

8IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)

Present:
Mr. Justice Md. Miftah Uddin Choudhury

CIVIL REVISION NO.3437 OF 2012

In the matter of:
An application under Section 115(4) of
the Code of Civil Procedure.

And

Terab Ali and others

... Petitioners

-Versus-

Syed Ullah and others

... Opposite parties

Mr. J. N. Deb, Advocate

... For the petitioners.

Mr. Md. Iqbal Hossain, Advocate

... For the opposite party

Nos.1-8.

Heard on 06.05.2014 and 07.05.2014.

Judgment on 19.05.2014.

This Rule arises out of the judgment and order dated 15.07.2012, passed by the learned Special District Judge, Sylhet, in Civil Revision No.03 of 2012, rejecting the same preferred against the judgment and order dated 11.01.2012, passed by the

learned Senior Assistant Judge, Sadar, Sylhet, in Title Execution Case No.03 of 1993.

The opposite party Nos.1-8 as plaintiffs instituted Title Suit No.22 of 1989 impleading the petitioners as principal defendants for declaration of their title in the suit land, as well as for recovery of khas possession. The principal defendants (petitioners of this petition) submitted written statement in that suit but ultimately did not contest. Accordingly the said Suit was decreed ex parte by judgment and decree dated 15.04.1989. To execute that decree, on 21.10.1993 the decree holders instituted Title Execution Case No.03 of 1993, in the Court of learned Senior Assistant Judge, Sadar, Sylhet. For setting aside the said ex parte decree dated 15.04.1989 the judgment debtors instituted Miscellaneous Case No.36 of 1989 under Order 9 Rule 13 of the Code of Civil Procedure on 15.05.1989 which was dismissed for default on 23.05.1989. Thereafter, for setting aside the said ex parte decree the judgment debtors as plaintiffs instituted Title Suit No.53 of 1995, in the same Court praying for a decree declaring that the said

exparte judgment passed in the said Title Suit No.22 of 1989 is not binding upon them for the reason that the decree passed in that suit was obtained by playing fraud upon the Court. The said suit was dismissed and against the judgment of dismissal of that suit they (petitioners of this petition) preferred Title Appeal No.309 of 2012 in the Court of District Judge, Sylhet, and the said appeal was also dismissed. Against such judgment of dismissal of said appeal they preferred Civil Revision No.6615 of 2002, before this Division and obtained a Rule. At the time of issuance of the Rule this Division stayed further proceeding of aforesaid Title Execution Case No.03 of 1993. Ultimately, the Rule issued in the said Civil Revision No.6615 of 2002 was discharged by judgment and order dated 17.12.2009 and the order of stay was vacated. After discharge of that Rule the petitioners of this petition made a prayer before the learned Senior Assistant Judge, Sylhet to dismiss the execution proceeding as being time barred. The learned Senior Assistant Judge after hearing the parties by order dated 11.01.2012 rejected such prayer. Against the said order the

petitioners preferred Civil Revision No.03 of 2012 in the Court of District Judge, Sylhet, and on transfer the same was heard by the learned Special District Judge, Sylhet, who by the impugned judgment and order dated 15.07.2012 rejected the said revision and affirmed the order dated 11.01.2012, passed by the learned Senior Assisant Judge, Sadar, Sylhet.

Being aggrieved by and dissatisfied with the impugned judgment and order the judgment debtors as petitioners preferred this revision and obtained the Rule alongwith an order of stay.

Mr. J. N. Deb, learned Advocate, appearing for the petitioners, submits that the Title Suit No.22 of 1983, was decreed exparte on 15.04.1989, and after obtaining that decree the execution proceeding was not instituted within 3(three) years, rather it was instituted on 21.10.1993, as such it is time barred as per Article 182 of the Limitation Act. But the learned Assistant Judge, as well as the learned Special District Judge, without considering that aspect illegally rejected the said prayer of the petitioners. He further submits, that the Miscellaneous case under Order 9

Rule 13 of the Code of Civil Procedure instituted by the petitioners was not continuation of the original suit and as such the time of limitation should not be counted from the date of disposal of said Miscellaneous Case, rather it should be counted from the date of passing the exparte decree, the decree holder since did not institute the execution proceeding within three years from 15.04.1989 on which the exparte decree was passed, the instant execution proceeding is illegal as being time barred. In support, the decisions in the cases of, the Comilla Banking Corporation Ltd. Vs. Nanda Kumar Bhattacharjee reported in Pakistan Law Report, Volume- 1950 Page- 215, Nurul Islam (Md) and others Vs. Md. Maniruddin Bepari and others reported in 49 DLR 351, Bangladesh Jatiya Samabaya Bank Ltd. Vs. Daily Sangbad and others reported in 36 DLR (AD) 5, are cited.

In reply of such arguments Mr. Iqbal Hussain, learned Advocate, appearing for the decree holder opposite parties submits that the learned Senior Assistant Judge rightly rejected the prayer of petitioners to dismiss the execution proceeding and the learned Special Judge committed no

illegality in rejecting the Civil Revision preferred under Section 115(2) of the Code of Civil Procedure against the order of the learned Senior Assistant Judge. He further submits, that after passing the exparte decree the petitioners instituted the Miscellaneous Case mentioned above under Order 9 Rule 13 of the Code of Civil Procedure for setting aside the exparte decree. The said Miscellaneous Case was dismissed and thereafter they also filed Title Suit No.53 of 1995 in the same Court for declaration that the decree obtained in Title Suit No.22 of 1989 is not binding upon them as being illegal. That suit was dismissed on contest, and against the judgment of dismissal of that suit an appeal was preferred by the judgment debtors which was also dismissed, and thereafter they preferred Civil Revision before this Division and obtained an order staying further proceeding of the instant execution case, but the said revision was finally decided against the petitioners. It is fact that the execution case was not initiated within three years from the date of exparte decree but it was initiated within three years from the date of dismissal of the

above Miscellaneous Case instituted under Order 9 Rule 13 of the Code of Civil Procedure. As per Mr. Iqbal Hussain the said Miscellaneous Case was instituted for setting aside the exparte decree and in the instant case it will be treated as continuation of the suit and as such the execution proceeding instituted within three years from the date of dismissal of the proceeding under Order 9 Rule 13 of the Civil Procedure Code shall not be time barred as per the period of limitation provided in Article 182 of the Lmitation Act. In support, he cited the decision in the case of United Bank Limited Vs. Messers Victory Engineering Company and others reported in Civil Law Cases, Volume-XX, Page- 690. He also cited an unreported judgment dated 02.08.2007 passed by me in Civil Revision No.4949 of 2001 between Abdul Gafur Vs. Moslehuddin Ahmed and another. He referred the provision of law provided in Article 182 of the Limitation Act.

After hearing the learned Advocates, I have gone through the impugned judgments and orders of the Courts below, as well as the decisions cited. On reading the decisions cited by Mr. J.N. Deb it

appears that those are not relevant to the instant case, but the decision cited by Mr. Iqbal Hussain in the case of United Bank Limited Vs. Messers Victory Engineering Company and others reveals relevancy with the facts and circumstances of the instant case. In the said decision their lordship held that "the decree holder is justified in not filing execution proceeding as the decree passed on 30.09.1992 became subjudice because of application filed by the judgment debtors, the application for setting aside exparte decree having been rejected on 13.03.1996, application for execution filed thereafter was well within time". Considering the facts and circumstances of the instant case, I hold the similar view as it expressed in the said judgment. Moreover, this is a second revision preferred under Section 115(4) of the Code of Civil Procedure. As per the subsection 4 of Section 115 of the Code of Civil Procedure a Second Revision may be preferred for non consideration of any important question of law occasioning any failure of justice. In the instant case it appears that no important questions of law

has been agitated and moreover no failure of justice has been occasioned.

Hence, this Rule is hereby discharged.

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

However, there is no order as to costs.

MASUD
B.O.