

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

Present:

Mr. Justice Md. Khairul Alam

Civil Revision No. 1869 of 2024.

Most. Maksuda Khatun and others  
.....Petitioners.

-Vs-

Mridha Md. Jamiruddin.  
.....Opposite Party.  
Mr. Jotimoy Barua with  
Mr. Tanvir Ahmed, Advocates  
...For the petitioner.  
Mr. Mohammad Humayun Kabir, Advocate

... For the opposite party.

Heard on 07.01.2026 and

Judgment on 08.01.2026.

This Rule was issued calling upon the opposite party to show cause as to why the impugned judgment and decree dated 19.03.2024 passed by the learned Senior District Judge, Faridpur in Title Appeal No. 84 of 2023 allowing the appeal and thereby reversing the judgment and decree dated 27.03.2023 passed by learned Joint District Judge, 2<sup>nd</sup> Court, Faridpur in Title Suit No. 200 of 2121 rejecting the plaint under Order VII

Rule 11 (d) read with section 151 of the Code of Civil Procedure should not be set-aside.

Relevant facts, for disposal of the Rule, are that the present opposite party, as plaintiff, filed a suit before the Court of Joint District Judge, 2<sup>nd</sup> Court, Faridpur, impleading the present petitioners as defendants, who are the wife and two daughters of the plaintiff, seeking a declaration that the Heba deed bearing No. 3470 dated 14.12.2011 executed in favour of the wife and two daughters of the plaintiff, and Kabala deed Nos. 346 dated 12.12.2004, 2194 dated 10.06.2004, 3626 dated 09.11.2004, 3714 dated 20.11.2012, 3714 dated 20.12.2012 and 3025 dated 14.11.2018, by which lands were allegedly purchased by the plaintiff in the benami of his daughters, were illegal and inoperative, having been procured by intimidation, fraud and deception, and therefore not binding upon the plaintiff.

In the said suit, before filing written statements, the defendants filed an application under Order VII Rule 11 of the Code of Civil Procedure for rejection of the plaint, contending, inter alia, that the suit was barred by section

5 of the Land Reforms Ordinance, 1984 prohibiting benami transactions, barred under Muslim Sharia Law as a gift to wife and daughters is irrevocable, barred by limitation, not maintainable for seeking a mere declaration without prayer for cancellation of the deeds, and that the plaintiff suffered from undervaluation and insufficiency of court fees.

The learned Joint District Judge, 2<sup>nd</sup> Court, Faridpur, after hearing the parties, by judgment and decree dated 27.03.2023 allowed the application, holding, *inter alia*, that there is no legal scope to revoke a deed of gift where the donees are the wife and daughters of the donor, who fall within the prohibited degree of relationship, and that transfer of title through benami transactions is not permissible in law.

Being aggrieved, the plaintiff preferred Title Appeal No. 84 of 2023 before the Court of District Judge, Faridpur, which was heard by the learned Senior District Judge, Faridpur, who, by the impugned judgment and decree dated 19.03.2024, allowed the appeal on the ground of maintainability and set aside the judgment of

the trial court, holding, *inter alia*, that in view of the decision in *Shitalakhaya Ice and Cold Storage Pvt. Ltd. vs. Artha Rin Adalat*, reported in 64 DLR 48, a plaint cannot be rejected under Order VII Rule 11 of the Code either on a question of law or fact before filing of the written statement. The appellate court did not enter into the merits of the case.

Being aggrieved thereby, the petitioners moved this Court and obtained the present Rule.

Mr. Jotimoy Barua, learned Advocate for the petitioners, submits that when, from the statements made in the plaint itself, the suit appears to be barred by law, the Court is competent to reject the plaint at any stage of the suit under Order VII Rule 11 of the Code of Civil Procedure. He submits that the trial court rightly rejected the plaint, but the appellate court, on a misconception of law, set aside the judgment holding that rejection of plaint before filing written statement is impermissible, and as such the impugned judgment is liable to be set aside.

On the other hand, Mr. Mohammad Humayun Kabir, learned Advocate for the opposite party, submits that a

plaint can be rejected under Order VII Rule 11 of the Code only when the bar is apparent from the statements made in the plaint itself, but in the present case, the plaint does not disclose any such bar. He further submits that although the appellate court decided the appeal on the question of maintainability, this Court, in its revisional jurisdiction, may dispose of the Rule on merit.

Heard the learned Advocates for the parties and perused the revisional application and the materials on record.

It appears that the impugned order relates to the rejection of plaint under Order VII Rule 11 of the Code. The trial court allowed the application under Order VII Rule 11 of the Code, whereas the appellate court rejected the same solely on the ground that such an application cannot be entertained before filing of the written statement.

Therefore, the core issue for determination is whether a Court can invoke the provisions of Order VII Rule 11 of the Code of Civil Procedure before filing of the written statement.

For proper adjudication, Order VII Rule 11 of the Code of Civil Procedure is reproduced below:

*“11. The plaint shall be rejected in the following cases:-*

*(a) where it does not disclose a cause of action:*

*(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so:*

*(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so:*

*(d) where the suit appears from the statement in the plaint to be barred by any law.”*

On a plain reading of the provision, it appears that a plaint can only be rejected if (1) the plaint does not disclose a cause of action; (b) the plaintiff failed to correct the valuation of the suit within a time fixed by the Court; (c) the plaintiff failed to pay the deficit stamp-paper within the time allowed by the Court; and (d) the suit appears from the statement in the plaint to be barred by any law.

On a careful reading of the provision, it is evident that neither the filing of a written statement nor the stage of the suit constitutes a condition precedent for the exercise of power under Order VII Rule 11 of the Code. Accordingly, the Court may invoke the provisions of Order VII Rule 11 of the Code of Civil Procedure at any stage of the suit, and a plaint may be rejected before the filing of the written statement, if any of the conditions enumerated therein is satisfied.

Although in Shitalakhaya Ice and Cold Storage Pvt. Ltd. vs. Artha Rin Adalat, reported in 64 DLR 48, upon which the Court of appeal below placed reliance, it was held that a plaint cannot be rejected under Order VII Rule 11 before filing of the written statement, the said view was subsequently reconsidered in Shirajul Islam vs. Bangladesh Bank, reported in 73 DLR 554, wherein this Division, upon elaborate discussion, held that a plaint can be rejected under Order VII Rule 11 of the Code at any stage of the suit even before issuance of any notice upon the plaintiff.

In the case of Jobeda Khatun vs. Momtaz Begum, reported in 45 DLR (AD) 31, the rejection of the plaint was

challenged on the ground that after framing of issues only the issues could be tried and, as such, the plaint could not be rejected thereafter. The Apex Court, however, rejected the said contention and held that a plaint may be rejected at any stage of the suit, and that such rejection depends upon the facts and circumstances of each case. In the case of Azhar Hussain vs. Rajiv Gandhi, reported in 1986(4) S.C.C 284 the plaint was dismissed at the threshold on the ground that it does not disclose a cause of action which was challenged on the plea that a plaint cannot be dismissed at the threshold and the Indian Supreme Court dismissed the contention and held that a plaint can be dismissed summarily at the threshold of the proceeding under Order VII Rule 11 of the Code.

Since the appellate court, by the impugned judgment, on a misconception of law, allowed the appeal solely on the question of maintainability without entering into the merits of the application under Order VII Rule 11, holding that a plaint cannot be rejected under Order VII Rule 11 of the Code before filing of the written statement this Court is of the view that justice would be best served

if the matter is remanded to the appellate court for disposal on merit.

In the above facts and circumstances, I find merit in the Rule.

Accordingly, the Rule is made absolute.

The impugned judgment and decree dated 19.03.2024 passed by the learned Senior District Judge, Faridpur, in Title Appeal No. 84 of 2023 are hereby set aside.

The appeal is remanded to the Court of appeal below for fresh hearing and disposal on merit in accordance with law.

The Court of appeal below is directed to dispose of the appeal as expeditiously as possible, preferably within six (6) months from the date of receipt of this judgment.

Send down the lower court records along with a copy of this judgment at once.

Kashem/BO