

District: Sylhet

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

Present

Mr. Justice Sardar Md. Rashed Jahangir

Civil Revision No. 1438 of 2015

In the matter of :

Md. Abdul Malik Raza

... Petitioner

-Versus-

Md. Mokbul Hossain and others

...Opposite parties

Mr. M.A. Halim Chowdhury, Advocate

...For the petitioner

Mr. Surajit Bhattacharjee with

Mr. Farhana Siraj Ronie, and

Mr. Monishankar Sarkar, Advocates

...For the opposite parties.

Heard on: 06.03.2025

Judgment on:11.03.2025

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 order dated 24.02.2015 passed by the Special District Judge, Sylhet in Miscellaneous Appeal No. 34 of 2012 allowing the appeal and reversing those of dated 25.03.2012 passed by the Judge of the Court of Rent

Controller, Sadar, Sylhet in Miscellaneous Case No. 98 of 2006 should not be set aside and/or such other or further order or orders as to this Court may seem fit and proper.

The present opposite party Nos. 1, 6, 7 and 8 along with the predecessor of opposite party Nos. 2-5, being petitioners filed Miscellaneous Case No. 98 of 2006 in the Court of Rent Controller, Sadar, Sylhet under sections 13 read with section 27 of the Premises Rent Control Act, 1991 stating, inter alia that the scheduled shop premises is belonged to Janu Bibi Waqf Estate having 5(five) annas share, Hazi Abdur Rahman Estate having 9(nine) annas share and 2(two) annas share was belonged to Habi Mia. The petitioner-opposite parties rented the shop premises from Janu Bibi Waqf Estate and Hazi Abdur Rahman Waqf Estate in respect of the aforesaid shares and also purchased 2(two) annas share from one Habi Mia through unregistered kabala dated 17.01.2001. The rent of the shop premises under the Janu Bibi Waqf Estate was fixed at Tk.300/- per month and the petitioner-opposite parties used to pay the rent regularly and obtained rent

receipt from the then Mutawalli Md. Hazi Abdul Monaf upto March, 2006. Hazi Abdul Monaf, the former Mutawalli retired from the office in the month of March, 2006 and thereafter, a new Mutawalli, Abdul Malik Raza was appointed from April, 2006. The previous Mutawalli Hazi Md. Abdul Monaf received rent from the petitioners up to the month of March, 2006 and accordingly issued receipt of the rent. As per the terms and conditions of the tenancy the petitioner-opposite parties paid the rent of the shop premises to the new Mutawalli from the month of April, 2006 by 7th of the following month, but the present Mutawalli did not provide rent receipts on the plea that the receipt book is finished and the new yet to be printed. Accordingly, the petitioners sent a notice on 11.09.2006 asking for issuance of rent receipt. The Mutawalli although received the said notice but in vain, hence the petitioners filed the present case.

The present petitioner as opposite party contested the miscellaneous case filing a written objection denying the

relationship of land lord and tenant and further denied receipt of any rent from the petitioner-opposite parties.

It is further asserted that the averment of petitioner, “the previous Mutawalli Hazi Md.Abdul Manaf received rent from the petitioners upto the month of March, 2006” is not correct, rather it is asserted that since the opposite party-petitioner did not receive the counter-foils (Muri-boi) of payment of rent, thus the petitioners are indeed defaulter.

The petitioners examined 2(two) witnesses and opposite party examined 1(one) witness and the petitioner of the miscellaneous case exhibited documentary evidence as ‘Exhibit-1’. On conclusion of hearing, the Court of rent controller dismissed the case by his judgment and order dated 25.03.2012 holding that the ‘Exhibit-1’, rent receipt of March, 2006 is a fraudulent and created one and the petitioners failed to prove their case.

Having been aggrieved, the petitioners as appellant filed Miscellaneous Appeal No. 34 of 2012 before the District Judge,

Sylhet, which was heard by the Special District Judge, Sylhet and by his judgment and decree dated 24.02.2015, allowed the appeal reversing those of dated 25.03.2012 passed by the Judge of the Court of Rent Controller, Sadar, Sylhet.

Being aggrieved by and dissatisfied with the aforesaid judgment and order of learned Special Judge, the opposite party of the miscellaneous case preferred the revisional application and obtained the Rule.

Mr. M.A. Halim Chowdhury, learned Advocate for the petitioner submits that the Court of appeal below committed error of law in shifting the onus upon the opposite party-petitioner to disprove the genuineness of the rent receipt, in contrary to the settled principle that the plaintiff is to prove his case independently on his own foot, not on the weakness of the defendant.

On the other hand, Mr. Monishankar Sarkar, learned Advocate for the opposite parties submits that the Judge of the Court of Rent Controller committed error of law in disbelieving

the rent receipt, 'Exhibit-1'. Although the opposite party as O.P.W. -1 in his evidence categorically admitted that he took over the charge of the office 6(six) months later of his appointment. Meaning thereby, in the month of April, 2006, the former Mutawalli was de-facto in charge of the office. The Court of appeal below in it's judgment categorically found that there exists land lord and tenant relationship between the parties and also found that through the 'Exhibit-1' issued by the former Mutwalli, the petitioners have successfully proved that they are paying rent. And also found that from the month of April to August, 2006 the tenant duly made the payment of rent, but in spite of that the Mutawalli, present petitioner did not issue any rent receipt in their favour. He continues to submit that the findings of fact arrived at by the Court of appeal below upon assessment of the evidences on record, binding on the revisional Court. He further submits that section 13 of the Premises Rent Control Act, 1991 makes it obligatory upon the land lord to provide a written receipt of the payment of rent and since the Mutawalli of Janu Bibi Waqf Estate failed to perform his said statutory obligation, thus, the Court of

appeal below justly and legally passed the judgment and order upon assessing the materials and evidences on record. Thus, he prayed for discharging the Rule.

Heard learned Advocates of both the parties, perused the revisional application together with the annexures and the copies of written objection as well as the copy of evidences provided by the learned Advocate for the petitioner.

It appears that the present opposite parties filed the miscellaneous case before the Court of Rent Controller, Sadar, Sylhet under section 13 read with section 27 of the Premises Rent Control Act, 1991 contending, inter alia that they are being tenant duly paid the rents of the months of April to August, 2006 to the newly appointed Mutawalli, Md. Abdul Malek Raza and to prove their case they examined 2(two) witnesses and exhibited 'Exhibit-1', rent receipt for the month of March, 2006 signed and issued by the previous Mutawalli, Hazi Abdul Manaf on 01.04.2006. The trial Court disbelieved the exhibit on the allegation that the newly Mutawalli appointed on 23 March, 2006, thus, in his view, it is an

absurd story that the previous Mutawalli, Hazi Abdul Manaf issued the receipt on 01.04.2006. The Court of appeal below, at the time of reversing the judgment of the trial Court categorically controverted the aforesaid findings, on the finding that the O.P.W. 1, Abdul Malek Raza in his evidence admitted that although he was appointed as Mutawalli on 23 March, 2006, but he entered into the office of the Mutawalli 6(six) months later of the appointment. And upon the aforesaid facts and the evidence of O.P.W, the Court of appeal below arrived at the decision that since the newly appointed Mutawalli entered into the office 6(six) months after his appointment, meaning thereby, the previous Mutawalli was in the office in the month of April and accordingly, upon receiving the rent he issued the receipt duly. It was also found upon assessing the evidence of O.P.W. 1 to the effect that the counterfoils of the rent receipts are kept in the office of the Mutawalli and could be found out, in particular, in the language of the witness, “আগের মোতয়াল্লীর আমলের রশিদ, মুড়ি বই খুঁজে দেখতে হবে” and from the aforesaid findings, the Judge of the appellate Court arrived at the decision that since the plaintiff exhibited the rent

receipt as Exhibit-1 and proved accordingly, but defendant failed to disprove the same by producing the counterfoils, since he did not deny the existence of counterfoil.

The Court of appeal below categorically also found that the P.W. 1, Makbul Hossain gave evidence that he paid rent to the new Mutawalli, which is supported by P.W.2 and the respondent, O.P.W. 1 admitted that no receipt has been issued in favour of the petitioner. The Court of appeal below upon assessing the evidences and materials on record categorically found that there exists land lord and tenant relationship between both the parties and the rent receipt, 'Exhibit-1' issued by the former Mutowally is not a forged one, rather a proved one and the opposite party although received rent from the petitioners, but did not provide any rent receipt.

The findings of fact arrived at by the Court of appeal below as the final Court of fact generally not to be interfered, unless it is shown that the findings and judgment of the Court of appeal below is based on non-consideration of evidences, misreading and

misconstruing the evidences on record. From the record as well as the submission of the petitioner, I could not find out any such reason to interfere into the judgment of the Court of appeal below.

Accordingly, the Rule is discharged without any order as to cost.

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

Communicate the judgment and order at once.