

Present:

Mr. Justice Sheikh Abdul Awal
and
Mr. Justice Md. Mansur Alam

Civil Revision No. 652 of 2002

In the Matter of:

Giasuddin and another

.....Plaintiff-petitioners.

-Versus-

Most. Jahura akter and others

...Defendant opposite parties

Mr. Md. Humayun Bashar, Advocate

..... For the Plaintiff petitioner.

None appears.

.....For the opposite parties

Heard and judgment on 11.02.2025

Sheikh Abdul Awal, J:

This Rule was issued calling upon the opposite party No. 1 to show cause as to why the impugned order dated 29.11.2001 passed by the learned Joint District Judge and Commercial Court No.3, Dhaka in Title Suit No. 13 of 1999(G) rejecting the application under Order 26, Rule 1 read with section 151 of the Code of Civil Procedure should not be set-aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

The brief fact relevant for disposal of this Rule is that the petitioners as plaintiffs filed Title Suit No. 184 of 1998 in the Court of the learned Joint District Judge, 3rd Court, Dhaka impleading the opposite parties as defendants for declaration of title in respect of “ka” schedule of land and also for declaration that the deeds mentioned in “Kha” schedule is false, collusive and without consideration and the deed mentioned in “Ga” schedule in favour of defendant Nos. 4-7 on the basis of the deed mention in “kha” schedule are also collusive, false and not binding upon the plaintiffs.

The suit was subsequently renumbered on transfer as Title Suit No. 13 of 1999(G) in the Court of 3rd Commercial Court, Dhaka.

Defendants entered appearance in the suit and filed written statements denying all the material allegations made in the plaint contending, inter-alia, that the suit is not maintainable in its present form and manner, the plaintiffs filed the suit on false averments and as such, the suit is liable to be dismissed.

In this backdrop, while the suit was in progress the plaintiffs filed an application under Order 26, Rule 1 read with section 151 of the Code of Civil Procedure for recording the evidence of PW-1 through Advocate Commissioner.

Defendant No. 8 resisted the said application by filing written objection stating that the plaintiffs filed the application on false statements. The plaintiff is not sick.

The learned Joint District Judge upon hearing both the parties by his order No. 65 dated 29.11.2001 rejected the

application holding that the plaintiffs could not produce sufficient documents to prove that the PW-1 is sick.

Aggrieved thereby the plaintiff-petitioners preferred this revision application and obtained the present Rule.

Mr. Md. Humayun Bashir, the learned Advocate appearing for the plaintiff-petitioners submits that he does not know whereabouts of the plaintiffs and whether the plaintiffs are alive or not and thus, he needs time to know the exact position of the plaintiffs.

No one appears to oppose the Rule.

Having heard the learned Advocate for the petitioners and having perused the Civil Revision application including the impugned order.

On scrutiny of the record, it appears from the record that during pendency of the suit the learned Joint District Judge rejected the application under Order 26, Rule 1 read with section 151 of the Code of Civil Procedure for recording the statements of PW-1 by appointing Advocate Commissioner holding that the plaintiff could not able to produce believable documents to prove that plaintiff No.1 is sick and he is not in a position to come before the Court, on the other hand, the defendants resisted said application by filing written objection stating that the plea as taken in the application as to sickness of PW-1 is out and out false and concocted.

On a reading of the impugned order, we find no flaw in the reasoning of the trial Court or any ground to assail the same. The impugned order appears to be well founded in law and fact.

In the result, the Rule is discharged. There will be no order as to costs. The order of stay granted earlier by this Court stands vacated.

Since the matter is an old of 1998, the trial Court below is directed to hear and dispose of the suit expeditiously.

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

Md. Mansur Alam, J:

I agree.