

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

Present:

Mr. Justice Md. Khairul Alam

Civil Revision No. 3148 of 2019

Md. Kamaruddahar Tokon and others.

..... -Petitioners.

-Versus-

Subrato Kumar Ghosh and others.

..... Opposite parties.

Mr. Md. Mesbahul Islam Asif, Advocate

..... For the petitioners.

Mr. Md. Amzad Hossain with

Ms. Mitu Sikder, Advocates

..... For the opposite parties.

Heard on: 30.04.2025, 07.05.2025

And Judgment on: 15.05.2025.

This Rule was issued calling upon the opposite parties to show cause as to why the judgment and order dated 14.03.2019 passed by the learned District Judge, Narail in Civil Revision No. 09 of 2017 affirming the judgment and order dated 27.03.2017 passed by the learned Assistant Judge, Narail in Miscellaneous Case No. 26 of 2012 allowing the Miscellaneous Case and thereby restoring the Title Suit No. 154 of 2006 to its original file and number after setting aside the dismissal order dated 13.10.2011 should not be set aside and/or pass such other or further order or orders as to this court may seem fit and proper.

The facts of this case, so far as relevant for the purpose of the disposal of the Rule herein, are that the present opposite parties as plaintiffs instituted the suit impleading the present petitioners as defendants, inter alia, praying for a decree for declaration of title over the

suit property. The defendants filed a written statement to contest the suit. On 13.10.2011, the suit appeared in the daily list of the learned trial Judge for taking the steps where the defendants appeared, but the plaintiffs did not appear when the suit was called on for hearing. Accordingly, the suit was dismissed for default. Then, the plaintiffs filed an application under Order IX rule 9 of the Code of Civil Procedure praying for making an order setting aside the dismissal order dated 13.10.2011 and appointing a day for proceeding with the suit stating, inter alia, that because of the death of his learned Advocate namely, Prodip Babu and his Mohorar namely, Nitai Babu they failed to appear when the suit was called on for hearing. Accordingly, Miscellaneous Case No. 26 of 2012 was initiated. The defendants contested the case by filing a written objection denying all the material allegations made in the application for restoration. To prove the respective case, the plaintiffs examined 2 witnesses and the defendants examined 1 witness. After hearing the parties the learned Assistant Judge, Sadar, Narail by the judgment and order dated 13.10.2011 allowed the said application. Challenging the said order the defendants preferred Civil Revision No. 09 of 2017 before the Court of District Judge, Narail.

The learned District Judge, Narail after hearing the said Civil Revision by the judgment and order dated 14.03.2019 dismissed the revisional application and thereby affirmed the order dated 27.03.2017 passed by the learned Assistant Judge, Sadar, Narail.

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

Mr. Md. Mesbahul Islam Asif the learned Advocate appearing for the petitioners submitted that no sufficient cause for restoration was made out in the application for restoration despite of that the courts below passed the impugned judgment and order restoring the suit to its original file and number after setting aside the dismissal order which required to be interfered.

Per contra, Mr. Md. Amzad Hossain, the learned Advocate appearing for opposite parties submitted that nonappearance of the learned Advocate due to death is a sufficient cause within the meaning of Order IX rule 9 of the Code of Civil Procedure, therefore the Courts below rightly passed the impugned order and hence the Rule is liable to be discharged.

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

Before addressing the contentions of the contending parties it will be advantageous to quote the provision of Order IX Rule 9 of the Code of Civil Procedure, which runs as follows:-

“ 9 (1) Where a suit is wholly or partly dismissed under rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside, and if he satisfies the court that there was

sufficient cause for his nonappearance when the suit was called on for hearing, the court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

(2) No order shall be made under this rule unless notice of the application has been served on the opposite party.

It reveals that if a suit was dismissed for non-appearance of the plaintiff at the time of the call for hearing the suit, the plaintiff applied to set aside the dismissal order of the suit then if he can satisfy the court that there was a sufficient cause for non-appearance when the suit was called for hearing. The court shall set aside the dismissal order with an order of cost.”

As per the said provision, if any suit is dismissed wholly or partly under rule 8, the plaintiff may apply for an order to set the dismissal aside, and if he satisfies the court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the court shall make an order setting aside the dismissal, and shall appoint a day for proceeding with the suit. But "sufficient cause" is not defined in the Code, so the "sufficient cause" depends upon the facts and circumstances of each case.

In our legal system parties in civil suits generally appear through their learned Advocates. The parties should select their Advocates and after engaging the lawyer, the party may remain in the impression that the lawyer will appear in the case on his behalf and protect his interest, but sometimes the learned Advocate may not appear in the case due to his personal difficulties. Now it is well settled that a party cannot be made to

suffer for the fault on the part of his Advocate if he himself is not at fault.

In the present case, the plaintiffs engaged an Advocate but he could not expect that his engaged Advocate died and failed to appear when the suit was called on for hearing, and therefore, the plaintiff cannot be made to suffer for that.

Therefore, I am of the opinion that the death of the engaged Advocate is a "sufficient cause" within the meaning of the provision of Order IX rule 9 of the Code of Civil Procedure and therefore, "sufficient cause" has been shown in the present case to justify allowing the application for setting aside the order of dismissal of the suit for nonappearance.

The courts below, after considering the said aspect, rightly passed the impugned judgment and order. The learned Advocate for the petitioner failed to find out any error of law to vitiate the impugned judgment and order. Therefore, I do not find any reason to interfere with the impugned judgment and order.

Hence, the Rule is devoid of any merit and the same is discharged without any costs.

The order of stay passed at the time of the issuance of the Rule is hereby vacated.

Send down the lower court's record along with this judgment and order at once.

Kashem, B.O