

District: Chattogram

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

Present

**Mr. Justice Sardar Md. Rashed Jahangir**

**Civil Revision No. 939 of 2015**

In the matter of :

Abdul Mannan and others

... Petitioners

-Versus-

Bangladesh Railway and others

...Opposite parties

Mr. Md. Nurul Islam Chowdhury, Advocate

...For the petitioners

Mr. Jahangir Ahmed Khan, D.A.G with

Mr. Md. Habibur Rahman Sarker, A.A.G and

Mr. Md. Aktaruzzaman, Advocate with

Mr. Syed Altaf Hossain, Advocate

...For the opposite parties.

**Heard on: 20.01.2025 and 04.02.2025**

**Judgment on: 13.02.2025**

Rule was issued on an application under section 115(1) of the Code of Civil Procedure calling upon the opposite parties to show cause as to why the judgment and decree dated 23.11.2014 passed by the Joint District Judge, Third Court, Chattogram in

Other Class Appeal No. 5 of 1998, affirming those of dated 09.11.1997 passed by the Senior Assistant Judge, First Court, Chattogram in Other Class Suit No. 98 of 1994 rejecting the plaint under Order VII, rule 11 of the Code of Civil Procedure should not be set aside and/or such other or further order or orders as to this Court may seem fit and proper.

The case of the plaint briefly are that the plaintiffs were licensees under the defendant Nos. 1-3 for long time and they are in possession upon paying license money in due course. The plaintiffs at their own cost upon developing the land erected semi pacca shops on the scheduled property and upon their applications the defendant Nos. 1-3 granted licenses for carrying on commercial activities thereon. Petitioners are paying the yearly license fees regularly and thereby renewed their license in due course. On 02.09.1993 vide Memo No.ডিইও/৩৯৫-বানিজ্যিক/ষ্টেশন রোড/চট্টগ্রাম the defendant No. 3 served show cause notices upon the plaintiffs asking to show cause as to why their licenses should not be revoked/cancelled for the allegation stated therein. The

plaintiffs within 09.09.1993 submitted their written replies denying all the allegations brought under the show cause notices stating that the plaintiffs are carrying on agency business of bus companies and thereby, they are getting commission upon the sold ticket. The plaintiffs in no manner sub-let the scheduled property to the bus owners or anyone else and or they did not handed over the possession of the property to anybody else. It is also stated that Railway Co-operative Store, another licensee of the defendants are carrying their business by sub-letting the scheduled property to one of the bus owners and handed over the possession to them, in spite of that the defendants allowed the said licensee to continue its license and even the defendants did not cause to issue any show cause notice upon them. The plaintiffs deposited the license money for the year, 1992-93 and thereafter, the plaintiffs requested the defendant No. 3 to accept license money for the year, 1993-94 and upon the request, the defendant Nos. 2 and 3 accepted license money from some of the plaintiffs for the year, 1993-94 and also refused to accept the license money from rest of

them. On behalf of the plaintiffs, the General Secretary of their association filed a representation on 24.04.1994 requesting the defendant Nos. 2 and 3 to accept the license money for the year, 1993-94. On 19.05.1994, the defendant No. 3 vide Memo No. ডিইও/৩৯৫-বানিজ্যিক/স্টেশন রোড/চট্টগ্রাম issued official letters informing the plaintiffs that their licenses have been revoked/cancelled and thereby asking them to handover the possession of the licensed property to the defendants. Under the same memo it is also informed that they shall be evicted without any further notice under the authority of Ordinance No. XXIV of 1970. It is further stated that through the show cause notice, the defendants brought allegation against the plaintiffs of violation of the terms and conditions of the license agreement by subletting the property to third parties and the plaintiffs through their replies specifically denied the aforesaid allegation. In spite of that the defendants without holding any inquiry illegally and with malafide intention issued the memo dated 19.05.1994. Moreover, it is also asserted that one of the licensees named Railway Co-operative Store after

getting license handed over the licensed property upon sub-letting it to the owner of Night Coach Company. In spite of that the defendants have been allowing the said licensee to continue it's license. At the same time without any material allegation or without having any evidence of violation of the covenant or terms and conditions of the license, the defendants illegally, arbitrarily and with a malifide intention revoked/cancelled the license and hence, the plaintiffs filed the suit for declaration that the memo vide No.ডিইও/৩৯৫-বানিজ্যিক/স্টেশন রোড/চট্টগ্রাম dated 19.05.1994 is illegal, collusive, malafide, ineffective and not binding upon the plaintiffs and also for permanent injunction restraining the defendant Nos. 1-3 from evicting the plaintiffs from their shop described in the schedule.

The defendant Nos. 1-3 made their appearance by filing power and thereafter, they filed an application under Order VII, rule 11 of the Code of Civil Procedure for rejection of plaint. In the said application it is stated that the suit of the plaintiffs is barred under Order VII, rule 11 of the Code of Civil Procedure

and under section 42, 54 and 56 of the Specific Relief Act, 1877.

The specific allegation brought through the application for rejection of plaint is that the plaintiffs have no right, title, possession or license over the scheduled property or shop and to evict from the property. In order to evict illegal occupants (plaintiffs) on 19.05.1994 eviction notices were served upon them under the provision of Ordinance No. XXIV of 1970; challenging the said notice no suit can be maintained.

Mr. Md. Nurul Islam Chowdhury, learned Advocate for the petitioners submits that it is settled principle that there is no scope to reject the plaint, unless the plaint itself shows that the suit is barred by law. If the suit is barred by law or does not disclose any cause of action, then the plaint can be rejected under the authority of Order VII, rule 11 of the Code, but in the instant case, learned Judges of the lower Courts below upon misconception of law and facts rejected the plaint of the plaintiffs and thereby committed error of law, resulting in an error in the decision occasioning failure of justice.

Mr. Jahangir Ahmed Khan, learned Deputy Attorney General with Mr. Md. Habibur Rahman Sarker, learned Assistant Attorney General and Mr. Md. Aktaruzzaman, learned Advocate with Syed Altaf Hossain, learned Advocate appearing for the opposite parties submits that the plaint itself discloses that a notice dated 19.05.1994 has been issued upon the plaintiffs challenging which the plaintiffs filed the suit, he continues to submit that the said noticed has been issued under the authority of Ordinance XXIV of 1970. Under section 13 of the Ordinance, it is provided that no suit or legal proceeding shall be entertained against the Government or a local authority in respect of anything which is in good faith done or intended to be done under this Ordinance and considering the above aspect, both the Courts below justly and legally rejected the plaint of the suit. He next submits that the license of the plaintiffs has been revoked/cancelled vide memo dated 19.05.1994 for breach of the terms and conditions of the license and as such, after revocation/cancellation of license the

plaintiffs are illegal occupant into the scheduled property, thus, they are not entitled to maintain the suit as it is framed by them.

Heard learned Advocates of both the parties, perused the revisional application together with the annexures appended thereto.

It appears that the plaintiffs were granted licenses by the defendants, Bangladesh Railway initially for a period of 1(one) year and thereafter, from time to time the said licenses have been renewed upon accepting license money from year to year. On 02.09.1993, the defendants served show cause notices upon the plaintiffs asking them to show cause on or before 09.09.1993 as to why the licenses should not be revoke/cancelled for breach of the terms and conditions of the license, in particular, the allegation was that the plaintiffs in violation of the terms and conditions, sublet the licensed property to the owners of night coach. The plaintiffs in due course within the stipulated period submitted the replies denying the allegation of subletting the licensed property.



In the said reply, the plaintiffs specifically averred that they are just doing commission business, upon getting commission they are selling bus tickets to the public on behalf of the bus companies and there is no legal bar in doing such business within the terms and conditions. Moreover, it was specifically asserted that one of the licensees namely, Railway Co-operative Store after getting license, sublet their property to the owner of bus company within the knowledge of the defendants, in spite of that the defendants allowed the said licensee to do so. On the other hand, with a false allegation, the defendants served show cause notices upon the plaintiffs. Upon receiving the reply the defendants kept themselves silent till 19.05.1994. In the mean time, the defendants accepted license money from some of the plaintiffs and also refused to accept license money from the others. On 19.05.1994, under the signature of the defendant No. 3, letters was issued to the plaintiffs. The subject matter of which is as follows:

“বিষয়ঃ বাংলাদেশ রেলওয়ের মালিকানাধীন চট্টগ্রাম স্টেশন রোডস্থ অস্থায়ী লাইসেন্স প্লট  
নাম্বার-..... জমির পরিমাণ ২৯৩ বর্গফুট এর বানিজ্যিক লাইসেন্স বাতিলকরণ প্রসঙ্গে”

Under the said memo it has been declared that for necessity of development and for breach of the terms and conditions of the license, the granted license has been revoked/cancelled. In the said notice, the plaintiffs were asked to handover the possession to the defendant No. 3, it was also stated that failing to handover the possession the plaintiffs shall be evicted from the licensed property without further notice under the authority of Ordinance No. XXIV of 1970.

On a bear reading of the plaint as well as the memo dated 19.05.1994 (Annexure- 'F' to the revisional application) it appears that through the said memo, the defendant No. 3 only apprised the plaintiffs that their licenses having been determined as being revoked/cancelled for breach of the terms and conditions specified thereon and at the same time, the plaintiffs were asked to handover the possession to the defendant No. 3. Interestingly through the said memo, the defendant No. 3 threatened the plaintiffs that they shall be evicted without notifying further under the authority of Ordinance No. XXIV of 1970.

Learned Deputy Attorney General for the opposite parties contended that the suit is barred under section 13 of the Government and Local Authority Lands and Buildings (Recovery of Possession) Ordinance, 1970, because, the notice dated 19.05.1994 has been issued under the authority of the said Ordinance. This Court is unable to be agreed with the contention of learned Deputy Attorney General, because by making a mere threat of eviction in a memo of determination or revocation of license does not ipso facto makes it to be issued under the Ordinance No. XXIV of 1970. On meticulous examination of the Ordinance together with the materials on record, it appears to this Court that any notice or proceedings under the said Ordinance is yet to be issued/initiated or commenced. Thus, the contention of learned Deputy Attorney General that a forum has been created under section 10 or the bar as has been stipulated under section 13 are misconceived; because, although the defendant No. 3 threatened under memo dated 19.05.1994 that he is empowered to evict the plaintiffs under the authority of Ordinance No. XXIV of

1970, but nowhere, in the plaint and or in the impugned memo, it discloses that any proceeding under the said Ordinance has been initiated till 19.05.1994.

Under section 9 of the Code of Civil Procedure, the Courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred and since, the plaintiffs by filing the suit challenged the propriety of the revocation/cancellation of their licenses. Apparently, this Court is of the view that the plaint of the said suit cannot be rejected under the authority of Order VII, rule 11 of the Code of Civil Procedure.

In the premise above, I do find merit in the Rule.

Accordingly, the Rule is made absolute.

The judgment and decree dated 23.11.2014 passed by the Joint District Judge, Third Court, Chattogram in Other Class Appeal No. 5 of 1998, affirming those of dated 09.11.1997 passed by the Senior Assistant Judge, First Court, Chattogram in Other

Class Suit No. 98 of 1994 rejecting the plaint of the suit is hereby set aside.

The ad-interim direction of maintaining status-quo passed at the time of issuance of the Rule is hereby recalled.

No order as to cost.

Communicate the judgment and order at once.