

**In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)**

Present:

Mr. Justice Md. Riaz Uddin Khan

Civil Revision No. 1182 of 2024

IN THE MATTER OF :

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

-And-

In the Matter of:

Minhaj Ali @ Minu and others

... Plaintiff-Petitioners

-Versus-

Marfat Ali and another

... Defendant-Opposite Parties

Mr. Golam Sarwar, with

Mr. Md. Emadul Hoque, Advocate

... For the petitioners

Mr. Abdul Halim Sikder, Advocate

... For the Opposite Party No. 1

Judgment on: 09.03.2026

Md. Riaz Uddin Khan, J-

At the instance of the plaintiffs Rule was issued calling upon the opposite parties to show cause as to why the judgment and order dated 06.09.2022 passed by the Senior District Judge, Dhaka in Miscellaneous Appeal No. 99 of 2022 dismissing the appeal and thereby affirming the order dated 03.02.2022 passed by the Senior Assistant Judge, Savar, Dhaka in Miscellaneous Case No. 23 of 2016 dismissing the same for default arising out of the judgment and order dated 24.11.2016 passed in Title Suit No. 222 of 2014 dismissing the same for default shall not be set aside and/or such other or further order or orders shall not be passed as to this Court may deem fit and appropriate.

At the time of issuance of the Rule the operation of the judgment and order dated 06.09.2022 passed in Miscellaneous Appeal No. 99 of 2022 was stayed for a period of 03 (three) months initially which was extended time to time.

Facts for disposal of this Rule are that on 04.08.2014 the present petitioners as plaintiffs instituted Title Suit No. 222 of 2014 in the court of Senior Assistant Judge, Savar, Dhaka for declaration that the judgment and decree dated 22.09.1990 passed in Title Suit No.39 of 1987 is not binding upon the plaintiffs. The defendant-opposite party appeared in the suit by filing written statement denying all material allegations and averments of the plaint and prayed for dismissal of the suit.

The suit was fixed on 24.11.2016 for framing of issues but the plaintiffs were not present before the trial court and accordingly the Title Suit No. 222 of 2014 was dismissed for default vide order dated 24.11.2016. Against that order dated 24.11.2016 the plaintiffs filed Miscellaneous Case No. 23 of 2016 under Order-IX, Rule-9 of the Code of Civil Procedure stating the facts for their non-appearance on the date fixed. The Miscellaneous Case No. 23 of 2016 was fixed on 03.02.2022 for hearing but the plaintiffs were not present before the trial court and accordingly the Miscellaneous Case No. 23 of 2016 was dismissed for default vide order dated 03.02.2022.

Against the order dated 03.02.2022 passed in Miscellaneous Case No. 23 of 2016, the plaintiffs as appellants preferred Miscellaneous Appeal No. 99 of 2022 before the learned District Judge, Dhaka. The

Miscellaneous Appeal No. 99 of 2022 was fixed on 06.09.2022 for hearing and after hearing the plaintiff-appellants the learned Judge was pleased to dismiss the appeal summarily by his impugned judgment and order dated 06.09.2022 on the finding that the trial court did not commit any wrong.

Being aggrieved by and dissatisfied with the impugned judgment and order dated 06.09.2022 passed by the learned District Judge the plaintiffs as petitioners filed the instant civil revision before this Court and obtained the Rule and Stay as stated at the very outset.

The opposite party No.1 filed an application for discharging the Rule which was kept with the record to be considered at the time of hearing of the Rule.

Mr. Golam Sarwar along with Md. Emadul Hoque, the learned advocate appearing for the petitioners submits that the courts below without applying judicial mind to the law and facts of the suit most illegally and arbitrarily dismissed the Miscellaneous Appeal No. 99 of 2022 arising out of Miscellaneous Case No. 23 of 2016 arising out of Title Suit No. 222 of 2014. The learned District Judge without assigning any cogent and lawful reason dismissed the Appeal and thereby affirmed the order dated 03.02.2022 passed by the Senior Assistant Judge most illegally, arbitrarily and on misconception of the law and facts of the suit though the petitioners have a good arguable case.

On the other hand Mr. Abdul Halim Sikder, the learned advocate for the opposite party submits that prior to institution of the present suit, this opposite party No. 1 along with another filed Title Suit No. 39

of 1987 before the Court of Senior Assistant Judge, Savar, Dhaka relating to the same land and subject matter. The predecessors of the petitioners were impleaded therein who contested the suit by filing written statement and the suit was decreed on contest on 22.09.1990 in favour of the present opposite party No.1. Despite such decree the plaintiff-petitioners filed the Title Suit No. 222 of 2014 on the same issue and suit property which is barred by law under section 11 of the Code of Civil Procedure. The learned advocate then submits that the suit is not maintainable as in the suit the plaintiffs impleaded one Jahanara Begum, defendant No. 2 who died on 01.01.2005, nine year prior to filing of the suit. In support of his contention he cited a decision of the case of Abdul Majid Vs. Md. Ibrahim reported in 41 DLR (AD) 165 wherein it has been held that the suit is not maintainable while filed against the deceased person without substitution.

The learned advocate next submits that this revisional application is not maintainable when lower court dismissed the matters for default repeatedly. The petitioners were negligent all through failing to pursue the suit as well as miscellaneous case repeatedly which is sheer negligence on the part of the petitioners as such they are not entitled to any relief under revisional jurisdiction. In support of his contention he cited the case of Sheikh Mohammad Ishak Vs. Abdul Wahab reported in 15 BLC (AD) 87 wherein it has been held that the litigant must come with due diligence.

The learned advocate strenuously submits that the revision is a discretionary jurisdiction and not a

matter of right. The learned advocate cited decision of Sanatannessa Bewa Vs. Haipatullah Sarker and others reported in 41 DLR (AD) 105 wherein it has been held that *in considering an application for restoration the Court often takes into consideration, besides the grounds taken for restoration, whether any useful purpose will be served in allowing the same. In its anxiety to do justice the merit of the case is often considered by the Court before exercising discretion in such matter. We do not, therefore, think that the impugned order has been vitiated by reason of consideration of the merit of the case also.*

The learned advocate further submits that the decree passed in 1999 stands valid, binding and applicable to the present plaintiffs but the petitioners are trying to re-open a finally concluded litigation. This attempt is contrary to public policy favouring finality of the litigation. In support of his contention the learned advocate cited decision of Rajlakshmi Dasi Vs. Banamali Sen reported in AIR 1953 (SC) 33 wherein it has been held that the endless litigation must be avoid.

Mr. Sikder finally submits that the instant civil revision contains patent legal deffects namely, i) impleading deceased person, ii) barred by res-judicata, iii) negligence in pursuing remedies and iv) no prima facie illegality in concurrent findings. And under section 115 of the Code of Civil Procedure revision lies only against the jurisdictional or legal error or illegality. In the present case the plaintiff-petitioners measurably failed to show any error of law occasioning failure of justice.

I have heard the learned advocate for both the parties, perused the revisional application and the application for discharging the Rule filed by the opposite party along with all the annexures.

It appears from the order dated 24.11.2016 that it was fixed for framing of issues but on that day the plaintiffs did not appear while the defendants appeared. The plaintiffs even did not file any adjournment application and in that circumstances the trial court at 4.31 p.m dismissed the suit for default of appearance of the plaintiffs by order dated 24.11.2016. The plaintiff then filed the Miscellaneous Case No. 23 of 2016. At one stage that Miscellaneous Case was fixed for hearing on 03.02.2022 and on that day the petitioners filed an application for adjournment which was rejected by the trial court and asked the learned lawyer to present his case. However, when the matter was taken up for hearing neither the learned advocate nor the petitioners were present before the court. In such circumstances at 4.20 p.m the trial court rejected the Miscellaneous Case for default of appearance of the petitioners.

Against that order of rejection dated 03.02.2022 the petitioners filed Miscellaneous Appeal No. 99 of 2022 before the District Judge, Dhaka who fixed on 06.09.2022 for hearing the admissibility of the appeal. On that date upon hearing both the parties, perusing the lower court records the appeal was dismissed summarily on the finding that since the plaintiff-appellants did not take proper steps when the matter was taken up for hearing by the trial court the trial court rightly rejected the Miscellaneous Case.

It is true that when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate cause. Judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so. Based on this gracious principle let me consider the present case.

The petitioners were absent on the date fixed for framing issues and the trial court dismissed their suit for default of appearance. The petitioners filed Miscellaneous case for restoration of the suit under Order-IX Rule-9 and on the date fixed again the petitioners and their advocate was absent. The petitioners filed Miscellaneous appeal but during hearing did not appear with convincing evidence to show what prevented them not to appear before trial court on the date fixed and the appeal was dismissed summarily. It appears from the conduct of the plaintiff-petitioners that the plaintiff-petitioners as well as their conducting lawyer was all through negligent in pursuing the cause. The learned advocate for the opposite party raised 4 points in opposing the present Rule namely i) impleading deceased person, ii) barred by res-judicata, iii) negligence in pursuing remedies and iv) no prima facie illegality in concurrent findings and on those grounds prayed for discharging the rule. The 1st point that in the instant revision one Mst. Jahanara Bibi was made opposite party no.2 who admittedly died on 01.01.2005 who was substituted by

her heirs in the suit on application of the plaintiff-petitioners. In my view, it is a mistake committed by the learned advocate for the petitioners and name of the opposite party no.2 was struck out by this Court on 25.11.2025 and as such on this ground only the instant rule cannot be discharged. The 2nd point whether the suit is barred by resjudicata as per section 11 of the Code of Civil Procedure. This is a mixed question of facts and law. The question of facts is to be raised at the trial court. However, this Court can also examine this mixed question of facts and law if all the relevant documents are available before it. In the present case though the opposite party annexed a copy of the judgment of earlier Title Suit no.39 of 1987 (Annexure-3) but from there I do not find the names of the parties to show that the predecessor of the plaintiff-petitioners were made party to that suit who appeared and contested that suit. As such this point has also been not proved before this Court at this stage for which on this point also the rule cannot be discharged. The 3rd and 4th points are petitioners' negligence in pursuing remedies and on that point concurrent findings of the court below. I have already opined that it is apparent from the conduct of the plaintiff-petitioners that the plaintiff-petitioners as well as their conducting lawyer were all through negligent in pursuing the cause. It is settled that the litigant must come before Court with due diligence in pursuing his cause and if there is gross negligence the Court cannot restore his suit. The petitioners took ground that their engaged lawyer was sick who did not informed the date but the petitioners did not prove

this fact before the trial court as at the date of hearing they were absent again. Even in the appellate Court they did not produce the document of illness of the engaged lawyer and/or any reason to show what prevented them from not to appear before the court.

In such facts and circumstances of the case discussed above, I am of the firm view, in the present Rule there is no merits which called for interference by this Court sitting in revision, as such I am constrained to discharge the Rule.

In the result the Rule is **discharged** with cost.

The stay earlier granted by this Court stands vacated.

Communicate the judgment and order at once.