

Present:  
Mr. Justice Md. Iqbal Kabir

Civil Revision No. 3458 of 2006

IN THE MATTER OF:

An application under Section 115(1) of the Code of  
Civil Procedure.

AND

IN THE MATTER OF:

Mohammad Osman Gani and others  
....Petitioners

Versus

Gulbhadan Begum (Parul) and others  
....Opposite Parties

No one appears  
....For both parties

Judgment on 11.12.2025.

At the instance of the plaintiffs-petitioners, this Rule was issued in the following terms:

“Let a Rule be issued calling upon the opposite parties to show cause as to why the judgment and order dated 06.04.2006, passed by District Judge, Patuakhali, in Misc. Appeal No. 5/05 affirming those dated 12.01.2005 passed by Joint District Judge, 1<sup>st</sup> Court, Patuakhali in Misc. Case No. 22/03 should not be set aside, and/or such other or further order or orders passed as to this Court may seem fit and proper.”

Short facts stated in the Rule are that the Defendant-Opposite Party Number 1 filed Title Suit No. 48 of 1988 in the Court of Subordinate Judge, 1<sup>st</sup> Court, Patuakhali, for setting aside the earlier decree passed in Title Suit No. 28 of 81 and the learned Subordinate Judge, 1<sup>st</sup> Court, Patuakhali, decreed the same ex parte by his judgment and decree dated 21.01.1991.

It appears that, as against the ex parte decree present petitioners, as petitioners filed Miscellaneous Case No. 28 of 1991 under Order 9 rule 13 for restoration, in the court of the learned Subordinate Judge, 1<sup>st</sup> Court, Patuakhali. However, after hearing the parties, the learned Judge allowed the Miscellaneous Case on contest by his judgment and order dated 14.10.2003, and the learned Judge gave a finding to the petitioner that within 15 (fifteen) days, the petitioner will give Tk. 2000/- to the opposite party as cost; in default, the order will be rejected, but the petitioners did not pay the Tk. 2000/- and the Miscellaneous case was dismissed automatically, and that's why the original Title Suit No. 28 of 1981 was restored on 29.5.1995.

Thereafter, Title Suit No. 28 of 1981 was fixed for peremptory hearing on 20.8.2003; however, based on an application for adjournment filed by the petitioners Court allowed time with a cost of Tk. 1500/- and the next date was fixed on 2.9.2003, and on the alleged date, petitioners could not take a step or comply with the order passed by the Court as he was not aware of the date or the Court's order; therefore, the said suit was dismissed for default.

Against which the present petitioners filed Miscellaneous Case No. 22 of 2003 under Order IX Rule 9 read with Section 151 of the Code of Civil Procedure, praying for restoration of the suit, which had been dismissed for default. The said Miscellaneous Case was filed on the ground that the petitioners became helpless and distressed due to the death of their father and the long pendency of the suit. The petitioners reside in different districts, and their sole *tadbirkar*, Md. Osman Gani has been suffering from diabetes and hypertension. Moreover, their mother was suffering from paralysis, and the said *tadbirkar* had to remain busy with her medical treatment in Dhaka. Owing to these unavoidable circumstances, the petitioners were compelled to seek several adjournments in the suit. Lastly, on 20.08.2003, the *tadbirkar* of the petitioners became seriously ill and prayed for time through the engaged learned lawyer. The learned Court was pleased to allow the prayer on payment of the cost of Tk. 1,500/- and fixed 02.09.2003 for the next date of hearing. However, due to his serious illness, the *tadbirkar* could not contact the concerned lawyer. Consequently, on 02.09.2003, the engaged lawyer submitted before the Court that he had no instruction in the matter, and as a result, the suit was dismissed for default on the same date. Thereafter, the petitioners came to know about the dismissal and immediately contacted their engaged lawyer on 25.09.2003, whereupon they filed the present application for restoration without any delay.

After hearing the learned Subordinate Judge, 1<sup>st</sup> Court, Patuakhali, rejected the same by his order dated 12.1.2005, and the petitioners as appellants preferred Miscellaneous Appeal No. 5 of 2005 in the Court of the learned District Judge, Patuakhali, who heard the appeal and dismissed the same by his order dated 6.4.2006.

Being aggrieved by and dissatisfied with the judgment and order dated 06.04.2006 passed by the learned District Judge, Patuakhali, in Miscellaneous Appeal No. 5 of 2005, by which the appeal was dismissed and the order dated 12.01.2005 passed by the learned Joint District Judge, 1<sup>st</sup> Court, Patuakhali, in Miscellaneous Case No. 22 of 2003 was upheld, the petitioner filed this revisional application and obtained the Rule.

No one appears to press the Rule.

However, in this case, the Rule was issued in the year 2006. By this time, 20 (twenty) years have elapsed. No one took appropriate initiative for its disposal, and no one also apprised this Court about the present position of the case. This is a long-pending Rule; there is no reason to make it pending for an unlimited period. Further, it appears from the order dated 14.08.2007 that the order of status quo passed earlier was extended for a period of 6(six) months, which period has already elapsed. Thereafter, no one take initiative to apprise this Court about the present position of the case.

However, on perusal of the application along with the annexures, it appears that the Court below rejected the suit and directed the deposit of the costs. Moreover, earlier, the Court below adjourned the matter with costs and directed to deposit of the costs, but the plaintiffs-petitioners did not comply with the Court's order. Further, it appears that while an application under Order 9 Rule 13 of the Code of Civil Procedure has been filed, the petitioners failed to show why they were not present before the Court. Thus, the application was rejected.

On the above facts, it appears there is no wrong in misreading or non-reading. Therefore, this Court finds that the learned Court did not commit any error or illegality, no failure of justice has occasioned thereby. Therefore, there is no merit in this Rule.

Accordingly, the Rule is discharged without any order as to cost.

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

Let a copy of this judgment be communicated to the Court concerned forthwith.