Present:
Mr. Justice Md. Salim

CIVIL REVISION NO.5499 OF 2024

Md. Nazrul Islam and others
..... Plaintiff-Petitioners.

-VERSUS-

Monjil Miah and others

..... Defendant-Opposite Parties.

Mr. Mainul Islam with
Mr. Faruq Uzzaman Bhuiyan,
Mr. Md. Nasir Uddin and
Ms. Kohenoor Akter, Advocates
------- For the petitioners.
Mr. Hussain Mahmud Sahin, Advocate
-------- For the opposite parties.

Heard on 30.10.2025 and 20.11.2025.

Judgment on 27.11.2025.

By this Rule, the opposite parties were called upon to show cause as to why the impugned Judgment and order dated 06.10.2024 passed by the learned Additional District Judge, 3rd Court, Kishoregonj in Civil Revision No.18 of 2023 allowed the Civil Revision and setting aside the Judgment and order dated 20.03.2023 passed by the learned Senior Assistant Judge, Sadar, Kishoregonj in Title Suit No.145 of 2022 allowed the application under Order 21, rule 29 of the Code of Civil Procedure for stay of the Execution Case No.6 of 2022 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 in a nutshell for the disposal of the Rule are that the petitioners herein as plaintiffs instituted Title Suit No.145 of 2022 before the Senior Assistant Judge, Sadar, Kishoreganj, against the opposite parties for setting aside the ex parte judgment and decree passed in a partition suit being Title Suit No.14 of 2013. Thereafter, filed an application under Order 21, rule 29 of the Code of Civil Procedure for a stay of the proceedings in Execution Case No. 6 of 2022, arising out of an ex parte judgment and decree passed in a partition suit being Title Suit No.14 of 2013.

Subsequently, the learned Senior Assistant Judge, Sadar, Kishoreganj, by the Judgment and order dated 20.03.2023, allowed the application and stayed the execution proceedings of the Execution Case No. 06 of 2022.

Being aggrieved, the opposite party No.1(decree holder of the ex-party Judgment and decree) herein, as the petitioner preferred Civil Revision No.18 of 2023 before the District Judge, Kishoreganj. Subsequently, the learned Additional District Judge, 3rd Court, Kishoreganj, by the Judgment and order dated 06.10.2024, allowed the Civil Revision and set aside the order of stay passed by the trial Court below.

Being aggrieved, the plaintiff-petitioners filed the present Civil Revision under Section 115(4) of the Code of Civil Procedure before this Court and obtained the instant Rule and order of stay extended from time to time.

Mr. Mainul Islam, the learned Counsel appearing on behalf of the petitioner, submits that, since the petitioner instituted the instant suit to set aside the ex party decree, the Court is empowered to pass an appropriate order to stay the proceedings of the execution case, but the learned additional District Judge, without considering the same, set aside the order of stay passed by the trial court below.

Mr. Hussain Mahmud Shahin, the learned advocate appearing on behalf of the opposite parties, submits that the learned additional district judge, having considered all the material aspects as well as the law very judiciously, set aside the order of stay passed by the trial Court below.

We have considered the submission of the learned advocate for both parties, perused the impugned Judgment and order, and other materials on record. It appears that the opposite parties herein, as plaintiff, earlier instituted a partition suit. Subsequently, the suit was decreed by the ex parte Judgment and decree dated 10.05.2018. The decree holder then filed Execution Case No. 06 of 2022. Thereafter, this petitioner, as plaintiff, instituted the instant for setting

aside the above ex parte Judgment and decree. Thereafter, filed an application under Order 21, rule 29 of the Code of Civil Procedure for a stay of all further proceedings of the Execution Case, which was allowed; however, the same was set aside by the impugned order.

Before we advert to the contentions raised from the side of the petitioners, it will be appropriate to quote the relevant provision of Order XXI, rule 29 of the Code of Civil Procedure, which runs as follows:-

> "Where a suit is pending in any Court against the holder of a decree of such Court, on the part of the person against whom the decree was passed, the Court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided."

In the case of Shawkat Vs. Bhuneshwai reported in AIR 1978 SC 528, it was held that:--

In order to attract rule 29 of Order 21 of the code of Civil Procedure there shall be simultaneously two proceedings in one Court, one is the suit by the judgment-debtor against the decree-holder of such Court which means the Court in which the suit is pending and the other one is the proceeding in Execution by the decree-holder and for the application of the

said Rule, the suit that should be stayed should be between the same parties.

Further, it is a cardinal principle of law that Rule 29 of Order XXI applies only in a case where a person challenges the decree under Execution in a subsequent suit.

In the case of Narsidas Nathubhai Vahra Vs. Manharsingh Agarsing Thakor reported in AIR 1931 Bombay 247, it has been held that-

> "The terms of Order 21, rule 29, indicate that the Court in which a suit is pending in the Court which has jurisdiction to pass an order under Order 21, rule 29. There is no indication in the Rule that the application must be made to the Court in the execution proceedings. On the other hand, the wording of the Rule is quite clear that the Court in which a suit is pending has jurisdiction to pass an order under that Rule."

In the instant case, it appears that the previous suit was of the same Court where the present suit has been filed. And the Ex parte Judgment and decree of the earlier suit have been challenged by the instant suit.

In view of the facts and circumstances, we are of the firm view that the application for stay of the execution case under Order 21, Rule 29, read with section 151 of the Code of Civil Procedure, is maintainable. Therefore, it appears that the

learned additional district judge, with a misinterpretation of the law, set aside the order of stay passed by the learned Senior Assistant Judge, Sadar, Kishoregonj; thus, committed an error of law, resulting in an error in the decision, occasioning a failure of justice.

In light of the foregoing analysis, it appears that the impugned Judgment and order suffer from legal infirmity and perversity, and as such, the same is liable to be set aside. Thus, find merit in the Rule.

Resultantly, the Rule is made absolute without any order as to cost.

The impugned Judgment and order dated 06.10.2024 passed by the learned Additional District Judge, 3rd Court, Kishoregonj in Civil Revision No.18 of 2023 is hereby set aside. The judgment and order dated 20.03.2023 passed by the learned Senior Assistant Judge, Sadar, Kishoregonj in Title Suit No.145 of 2022 is affirmed.

The order of stay passed by this Court at the time of issuance of Rule is stands vacated.

Communicate this Judgment at once.

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(MD. SALIM, J).

Kabir/BO