District-Manikgonj.

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

Present:

Mr. Justice Md. Toufiq Inam

Civil Revision No. 1805 of 2017.

Md. Nuru Mia and others.
---- Defendant-Respondent-Petitioners.

-Versus-

Abdul Mannan alias Md. Mannan being dead his legal heirs Oli and others.
---- Plaintiff-Appellant-Opposite Parties.

Mr. Shahajada Al-Amin Kabir, Advocate
----For the Defendant-Respondent-Petitioners.

Mr. Rashedul Islam Bashunia , Advocate
----For the Plaintiff-Appellant-Opposite Parties.

Heard On: 07.12.2025.
And
Judgment Delivered On: 08.12.2025.

Md. Toufiq Inam, J.

This Rule was issued calling upon the opposite parties to show cause as to why the judgment and decree dated 26.10.2016 passed by the learned Joint District Judge, 1st Court, Manikgonj in Title Appeal No. 59 of 2014, allowing the appeal and thereby reversing the judgment and decree dated 17.07.2014 (decree signed on 21.07.2014) passed by the learned Senior Assistant Judge, Manikgonj in Title Suit No. 159 of 2007 dismissing the suit, should not be set aside, and why such other or further order or orders should not be passed as to this Court may seem fit and proper.

The plaintiffs instituted Title Suit No. 159 of 2007 seeking specific performance of a *bainanama* dated 23.02.2001 executed by defendant No. 4 in their favour in respect of 30 decimals of land. The case of the plaintiffs, in short, is that they paid almost the entire consideration, and in pursuance of the contract the defendants delivered possession of the land. The plaintiffs repeatedly requested the defendants to execute the registered sale deed, which the defendants refused despite the matter being taken before a local *salish* in April 2006. Having no alternative, the plaintiffs brought the suit on 21.05.2006.

The defendants appeared and contested, but significantly did not deny execution of the *bainanama*. Their defence was that they received only Tk. 40,000/-, that the plaintiffs failed to tender the balance consideration and complete registration despite being requested, and that a portion of the land had been transferred to one Md. Anwar Ali prior to the suit. They further contended that the plaintiffs' suit was barred under Section 17B of the Registration Act, 1908, as the plaintiffs failed to present the unregistered *bainanama* for compulsory registration within the statutory period expiring on 31.12.2005.

The learned trial Court dismissed the suit holding it defective for non-joinder of the alleged transferee and observing that the *bainanama* was unenforceable under Section 17B. The learned Appellate Court, upon re-assessment of the evidence, allowed the appeal, holding that

execution of the *bainanama*, payment of substantial consideration, and delivery of possession were proved; that the defendants failed to prove the alleged sale to Anwar Ali; and that the bar under Section 17B did not apply in the facts of the case.

Mr. Shahajada Al-Amin Kabir, learned Advocate for the defendant-petitioner, submits that the appellate Court failed to appreciate the mandatory nature of Section 17B of the Registration Act. He argues that the plaintiffs were under a statutory duty to present the unregistered *bainanama* for registration by 31.12.2005, and non-compliance rendered the contract void. He further submits that even assuming the defendants denied the plaintiffs' request in the *salish* held in April 2006, the plaintiffs still had time until 31.12.2005 to present the document. Without complying with Section 17B(1)(a), the plaintiffs cannot invoke Section 17B(1)(b) as an "aggrieved person." Relying on the case reported in *21 ADC (AD) 430*, he argues that once the plaintiffs failed to cause the *bainanama* to be registered or approach the executant within the statutory period, the *bainanama* became void by operation of law and cannot be specifically enforced. He further argues that non-joinder of the alleged transferee, Anwar Ali, is fatal to the suit.

On the other hand, Mr. Rashedul Islam Bashunia, learned Advocate for the plaintiffs-opposite party, supports the impugned judgment. He

submits that delivery of possession and substantial payment of consideration are admitted and proved. He argues that the defendants have failed to produce any document or evidence to establish the alleged transfer to Anwar Ali, and thus the plea of non-joinder is illusory. He submits that the plaintiffs approached the defendants repeatedly and the defendants themselves obstructed completion of registration. The refusal of the defendants, including the events of the April 2006 *salish*, provided the cause of action and brought the plaintiffs within the scope of Section 17B(1)(b). He argues that Section 17B cannot be applied mechanically to defeat substantive rights where delay is attributable to the defendants' own conduct.

Section 17B of the Registration Act, 1908 was inserted by Act No. XXXV of 2004. For clarity, the statutory provision reads as follows:

> 17B. (1) Where a contract for sale of immovable property is executed but not registered prior to coming into force of section 17A-
>
> > (a) the parties to the contract shall, within six months from the date of coming into force of that section,-(i) present the instrument of sale of immovable property under the contract for registration, or(ii) present the contract for sale itself for registration; or,
> >
> > (b) either of the parties, if aggrieved for non-compliance with any of the provisions mentioned in clause (a), shall,

notwithstanding anything contained to the contrary in any law for the time being in force as to the law of Limitation, institute a suit for specific performance or recession of the contract within six months next after the expiry of the period mentioned in clause (a),failing which the contract shall stand void.

(2) The provision of sub-section (1) shall not apply to any contract for sale of immovable property on the basis of which a suit has been instituted in a civil court before coming into force of section 17A.]

The principal issue for determination concerns the applicability of Section 17B of the Registration Act, 1908. It is not disputed that the plaintiffs did not present the unregistered *bainanama* for registration by 31.12.2005, as contemplated under clause (a) thereof. The decisive question, however, is whether, in the facts and circumstances of the case, the plaintiffs were entitled to maintain a suit under clause (b) as "aggrieved persons." From the evidence on record, including the circumstances culminating in the *salish* held in April 2006, it clearly transpires that the plaintiffs repeatedly requested the defendants to complete registration, but the defendants persistently refused to do so.

Section 17B was enacted with a transitory and remedial object, namely, to regularize pre-existing unregistered contracts for sale executed prior to the coming into force of Section 17A. Sub-section (1)(a) imposes a joint statutory obligation upon "the parties to the contract" to present either the instrument of transfer or the contract for registration within six months from the commencement of Section 17A. Sub-section (1)(b) then confers a right upon either party, "if aggrieved for non-compliance" with clause (a), to institute a suit for specific performance or rescission within the succeeding six months, failing which the contract shall stand void.

Against this statutory backdrop, the pivotal question is whether the plaintiffs' suit is barred solely on account of their failure to present the *bainanama* by 31.12.2005, or whether they fall within the protective ambit of Section 17B(1)(b) as "aggrieved persons." The language of Section 17B(1)(a) unequivocally demonstrates that the obligation to present the document for registration is joint and reciprocal, binding upon both parties to the contract. It is not a unilateral duty imposed exclusively upon the purchaser. Where the vendor is unwilling or actively obstructs registration, the purchaser cannot unilaterally compel presentation, nor can he effectively complete the registration process without the vendor's cooperation. Presentation of such an instrument by the purchaser alone would, in such circumstances, be a

futile exercise. The statutory obligation is thus mutual, and non-cooperation by the vendor frustrates compliance with clause (a).

The evidence on record, as concurrently accepted by the courts below, establishes that: (i) execution of the *bainanama* is admitted; (ii) substantial consideration was paid; (iii) possession of the suit property was delivered; and (iv) the vendor-defendants refused to complete registration despite repeated demands, ultimately leading to the *salish* of April 2006. These facts unmistakably demonstrate that compliance with clause (a) was rendered impossible by the conduct of the defendants themselves. The plaintiffs, therefore, squarely fall within the meaning of "aggrieved persons" under clause (b). The law does not compel the performance of an impossibility, nor does it penalize a purchaser for the deliberate non-cooperation of the vendor. Section 17B must be construed and applied in a manner consistent with its remedial purpose, and not mechanically so as to reward the defaulting vendor.Section 17B(1)(b) expressly permits a suit to be instituted within six months *"next after the expiry of the period mentioned in clause (a)."* In the present case, the plaintiffs instituted the suit well within that statutory period. Their cause of action was further crystallized and fortified by the defendants' refusal to execute and register the deed during the *salish* of April 2006. The suit was, therefore, both within limitation and legally maintainable.

The reliance placed by the defendant-petitioner on the decision reported in 21 ADC (AD) 430 is wholly misconceived. In that case, the purchaser neither presented the document for registration nor adduced any evidence to establish that the vendor obstructed or prevented compliance with the statutory requirement. The factual matrix of the present case stands in stark contrast, as the defendants herein admit the contract and delivery of possession, and the evidence affirmatively establishes their deliberate avoidance of registration. Consequently, the ratio of 21 ADC (AD) 430 has no application to the facts of the instant case.

For a contract to “stand void” under Section 17B, two conditions must coexist:

(i) non-compliance with clause (a); and(ii) failure to institute a suit within the period prescribed under clause (b).In the present case, although compliance with clause (a) could not be achieved due to the defendants’ (vendors) own refusal, the plaintiffs (purchasers) duly instituted the suit within the time stipulated under clause (b). Accordingly, the contract did not become void and remained specifically enforceable in law.

This court is of the considered view that where execution of a *bainanama*, payment of substantial consideration, and delivery of possession are admitted or proved, and compliance with Section

17B(1)(a) of the Registration Act, 1908 is rendered impossible due to the vendor's refusal or obstruction to cooperate in registration, the purchaser is an "aggrieved person" within the meaning of Section 17B(1)(b). In such circumstances, non-presentation of the document within the period prescribed under clause (a) does not render the contract void, provided the purchaser institutes a suit for specific performance within the time stipulated under clause (b). A contract stands void under Section 17B only when there is both non-compliance with clause (a) and failure to file the suit within the period prescribed under clause (b); the provision cannot be applied mechanically to defeat substantive rights or to reward the defaulting vendor whose own conduct frustrated registration.

In the present case, the plaintiffs' readiness and willingness to pay the balance consideration have been satisfactorily established. The defendants adduced no evidence whatsoever to demonstrate any default on the part of the plaintiffs. It is well settled that once execution of the contract, receipt of part consideration, and delivery of possession are admitted, the burden shifts upon the defendant to prove that the plaintiff was at fault- a burden which the defendants have conspicuously failed to discharge.

Upon a proper construction of Section 17B and in view of the concurrent factual findings, the statutory bar contemplated therein

does not apply. The plaintiffs were clearly aggrieved persons within the meaning of Section 17B(1)(b), having been prevented by the defendants' own conduct from complying with clause (a). The suit was filed within the prescribed period, and the contract never stood void. The legislative intent underlying Section 17B(1)(b) is to protect substantive rights in cases where the executant's refusal renders presentation of the document futile, and that intent would be frustrated if the provision were applied otherwise.

The defendants' assertion of a prior transfer in favour of Anwar Ali is entirely unsubstantiated. No deed, mutation entry, receipt, or witness testimony was produced to support this claim. A mere allegation, devoid of any documentary or oral foundation, cannot override the admitted and proven facts regarding the plaintiffs' possession and payment. An unproved assertion of an earlier transfer to a third party neither attracts the bar of non-joinder nor displaces an otherwise enforceable contract. The appellate Court therefore correctly held that the plea of non-joinder was illusory, and the trial Court erred in treating it as fatal to the suit.

The appellate Court correctly appreciated the evidence, applied Section 17B(1)(b), and rightly held that the suit was within time. There is no perversity, misreading, or non-reading of evidence

warranting interference under Section 115 CPC. The revision has no merit.

Accordingly**, the Rule is discharged.**

The judgment and decree dated 26.10.2016 passed by the learned Joint District Judge, 1st Court, Manikgonj in Title Appeal No. 59 of 2014 allowing the appeal and decreeing the suit for specific performance are hereby affirmed.

There will be no order as to costs.

Let the LC Records be sent back together with this judgment at once.

(Justice Md. Toufiq Inam)

Ashraf/ABO.