IN THE SUPREME COURT OF BANGLADESH

HIGH COURT DIVISION

(CIVIL REVISIONAL JURISDICTION)

Present:

Mr Justice Abdur Rahman

Civil Revision No. 3025 of 2013

In the matter of:

Mosammat Khadiza Begum

…Petitioner

-Versus-

Md. Hochain Ali Howlader and others

…Opposite Parties

Mr. Md. Shahariar Bhuiyan, Advocate

…For the petitioner.

Mr Ibne Aziz Md. Nurul Huda, with

Ms Shamima Ferdousi, Advocate

…For the opposite parties.

Date of Hearing: 24.06.2026 and 29.06.2026

Date of Judgment: 29.06.2026 A.D. Monday

15 Ashar, 1433 B.S.

JUDGMENT

Abdur Rahman, J:

This Rule, issued at the instance of the petitioner under section 115(1) of the Code of Civil Procedure, 1908, calling upon the opposite parties to show cause as to why the judgment and decree dated 19.05.2013 (decree drawn up thereunder and signed on 26.05.2013) passed by the learned Joint District Judge, 2nd Court, Jhalokathi in Title Appeal 41 of 2012, affirming the judgment and decree dated 30.04.2012 (decree drawn up and signed on 08.05.2012) passed by the learned Senior Assistant Judge, Sadar, Jhalokathi in Title Suit 101 of 2010, dismissing the suit for specific performance of contract should not be set aside and/or such other or further order or orders be passed as to this Court may seem fit and proper.

Concomitantly, the Court was pleased to call for the records of the Subordinate Courts, without passing any ad-interim order.

The gravamen of facts, shorn of unnecessary details, is that the petitioner, as plaintiff, instituted Title Suit 101 of 2010 before the Court of the learned Senior Assistant Judge, Sadar, Jhalokathi, seeking specific performance of a contract for the sale of immovable property. The plaintiff contended that the defendant-opposite parties 1 and 2 were the owners of the land described in Schedule-'Ka' of the plaint, having acquired title thereto by virtue of registered deed No.940 dated 12.04.1997. The defendants, being in urgent need of money, offered to sell the suit land, and the plaintiff agreed to purchase the same. Consequently, on 08.07.2009, the parties entered into a registered agreement for sale (Bainapatra), whereby the total consideration was fixed at Tk.1,07,000/- only. On the date of execution of the agreement, the plaintiff paid Tk.70,000/- to the defendants as part consideration.

It was further stipulated that upon payment of the remaining consideration of Tk.37,000/-, the defendants would execute and register the kabala deed on or before 08.10.2009. But the defendants did not have certified copies of the relevant title documents and the record of rights at the relevant time, and the execution and registration of the sale deed were deferred by mutual agreement. The defendants assured the plaintiff that after collecting the necessary documents, they would execute and register the sale deed upon receipt of the balance consideration. It was also agreed that, in the event of their failure or refusal to execute the sale deed, the plaintiff would be entitled to enforce the agreement through a competent court of law.

The plaintiff further claimed that possession of the suit property was delivered to her simultaneously with the execution of the Bainapatra, and she had been in possession of the land by cultivating it and enjoying its usufruct. Thereafter, on several occasions, she approached the defendants with the balance consideration of Tk. 37,000/-, requesting them to execute and register the sale deed. Ultimately, on 30.05.2010, accompanied by her husband and two respectable local witnesses, she again tendered the balance consideration, but the defendants refused to receive the money and declined to execute the sale deed. Finding no alternative, the plaintiff instituted the present suit for specific performance of the contract.

On the other hand, the defendant-opposite parties 1 and 2 contested the suit by filing a joint written statement denying the material allegations made in the plaint, except those specifically admitted. The defendants admitted execution of the registered Bainapatra but disputed the consideration mentioned therein. Their case, in substance, is that the actual consideration for the proposed sale was Tk.1,70,000/- and not Tk.1,07,000/- as recited in the agreement. According to them, although the Bainapatra mentioned that Tk.70,000/- had been paid as earnest money, in reality the plaintiff paid only Tk.10,000/- at the time of execution of the agreement and promised to pay the remaining Tk.60,000/- shortly thereafter.

The defendants further stated that they intended to sell the property solely to raise money to send Md. Manik Howlader, son of defendant 1, abroad for employment. As the plaintiff failed to pay the agreed amount on time, the defendants were compelled to arrange funds by selling cattle, borrowing money from different sources, including Bangladesh Krishi Bank and other lending organizations, and ultimately succeeded in sending Manik abroad.

The defendants also asserted that an arbitration (Salish) was subsequently held in the locality in presence of respectable persons, wherein it was decided that the Bainapatra would stand cancelled upon refund of Tk. 10,000/-, allegedly received from the plaintiff. According to the defendants, possession of the suit land had never been delivered to the plaintiff, and they had remained in uninterrupted possession thereof throughout.

On the aforesaid assertions, the defendants contended that the plaintiff had no cause of action for the suit, that the suit was based on false and fabricated allegations, and that the suit was liable to dismissal.

Upon consideration of the parties' pleadings, the learned Senior Assistant Judge framed the necessary issues. Both parties adduced oral and documentary evidence in support of their respective cases, and after hearing the parties and evaluating the evidence on record, the learned trial Court, by judgment and decree dated 30.04.2012 (decree signed on 08.05.2012), dismissed the suit.

Being aggrieved thereby, the plaintiff preferred Title Appeal 41 of 2012 before the learned District Judge, Jhalokathi. The appeal was subsequently transferred to the Court of the learned Joint District Judge, 2nd Court, Jhalokathi, for disposal. Upon hearing the parties, the learned appellate Court dismissed the appeal by judgment dated 19.05.2013 (decree drawn up and signed on 26.05.2013), thereby affirming the judgment and decree passed by the trial Court.

Feeling aggrieved by the concurrent findings and decisions of the Subordinate Courts, the plaintiff-petitioner has invoked the revisional jurisdiction of this Court under section 115(1) of the Code of Civil Procedure, 1908, thereby giving rise to the present Rule.

Mr Md. Shahariar Bhuiyan, the learned Counsel appearing on behalf of the petitioner, submits that both the Courts below committed a serious error of law in dismissing the suit despite concurrently finding that the Bainapatra was duly executed by the defendant-opposite parties 1 and 2 upon receipt of Tk.70,000/- as part consideration. He contends that, having admitted the execution and validity of the agreement, the defendants themselves ought to have decreed the suit rather than dismissing it on a mere technical ground.

The learned Counsel further submits that although the balance consideration was not deposited simultaneously with the institution of the suit, the plaintiff subsequently deposited the entire balance amount before the trial Court during the pendency of the suit and well before its final disposal. According to him, such subsequent deposit substantially fulfilled the requirement contemplated under section 21A(b) of the Specific Relief Act, 1877, and, therefore, the defect, if any, stood duly cured. Consequently, dismissal of the suit solely on the ground that the balance consideration had not been deposited at the time of filing the suit amounts to an erroneous interpretation of the statutory provision.

He next submits that the provisions of section 21A of the Specific Relief Act are directory rather than mandatory and that the courts below misconstrued the legislative intent behind the provision. According to him, the object of the provision is to ensure the *bona fide* readiness and willingness of the purchaser to perform his part of the contract, and once the balance consideration is deposited before the final adjudication of the suit, the statutory object stands substantially fulfilled.

The learned Counsel further argues that the learned appellate Court mechanically affirmed the judgment of the trial Court without independently examining the evidence on record and the grounds urged in the memorandum of appeal. According to him, the appellate Court failed to discharge its statutory obligation as the final Court of fact and thereby committed an error of law, resulting in an error in the decision, occasioning a failure of justice.

He also submits that the Courts below placed reliance upon **31 DLR (AD) 91**, although, according to him, no such proposition of law as relied upon by the courts below is discernible from the reported decision. Thus, the impugned judgments, being based upon an erroneous understanding of the law, cannot be sustained.

Lastly, the learned Counsel submits that the petitioner is prepared to comply with all legal requirements and, if necessary, seeks liberty to institute a fresh suit after fulfilling the statutory requirements. He, therefore, prays that the Rule be made absolute.

Conversely, Mr Ibne Aziz Md. Nurul Huda, the learned Counsel appearing for the opposite parties 1 and 2, supports the concurrent findings and judgments of the Courts below. He also submits that section 21A(b) of the Specific Relief Act, 1877, unequivocally requires the plaintiff to deposit the balance consideration at the very time of institution of the suit, and compliance with such requirement is a condition precedent to the maintainability of a suit for specific performance.

He contends that the petitioner admittedly failed to comply with the mandatory legal requirement when filing the suit. The subsequent deposit of the balance consideration during the pendency of the suit cannot validate a suit which was incompetent from its very inception. According to him, the Courts below rightly held that the defect was incurable and dismissed the suit accordingly.

The learned Counsel finally posits that both the trial Court and the appellate Court concurrently arrived at findings of fact after proper appreciation of the pleadings, oral testimony and documentary evidence, and no misreading or non-reading of evidence has been pointed out warranting interference by this Court in its revisional jurisdiction under section 115(1) of the Code of Civil Procedure, 1908. He therefore refers to a decision in 69 DLR (AD) 239 regarding the provisions of Section 21A(b) of the Specific Relief Act, 1877, and prays for the discharge of the Rule.

I have heard the learned Counsels for the respective parties, perused the judgments of the Subordinate Courts, examined the pleadings and the materials available on the record and carefully considered the submissions advanced at the Bar.

The peremptory question that falls for determination in this Rule is whether a suit for specific performance of contract is maintainable where the plaintiff fails to deposit the balance consideration simultaneously with the institution of the suit, as required under section 21A(b) of the Specific Relief Act, 1877.

On perusal of the judgment of the learned Senior Assistant Judge observed that:

> “Specific Relief Act 1877 এর 21A ধারা পর্যালোচনায় স্পষ্ট রুপে প্রতীয়মান হয় যে ২০০৪ সালে সংশোধিত নতুন এই আইনের দ্বারা এই বিষয়ে অন্য সকল আইন ও বিধানের কর্তৃত্ব হ্রাস করা হয়েছে এবং মামলা দায়েরের সময় বায়নায় উল্লেখিত বহায়ের বাকী টাকা দাখিল না করলে সংশ্লিস্ট বিক্রয়ের চুক্তি বাস্তবায়ন করা যাবেনা মর্মে বিধান করা হয়েছে। সুতরাং তামাদি

আইন প্রয়োগের কোন আইনগত সুযোগ অন্ততঃ বহায়ের বাকী টাকা দাখিলের ক্ষেত্রে নেই। সুতরাং তামাদি আইন প্রয়োগের কোন আইনগত সুযোগ অন্ততঃ বহায়ের বাকী টাকা দাখিলের ক্ষেত্রে নেই।"

The learned trial Court, while dismissing the suit, observed that section 21A, inserted by the Specific Relief Act, 1877 (Amended in 2004), has made the statutory requirement of depositing the balance consideration at the time of filing the suit mandatory, thereby excluding the application of any other law inconsistent therewith. The appellate Court, upon independent consideration, concurred with the aforesaid findings and affirmed the judgment of the trial Court.

For proper appreciation of the controversy, it is expedient to reproduce section 21A of the Specific Relief Act, 1877:

Unregistered contract for sale not specifically enforceable:

21A. Notwithstanding anything contained in this Act or in any other law for the time being in force, no contract for the sale of any immovable property shall be specifically enforced unless—

(a) the contract is in writing and is registered under the Registration Act, 1908, whether or not possession of the property has been delivered; and

(b) the balance amount of the consideration is deposited in the Court at the time of filing the suit for specific performance of the contract.

A plain and literal reading of clause (b) leaves no room for ambiguity. The Legislature has consciously employed the expression **"at the time of filing the suit"**, which unmistakably signifies that the balance consideration must accompany the institution of the suit itself. The provision neither authorizes the Court to extend the time for such deposit nor contemplates subsequent compliance after institution of the suit. The language employed is imperative and admits of no discretionary relaxation.

Moreover, the expression "shall" does not occur in section 21A; thus, the whole context, read together with the overriding non-obstante clause, clearly manifests the legislative intent that the fulfilment of the conditions stipulated therein is mandatory and constitutes a condition precedent to the institution and maintainability of a suit for specific performance.

In the instant case, it is an admitted position that although the plaintiff instituted the suit on 10.06.2010, she did not deposit the balance consideration of Tk.37,000/- simultaneously with the filing of the plaint. The said amount was deposited only on

20.09.2011, more than one year after the suit was instituted. Such a subsequent deposit was not within the limitation period to file a suit afresh. In my considered opinion, **the legal character of a suit is to be determined at its inception as per the sanction of law. Consequently, a proceeding that was incompetent at the time of its institution cannot be retrospectively validated by the subsequent invocation of the proper forum, since a patent defect strikes at the very root of the proceeding and is not curable by subsequent events.**

The question is no longer *res integra (i.e., an untouched matter)*. The issue has been authoritatively settled by the Appellate Division in **Abdul Kalam (Md.) Vs. Md. Mohiuddin and others, 69 DLR (AD) 239**, wherein their Lordships categorically held that the deposit of the balance consideration at the time of filing the suit is a mandatory pre-condition for maintaining a suit for specific performance and that failure to comply with the statutory mandate renders the plaint liable to rejection under Order VII, Rule 11 of the Code of Civil Procedure, 1908.

The ratio laid down in the aforesaid decision fully governs the facts of the present case. Consequently, the subsequent deposit made by the plaintiff during the pendency of the suit cannot cure the initial statutory defect nor confer jurisdiction upon the Court to entertain a suit which was not maintainable on the date of its institution.

Having considered the submissions advanced by the learned Advocates for the respective parties, the pleadings of the parties, the evidence on record, the judgments of the Subordinate Courts, and the proposition of law laid down by the Appellate Division, I find that the learned trial Court correctly appreciated the legal effect of section 21A of the Specific Relief Act, 1877, and rightly held that the suit was not maintainable for non-compliance with the mandatory requirement of depositing the balance consideration at the time of institution of the suit.

It is well settled that a suit for specific performance of a contract is an equitable remedy governed not only by equitable principles but also by the statutory conditions expressly prescribed by law. Once the Legislature has made the fulfilment of a particular requirement a condition precedent to the institution of such a suit, the Court is not competent to dilute or dispense with that requirement on equitable considerations. Equity follows the law and cannot override an express statutory mandate.

In the present case, although the execution of the registered Bainapatra appears to have been admitted by the defendants, such admission by itself does not entitle the plaintiff to a decree for specific performance unless all the statutory preconditions prescribed under section 21A of the Specific Relief Act are strictly fulfilled. The plaintiff admittedly failed to deposit the balance consideration at the time of instituting the suit. Consequently, the very foundation on which the suit was instituted was subject to a statutory infirmity.

The subsequent deposit of the balance consideration during the pendency of the suit cannot retrospectively validate a proceeding which was incompetent at its inception. The defect goes to the root of the suit's maintainability and is not a mere procedural irregularity that can be cured by subsequent compliance.

It further appears that both the trial Court and the appellate Court reached concurrent findings after proper consideration of the pleadings, oral testimony, and documentary evidence on record. It is a settled principle that this Court, while exercising its revisional jurisdiction under section 115(1) of the Code of Civil Procedure, does not sit as a Court of appeal to reassess or reappreciate the evidence merely because another view is possible. Unless the concurrent findings suffer from misreading or non-reading of evidence, misconception of law, jurisdictional error or are otherwise perverse, resulting in an error in the decision occasioning failure of justice, interference in revision is wholly unwarranted.

In the instant case, the learned Counsel for the petitioner has failed to demonstrate that the Subordinate Courts misread any material evidence or ignored any vital piece of evidence affecting the merits of the case. Nor has he been able to show that the impugned judgments suffer from any jurisdictional error or legal infirmity warranting interference by this Court in its revisional jurisdiction.

The submission that the petitioner may now be permitted to institute a fresh suit after complying with the statutory requirement is equally devoid of substance. Such liberty cannot be granted in revision, particularly when the statutory limitation period has long since expired. The question whether a fresh suit would be maintainable is neither the subject matter of the present Rule nor can this Court render any opinion on a hypothetical cause of action.

Accordingly, I find no illegality, impropriety, or jurisdictional error in the concurrent findings recorded by the Subordinate

Courts that would warrant interference by this Court in the exercise of its revisional jurisdiction.

Nevertheless, one aspect of the matter deserves consideration. The defendants have unequivocally admitted, both in their written statement and throughout the proceedings, that they received at least **Tk.70,000/-** from the plaintiff under the registered Bainapatra, and that they made no positive assertion to return the consideration money received. Once the agreement has become incapable of specific enforcement by operation of law, it would be inequitable to permit the defendants to retain the admitted amount without restoring the same to the plaintiff. No person should be allowed to enrich himself unjustly at the expense of another. Restitution, being an equitable consequence, demands that the amount admittedly received under the unenforceable agreement be refunded.

Equity follows the law and does not override it (*Aequitas sequitur legem*). Equity cannot override section 21A of the Specific Relief Act by granting specific performance. However, once the suit fails because of a statutory bar, equity may still order restitution of money admittedly received, provided such relief does not conflict with the statute.

In the facts and circumstances of the case, the ends of justice would be sufficiently met by directing the defendant-opposite parties 1 and 2 to refund the sum received under the admitted Bainapatra. The petitioner is also entitled to withdraw the rest balance amount of the contract deposited in the Court.

As a result, the Rule is discharged.

There shall, however, be **no order as to costs.**

However, the defendant-opposite parties 1 and 2 are directed to refund to the plaintiff-appellant-petitioner the admitted sum of Tk. **70,000/- (Taka seventy thousand)** received under the registered Bainapatra within **30 (thirty) days** from the date of the trial Court's receipt of a copy of this judgment.

In default of such payment within the stipulated period, the aforesaid amount shall carry simple interest at the prevailing scheduled bank rate from the date immediately following the expiry of the said period until full and final realization.

Let a copy of this judgment be communicated to the courts below forthwith.

The Office is directed to transmit the Subordinate Courts' Records (SCR) immediately.

This Court sincerely acknowledges the efforts of the learned counsel for both parties in disposing of an old Rule.

(Abdur Rahman, J.)