

District- Patuakhali

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

Present:

Mr Justice Md Atoar Rahman

Civil Revision No. 1845 of 1996

Shamsuddin Howlader and others

...defendants-petitioners

- versus-

Md. Nannu Sikder and others

...plaintiff- opposite parties

No one appears

...for the defendants-petitioners

No one appears

... for the plaintiff- opposite parties

Judgment on: 21.03.2024

This Rule was issued on an application under section 115 of the Code of Civil Procedure calling upon the opposite parties to show cause as to why the impugned order dated 08.05.1996 passed in Title Suit No. 102 of 1993 should not be set aside and/or passed such other or further orders as to this court may seem fit and proper.

During issuance of the Rule, further proceedings of the Title Suit No. 102 of 1993 was stayed.

The short facts for the purpose of disposal of the Rule are that the opposite parties as plaintiff instituted the Title Suit No. 102 of 1993 in the Court of Senior Assistant Judge, Bauphat, Patuakhali for

cancellation of the certificate case and the auction sale in respect of the scheduled property. The defendant petitioners having appeared were contesting the suit by filing written statement on 24.04.1996. The suit was fixed for peremptory hearing but the plaintiff opposite party prayed time. Learned trial judge was pleased to reject the application for time and dismiss the suit for default under Order IX rule 8 of the Code of Civil Procedure. On the self same day the plaintiff filed another application seeking time which was heard on 08.05.1996 and learned trial judge upon hearing by the impugned order No. 42 dated 08.05.1996 revived the suit in its original file and number after setting aside the order for dismissal.

Being aggrieved by and dissatisfied with the above judgment and order the defendant petitioners moved this court with an application under section 115 of the Code of Civil Procedure and obtained the present Rule and the order of stay

No one appears for either of the parties.

I have perused the application and record along with the impugned judgment and other connected papers on record.

It transpires that on 24.04.1996 the suit was dismissed for default under Order IX rule 8 of the Code of Civil Procedure. But the plaintiff did not file any application under Order IX rule 9 of the Code of Civil Procedure or under section 151 of the said Code for revival of the suit.

But the learned trial judge without considering the legal aspect and without any application for revival of the suit he revived the same after setting aside the order of dismissal by the impugned order which is not sustainable in law. Accordingly I find merit in the Rule which deserves to be made absolute.

In the result the Rule is made absolute.

The impugned judgment and order dated 08.05.1996 passed by the learned Senior Assistant Judge is hereby set aside.

Let a copy of this judgment be transmitted at once.