

Present:

***MR. JUSTICE S.M. EMDADUL HOQUE***

CIVIL REVISION NO. 3998 OF 2015.

IN THE MATTER OF:

An application under Section 115 (4) of the Code of Civil Procedure.

- AND -

IN THE MATTER OF:

Chowdhury Samsuddin Ahmed

....Petitioner.

-Versus –

Md. Nazrul Islam Majumder

.....opposite party.

Mr. Mizanur Rahman, Advocate

.... for the petitioner.

Mr. Mohammad Abu Hanif Sarder, Advocate

..... for the opposite party.

**Heard on: 11.03.2024 and**

**Judgment on: 18.03.2024.**

On an application of the petitioner Chowdhury Samsuddin Ahmed under section 115(4) of the Code of Civil Procedure the leave was granted and the Rule was issued in the following terms: Let a Rule issue calling upon the opposite party to show cause as to why the judgment and order dated 26.07.2015 passed by the learned Additional District Judge, 5<sup>th</sup> Court, Dhaka in Civil Revision No.161 of 2014 dismissing the revisional application and affirming the judgment and order dated 14.05.2014 passed by the Assistant Judge, 3<sup>rd</sup> Additional Court, Dhaka in Miscellaneous Case No.02 of 1996 should not be set-aside and/or such

other or further order or orders passed as to this Court may seem fit and proper.

Facts necessary for disposal of the Rule, in short, is that the petitioner as plaintiff instituted Title Suit No.32 of 1993 in the Court of Assistant Judge, 3<sup>rd</sup> Court, Dhaka with a prayer for a declaration that the plaintiff No.1 is a tenant under the defendant No.3 and further prayer that the unregistered compromise deed dated 05.12.1986 of the defendant No.3 in favour of defendant No.1 and 2 is to be declared illegal, forged, fabricated, concocted and not binding upon the plaintiff.

The defendant Nos.1 and 2 did not contest the suit and accordingly the suit was decreed ex-parte on 10.09.1995 and the plaintiff got physical possession through Court on 01.11.1995 in Title Execution Case No.3 of 1995.

Subsequently, the defendant Nos.1 and 2 as petitioner filed Miscellaneous Case No.2 of 1996 under Order IX rule 13 of the Code of Civil Procedure for setting-aside the ex-parte decree. The plaintiff petitioner contested the same by filing written objection. Subsequently, the petitioner filed an application for abatement of the suit against the defendant No.3 on 10.02.2013.

The learned Assistant Judge after hearing the parties and considering the facts and circumstances of the case rejected the said petition for abatement filed on 10.02.2013 by its judgment and order dated 14.05.2014.

Against the said order the present petitioner filed Civil Revision No.161 of 2014 under Section 115(2) of the Code of Civil Procedure before the learned District Judge, Dhaka.

The defendant opposite party contested the revisional application. The learned District Judge by its order dated 13.05.2015 sent the civil revision to the Additional District Judge, 5<sup>th</sup> Court, Dhaka for disposal of the same.

Thereafter the petitioner filed an application for transfer of the case from the said Court to any other competent Court having jurisdiction.

The learned District Judge after hearing the same rejected the said application by its order dated 13.05.2015.

Thereafter, the petitioner filed Civil Revision No.2211 of 2015 before this Court against the order dated 13.5.2015 passed by the learned District Judge, Dhaka rejecting the application for transfer of the suit in Transfer Miscellaneous Case No.351 of 2015 and this Court was pleased to issue a Rule and also pleased to stay all further proceeding of Civil Revision No.161 of 2015 (arising out of Miscellaneous Case No.2 of 1996) for a period of 6 (six) months from date by the order dated 26.7.2015.

It may be stated here that the Civil Revision No.161 of 2014 also fixed for hearing on 26.7.2015. But since the petitioner has already filed a Civil Revision No.2211 of 2015 against the order dated 13.5.2015 passed by the learned District Judge in Transfer Miscellaneous Case No.351 of 2015 refusing to transfer the said Civil Revision No.161 of 2014 from the Court of Additional District Judge, 5<sup>th</sup> Court, Dhaka to any other

competent Court having jurisdiction and the petitioner filed an application for adjournment of the hearing on that day on the ground stated therein. But the learned Court refused to grant adjournment. Thereafter, the petitioner again filed another application for adjournment of hearing. But the learned Court again rejected the adjournment petition with C.P. cost of Tk. 1000/-.

In the meantime the petitioner filed an application under Section 115(4) of the Code of Civil Procedure in the Hon'ble High Court Division against the order dated 13.5.2015 passed by the learned District Judge. The application was heard and this Court was pleased to issue a Rule and also pleased to stay all further proceeding of the Civil Revision No.161 of 2014, pending in the Court of Additional District Judge, 5<sup>th</sup> Court, Dhaka and the learned Advocate for the petitioner informed the facts over mobile phone and thus the petitioner again filed an application praying for staying all further proceeding of Civil Revision No.161 of 2014 in view of the order dated 26.7.2015 passed by this Court in Civil Revision No.2211 of 2011. But the learned lower revisional Court without considering the petition filed by the petitioner dismissed the Civil Revision No. 161 of 2014 by its order dated 26.7.2015 (impugned order) but by the said order the revisional Court took view that the concerned Advocate should be referred to the Bar Council.

Against the said order the petitioner filed this revisional application under Section 115 (4) of the Code of Civil Procedure and accordingly the leave was granted and Rule was issued.

Mr. Mohammad Abu Hanif Sarder, the learned Advocate entered appeared on behalf of the opposite party No.1 through vokalatnama to oppose the Rule.

At the time of hearing of the revision Mr. Md. Mizanur Rahman, the learned Advocate submits that the said revisional application was dismissed on 12.02.2020 as being infructuous. He submits that by the impugned order the learned revisional Court without touching the merit of the case only one technical ground rejected the revisional application. But in the revisional application the learned judge made some remarks against the concerned lawyer whereas admittedly on the same day this Court issued Rule and stayed all further proceedings. He further submits that since the petitioner filed an application for order of abatement of the defendant No.3 in miscellaneous case but the Court rejected the same taking view that the petitioner may make the heirs of the deceased as proforma defendants so no requirements for any necessary order for abatement.

I have heard the learned Advocate of both the sides perused the application the petitioner was the plaintiff of original suit and obtained ex-parte decree and on execution case the possession was restored and now he is in possession of the suit shop. The learned Advocate submits that subsequently since the defendant No.3 died he filed rent suit before the rent controller and accordingly deposited the monthly rent regularly.

It appears that the original miscellaneous case was filed under Order IX rule 13 and in such a case it is my view that without discussing

the merit of the case it is better to direct the trial Court to dispose of the application filed under Order IX rule 13 expeditiously on merit.

In the result, the Rule is disposed of. The trial Court is directed to dispose of the application filed by the defendant No.1 and 2 under Order IX rule 13 as early as possible preferably within 06 (six) months from the date of receipt of this order.

However, the comments made by the revisional Court against the Advocate is hereby expunged.

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

Communicate the order at once.