:*

*Mr. Justice S M Kuddus Zaman*

**CIVIL REVISION NO.2988 OF 2011**

In the matter of:

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

And

Md. Azizul Haque

... Petitioner

-Versus-

Md. Shahid Mahmud and others

... Opposite parties

No one appears

... For both the sides.

**Heard and Judgment on 26.02.2026**

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued calling upon the opposite party Nos.1-4 to show cause as to why the judgment and order dated 26.05.2011 passed by the learned District Judge, Nilphamari in Miscellaneous Appeal No.60 of 2010 reversing the judgment and order dated 11.10.2010 passed by the learned Senior Assistant Judge, Sadar Court, Nilphamari in Other Suit No.93 of 2010 should not be set aside and/or pas such order or further order or orders as to this Court may seem fit and proper.

Facts in short are that the petitioner as plaintiff instituted above suit for declaration that the Notice dated 05.07.2010 issued by defendant No.1 directing the plaintiff to hand over the charge of Headmaster of Rabeya Girls Biddaniketon to Syeda Begum a Teacher of above school was unlawful and not binding upon the plaintiff.

In above suit plaintiff filed a petition under Order 39 Rule 1 of the Code of Civil Procedure, 1908 stating that defendant No.1 issued above notice for unlawful removal of the plaintiff from the position of acting Headmaster without any lawful cause and without due process and if above notice is made effective the plaintiff shall suffer irreparable loss and injury not measurable by money.

Defendant Nos.1-4 contested above petition by filing a joint written objection alleging that the plaintiff was appointed as an Assistant Teacher of above school on 01.03.2009 and the Managing Committee gave the plaintiff ad-hoc charge for Headmaster due to retirement of the Headmaster. The plaintiff started plundering the fund of the school and the Teachers and Employees of above school submitted a complain to defendant No.1 on 21.02.2010 against corruption of the plaintiff which was enquired by the District Education Officer on 27.06.010. The ad-hoc Managing Committee of above school adopted a resolution for removal of the plaintiff from the position of Headmaster in charge and appoint of Senior Teacher of above school

Syeda Begum as ad-hoc Head Teacher. Above Syeda Begum has resumed duty as the acting Headmistress of above school and the plaintiff obtained cause leaves from her on 21.09.2010, 27.09.2010 and 29.09.2010.

On consideration of facts and circumstances of the case and materials on record the learned Senior Assistant Judge allowed above petition for injunction and restrained defendants from removing the plaintiff from the position of acting Headmaster of above school.

Being aggrieved by and dissatisfied with above judgment and order of the trial Court above defendants as appellants preferred Miscellaneous Appeal No.60 of 2010 to the District Judge, Nilfamari who allowed above appeal, set aside the judgment and order of the trial Court and rejected above petition under Order 39 Rule 1 of the Code of Civil Procedure. 1908.

Being aggrieved by and dissatisfied with above judgment and order of the learned District Judge above respondents as petitioner moved to this Court with this Civil Revisional application under Section 115(1) of the Code of Civil Procedure, 1908 and obtained this Rule.

No one appears when this Rule was taken up for hearing although this matter was appeared in the list for hearing today.

I have carefully gone through the petition under Order 39 Rule 1 of the Code of Civil Procedure, 1908, written objection and the impugned judgment and order passed by the learned District Judge and other materials on record.

It is admitted that the Headmaster of above school namely Surendranath Roy retired on 31.12.2008 and the Managing Committee appointed the petitioner an Assistant Teacher of above school as Headmaster in charge of above school on 31.12.2008 and above Committee issued a notice on 05.07.2010 informing the plaintiff that he has been relieved of additional charge of Headmaster and directed him to hand over charge to Syeda Begum an Assistant Teacher of above school.

The legality and propriety of above notice will be determined at trial on consideration of evidence. A plaintiff cannot get the remedy of the original suit on an interlocutory petition under Section 39 Rule 1 of the Code of Civil Procedure, 1908. In above suit the plaintiff has sought a declaration that above notice dated 05.07.2010 was unlawful and plaintiff was the rightful Headmaster in charge of above school. In above petition under Order 39 Rule 1 of the Code of Civil Procedure, 1908 the plaintiff has sought the similar remedy by continuation as Headmaster in charge of above school by restraining the defendants from handing over charge of Headmaster to Syeda Begum.

The plaintiff was not the Headmaster of Rabeya Girls Biddaniketon he was merely given temporary charge of Headmaster which was a privilege and the same does not create a legal right which can be enforced by an order of temporary injunction as provided under Order 39 Rule 1 of the Code of the Civil Procedure.

It has been stated by the defendants that before filing of above suit Syeda Begum took charge of acting Headmaster of above school and plaintiff has relinquished the position of Headmaster in charge of above school. The plaintiff did not make any specific denial to above claims of the defendants.

On consideration of above facts and circumstances of the case and materials on record I am unable to find any illegality or irregularity in the impugned judgment and order passed by the learned District Judge nor I find any substance in this Civil Revisional application under Section 115(1) of the Code of Civil Procedure and the Rule issued in this connection is liable to be discharged.

In the result, the Rule is hereby discharged.

However, there will be no order as to cost.