

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.648 OF 2023

In the matter of:

An application under Section 115(1) of the Code of Civil Procedure.

And

Md. Imran

.... Petitioner

-Versus-

Manjur Morshed and others

.... Opposite parties

Mr. Surojit Bhattacharjee, Advocate

.... For the petitioner.

Mr. Shamsuddin Babul with

Ms. Shahinur Begum,

Mr. Mohd. Lokman Hossain, Advocates

.... For the opposite parties.

Heard on 25.06.2025 and 29.06.2025.

Judgment on 30.06.2025.

This Rule was issued calling upon the opposite party Nos.1-7 to show cause as to why the impugned judgment and decree dated 04.01.2023 passed by the learned Additional District Judge, 8th Court, Chattohgram in Other Class Appeal No.211 of 2022 dismissing the appeal and affirming the judgment and decree dated 15.03.2022 passed by the learned Senior Assistant Judge, 1st Court, Chattogram in Other Suit No.06 of 2019 allowing an application filed under Order VII Rule

11(A) and (D) read with Section 151 of the Code of Civil Procedure and thereby dismissing the suit should not be set aside and/or other or further order or orders as to this Court may seem fit and proper.

Facts in short are that the petitioner as plaintiff instituted above suit for a decree for permanent injunction restraining the defendant Nos.1-7 from evicting the plaintiff from the disputed shop without due course of law alleging that the plaintiff entered into a contract for partnership business with the defendants and invested Taka 1,50,00,000/- and regularly paid profit to the defendants. Above partnership deed expired in 2016 and the defendant agreed to extend above partnership until 2021 and received additional security and enhanced amount of profit. But the defendants tried to forcibly dispossess the plaintiff from above shop.

Defendant Nos.1-7 contested above suit by filing a joint written statement denying all claims and allegations made in the plaint and alleging that above partnership deed has expired and pursuant to the term of above deed of partnership the dispute were referred to mediation. The mediator gave an award asking the plaintiff to handover vacant possession of above shop. But the plaintiff disobeyed above award and filed this suit on false claim and allegation.

In above suit defendant Nos.1-7 filed a petition under Order 7 Rule 11 of the Code of Civil Procedure on 03.11.2021 for rejection of plaint alleging that the partnership agreement between the plaintiff and

defendant has expired on 01.03.2016 and the defendants asked the plaintiff to handover vacant possession of above shop but the plaintiff invoked Article 11 of above deed of partnership and sent above dispute for mediation to a sole arbitrator who gave an award on 11.05.2018 and both plaintiff and defendant accepted above award. In above award plaintiff was directed to handover vacant possession of above shop by December 2018 but the plaintiff did not abide by above award and filed this false suit to continue his unlawful possession in above shop.

On consideration of facts and circumstances of the case and evidence on record the learned Senior Assistant Judge allowed above petition and rejected the plaint.

Being aggrieved by above judgment and decree of the trial Court above plaintiff as appellant preferred Other Class Appeal No.211 of 2022 to the District Judge, Chattogram which was heard by the learned Additional District Judge who dismissed above appeal and affirmed the judgment and decree of the trial Court.

Being aggrieved by and dissatisfied with above judgment and decree of the Court of Appeal below above appellant as petitioner moved to this Court and obtained this Rule.

Mr. Surojut Bhattacharjee, learned Advocate for the petitioner submits that learned Judges of the both the trial below most illegally rejected the plaint on consideration of materials of the defendants which is not tenable in law.

Mr. Shamsuddin Babul, learned Advocate for the opposite parties submits that admittedly the deed of partnership for running a jewelry business between the plaintiff and defendant expired on 01.03.2016. The defendants asked the plaintiff to handover vacant possession of above shop but the plaintiff invoked Section 11 of above deed of partnership for mediation and the sole mediator passed an award 11.04.2008 asking the plaintiff to handover possession of above shop by December 2018. But the plaintiff did not abide by above award nor he took recourse to any legal measures for setting aside above award but most illegally filed this suit for permanent injunction. On consideration of above materials on record the learned Judges of both the Courts below rightly held that since the plaintiff did not seek any remedy against the award passed by the sole mediator the instant suit was barred by law which calls for no interference. The learned Advocate lastly submits that the impugned deed of partnership between the plaintiff and defendant was not a registered partnership deed. As such the plaintiff was not entitled to file any suit at all. As such the learned Judge of the Court of Appeal below rightly dismissed the appeal and affirmed the order of rejection of plaint which calls for no interference.

I have considered the submission of the learned Advocates for respective parties and carefully examined all materials on record.

Order 7 Rule 11 of the code of Civil Procedure provides for rejection of plaint by which undeserving suits are get rid of from the list

of cases at the very outset and the plaintiff is told that he would not get a hearing of his suit and the door of justice is closed for above suit. Above stringent measure against a plaintiff who has filed a Suit on payment of Court fees must ordered strictly within the framework of the law as provided in Order 7 Rule 11 of the Code of Civil Procedure.

While considering a petition for rejection of plaint the Court must remain confined within the averments made in the plaint and the documents produced by the plaintiff. The Court shall not take into account any material produced by the defendant. A plaint is liable to outright rejection if the is found to be directly in conflict with any law as has been alleged by the opposite party. But if it is found that the plaint was inadequately valued or insufficiently stamped the plaintiff shall be given an opportunity for removing above deficiencies by providing proper valuation and supplying deficit Court fees but if the plaintiff fails to make up above deficiencies in the plaint only then the plaint shall be rejected.

It turns out from the plaint that in the four corners of the plaint the plaintiff did not mention anything about invoking Article 11 of above deed of partnership and appointed sole mediator who passed an award. All above allegations have been stated in the written statement and in the petition filed by the defendants under Order 7 Rule 11 of the Code of Civil Procedure. As far as the deed of partnership is concerned

there is no mention in the plaint if above deed of partnership was registered or not registered.

On consideration of the contentious facts stated by the defendants in the written statement and in the petition for rejection of plaint the learned Judge of the trial Court rejected the plaint and the Court of Appeal below upheld above flawed judgment and order of the trial Court which is not tenable in law.

In above view of the facts and circumstances of the case and materials on record I hold that the impugned judgment and decree passed by the learned Additional District Judge is completely misconceived, unlawful and not tenable in law.

I find substance in this revisional application under Section 115(1) of the Code of Civil Procedure and the Rule issued in this connection deserves to be made absolute.

In the result, the Rule is made absolute. The impugned judgment and decree dated 04.01.2023 passed by the learned Additional District Judge, 8th Court, Chattohgram in Other Class Appeal No.211 of 2022 dismissing above appeal and affirming the judgment and decree dated 15.03.2022 passed by the learned Senior Assistant Judge, 1st Court, Chattogram in Other Suit No.06 of 2019 is set aside.

The learned Senior Assistant Judge is directed to proceed with the trial of above suit expeditiously in accordance with law.

However, there will be no order as to costs.

Send down the lower Court's records immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER.