

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

Present:

Mr. Justice Md. Khairul Alam

Civil Revision No. 2057 of 2020

Umme Kulsum and others.

..... -Petitioners.

-Versus-

A. Samad and others.

..... Opposite parties.

Mr. Md. Mozammel Haque Bhuiyan, Advocate

..... For the petitioners.

Mr. A.S.M. Moniruzzaman, Advocate

..... For the opposite parties.

Heard on: 03.07.2025 and

Judgment on: 16.07.2025

Leave was granted to consider whether any error of important question of law resulting in an error in the decision occasioning failure of justice has been committed in passing the judgment and order dated 24.09.2020 passed by the learned District Judge, Mymensingh in Civil Revision No. 11 of 2020 dismissing the Civil Revision and affirming the order dated 24.02.2020 passed by the learned Joint District Judge, 3rd Court, Mymensingh in Partition Suit No. 62 of 2013 refusing the prayer of the defendants-petitioners to withdraw the suit from the stage of argument after allowing the amendment of written statement.

Facts leading to filing this Civil Revision, in short, are that the present opposite parties as plaintiffs instituted the suit impleading the present petitioners as defendants seeking, inter alia, partition of the suit property. The defendants filed a written statement to contest the suit. On 05.11.2019, defendant Nos. 2 and 3 filed an application for amendment of the written statement by rectifying some clerical and arithmetical

mistakes and inserting some statements. The learned Joint District Judge, 3rd Court, Mymensingh after hearing the application by the order of the same date i.e. on 5.11.2019 allowed the application with costs of taka 500/-, but the same was subsequently recalled on the ground of non-submission of the costs. On 24.02.2020, the defendant filed a similar application for amendment of the written statement and also filed another application for recalling the witnesses of the plaintiffs. The learned Joint District Judge, 3rd Court, Mymensingh after hearing the applications by the order dated 24.02.2020 rejected both the applications due to non-payment of the previous costs. Against the said order, the petitioners filed the civil revision in the Court of District Judge, Mymensingh. The learned District Judge by the order dated 24.09.2020 dismissed the civil revision summarily and thereby affirmed the order passed by the trial Court.

Being aggrieved thereby the petitioners filed this civil revision and obtained the Rule and an order of stay of the impugned order.

Mr. Md. Mozammel Haque Bhuiyan, the learned Advocate appearing for the petitioners submits that the courts below committed an error of law resulting in an error in the decision due to a misconception of law and facts which has resulted in failure of justice. He next submits that the amendment sought for will, in no way, change the nature and character of the suit, it will neither be inconsistent with the pleading nor will there be any substitution of the cause of action as made out in the written statement. He further submits that the application for amendment of the written statement is to rectify some clerical and arithmetical mistakes and to insert some important statements clarifying the

statements already made, which were essential for the determination of the issue involved, but both the Courts below without considering the same passed the impugned judgment and order and the same is liable to be set aside. He lastly submits that due to a misunderstanding with the learned Advocate of the trial Court, the petitioners could not deposit the costs in time and now he is ready to deposit any costs as fixed by this Court.

Per contra, Mr. A.S.M. Moniruzzaman, the learned Advocate appearing for the opposite parties submits that the proposed amendment would change the nature and character of the suit, therefore, the Courts below rightly passed the impugned order and hence the Rule is liable to be discharged. He lastly submits that since the petitioner did not deposit the earlier costs, the Courts below rightly passed the impugned judgment and order.

I have considered the submissions of the learned Advocates for the contending parties perused the impugned judgment and order, and other materials on record.

The impugned judgment and order was passed rejecting an application filed under Order VI rule 17 of the Code of Civil Procedure. Before addressing the contentions of the contending parties it will be advantageous to quote the provision of Order VI Rule 17 of the Code of Civil Procedure, which runs as follows:-

“The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court is of

opinion that in spite of due diligence, the party could not have raised the matter before the commencement of trial:

Provided further that if an application for amendment is made after the trial has commenced and the Court is of opinion that the application is made to delay the proceedings, the Court shall make an order for the payment to the objector such cost by way of compensation as it thinks fit.”

From the said provision of the law, it appears that at any stage of the proceeding, the court may allow either party to alter or amend their pleading to determine the real question in controversy. It is well-settled that said power is wide and discretionary, but that power must be exercised judicially in the facts and circumstances of each case and not arbitrarily or whimsically. If the proposed amendment does not change the nature and character of the suit or the pleading or in any way substitutes any cause of action of the suit, the court will generally allow such prayer for amendment.

In the instant case it appears that the proposed amendment will in no way change the nature and character of the suit or substitute any cause of action, rather it appears that the proposed amendment of the written statement is to rectify some clerical and arithmetical mistake and inserting some important statements clarifying the statements already made and was essential for determination of the issue involved, so it will not be justified to reject the same on the ground of failure to deposit the earlier costs.

In the above facts and circumstances, I am inclined to make the Rule absolute.

Accordingly, the Rule is made absolute without any order as to costs.

The judgment and order dated 24.09.2020 passed by the learned District Judge, Mymensingh in Civil Revision No. 11 of 2020 affirming the order dated 24.02.2020 passed by the learned Joint District Judge, 3rd Court, Mymensingh in Partition Suit No. 62 of 2013 rejecting the application for amendment of the written statement is hereby set aside.

The trial Court is hereby directed to allow the amendment application subject to payment a costs of Taka 5,000/- by the defendants No. 2 and 3 within two months from the date of receiving the copy of this judgment.

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

The learned Trial Court is hereby directed to dispose of the Partition Suit No. 62 of 2013 as early as possible if, in the meantime, the same is not otherwise disposed of.

Let a copy of this judgment and order be communicated at once.

Kashem, B.O