

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(Civil Revisional Jurisdiction)

**Present:**

**Mr. Justice Md. Khairul Alam**

**Civil Revision No. 2433 of 2012.**

Mosammat Rowshan Ara.

..... Petitioner.

-Versus-

Md. Altaf Hossain and others.

..... Opposite parties.

Mr. Md. Kaisanuzzaman, Advocate.

..... For the petitioner.

Mr. Moshiur Rahman, Advocate

..... For the opposite parties No. 1-3.

**Heard on: 21.05.2025 and**

**Judgment on: 22.05.2025.**

**Md. Khairul Alam, J.**

This Rule, at the instance of plaintiff petitioner Mosammat Rowshan Ara, was issued calling upon the opposite parties to show cause as to why the order dated 20.06.2012 passed in Other Class Appeal No. 41 of 2012 by the learned District Judge, Lalmonirhat rejecting two applications one under Order XIII rule 10 of the Code of Civil Procedure calling for the records of the Other Class Suit No. 43 of 2011 and Miscellaneous Case No. 40 of 1999 and another under Order XLI rule 5 of the Code of Civil Procedure for staying all further proceedings of Miscellaneous Case No. 40 of 1999 now pending before the Court of learned Assistant Judge, Hatibandha, Lalmonirhat should not set aside and/or pass such other or further order or orders as to this court may seem fit and proper.

Relevant facts for disposal of the rule are that the present petitioner as plaintiff instituted Other Class Suit No. 43 of 2011 in the Court of Assistant Judge Judge, Patgram, Lalmonirhat impleading the present opposite parties as defendants praying for a declaration that the Sub Kabala deed No. 1299 dated 27.03.1997 registered with the Patgram Sub-Registry Office was illegal, collusive and invalid and also for a declaration that the judgment and order dated

29.11.1999 passed by the learned Senior Assistant Judge, Sadar, Lalmonirhat in Pre-emption Miscellaneous Case No. 40 of 1999 is null and void and not binding upon the plaintiff. The case of the plaintiff, in short, was that the plaintiff was the owner of the suit land. The vendor of Sub Kabala deed No. 1299 dated 27.03.1997 without having any title transferred the land to one Didar Uddin. The predecessor of defendant No. 1-13 filed Pre-emption Miscellaneous Case No. 40 of 1999 for pre-emption of the said property. The petitioner was made defendant No. 6 in the said case, but no notice was served upon him. The defendants obtained the judgment and order in the said preemption case fraudulently. Defendants No. 1, 2, 3, 12 and 13 contested the suit by filing a written statement denying the material allegations made in the plaint. The case of the contesting defendants, in short, was that the Pre-emption Miscellaneous Case No. 40 of 1999 was allowed and in appeal, the same was set aside. The Rule issued against the said judgment and order was made absolute by a single bench of this division on 30.10.2002 and accordingly, the pre-emption was allowed. The plaintiff was a party in all the said proceedings, but without contesting the said proceedings, the plaintiff filed the suit on false allegations. During the trial, both parties adduced both oral and documentary evidence. The suit was dismissed by the judgment and decree dated 27.05.2012. Against the said judgment and decree the plaintiff preferred Other Class Appeal No. 41 of 2012 in the Court of District Judge, Lalmonirhat. In the said appeal, the petitioner filed two applications, the first application was under Order XIII rule 10 of the Code of Civil Procedure calling for the records of Other Class Suit No. 43 of 2011 from the Court of Assistant Judge, Patgram, Lalmonirhat and records of Miscellaneous Case No. 40 of 1999 from the Court of Assistant Judge, Hatibandha, Lalmonirhat and the second application was under Order XLI rule 5 of the Code of Civil Procedure for staying all further proceedings of Miscellaneous Case No. 40 of 1999 now pending before the Court of learned Assistant Judge, Hatibandha, Lalmonirhat.

The learned District Judge after hearing the parties by the order dated 20.06.2012 rejected both the applications.

Being aggrieved thereby the present petitioner moved before this Court and obtained the Rule and order of stay of the further proceedings of Miscellaneous Case No. 40 of 1999.

Mr. Md. Kaisaruzzaman, the learned Advocate appearing on behalf of the petitioner submits that the court below committed an error of law resulting in an error in the decision to pass a con-speaking order rejecting the applications of the petitioner which occasioned a failure of justice and requires interference of this court.

Mr. Moshir Rahman, the learned Advocate appearing on behalf of the opposite parties supports the impugned order and prays for discharging the Rule.

Heard the learned Advocates, perused the revisional application and other material on records.

It appears that the petitioner filed a suit praying for a declaration that the deed mentioned in the schedule to the plaint was illegal, collusive, and invalid and also for a further declaration that the judgment and order passed in the Preemption Miscellaneous Case No. 40 of 1999 was null and void and not binding upon the plaintiff. The suit was dismissed on 27.05.2012 and then the petitioner filed an appeal and in the appeal, the petitioner filed two applications one under order XIII rule 10 of the Code of Civil Procedure calling for the records of the Other Class Suit No. 43 of 2011 from the court of Assistant Judge, Patgram, Lalmonirhat and Miscellaneous Case No. 40 of 1999 from the Court of Assistant Judge, Hatibandha, Lalmonirhat and another under Order XLI rule 5 of the Code of Civil Procedure seeking for staying all further proceedings of Miscellaneous Case No. 40 of 1999 pending before the Court of learned Assistant Judge, Hatibandha, Lalmonirhat. The learned District Judge after hearing the parties by the order dated 20.06.2012 rejected both the applications.

The first application was under Order XIII rule 10 of the Code of Civil Procedure. Rule 10 of Order 13 of the Code of Civil Procedure runs as follows:-

“ (1) The Court may of its own motion, and may in its discretion upon the application of any of the parties to a suit, send for, either from its own records or from any other suit or proceedings, and inspect the same.

**(2)** Every application made under this rule (unless the Court otherwise directs) be supported by an affidavit showing how the record is material to the suit in which the application is made, and that the applicant cannot without unreasonable delay or expense obtain a duly authenticated copy of the record or of such portion thereof as the applicant requires, or that the production of the original is necessary for the purposes of justice.

**(3)** Nothing contained in this rule shall be deemed to enable the Court to use in evidence any document which under the law of evidence would be inadmissible in the suit”

On a plain reading of the said provision it appears that on an application of any of the parties to a suit, the Court can call for, either from its own records or from any other court, the record of any other suit or proceeding. The said power of the court is discretionary. Now it is well settled that the Court shall apply such discretion if the production of the original is necessary for the purpose of justice or the record is material to the suit in which the application was made. No party has a right to summon the original record unless it be to prove certain certified copies of some papers on that record which the opposite party denies and which require proof.

I have carefully perused the application filed by the petitioner under Order XIII rule 10 of the Code of Civil Procedure for calling the records and do not find any ground to substantiate that the original record is necessary for the purpose of justice or that the record is material to disposal of the appeal. Therefore, I am of the opinion that the Court below after proper consideration of the said aspect of the case passed the impugned order rejecting the application of the petitioner and do not find any reason to interfere with the same.

The second application was filed under Order XLI rule 5 of the Code of Civil Procedure which runs as follows:-

“ **R. 5 Stay by Appellate Court** (1) An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree.

(2) **Stay by Court which passed the decree.** Where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing therefrom, the Court which passed the decree may on sufficient cause being shown order the execution to be stayed.

(3) No order for stay of execution shall be made under sub-rule (1) or sub-rule (2) unless the Court making it is satisfied-

(a) that substantial loss may result to the party applying for stay of execution unless the order is made;

(b) that the application has been made without unreasonable delay; and

(c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

(4) Notwithstanding anything contained in sub-rule (3), the Court may make an ex parte order for stay of execution pending the hearing of the application.”

It appears that Order XLI rule 5 of the Code of Civil Procedure provides the provision of stay of proceedings and execution. Under the said provision the Appellate Court may order for a stay of execution of a proceeding arising out of a decree against which the appeal was filed.

In the present case, the petitioner preferred the appeal against the judgment and decree dated 27.05.2012 passed by the learned Assistant Judge,

Patgram, Lalmonirhat in Title Suit No. 43 of 2011, but in the guise of stay of further proceeding of Pre-emption Miscellaneous Case No. 40 of 1999, the petitioner prayed for stay of the judgment and order passed in Pre-emption Miscellaneous Case No. 40 of 1999 which is misconceived. Therefore, the appellate Court below rightly rejected the application.

The learned Advocate for the petitioner filed to show that the court below committed any error of law resulting in an erroneous decision occasioning failure of justice.

Therefore, I do not find any merit in the Rule, accordingly, the Rule is discharged without any order as to costs.

The order of stay granted earlier by this court is hereby recalled and vacated.

However, this judgment is not an impede for the appellate court below to call for any record of its own motion.

Let a copy of this judgment and order be communicated at once.

Kashem, B.O