

District: Jhenidah

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

Present:

Mr. Justice Sardar Md. Rashed Jahangir

Civil Revision No. 2306 of 2012

In the matter of:

Md. Abdur Ranto alias Abdur Rohu
...Petitioner

-Versus-

Md. Abul Hossain and others
...Opposite-parties

Mr. Md. Firoz Alam, Advocate
... For the Petitioner

Mr. Abu Hasnat Md. Mofijur Rahman, Advocate
....For the opposite-party Nos. 1-3 and 5-8

Judgment on: 14.12.2023

The Rule was issued calling upon the opposite-parties to show cause as to why the judgment and order dated 22.03.2012 passed by the Joint District Judge, First Court, Jhenaidah in Miscellaneous Case No. 07 of 2011 rejecting the application for re-admission of Miscellaneous Appeal No.59 of 2007 filed under Order XLI, rule 19 read with section 151 of the Code of Civil Procedure.

Sort facts are that the opposite-parties as pre-emptor filed Miscellaneous Case No. 118 of 2000 before the Court of Assistant Judge,

Moheshpur, Jhenidah seeking pre-emption against the Registered Kabla Deed No.5835 dated 25.06.2000 of Moheshpur Sub-register Office, Jhenidah and on contest the pre-emption application was allowed by the judgment and order dated 18.09.2007 of learned Assistant Judge, Mohespur, Jhenidah.

Having aggrieved the pre-emptee-petitioner preferred Miscellaneous Appeal No.59 of 2007 before the District Judge, Jhenidah and the said miscellaneous appeal was dismissed for default on 07.04.2010 for non-appearance of the appellant. On being aggrieved by the said order of dismissal for default, the appellant filed an application for re-admission of the miscellaneous appeal under Order XLI, rule 19 read with section 151 of the Code of Civil Procedure before the Joint District Judge, First Court, Jhenidah, which gave rise to Miscellaneous Case No.07 of 2011 and learned Joint District Judge after hearing both the parties by his judgment and order dated 22.03.2012 rejected the said application for re-admission. Hence, this instant revisional application has been filed by the pre-emptee appellant-petitioner.

Mr. Md. Firoz Alam, learned Advocate appearing for the appellant-petitioner and submits that the petitioner is physically disabled person and the case property is his homestead and only property which he used to reside with his family and the petitioner being aggrieved by the judgment and order of trial Court, allowing the pre-emption application, filed Miscellaneous Appeal No.59 of 2007 and the same is required to be disposed of on merit. Thus, he prays for a direction upon the appellate Court below to hear and dispose of the appeal on merit.

On the other hand, Mr. Abu Hasnat Md. Mofijur Rahman, learned Advocate for the opposite party Nos.1-3 and 5-8 although initially raised objection against the present Rule, and thereafter on a second thought he conceded that if this Court gives a direction upon the appellate Court below to hear the appeal with a given time frame then he has no objection for disposal of the revisional application in the aforesaid manner.

Heard learned Advocates of both the parties and without touching merit of the substantive appeal or the pre-emption case, this Court is of the view that if this revisional application is disposed of with a direction upon the appellate Court below to hear and dispose of the substantive appeal within a given time frame, then justice would be best served.

Accordingly, the order dated 07.04.2010 passed in Miscellaneous Appeal No. 59 of 2007 and the order dated 22.03.2012 passed in Miscellaneous Case No. 07 of 2011 are hereby set aside and let the Miscellaneous Appeal No. 59 of 2007 be restored in its file and number and the learned Joint District Judge, First Court, Jhedidah is hereby directed to hear and dispose of the Miscellaneous Appeal No. 59 of 2007 within 6(six) months without fail.

Accordingly, the Rule is made absolute. No order as to cost.

Communicate the judgment and order at once.