

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

Present:

Mr. Justice Md. Shohrowardi

Civil Revision No. 2813 of 2025

IN THE MATTER OF

An application under section 115(1) of
the Code of Civil Procedure, 1908.

-AND-

IN THE MATTER OF:

Kishan Chandra Shaha and others
... Petitioners

-Versus-

Pintu Chandra Das Shuklabaidha and
another

... Opposite parties

No one appears

.....For the petitioners

Mr. Kingshuk Das, Advocate

...For the opposite party Nos. 1 and 2.

Heard on 01.07.2026

Judgment on: 02.07.2026

On an application under section 115(1) of the Code of Civil Procedure, 1908 at the instance of the plaintiff-petitioner Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and order dated 25.08.2024 passed by the Additional District Judge, Court No. 2, Habigonj in Miscellaneous Appeal No. 01 of 2022 affirming the judgment and order dated 28.11.2021 passed by Assistant Judge, Bahubal, Habigonj in Miscellaneous Case No. 01 of 2020 arising out of Title Suit No. 31 of 2016 dismissing the Miscellaneous Case

filed under Order IX Rule 13 of the Code of Civil Procedure, 1908 for setting aside *ex parte* judgment and decree should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

The relevant facts for disposal of the Rule are that the opposite party Nos. 1 and 2, as plaintiffs, filed Title Suit No. 31 of 2016 in the Court of Assistant Judge, Bahubal, Habiganj, praying for a decree of declaration of title and further declaration that deed No. 1079/2013 executed by defendant Nos. 1 to 4 is not binding on the plaintiffs. The defendant Nos. 1 to 4 filed the written statement in the suit and after concluding trial, the Assistant Judge, Bahubal, Habiganj, by judgment and decree dated 28.11.2019 decreed the suit in favour of the plaintiff and against the defendants *ex parte*. Thereafter, the defendants filed an application on 09.01.2020 under Order IX Rule 13 of the Code of Civil Procedure, 1908 for setting aside *ex-parte* judgment and decree dated 28.11.2019 passed in Title Suit No. 31 of 2016 (decree signed on 01.12.2019) stating that the defendants were arrested in connection with the G.R. Case No. 02 of 2017 lodged by the plaintiff for which they could not contest the suit in the facts and circumstances of the case.

After hearing the parties, the trial court, by judgment and order dated 28.11.2021, rejected the Miscellaneous Case No. 01 of 2020 against which the defendant Nos. 1, 2, 4 and 5 filed Miscellaneous Appeal No. 01 of 2022 in the Court of the District Judge, Habigonj. The Additional District Judge, Habigonj, after hearing the appeal by impugned judgment and order dated 25.08.2022, dismissed the appeal affirming the

judgment and order dated 28.11.2021 passed by the trial court against which the petitioner obtained the Rule.

No one appears on behalf of the petitioners.

The learned Advocate Mr. Kingshuk Das appearing on behalf of the opposite party Nos. 1 and 2 submits that the petitioners filed written statement in the suit on 18.04.2018 but after filing the written statement, the defendants did not appear on 19 consecutive days to contest the suit and the trial court after concluded the trial passed the judgment and decree and the defendants failed to show any sufficient cause of their non-appearance on those days for which both the courts below legally dismiss the miscellaneous case. He prayed for discharging the Rule.

I have considered the submission of the learned Advocate Mr. Kingshuk Das who appeared on behalf of the opposite party Nos. 1 to 2, perused the impugned judgments and orders passed by the courts below, the revisional application and the records.

On perusal of the impugned judgment and order passed by the trial court reveals that the defendant No. 2 was arrested on 09.02.2017 in G.R. No. 02 of 2017 and obtained bail on 22.02.2017, and on 18.04.2018 the defendant petitioners entered appearance in the suit by filing written statement, and he did not appear in the suit on consecutive 19 days and failed to explain the cause of non-appearance. The appellate court affirmed the judgment and order passed by the trial court holding that the defendants were in custody for total 14 days in G.R. Case No. 02 of 2017 and after granting bail, the defendant Nos. 1 to 4 filed

joint written statement on 18.04.2018. Therefore, there was no reason for non-appearance of the defendants in the said suit.

On perusal of the application filed under Order IX Rule 13 of the Code of Civil Procedure, 1908 reveals that the defendant petitioners were arrested on 08.02.2017 in G.R. Case No. 02 of 2017, but no date of granting bail has been mentioned in the said application. It is found that the petitioner Nos. 3 to 4 were granted bail on 22.02.2017, and after granting bail they filed joint written statement on 18.04.2018 and thereafter the plaintiff examined 2 P.Ws in the case, and the defendants remained absent on 19 consecutive dates without taking any step. Consequently, the trial court passed the ex parte judgment and decree in favour of the plaintiffs. No cogent reason has been asserted in the application filed under Order IX Rule 13 of the Code of Civil Procedure, 1908 as to their non-appearance in the suit.

I do not find any merit in the Rule.

In the result, the Rule is discharged.

The ad-interim order of stay granted at the time of issuance of the Rule is hereby recalled and vacated.

However, there will be no order as to costs.