

Present:-

Mr. Justice Mahmudul Hoque

Civil Revision No.1745 of 2022

Md. Fazlul Haque Badsha

... Petitioner

-Versus-

Khulna City Corporation, represented by
its Mayor, Nagar Bhaban, Khulna and
others

...Opposite-parties

Mr. Garib Newaj, Senior Advocate with
Ms. Maksuda Akhter, Advocate

...For the petitioner

Mr. Kishore Kumar Mondal, Advocate

...For the opposite-party No.4.

Judgment on 27th August, 2025.

In this application under Section 115(4) of the Code of Civil Procedure, by granting leave to revision to the petitioner, Rule was issued calling upon the opposite parties to show cause as to why the judgment and order No.1 dated 03.03.2022 passed by the learned District Judge, Khulna in Civil Revision No.14 of 2022 disallowing the same and thereby affirming the judgment and order No.54 dated 03.02.2022 passed by the learned Senior Assistant Judge, Doulatpur, Khulna in Title Suit No.112 of 2015 rejecting the application of the plaintiff dated 19.02.2019 for calling for the file/ledger of the suit property from the office of defendant opposite party No.1 shall not

be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

Facts relevant for disposal of this Rule, in short, are that the petitioner, as plaintiff, filed Title Suit No.112 of 2015 in the court of Assistant Judge, Doulatpur, Khulna against the present opposite parties, as defendant, for declaration and permanent injunction, stating that the plaintiff is holding and possessing the property measuring 705 square feet within KCC, Ward No.7 under Khulna City Corporation and has raised a shop room thereon by filling up the land and running his business therein since 1988. The property bears a City Corporation Holding 40/264 and lastly in 2008 the holding number has been changed as No.50 and the same is still continuing.

The plaintiff has been paying Municipal/City Corporation Taxes regularly. While Tk.21,700/- became due as City Corporation Tax, the City Corporation seized the goods of the shop of the petitioner in 2007. After payment of the tax the goods were released by the order dated 11.07.2007. While excess tax was imposed for the year 2006-2007 the plaintiff made application for review and by the

order dated 23.06.2008 tax was re-fixed at Tk.340/- per year. In 2010 the plaintiff met road accident and some of his bones were broken. Since the plaintiff could not run the business himself, he let out the shop to one Abu Bakar. After recovery, when the plaintiff asked said Abu Bakar to vacate the premises he refused to vacate the shop. The plaintiff in such situation has filed S.C.C. Suit No.05 of 2014 for his eviction and the same is now pending for disposal.

The defendant No.4 in collusion with the said tenant Abu Bakar created some forged and fraudulent documents and prayed to the defendant Nos.1 to 3 for giving a holding number in his name. In spite of objection of the plaintiff the defendant No.2 by the letter under Memo No.Shompotti/14-15/581(4) dated 12.03.2015 cancelled the allotment of holding No.50 of the plaintiff and allotted 308 square feet of the property to the defendant No.4. Hence, the suit for declaring the said Memo No.Shompotti/14-15/581(4) dated 12.03.2015 is illegal, fraudulent, collusive and not binding upon the plaintiff and also prayed for decree of permanent injunction restraining the defendant Nos.1 to 4 from evicting the plaintiff from “Ka” schedule property.

When the suit was fixed for argument, the plaintiff filed an application for calling original file and ledger in respect of allotment of suit shop in favour of the plaintiff from the office of the defendant No.1 to prove that the allotment was cancelled illegally. The trial court heard the application and after hearing by order dated 03.02.2022 rejected the same.

Being aggrieved by and dissatisfied with the judgment and order of the trial court, the plaintiff filed Civil Revision No.14 of 2022 before the Court of learned District Judge, Khulna who after hearing by the impugned judgment and order dated 03.03.2022 rejected the same affirming the judgment and order of the trial court. At this juncture, the petitioner moved this Court by filing this application under Section 115(4) of the Code seeking leave to revision and obtained the present Rule and order of stay.

Mr. Garib Newaj, learned senior Advocate appearing for the petitioner submits that the defendant Nos.1-3, 4 and 5 by filing separate written statements contested the suit, but the City Corporation did not file original record and ledger in respect of allotment of shop and realization of rents from the plaintiff.

Consequently, the plaintiff filed the application for calling such record from defendant Nos.1-3, but the trial court without assigning any reason rejected the application. The revisional court also rejected the revision affirming the judgment and order of the trial court. He submits that whether the allotment of the plaintiff has been legally cancelled by City Corporation will be seen from the ledger and file lying with the City Corporation, but they did not file the same before the court with malafide intention to hide their misdeeds in cancelling allotment of the shop, as such, the record is required for proper adjudication of the matter in dispute between the parties, but the courts below rejected the application occasioning failure of justice.

Mr. Kishore Kumar Mondal, learned Advocate appearing for the opposite party No.4 submits that at the time of hearing of the suit and recording evidences, the plaintiff did not take any step for calling any document from the defendant Nos.1-3. When the suit was fixed for argument, all of a sudden the plaintiff pressed the application filed in the year 2019. He further submits that the application is vague and unspecified and the reason stated in the application for calling the record deserve no consideration as the suit

of the plaintiff is liable to be proved independent of the defense case.

It is argued that it is the obligation of the plaintiff to prove how cancellation of allotment of shop is illegal under which terms and condition or which provisions of law and for that reason no records are required to be called for from the defendants office as the case of the plaintiff has to be proved by the plaintiff producing evidence both oral and documentary and as such, both the courts below rightly rejected the application and have not committed any illegality or error of law in the decision occasioning failure of justice.

Heard the learned Advocates of both the sides, have gone through the revisional application, application for calling record and the impugned judgment and order of both the courts below.

The petitioner filed Title Suit No.112 of 2015 in the court of Senior Assistant Judge, Doulatpur, Khulna for declaration that the cancellation of allotment of the shop in favour of the plaintiff by defendant Nos.1-3 is illegal, malafide, unlawful, without jurisdiction.

In usual course, defendant Nos.1-5 entered into appearance, filed separate written statements denying all the material allegations made in the plaint, contending, that the plaintiff violated the terms

and conditions of allotment made in favour of the plaintiff, consequently, the allotment was cancelled. In course of hearing both the parties adduced evidence both oral and documentary in support of their respective cases. After conclusion of evidence the suit was fixed for argument on 03.02.2022. Application for calling record was filed by the plaintiff on 19.02.2019, but did not press the application till 2022, on the date of passing order rejecting the same. During hearing of the suit, and after closing evidence the plaintiff pressed the application for hearing and the trial court rejected the same holding that the 2 sets of defendants by filing written statements and on oath at the time of recording evidence unequivocally admitted that the shop in question was allotted to the plaintiff and subsequently, said allotment was cancelled. The plaintiff is to prove his case by evidence as stated in the plaint and he could have called for any record disclosed in the written statement by the defendant Nos.1-3 giving specific description of the document and date. Where evidences closed and fixed for argument of the suit he pressed the application after 3 years of filing it. The revisional court while rejecting the revision held that the defendant Nos.1-4 in their written statement concurrently admitted the fact of allotment of shop in

favour of the plaintiff and also proved from the allotment letter issued to the plaintiff duly marked as Exhibit. Whether said allotment was cancelled illegally is a matter to be decided by the court on the evidences and the averment made in the written statement. For proving legality or illegality of cancelation of allotment, ledger or record lying with defendants are not at all required for adjudication of the dispute. The revisional court rightly held that it is an attempt on the part of the plaintiff to killing time and delay disposal of the suit which is an abuse of process of the court. I am of the same view that proper adjudication of the dispute between the parties and to determine whether allotment was legally or illegally cancelled by the defendant the record or ledger of the allotment of shop is not at all necessary.

Therefore, I find that the trial court and the revisional court committed no illegality in the decision occasioning failure of justice.

Taking into consideration the above, this Court finds no merit in the Rule.

In the result, the Rule is discharged, however, without any order as to costs.

Order of *stay* granted at the time of issuance of the Rule stands vacated.

The trial court is hereby directed to proceed with the hearing and dispose of the same within a shortest possible time giving top most priority preferably within 3(three) months from the date of receipt of this judgment and order and positively.

Communicate a copy of the judgment to the Court concerned at once.