

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

Present:

Mr Justice Abdur Rahman

Civil Revision Case No. 2712 of 2001

In the matter of:

Abdul Khaleque Chowdhury

.... petitioner

-Versus-

Cox's Bazar Pourashava, represented by its
Chairman and others

.....Opposite parties

Mr. A.K.M Rashedul Huq, with

Mr Md. Kamal Parvez, Advocates

...for the petitioner

Mr Md. Zahirul Islam, Deputy Attorney General,
with

Mr Md. Ferdous Sarker, Assistant Attorney
General

.....For the opposite parties.

Date of Hearing: 16.06.2026 and 17.06.2026

Date of judgment: 18.06.2026 A.D. Thursday

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JUDGMENT:

Abdur Rahman, J.

This Rule was issued at the instance of the petitioner under Section 115(1) of the Code of Civil Procedure, 1908, upon the opposite parties challenging impugned the Order 30 dated 06.02.2001 passed by the learned Subordinate Judge, Court No.1 Cox's Bazar in other Appeal No. 2 of 1998 shall not be set aside and/or such other or further order or orders be passed as to this court may seem fit and proper.

At the same time, this Court was also pleased to stay the operation of the proceedings of Other Appeal No. 2 of 1998, now pending in the Court of the Joint District Judge, Court No.1, Cox's Bazar.

The crux of facts of the case are that the petitioner Abdul Khaleque Chowdhury instituted Other Suit 120 of 1991 in the Court of the learned Senior Assistant Judge, Cox's Bazar against the present opposite parties and eight others for declaration of title and confirmation of possession

of the suit land stating *inter alia*, that the suit land belonged to one Chenha Sowdagar (a tribal) who, having built his home on the suit land, has been in exclusive possession and ownership of same and after his death the title of the suit land passed on to his son Chamong Sowdagar who sold the land to the petitioner by a registered sale deed dated 21.9.1990 which followed from an agreement for sale dated 31.5.1990 in favour of the petitioner for Taka 60,000. During the last MRR and BS survey certain lands adjacent to the suit land were mistakenly and partially recorded in the names of the opposite party No. 1 and 6, and a part of the suit land under plot 561 was mistakenly recorded in plot No. 2446 appertaining to BS Khatian 1234 which belonged to defendant 6. Thereafter, the opposite party No. 1 by taking undue and illegal advantage of the wrong recording of the suit land was making unlawful claims to the suit land thereby the necessity of filing the suit arose.

On the other hand, Defendants 1-4 contested the suit by filing written statements contending, *inter-alia* that the

suit is not maintainable in its present form and manner; and the suit land was properly recorded during the BS survey in the name of defendant 1, and the documents produced by the plaintiff-petitioner does not create any right, title or interest in favour of the plaintiff, and the plaintiff-petitioner was trying to grab government land. Similarly, the defendant 5 (present opposite party No. 1) contested the suit by filing a separate written statement, contending, *inter alia*, that the documents produced by the plaintiff-petitioner were false and fabricated, and that the suit was baseless and, as such, it should be dismissed.

Thereafter, the Senior Assistant Judge, Cox's Bazar, completing all the lawful formalities of the trial, was pleased to decree the same on contest as against defendants 1 to 5, and *ex parte* against the rest.

Afterwards, one Serajul Haq, as Chairman of Cox's Bazar Pourashava, challenged the aforesaid Judgment and Decree through an appeal before the Court of the learned District Judge, Cox's Bazar, who subsequently, transmitted

the record of Appeal No. 2 of 1998 to the learned Subordinate Judge, Cox's Bazar, which is still pending for hearing in the Court of the learned Joint District Judge, Cox's Bazar.

Thereafter, at the initial stage of the appeal, the petitioner as respondent filed an application on 28.6.2000 under Order XLI Rule 3(1) of the Code of Civil Procedure, 1908 (hereinafter referred to as the CPC) praying that the appeal be dismissed as it was not filed according to law and that the Chairman of the Pourashava did not grant permission to file the appeal. In this regard, it is stated that the vokalatnama purportedly filed by the Chairman of Cox's Bazar Pourashava was signed by a person named Serajul Haq, whereas there is no one by that name as Chairman of Cox's Bazar Pourashava. In fact, Mr Nurul Absar, the elected chairman of the aforesaid pourashava, did not file the appeal, nor did he execute the power, and as such, the memo of appeal, not being preferred by the appropriate person and/or authority, is liable to be dismissed.

Thereafter, the opposite party-appellant, filed a written objection against the said application stating *inter alia* that the lawyers engaged by the Pourashava had the necessary authorization to file the appeal which was done in favor of the pourashava's interests, and in the absence of the elected Chairman, the Acting or Panel chairman had signed the Vokalotnama, but had mistakenly omitted to mention the word "Acting" or "Panel", and on the basis of the lawyer's report dated 3.3.1999, the Chairman did not give any written order to withdraw the appeal rather they were just written words used at the primary stage of official correspondence. Subsequently, the Chairman made extensive enquiries, and the Pourashava members agreed verbally regarding continuation of the appeal.

Thereafter, the learned Subordinate Judge, Cox's Bazar, after hearing the said application, was pleased to reject the petitioner's application vide the impugned judgment and order dated 06.02.2001. Thereafter, being

aggrieved by and dissatisfied with the said order, the petitioner invoked this revisional jurisdiction.

The opposite parties did not appear by filing any Vakalatnama or counter-affidavit.

Learned Counsel Mr A.K.M. Rashedul Huq along with Mr Md. Kamal Perves, appearing on behalf of the petitioner, submitted that while passing the impugned order, the learned Subordinate Judge travelled beyond the sweep of the express provision of law governing the procedure for presenting a memorandum of appeal.

Learned Counsel has further submitted that the order of the learned Subordinate Judge rejecting the application moved by this petitioner for rejecting the memorandum of appeal tantamounts to giving a go-by to a memorandum of appeal which is preferred apparently in violation of law.

Learned Counsel has further submitted that considering the peculiar facts of the case, signature and seal accorded on the vakalatnama and the correspondence

between the chairman and the pourashava officials *per se* suggest that the power is signed by one Serajul Haq as chairman of the pourashava, in fact what he is not and having been detected as such laboured much to justify his action in different ways ultimately leaving the vokalatnama, and for that matter the memorandum of appeal, not corrected in accordance with law and thus exposing the same liable to rejection or returned.

Learned Counsel has further submitted that the order of the learned Judge suffers from non-application of mind to the express provision of law with regard to memorandum of appeal filed in an extra procedural manner as laid down in rule 3(1) of order 41 of the Code of Civil Procedure which contemplates rejection or refusal of the memorandum of appeal for amendment which has resulted in continuing a memorandum of appeal not sustainable in law.

Learned Counsel has further submitted that allowing the memorandum of appeal not filed by the appropriate and/or authorised person to continue, especially where

objection has been raised at the outset, would amount to perpetuating an illegality with the possibility of further complication of law.

Learned Counsel further submitted that the Provision of Order 41 Rule 1 specifically enrolled the requirement of a memorandum of appeal, including that every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader, must be presented to the Court or such office as it demands on his behalf.

Learned Counsel has also posited that the provisions of Order 41 Rule 1 specifically enrolled the requirement of memorandum appeal including that (i) every appeal shall be preferred in the form of memorandum signed by the appellant or his pleader, (ii) it must be presented to the court or to such officers as it appears on his behalf, (iii) it shall also be accompany by a copy of the decree appeal and the judgment on which it is founded he further process that to consequent of failing the above requirement has been denoted in Rule 3 Order of 41 specifically were the

memorandum of appeal is not drone up in the manner hearing before prescribed it may be rejected or returned to the appellant for the purpose being amendment within time to be fixed by the court or the amendment then and there.

Learned Counsel finally referred to a decision as contained in A.I.R 1920 Patna 581 in the case of Sheikh Palat -Vs- Sarwan Sahu and others, where their Lordships opined that the presentation of an appeal by vakil without vakalatnama is invalid, and finally, he prayed to make the Rule absolute.

Mr Md. Zahirul Islam, the learned Deputy Attorney General for Bangladesh, assisted by Mr Md. Ferdose Sarker, the learned Assistant Attorney General, strenuously opposed the Rule and supported the judgment and order passed by the learned Subordinate Judge. He submitted that the impugned judgment was rendered upon a proper appreciation of the facts, evidence and the relevant provisions of law, and that the learned Court below committed no illegality, irregularity or jurisdictional error

warranting interference by this Court in the exercise of its revisional jurisdiction.

Learned Deputy Attorney General further contended that although the memorandum of appeal had been signed by one Sirajul Huq instead of the Chairman of the Cox's Bazar Pourashava, such circumstance did not render the appeal incompetent or non-maintainable. Elaborating his submission, he argued that the said Sirajul Huq was, at the material time, a duly elected Commissioner of the Cox's Bazar Pourashava and, by virtue of his office, possessed a direct, substantial and *bona fide* interest in safeguarding and protecting the legal rights, properties and institutional interests of the Pourashava. According to him, the act of signing and presenting the memorandum of appeal was performed in furtherance of the affairs of the local authority and was intended solely to protect its lawful interests, and therefore such act ought not to be invalidated on the ground of any alleged procedural irregularity.

Learned Deputy Attorney General further submitted that even assuming, without admitting, that there had initially been any procedural defect or absence of express authorisation in filing the appeal, the same stood subsequently cured by the competent authority of the Pourashava. In this regard, he pointed out that the then Chairman of the concerned Pourashava subsequently entered an appearance before the appellate Court, filed a written objection acknowledging and affirming the acts already undertaken by the Commissioner, thereby expressly ratifying the filing of the appeal and all consequential steps taken on behalf of the Pourashava.

Learned Deputy Attorney General further submitted that the Chairman thereafter appointed a duly authorised panel lawyer to conduct and defend the proceedings on behalf of the Pourashava, thereby leaving no room for any doubt that the Pourashava had unequivocally adopted and approved the institution and continuation of the appeal. Consequently, any alleged defect relating to the authority of

the person signing the memorandum of appeal, being merely procedural in nature, stood effectively ratified and regularised by the subsequent conduct and express approval of the competent authority.

On the aforesaid premises, the learned Deputy Attorney General emphatically submitted that no prejudice whatsoever had been occasioned to the petitioner, nor had any failure of justice been demonstrated. He, therefore, prayed for the discharge of the Rule with costs, affirming the legality, propriety and correctness of the impugned judgment and order.

Considering the above facts, circumstances, and submissions advanced by the learned Counsel for the petitioner and the Deputy Attorney General for Bangladesh, I find that the main controversy arises from the memorandum of appeal, basically, whether it is legally filed or not. On perusal of the impugned order dated 6.2.2001, it is evident that the learned Court observed that:

“উভয় পক্ষ স্বীকার করিয়াছেন যে, উক্ত সিরাজুল হক কোন অস্তিত্বহীন ব্যক্তি নহে এবং তিনি তৎকালে চেয়ারম্যান এর সাময়িক অনুপস্থিতিতে কক্সবাজার পৌরসভার প্যানেল চেয়ারম্যান হিসাবে দায়িত্ব পালন করিয়াছেন। আপীলকারী পক্ষ স্বীকার করিয়াছেন যে, প্যানেল বা পক্ষে কথাটি ভুল শতঃ ওকালতনামায় লিপি করা হয় নাই। কক্সবাজার পৌরসভার চেয়ারম্যান জনাৱ নুরুল আছার তাহার আপত্তিতে উল্লেখ করিয়াছেন যে, কক্সবাজার পৌরসভার পক্ষ হইতে অত্র আপীল মামলাটি তাহাদের নিযুক্তি আইনজীবী কর্তৃক দায়ের করা হইয়াছে। ফলে প্যানেল চেয়ারম্যান সিরাজুল হক কর্তৃক অত্র আপীল মোকদ্দমাটি দায়ের করার জন্য ওকালতনামায় স্বাক্ষর করার সময় প্যানেল কথাটি বা পক্ষে কথাটি লিপি না করা bonafide mistake মনে করি।”

At the same time, upon perusal of the written objection, the chairman of Cox's Bazar Pourashava specifically stated in paragraphs 11 and 12, which were subsequently endorsed in filing the appeal in the interest of the Pourashava. On perusal of the memorandum of appeal, it is found that the appeal has been filed by Kamrul Hasan, who, being the lawyer for the pourashava, presented it before the learned court.

Now, to examine the legal footing of the requirements of a memorandum of appeal as contained in Order XLI Rule 1 and 3 of the CPC, is reproduced below:

“R.1 Form of appeal: What to accompany memorandum: Every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the Court or to such officer as it appoints in this behalf. The memorandum shall be accompanied by a copy of the decree appealed from and (unless the Appellate Court dispenses therewith) of the judgment on which it is founded.

(2) ---

R.3 Rejection or amendment of memorandum: (1)
Where the memorandum of appeal is not drawn up in the manner hereinbefore prescribed, it may be rejected, or be returned to the appellant for the purpose of being amended within a time to be fixed by the Court or be amended then and there."

Upon a plain, harmonious and meaningful construction of the aforesaid statutory provisions, it becomes manifestly evident that the memorandum of appeal is required to be signed either by the appellant himself or by his duly authorized pleader. The scheme of the relevant provisions further provides that where a memorandum of appeal is not drawn up or presented in the manner prescribed by law, the Court is vested with the authority either to reject it or to return it to the appellant for the purpose of removing the defect by way of amendment. Such jurisdiction is not confined to the stage of initial presentation alone; rather, it may be exercised at any stage of the proceedings whenever the Court considers that the interests of justice so require, although ordinarily such scrutiny is expected to be undertaken at the time when the memorandum is first presented before the Court.

In the instant case, the records unmistakably reveal that the memorandum of appeal had initially been signed by the Panel Chairman of the Cox's Bazar Pourashava. It further

appears that the learned appellate Court did not resort to the procedural course contemplated under Rule 3 of Order XLI of the Code of Civil Procedure, 1908, namely, either rejecting the memorandum of appeal or returning the same to the appellant for curing the procedural defect arising from non-compliance with Rule 1 of the said Order. Instead, the learned Court appears to have accepted the subsequent endorsement and ratification made by the Chairman of the Pourashava, evidently invoking its inherent jurisdiction preserved under section 151 of the Code of Civil Procedure, 1908, to secure the ends of justice and to prevent the defeat thereof on account of a curable procedural irregularity.

The learned Deputy Attorney General, appearing on behalf of the Government, has, in support of his submission, placed reliance upon the decision reported in **54 DLR (2002) 494**, (*Md. Delwar Hossain Vs. Government of the People's Republic of Bangladesh and others*), wherein it has been authoritatively laid down that the right of appeal is not invariably confined to a formal party to the suit, and that

any person who is genuinely and substantially aggrieved by a judgment and decree may, in an appropriate case, maintain an appeal, notwithstanding the fact that he was not impleaded as a party to the original proceeding.

Nevertheless, the decision relied upon by the learned Counsel for the petitioner is clearly distinguishable on both facts and law and, therefore, lends no assistance to the petitioner's case. The said decision, reported in **A.I.R. 1920 Patna 581** in the case of Sheikh Palat Vs Sarwan Sahu and others, dealt with an entirely different legal issue, namely, the validity of the presentation of an appeal by a vakil who had acted without any duly executed Vokatnama authorizing him to represent the appellant. In that context, their Lordships held that the presentation of an appeal by a pleader in the absence of a valid Vokatnama was incompetent in law and incapable of conferring jurisdiction upon the appellate Court.

The factual and legal matrix of the present case, however, is fundamentally different. Here, the

memorandum of appeal was not presented by a pleader acting without authority. Rather, the appeal was instituted through a duly appointed learned Advocate on the strength of a Vakalatnama executed on behalf of the appellant. The controversy in the present proceeding does not concern the absence or non-existence of a Vakalatnama; rather, it concerns only the identity and competence of the person who endorsed or signed the memorandum of appeal on behalf of the appellant-Pourashava. Therefore, the *ratio decidendi* of the aforesaid Patna decision, which was rendered in an altogether different factual and legal setting, has no manner of application to the issue involved in the instant case.

It is a well-settled principle of judicial precedent that a decision is an authority only for what it actually decides and not for what may logically or remotely follow therefrom. Since the point decided in the aforesaid case bears no real or substantial similarity to the controversy now before us,

the reliance placed thereon by the learned Counsel for the petitioner is wholly misconceived.

Accordingly, I am of the considered view that the aforesaid decision neither advances the case of the petitioner nor furnishes any persuasive guidance for determining the issue involved in the present Rule. The same is, therefore, clearly distinguishable and is of no assistance to the petitioner, and, consequently, does not merit any further consideration.

Turning to the matrix of facts of the present case, it transpires from the materials available on record that the Chairman of the Cox's Bazar Pourashava subsequently affirmed and expressly endorsed that the persons who had presented the memorandum of appeal, together with the learned Panel Pleader of the Pourashava, had acted *bona fide* and solely for safeguarding the interest and proprietary rights of the Pourashava. The record further demonstrates that the original suit seeking a declaration of title had been decreed in favour of the plaintiff-petitioner by the

competent civil Court. The irregularity complained of pertains merely to the manner in which the memorandum of appeal was initially presented and signed, which, in the attending facts and circumstances of the case, appears to be a *bona fide* procedural lapse rather than a deliberate or jurisdictional defect. Such an irregularity, being essentially curable in nature, ought not to be elevated to a position so as to defeat or frustrate the adjudication of the dispute on its substantive merits.

It is now well settled that the rules of procedure are intended to facilitate the administration of justice and not to obstruct it. Unless a procedural defect goes to the very root of the jurisdiction of the Court or occasions manifest prejudice to the opposite party, the Court ought to lean in favour of curing such defect rather than terminating the proceeding on technical considerations alone. Procedural law is but the handmaid of justice and should receive a liberal construction so as to advance, rather than defeat, the cause of substantial justice.

Having bestowed my anxious consideration upon the facts and circumstances of the case, the relevant statutory provisions, the principles enunciated in the judicial precedents cited at the Bar, as well as the respective submissions advanced by the learned Counsel for the petitioner and the learned Deputy Attorney General for Bangladesh, I am of the considered view that no failure of justice has been occasioned by the initial defect in the presentation of the memorandum of appeal. On the contrary, the ends of justice would be better served if the appeal is adjudicated upon after affording both parties a full opportunity of contest on the merits. Interference in revisional jurisdiction merely on account of a curable procedural irregularity would neither advance the cause of justice nor accord with the settled principles governing the exercise of such jurisdiction.

Accordingly, I find no illegality in the decision passed by the learned Appellate Court, and thus got no substance in the Rule. The Rule is, therefore, discharged.

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

The impugned order passed by the learned Appellate Court is hereby upheld, and order of stay granted earlier by this Court is hereby recalled and vacated.

The learned Appellate Court is hereby directed to hear the appeal and dispose of it as early as possible, considering it a long-pending appeal.

The office is directed to send down the Subordinate Courts Record (SCR) along with a copy of this judgment and order forthwith.

The Court acknowledges and highly appreciates the diligent efforts, persuasive submissions, and valuable assistance rendered by the learned Counsel for both parties in facilitating the just determination of the issues involved.

(Abdur Rahman, J)