# IN THE SUPREME COURT OF BANGLADESH

## HIGH COURT DIVISION

### (CIVIL REVISIONAL JURISDICTION)

**Single Bench:**

**Mr Justice Abdur Rahman**

**Civil Revision No. 986 of 2015**

***In the matter of:***

Most. Monowara Khatun

*......Pre-emptee-Petitioner*

*Petitioner*

**-Versus-**

Md. Golam Kibria and others

*... Preemptor-Opposite Parties*

*Opposite parties*

Mr Shasti Sarker, Senior Counsel

*........For the Petitioner*

*Mr Md. Nurul Amin, Senior Counsel, with*

*Mr Md. Saidul Alam Khan, Advocate*

*...For the opposite party 1.*

**Date of Hearing:** 16.07.2026, 21.07.2026 and 30.07.2026 A.D.

**Date of Judgment:** 06.08.2026 A.D.,

[ বৃহস্পতিবার, ২২ শ্রাবণ, ১৪৩৩ বঙ্গাব্দ ]

## *JUDGMENT:*

**Abdur Rahman, J:**

**By granting Leave,** this Rule was issued at the instance of the petitioner under section 115(4) of the Code of Civil Procedure, 1908, calling upon the opposite party 1 to show cause as to why the judgment and order dated 13.10.2014 passed by the learned District Judge, Kushtia, rejected the revisional application, in Civil Revision 38 of 2014, by affirming the judgment and order dated 28.05.2014, passed by the learned Assistant Judge, Khoksha, Kushtia, in Miscellaneous Case 24 of 2009, allowing the application to deposit the consideration value of the another preemptor who withdrew his half of the deposited money.

***Tempore quo,*** this Court was also pleased to stay all further proceedings of Miscellaneous Case 24 of 2009 pending before the learned Assistant Judge, Khoksha, Kushtia, for a period of three months from the date of the order.

The relevant facts, shorn of unnecessary details, are that the specific case of the pre-emptor was that the land measuring 29 acres of Plot No.2360 under R.S. Khatian No. 175 belongs to Abdur Rashed, Abdul Malek and Abdus Sattar, in equal shares. They possessed the suit land by erecting their houses. Abdur Rashid died leaving behind three sons, three daughters and one wife, i.e., opposite party Nos.2-8. Abdul Malek sold his share on 21.04.1973 to opposite party No.15 (who was pre-emptor No.2). Abdur Sattar died leaving behind 6 (six) sons, 2 daughters, opposite party Nos.2-7; their mother was a co-sharer of jama of Plot No.2360, who sold to his brother petitioner on 22.03.2007 in respect of 07868 acres of land. The petitioner No. 1 and Petitioner No.15 are the co-sharers of inheritance. Other co-sharers are also co-sharers, and they have been possessing as ejmali property. Opposite party Nos.2-7 and their mother sold .0966 acres of land on 14.09.2009 by registered kabala Deed No. 1734 at a consideration of 2 lac to opposite party No.1. Opposite party No.1 is not the co-sharer. Opposite party Nos.2-7 and their mother mutated their land by Mutation Case No.244/9-1/09-10 without serving any notice upon the pre-emptor and opposite party No.15. The opposite party Nos. 1 and 15 came to know about the sale on 01.10.2009, withdrew the certified copy and filed the same in Miscellaneous Case No.24 of 2009.

Initially, the pre-emptor Nos. 1 and 2 jointly deposited the consideration money and 5% compensation to the actual value, but the pre-emptor No.2 withdraw 50% of the deposited money and petitioner No.1 then instituted an application praying for permission to deposit half of the withdrawal money which was withdrawn by the pre-emptor No. 2. But facts remain that pre-emptors should have filed an application for consideration for money along with compensation money at the time of filing an application but in this instant case no such deposited is available as such the impugned order is liable to be set aside but the revisional court did not consider so which has caused a failure of justice.

Conversely, the opposite party 1 claimed that the pre-emptees 2 to 7 have transferred the suit property to pre-emptee 1 Most. Monowara Khatun on 24.09.2009 in respect of 0966 acres of land at a consideration of Taka 2 (two) lac, thereafter pre-emptors 1 and 2 deposited the said amount along with compensation money. Subsequently, pre-emptor

No. 2 prayed for withdrawal of 50% of the deposited money at 10,5000/- taka, and the same was allowed on 19.05.2014. Earlier, on 22.11.2012, pre-emptor No.1 sought permission to deposit 50% of the withdrawn deposited money. The pre-emptor No. 2 withdrew money on 19.05.2014 vide Order No. 50, and the learned trial Court allowed the application of Preemptor No. 1 vide Order No. 51, and he deposited the said withdrawn money vide Order No. 52, dated 11.06.2016. So, there was no negligence on the part of the pre-emptor No.1 to fulfil the legal requirements.

Thereafter, the preemptee No.1 being agrrieved by and dissatisfied with the decision as contained in Order No. 51 dated 28.05.2014 passed by the learned Assistant Judge, Khoksha, Kushtia preferred a revisional application before the learned District Judge, Kushtia, who, after hearing the same, was pleased to reject the revisional application vide its judgment and order dated 13.10.2014, by affirming the judgment and order of the learned trial Court.

Feeling aggrieved thereby, the pre-emptee No. 1, as petitioner, invoked the jurisdiction of this Court under Section 115(4) of the Code of Civil Procedure, 1908.

**Mr Shashti Sarker**, learned Senior Counsel appearing on behalf of the petitioner, submitted that the pre-emptor Nos. 1 and 2 deposited the consideration money, but the pre-emptor 2 withdrew the deposited money and pre-emptor No.1 then submitted an application for persuasion to deposit half of the withdrawn money, which was withdrawn by the pre-emptor No.2, but facts remains that preemptors should have filed an application with consideration for along with compensation money at the one of filing an application, but as this instant such deposited is available as such the impugned order is liable to be set aside.

He further submitted that the pre-emptor No.2 prayed for withdrawal of 50% of the deposited money, and the same was allowed on 25.09.2013. Subsequently, pre-emptor No.2 sought permission to deposit ½ of the total deposited money, and the court below directed the deposit of the money on 28.05.2014. But the fact remains that the total valuation of the deed value plus 5% Compensation money should be deposited at a time. But in this instant case, ¼ of the money has been deposited on 19.10.2009 and ½ of the money on 28.05.2014, which is barred by limitation; as such, the impugned order dated 13.10.2014 is liable to be set aside.

Mr Sarker, further submitted that in a pre-emption case under Section 24 of the NAT Act, the application under Section (1) shall be dismissed under the application at the time of making deposit in court, the amount of the consideration money or the value of the portion or share of the property transferred as stated in the notice served in the applicant under Section 23 together with compensation at the rate of five percent of such amount but in this instant case the same is not available so the case should be dismissed.

He further submitted that the pre-emptor No.1, Md. Golam Kibria got permission to deposit money within the time of limitation, and the same has not been deposited within one month, for which the impugned order dated 13.10.2014 is liable to be set aside.

Learned Counsel further argued that the Judgment and Order dated 13.10.2014 passed by the learned District Judge, Kushtia, is arbitrary, fanciful, and whimsical; as such, the impugned order is liable to be set aside.

Learned Counsel finally referred to the decision in 74 DLR (AD) 146, in respect of amendment of the provisions of Section 96 of the State Acquisition and Tenancy Act (XXVIII of 1951), where there is no opportunity to deposit any shortfall of consideration, compensation, and interest. He prayed for making the Rule absolute.

**Mr Md. Nurul Amin,** learned Senior Counsel, appearing on behalf of the opposite party 1, made submission that the learned trial Court, being convinced of the facts and proposition of law, rightly allowed the application for depositing the withdrawal money of the pre-emptor No.2, and the learned District Judge, Kushtia also analyzing the facts and legal footing affirm the decision of the trial Court, and thereby no room is available to interfere with the said decisions.

Learned Counsel further submitted that the factual matrix is legally founded on the fact that Pre-emptor No. 2

sought withdrawal of 50% of the deposited consideration amounting to Tk. 1,05,000/-, which was allowed on 19.05.2014. Prior thereto, on 22.11.2012, Pre-emptor No. 1 had already prayed for leave to deposit the said 50% amount in anticipation of such withdrawal. Pursuant to Order No. 50, Pre-emptor No. 2 withdrew the amount, whereafter the learned trial Court, by Order No. 51, allowed the prayer of Pre-emptor No. 1, who accordingly deposited the withdrawn amount under Order No. 52 dated 11.06.2016. Thus, it cannot be said that Pre-emptor No. 1 was negligent or failed to comply with the statutory requirements.

Learned Counsel further argued that the fundamental principles of pre-emption law as per Section 96 of the State Acquisition and Tenancy Act are inter-linked with the provisions of Section 24 of the Non-Agricultural Tenancy Act, and accordingly, initial depositions of consideration value of purchased land together with compensation money has been duly paid in the instant case, this legal requirements have been complied with, therefore, the subsequent events must be dealt with the discretion of the Court concerned, and thereby no illegality found apparent on the face of the record.

Learned Counsel also posited that the provisions of Section 24(2) strictly endorsed upon the initial depositions of consideration and compensations thereto, which has been duly complied with and by the subsequent withdrawal and deposition of the 50% deposits amount did not make any vacuum in the initial deposition, rather the pre-emptee's interests has not been affected in any way, and accordingly, the concurrent decisions of the learned Subordinate Courts warranted no interference by this revisional jurisdiction.

Mr. Amin, the learned Advocate appearing on behalf of the opposite parties, in support of his submissions, placed reliance upon a series of judicial pronouncements governing the law of pre-emption under the provisions of the State Acquisition and Tenancy Act, 1950 (Act No. XXVIII of 1951). He first referred to the decision reported in **42 DLR (AD) 77**, wherein the Appellate Division authoritatively expounded the legal requirement of depositing the balance of the consideration money in compliance with section 96(3)(b) of the said Act, emphasizing the mandatory nature of such statutory requirement.

He next relied upon the decision reported in **17 DLR (1965) 565**, wherein it was held that the substantive right of pre-emption is not rendered nugatory merely because the original application for pre-emption has subsequently been withdrawn, provided the statutory conditions governing the exercise of such right otherwise remain fulfilled.

Learned Counsel further drew the attention of the Court to the decision reported in **6 BLD (HCD) 32**, wherein the High Court Division considered the legal consequences arising from the withdrawal of a portion of the deposited consideration by some of the co-pre-emptors and elucidated the effect of such withdrawal upon the maintainability and continuation of the pre-emption proceeding.

Relying upon the principles enunciated in the aforesaid decisions, Mr. Amin contended that the facts and circumstances of the present case unmistakably attract the ratio laid down therein and that the petitioners have failed to establish any legal infirmity warranting interference by this Court. He accordingly submitted that the Rule is devoid of substance, suffers from no merit either in fact or in law, and is, therefore, liable to be discharged. He, accordingly, prayed for the discharge of the instant Rule.

However, on perusal of the judgment and order of the learned District Judge, who under the authority of Section 115(2) of the Code of Civil Procedure, 1908, observed that the suit was instituted within the prescribed period of limitation upon lawful deposit of the consideration money together with the statutory compensation, and no legal defect or irregularity attended the institution of the suit. It was also observed that the applicant No. 2 withdrew from the proceedings and filed an application seeking withdrawal of his proportionate share of the amount deposited. Before Applicant No. 2 had actually withdrawn his share of the deposited amount, Applicant No. 1 filed an application praying for leave to deposit the amount corresponding to the share sought to be withdrawn by Applicant No. 2. Thereafter, Applicant No. 1 deposited the said amount within 22 (twenty-two) days after Applicant No. 2

had withdrawn his share. Prior to the date on which Applicant No. 1 made such deposit, he had no legal opportunity to do so. This is because Applicant No. 2 unexpectedly abandoned the proceedings and sought withdrawal of his deposited share, and without obtaining the leave of the Court, Applicant No. 1 was legally incompetent to deposit the corresponding amount. Moreover, even assuming, without admitting, that there had been any deficiency or shortfall in the deposit at the time of institution of the suit, and provided that such deficiency was not attributable to any fault or default on the part of the applicants, the law permits the deficient amount to be deposited even after the expiry of the prescribed period of limitation, subject to the leave and permission of the Court.

Having meticulously examined the revisional application together with the documents annexed thereto and having given anxious consideration to the submissions advanced by the learned Advocates appearing for the respective parties, this Court finds that the principal issue requiring determination is whether the subsequent deposit of the remaining fifty per cent (50%) of the consideration money together with the statutory compensation, made after the withdrawal of one of the pre-emptors from the proceeding, can be regarded as sufficient compliance with the mandatory requirement of the initial deposit envisaged under section 24(2) of the Non-Agricultural Tenancy Act, 1949, or whether such subsequent deposit constitutes a deviation from, and consequently a violation of, the statutory precondition governing the maintainability of an application for pre-emption under the said provision.

This Court has also carefully considered the authorities cited at the Bar. It appears that all the reported decisions relied upon by the learned Advocates have been rendered in the context of section 96 of the State Acquisition and Tenancy Act, 1950 (Act No. XXVIII of 1951). Undoubtedly, those pronouncements, particularly those of the Appellate Division, constitute binding precedents and authoritatively expound the principles governing pre-emption under the statutory framework of the State Acquisition and Tenancy Act. Nevertheless, the legal principles enunciated therein must necessarily be appreciated in the backdrop of the statutory scheme under which they were pronounced.

The controversy involved in the present case, however, does not emanate from section 96 of the State Acquisition and Tenancy Act, 1950; rather, it arises exclusively under section 24 of the Non-Agricultural Tenancy Act, 1949, which is a distinct statutory provision operating within a separate legislative framework and prescribing its own conditions, procedural requirements and legal consequences. Although both enactments deal with the concept of pre-emption, the scope, language and legislative intent underlying the respective provisions are not identical and, therefore, the principles governing one enactment cannot invariably or mechanically be imported into the other without first examining the statutory context and legislative scheme.

In such circumstances, this Court is of the considered view that the controversy involved in the instant Rule arises out of a distinct factual matrix as well as a separate statutory regime, thereby requiring an independent examination on the touchstone of section 24 of the Non-Agricultural Tenancy Act,

1949. The issues involved must, therefore, be resolved in the light of the language, object and legislative intent of the said provision, rather than by an unqualified application of principles evolved under section 96 of the State Acquisition and Tenancy Act, 1950. Accordingly, the present case must be examined through the lenses on its own facts and within the four corners of the statutory framework governing the Non-Agricultural Tenancy Act, 1949.

For reasons of necessity, I would like to examine the relevant provisions of Section 24 of the Non-Agricultural Tenancy Act, 1949, which are reproduced as under:

"24. (1) If a portion or share of the non-agricultural land held by a non-agricultural tenant is transferred, one or more co-sharer tenants of such land may, within four months of the service of notice issued under section 23 and, in case no notice had been issued or served, then within four months from the date of knowledge of such transfer, apply to the court for such portion or share to be transferred to himself or to themselves, as the case may be.

(2) The application under sub-section (1) shall be dismissed unless the applicant at the time of making it deposits in Court the amount of the consideration money or the value of the portion or share of the property transferred as stated in the notice served on the applicant under section 23 together with compensation at the rate of five per centum of such amount.

(3) If such deposit is made, the Court shall give notice to the transferee to appear within such period as it may fix and to state what other sums he has paid in respect of rent for the period after the date of transfer or in annulling encumbrances on the property and also what other amounts, if any, have been spent by him, between the date of the transfer and the date of service of the notice of the application, in erecting any building or structure or in making any other improvement in the portion or share of the property transferred. The Court shall then direct the applicant, including any person whose application under sub-section (4) is granted, to deposit within such period as the Court thinks reasonable such amount as the transferee has paid or spent on these accounts together

with interest at the rate of six and a quarter per centum per annum with effect from the date on which the transferee made such payments or spent such amounts:

Provided that if the correctness of any amount claimed to have been paid or spent by the transferee on any such account is disputed by any applicant the Court shall enquire into such dispute and, after giving the transferee an opportunity of being heard, determine the amount actually paid or spent by the transferee on any such account and shall then direct the applicant to deposit the amount so determined with interest at the rate of six and quarter per centum per annum as aforesaid within such period as the Court thinks reasonable.

(4) (a) When an application has been made by one or more co-sharer tenants under sub-section (1) any of the remaining co-sharer tenants including the transferee, if one of them, may within the period of four months referred to in the said sub-section or within one month of the service of notice of the application, whichever is later, apply to join in the said application, and any co-sharer tenant who has not applied

under sub-section (1) or has not applied to join under this sub-section, shall not have any further right to purchase under this section.

(b) Such application to join as a co-applicant shall be dismissed unless within such period as the Court may fix, the applicant deposits in Court for payment to the applicant under sub-section (1), such sum as the Court shall determine as the share to be paid by him for the purposes of sub-section (2).

(c) If such deposit is made, the Court shall grant the application to join, and thereafter such applicant shall be deemed to be an applicant under sub-section (1).

(5) If the deposits required under sub-section (2) or clause (b) of sub-section (4), as the case may be, and under sub-section (3) are made, the Court shall make an order allowing the application and directing that the deposits made under sub-sections (2) and (3) shall be paid to the transferee or to such persons as the Court thinks fit.

(6) --- to (11) ---. "

A careful and harmonious reading of the foregoing statutory provisions unmistakably reveals the legislative scheme embodied in Section 24 of the Act. It transpires that, in terms of sub-section (1), the right of pre-emption is set in motion by the presentation of a duly constituted application before the competent Court. Simultaneously, sub-section (2) imposes a mandatory statutory obligation upon the applicant to deposit, at the very inception of the proceeding and contemporaneously with the filing of the application, the entire consideration money specified in the impugned transfer together with compensation calculated at the rate of five per centum thereof. Such deposit constitutes a condition precedent for the entertainment and maintainability of the application itself.

The record further demonstrates that, upon due compliance with the initial statutory requirements, the Court proceeded in accordance with sub-section (3) by issuing the requisite summons and notices to the persons concerned. Significantly, at no stage of the proceeding did the pre-emptee raise any objection or dispute regarding the sufficiency, validity, or legality of the initial deposit made under sub-section (2). The proceeding, therefore, advanced on the undisputed premise that the mandatory requirement relating to the initial deposit had been duly fulfilled.

It further appears that, despite the issuance of notice as contemplated by law, no other person came forward to join the proceeding as a co-applicant in exercise of the right envisaged under sub-section (4). Consequently, the proceeding remained confined to the original applicant, and no question arose concerning any additional deposit to be made by any subsequently added co-applicant under the statutory framework.

In such circumstances, the scope and operation of sub-section (5) assume considerable significance. The said provision confers discretionary authority upon the Court to determine the application on its merits and, where the statutory conditions stand satisfied, to allow the prayer for pre-emption and direct that the deposits made under sub-sections (2) and (4), as the case may be, be paid to the transferee or to such other person as the Court may, in the facts and circumstances of the case, consider just and proper. The discretion contemplated under sub-section (5), however, is not an unfettered or arbitrary discretion; rather, it is a judicial discretion exercisable only upon the foundational premise that the mandatory deposits required by the preceding provisions have been duly made in accordance with law.

In my considered opinion, the expression "deposits required under sub-section (2)" occurring in sub-section (5) unmistakably refers to the initial deposit of the full consideration money together with the statutory compensation, which the legislature has made an indispensable precondition for invoking the jurisdiction of the Court. The language employed by the legislature leaves little room for any other interpretation. Compliance with sub-section (2) is, therefore, mandatory in nature and admits of no relaxation or subsequent rectification saves as expressly authorized by the statute itself. The Court's discretionary jurisdiction under sub-section (5) can be invoked only after being satisfied that such foundational requirement has been fulfilled.

Viewed from this perspective, the statutory consequence attached to non-compliance with sub-section (2) is both explicit and inevitable. Since the initial deposit constitutes the very foundation of a valid application for pre-emption, any failure to comply with that mandatory requirement strikes at the root of the proceeding and renders the application liable to dismissal. Accordingly, the discretion vested in the Court under sub-section (5) cannot be construed as empowering the Court to dispense with, dilute, or retrospectively validate the mandatory initial deposit prescribed under sub-section (2), for to hold otherwise would amount to defeating the clear legislative mandate and rewriting the statutory scheme.

However, to be more certain, I would like to analyze the whole scheme of Section 24 of the Non-Agricultural Tenancy Act, 1949, e.g., the pivotal question that falls for determination in the present Rule is whether, in a proceeding instituted under section 24 of the Non-Agricultural Tenancy

Act, 1949 by more than one pre-emptor, the Court is legally competent to permit one of the existing pre-emptors to deposit the proportionate amount withdrawn by another co-pre-emptor during the pendency of the proceeding, thereby enabling the former to continue and prosecute the case as the sole pre-emptor.

It is an admitted position that the application for pre-emption was originally instituted jointly by two pre-emptors, both of whom possessed the requisite statutory qualification to maintain the proceeding. At the time of institution of the case, the entire consideration money together with the statutory compensation as required under section 24(2) of the Act was duly deposited before the Court. Consequently, the application, on the date of its institution, fully satisfied the mandatory statutory requirements prescribed by law, and no objection has been raised regarding the validity of the original deposit.

Thus, the controversy arose subsequently when one of the joint pre-emptors voluntarily withdrew his proportionate share from the deposited amount during the pendency of the suit. Thereafter, the remaining pre-emptor expressed his willingness to deposit the amount so withdrawn to restore the statutory deposit in its entirety and to continue the proceedings in his own right. The learned trial Court allowed such deposit, giving rise to the present legal question as to whether such permission is sanctioned by law.

As it is observed earlier, Section 24 of the Non-Agricultural Tenancy Act, 1949 undoubtedly requires the applicant to deposit the consideration money together with the prescribed compensation as a condition precedent for maintaining an application for pre-emption. The object behind such statutory deposit is manifestly to secure the financial interest of the transferee and to ensure that, in the event the application succeeds, the purchaser is immediately entitled to receive the consideration money without being subjected to further litigation or uncertainty. The statutory requirement is thus intended to safeguard the interest of the transferee and not to regulate the internal financial arrangement or contribution among multiple pre-emptors.

It is a well-established principle of statutory interpretation that procedural provisions enacted to facilitate the enforcement of substantive rights should ordinarily receive a liberal construction unless the statute expressly provides otherwise. The law of pre-emption undoubtedly creates a statutory right and prescribes certain mandatory conditions for its exercise. Nevertheless, where those conditions have already been substantially complied with at the institution of the proceeding, subsequent procedural developments should not ordinarily be construed so rigidly as to defeat the very right which the statute seeks to protect, particularly in the absence of any express legislative prohibition.

In the instant case, the withdrawal of the proportionate amount by one of the co-pre-emptors may reasonably be construed as an abandonment or relinquishment of his own claim to pre-emption. Such withdrawal, however, cannot automatically extinguish the independent statutory right possessed by the remaining pre-emptor, who was admittedly a competent applicant from the very inception of the proceeding. The abandonment of one claimant cannot, by necessary implication, operate as an abandonment of another claimant whose right remains unaffected both in law and in fact.

Equally significant is the fact that no new pre-emptor has been introduced into the proceeding. The person seeking permission to deposit the withdrawn amount was one of the original applicants and possessed the statutory qualification to seek pre-emption on the date of institution of the proceeding. Consequently, permitting him to replenish the deficiency created by the withdrawal of his co-pre-emptor neither enlarges the scope of the litigation nor introduces a fresh cause of action. It merely enables an already existing applicant to continue prosecuting a proceeding lawfully instituted within the period prescribed by law.

The incidental and procedural powers of a civil Court are always available to advance the cause of justice, provided the exercise of such power does not contravene any express statutory prohibition. The permission granted to the remaining pre-emptor to deposit the amount withdrawn by his co-pre-emptor does not extend the period of limitation, nor does it create any fresh substantive right in his favour. Rather, such permission merely restores the statutory deposit to the position in which it originally stood at the time of institution of the proceeding, thereby preserving the legislative object underlying section 24(2) of the Act.

It is also pertinent to observe that the transferee suffers no legal prejudice by permitting such subsequent deposit. Before the Court proceeds to pass any final order allowing pre-emption, the entire consideration money together with the statutory compensation again stands deposited before the Court. The financial security contemplated by the statute thus remains fully protected, and the transferee is placed in no less advantageous position than that contemplated by the legislature at the commencement of the proceeding.

Although no direct decision of the Appellate Division specifically governs the precise factual situation presently under consideration, judicial pronouncements relating to pre-emption consistently demonstrate that the statutory requirement regarding deposit is intended primarily to secure the interest of the purchaser, while procedural deficiencies capable of being cured without affecting the substantive rights of the parties should not ordinarily result in the defeat of an otherwise maintainable claim. The judicial trend has consistently favoured advancement of substantial justice over technical objections which occasion no prejudice to the opposite party.

Comparable principles are also discernible from the jurisprudence developed under analogous pre-emption statutes in the Indian subcontinent, wherein the Courts have recognized that where the statute permits, or the Court directs further deposit to make good any deficiency before the final disposal of the proceeding, the validity of the application is not necessarily impaired, provided the substantive statutory requirements ultimately stand fulfilled. Though such authorities are not directly applicable, they nevertheless lend persuasive support to a construction that advances the object of the legislation rather than frustrating it on purely technical considerations.

In the High Court at Calcutta, Civil Revisional Jurisdiction (Appellate Side), in C.O. No. 16 of 2014, Serina Begum Vs. Sk. Alauddin, being deceased, his heirs Aseka Begum and others; the Hon'ble Justice Sabyasachi Bhattacharyya, was pleased to hold that C.O. No. 16 of 2014 is allowed, thereby setting aside the impugned order and directing the Court below to enquire into the actual consideration paid for the sale, sought to be preempted, prior to finally disposing of the preemption application and directing the preemptor/petitioner to deposit such balance consideration, as found due by the Trial Court, prior to the final disposal of the preemption application.

Concomitantly, viewed from another angle, acceptance of the contrary proposition would lead to manifestly inequitable consequences. If the withdrawal by one joint pre-emptor were held to automatically terminate the right of the remaining pre-emptor despite his undisputed statutory qualification and willingness to maintain the entire deposit, the result would be that the substantive statutory right of an otherwise competent applicant would stand defeated solely because of the unilateral conduct of another claimant over whom he had no legal control. Such a consequence neither advances the purpose of section 24 nor accords with the settled principles governing the administration of justice.

I am, therefore, of the considered opinion that where an application for pre-emption has been validly instituted by more than one competent pre-emptor upon depositing the entire consideration money together with the prescribed compensation, and thereafter one of such pre-emptors voluntarily withdraws his proportionate contribution and abandons his individual claim, the competent Court may, in the exercise of its procedural and incidental jurisdiction, permit the remaining original pre-emptor to deposit the amount so withdrawn and continue the proceeding as the sole pre-emptor, provided that the entire statutory deposit remains complete before the final adjudication of the application and no prejudice is thereby caused to the transferee.

Accordingly, the order permitting the remaining pre-emptor to replenish the deficiency created by the withdrawal of his co-pre-emptor cannot be said to suffer from any jurisdictional infirmity or material illegality warranting interference in revisional jurisdiction. The permission so granted neither creates a new right nor revives an extinguished claim; it merely preserves an existing statutory right by ensuring continued compliance with the mandatory requirement relating to the statutory deposit. Consequently, the contention advanced on behalf of the petitioner in this regard is devoid of substance.

Therefore, I am of a firm conviction that **once the mandatory initial deposit under Section 24(2) of the Non-Agricultural Tenancy Act, 1949, has been validly made, the subsequent withdrawal of one joint pre-emptor does not defeat the pre-emption proceeding, as the Court under Section 24(5) of the Act, may permit the remaining original pre-emptor to restore the withdrawn amount, ensuring continuous compliance with the statutory deposit requirement before final disposal and safeguarding the transferee from prejudice.**

However, it is well settled that this Court, while exercising revisional jurisdiction under section 115(4) of the

Code of Civil Procedure, 1908, does not function as a Court of appeal to reappraise the evidence merely because another view is possible. Unless the concurrent findings of fact are shown to have been arrived at by misconstruction of law, misreading the evidence, non-consideration of material evidence, *coram non-judice*, or by committing an error of law occasioning failure of justice, interference in revision is wholly unwarranted.

In the instant case, the petitioner has failed to demonstrate that either of the Subordinate Courts misread the evidence or ignored any material piece of evidence or committed error on law. On the contrary, both the Courts have meticulously examined the pleadings, application for depositing the withdrawal money and legal principles before arriving at concurrent findings of fact and law. Those findings are based upon evidence on record and are neither perverse nor contrary to law.

Accordingly, I find no illegality, impropriety or jurisdictional error in the impugned judgments warranting interference by this Court in the exercise of its revisional jurisdiction.

As a result, the Rule is discharged.

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

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

The trial Court is hereby directed to complete the trial expeditiously, in accordance with law.

The office is directed to communicate this judgment to the Court concerned forthwith.

*(Abdur Rahman, J)*