

Present:-

Mr. Justice Mahmudul Hoque

Civil Revision No. 3785 of 2011

Md. Nazrul Islam and another
..... Petitioners

-Versus-

Abdul Jalil and others
..... Opposite-Parties

Mr. Md. Khurshid Alam Khan, Advocate with
Mrs. Nigar Sultana, Advocate

... For the Petitioners

Mr. Md. Abdul Alim Miah, Advocate

... For the Opposite Party No. 1

Judgment on 09.03.2025

In this revision Rule was issued calling upon the opposite party No. 1 to show cause as to why the impugned judgment and order dated 07.06.2011 passed by the learned Additional District Judge, 7th Court, Dhaka in Miscellaneous Appeal No. 134 of 2007 allowing the appeal and thereby reversing the judgment and order dated 25.03.2007 passed by the learned Additional Assistant Judge, 4th Court, Dhaka in Miscellaneous Case No. 05 of 2005 dismissing the case should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

Facts relevant for disposal of this Rule, in short, are that the opposite party No.1, as pre-emptor, filed Miscellaneous Case No. 20 of

1997 in the court of Second Assistant Judge, Dhaka, subsequently renumbered as Miscellaneous Case No. 05 of 2005 on transfer to the court of 4th Additional Assistant Judge, Dhaka against the present petitioner, as pre-emptee-opposite party along with others, claiming that the case property belonged to one Gafur ullah, grandfather of the pre-emptor who died leaving four sons, Kanku Mia, Abdur Rashid, Abul Hashem, Mojibur Rahman and daughter Karpun Nessa. Said Karpun Nessa transferred and relinquished her share in favour of brothers, resultantly, four brothers became owners of the property in Plot No. 43. Among the brothers Abdur Rashid died leaving wife Sahara Khatun, two sons Salim and the pre-emptor Abdul Jalil, so, the pre-emptor is a co-sharer of the case property by inheritance. Said Abul Hashem and Salim sold the case land to the pre-emptee Nos. 1 and 2 by a registered deed dated 28.07.1996 without serving notice to the pre-emptor. The pre-emptor used to live in Saudia Arabia for long and to look after his property one Md. Liakat Ali son of late Akkas Ali was appointed as his attorney. After coming to know about the sale of the case property in the last part of February 1997 he obtained true copy of the sale deed through his attorney from Gulshan Sub-

Registry Office on 02.03.1997. Thereafter, filed the pre-emption case depositing consideration money along with other deposits as per law.

It is further stated that had the fact of sale of the case property was known to him and the seller opposite party offered the same to him he would have purchased the property at the market price, but the seller opposite party most cunningly and very secretly transferred the property to the pre-emptee without offering the same to him. Consequently, the petitioner as co-sharer by inheritance is entitled to get pre-emption of the case property.

Opposite party Nos. 1 and 2, pre-emptees contested the case by filing written objection denying all the material allegations made in the application for pre-emption contending *inter alia*, that the case property belonged to one Gafur Ullah who died leaving four sons, Kanku Mia, Abdur Rashid, Abul Hashem, Mojibur Rahman and daughter Karpun Nessa. Gafur Ullah while in possession and enjoyment of the case plot by a registered deed No. 4071 dated 28.10.1944 sold $17\frac{1}{2}$ sataks or 10 gondas land to one Samed Ali Kazi. Said Samed Ali Kazi while in possession died leaving daughter Golesa Begum and his full brother Hamed Ali Kazi,

Golesa Begum sold her share to Kanku Mia, Abdur Rashid, Abul Hashem and others by a registered deed No. 30902 dated 24.12.1973. On the other hand, Hamed Ali Kazi transferred his share by way of exchange with his step brother Mansur Ali Kazi by a registered deed of exchange No. 9471 dated 12.12.1968. Said Mansur Ali while in possession and enjoyment of the property sold the same to the pre-emptee No. 1 by a registered deed No. 6319 dated 13.09.1986. Said Mansur Ali Kazi along with Kanku Mia by a registered deed No. 11623 dated 21.08.1988 transferred his exchanged property to pre-emptee-opposite party No. 2. Said Kanku Mia also by a registered deed No. 6333 dated 13.09.1986 transferred 01 gonda of land to opposite party No. 1, pre-emptee and delivered possession of the same to the opposite party Nos. 1 and 2. In the manner aforesaid opposite party Nos. 1 and 2 have become co-sharer in the case plot by purchase. While they have been possessing a portion of the property measuring 5 kathas, opposite party Nos. 3 and 4 Abul Hashem and Salim for need of money offered to sell the property to the pre-emptor in presence of witnesses Arfan uddin, Motaleb, Fazar Ali, Abul Khayer, Shahidullah, Mukter Hossain and others, but the pre-emptor expressed his inability to purchase the property.

Thereafter, the opposite party Nos. 1 and 2 also asked the pre-emptor to purchase the property, but he expressed inability, consequently, opposite party Nos. 3 and 4 offered to sell the property to the opposite party Nos. 1 and 2 and the pre-emptees agreed to purchase the same at the market price, consequently, opposite party Nos. 3 and 4 seller entered into two separate agreement for sale with the pre-emptees on 17.03.1989 and 23.12.1989 and delivered possession of the property to the pre-emptees. The property was a pond nature land, after getting possession of the same, the pre-emptee Nos. 1 and 2 by spending Tk. 20,000/- (Twenty thousand) got the land filled in with sand and constructed three tin shed shop house at a cost of Tk. 50,000/- (Fifty thousand) on a portion of land. On the remaining vacant land the pre-emptee planted various types of trees by spending Tk. 10,000/-. Opposite party Nos. 3 and 4 sellers after entering into agreement for sale with the opposite party Nos. 1 and 2 at a point of time delaying execution and registration of sale deed in favour of pre-emptees being instigated by the pre-emptor. Consequently, there had been several local salish and finally the salishan decided the dispute saying that the sellers shall execute and register the sale deed in favour of the pre-emptees. Consequently, as per decision of salish, the sellers opposite party

Nos. 3 and 4 executed and registered the sale deed in favour of the pre-emptees on 28.07.1996 on receipt of further amount of Tk. 30,000/- (Thirty thousand) from the pre-emptees. The opposite party Nos. 1 and 2 spent Tk. 1,50,000/- (One lac fifty thousand) for the purpose of filling up sand, plantation and construction of shop house on a part of the property.

The pre-emptor has no property surrounding the case land. The pre-emptees constructed a pucca building by the side of the case property having four storied foundation and living therein with his family. The case property is adjacent to the building of the pre-emptees. For expansion of the residential building and for ingress and outgress, the case property is necessary for the pre-emptees. The pre-emptor though aware of earlier transfers of property by his co-sharers to the pre-emptees right from 1986 did not raise any objection or claimed pre-emption of the property under the possession of pre-emptees as their residential house. The property in question is not at all necessary for the pre-emptor, but the same is lying in front of the pre-emptees building. After development of the case property price of the same being increased, the pre-emptor for illegal gain and with ulterior motive filed this case through his attorney Liakat Ali. In fact the instant case has been filed by Liakat Ali with his money in the name of

pre-emptor Abdul Jalil. The pre-emptor is not the actual petitioner, alleged attorney has filed the present case for his personal interest, as such, the case is liable to be dismissed.

The trial court framed four issues for adjudication of the matter in dispute. In course of hearing the pre-emptor examined only one witness, his attorney as Pt.W-1. On the other hand, the opposite party Nos. 1 and 2 examined three witnesses as OPWs. Both the parties submitted some documents in support of their respective claim which were duly marked as exhibits. The trial court after hearing dismissed the case.

Being aggrieved by and dissatisfied with the judgment and order of the trial court, the pre-emptor petitioner preferred Miscellaneous Appeal No. 134 of 2007 before the District Judge, Dhaka. Eventually, the appeal was transferred to the court of Additional District, Judge, 7th Court, Dhaka for hearing and disposal who after hearing by the impugned judgment and order dated 07.06.2011 allowed the appeal and reversed the judgment and order of the trial court and allowed pre-emption in favour of the pre-emptor. At this juncture, the pre-emptee, as petitioners, moved this Court by filing this revisional application under section 115(1) of the Code of Civil Procedure and obtained the present Rule and order of stay.

Mr. Md. Khurshid Alam Khan, learned Senior Advocate with Mrs. Nigar Sultana, learned Advocates appearing for the petitioners supported the judgment and order of the trial court. He submits that admittedly a portion of the case plot purchased by Provaty Kindergarten School, Mozaffar Hossain and Abu Bakkar and others, those persons have not been made party in the case, consequently, the trial court rightly held that the suit is barred by defect of parties.

He submits that attorney of pre-emptor named Liakat Ali while deposing and cross examined by the opposite parties, clearly stated that the pre-emptees now living in the country for last one year, but he did not come before the court to depose in support of his case. The attorney admitted that he used to bear all the costs of the case, he deposited all the money for filing the case of his own and he is conducting the case as of his own case. He has a market on the south-east side of the case property and clearly stated that the pre-emptor has no property surrounding the case property and also admitted that the property is also necessary for the pre-emptee opposite-party No. 1. From the statement made by attorney of the petitioner it is clear that the petitioner pre-emptor has no necessity of

the property but has filed the case through his attorney Liakat Ali for the interest of Liakat Ali himself not for the interest of the pre-emptor.

He further submits that admittedly co-sharer of pre-emptor Abdul Jalil, Kanku Mia, Mansur Kazi, Hamed Kazi earlier transferred a portion of the case plot to the opposite party Nos. 1 and 2. After purchase they constructed residential building with four storied foundation on a portion of the case plot No. 43. Knowing fully well about sale of the property by other co-sharers of the pre-emptor and purchased by opposite party Nos. 1 and 2 and possessing the same by constructing residential building, the pre-emptor did not file any case praying for pre-emption of that portion of the plot. Moreover, the instant transfer was made in the year 1989 by way of agreement for sale and after obtaining delivery of possession when the opposite parties developed the property by filling up sand, Abdul Jalil along with OPW-3 worked for filling up the sand under opposite party pre-emptees and it was within the knowledge of pre-emptor Abdul Jalil, but he did not raise any objection or expressed his willingness to purchase the property since 1989-1997. He argued that the pre-emptor right from 1986 upto 1988 was in the know of the transfers, but he knowing fully

well waived and acquiesced his right by not filing pre-emption case for transferred land of plot No. 43.

He finally submits that the trial court rightly held that the case is barred by defect of parties, waiver and acquiescence and refused pre-emption, but the appellate court while allowing the appeal did not even touch any evidences adduced by Pt.W-1 and OPWs but only saying that the power of attorney has not been cancelled by the principal and there was no acquiescence and waiver of the pre-emptor as the cause of action and right of pre-emption arose on and from the date of sale of the property, not before, as such, committed an error in the decision occasioning failure of justice. In support of his such submissions he has referred to the cases of *Bima Rani and another vs. Shantosh Chandra Dey* reported in *51 DLR (AD) 81*, *Shashikanta Roy vs. Khitish Chandra Roy and others* reported in *15 BLD 97*, *Md. Samsur Rahman and others vs. Md. Sukur Ali Khan and others* reported in *BLT (HCD) 1*, *Akhlaur Rahman and others vs. Safurullah and others* reported in *14 BLD (AD) 20*, *Jahir Ahmed vs. Nurul Islam and others* reported in *26 BLC 697*, *Shri Audh Behari Singh vs. Gajadhar Jaipuria and others* reported in *SCR*, *Janata Bank vs. Md. Bazlur Rahman and others* reported in *51*

DLR (AD) 141, Most Rokeya Begum vs. Md. Abu Zaher and others reported in *20 BLD (AD) 91, Maulana Abdul Karim vs. Nurjahan Begum and others* reported in *38 DLR 361*

Mr. Md. Abdul Alim Miah, learned Advocate appearing for the opposite party No. 1 at the very outset submits that the trial court committed an error in finding defect of parties in the case. The court itself by order No. 21 noted the fact that the pre-emptor served question upon the opposite party pre-emptees as to defect of parties, but they did not reply the question consequently, the court debarred the pre-emptees from raising question about defect of parties in future, therefore, there cannot be any question of defect of parties.

He further submits that the trial court rightly held that the case is not barred by limitation and also rightly held that the petitioner is a co-sharer by inheritance having first priority to get the property pre-empted and also held that the opposite party Nos. 1 and 2 are co-sharer by purchase, but while refusing pre-emption wrongly held that the pre-emptor is in the country, but he did not come before the court to depose in support of his case which is absolutely beyond the law as he can appoint attorney for and on his behalf to take any step or depose in support of his

case before any court of law, as such, unless the power of attorney is revoked or cancelled by the pre-emptor himself, the court cannot question the authority given by the pre-emptor to his attorney.

He further submits that admittedly the petitioner is a co-sharer by inheritance. For transfer of some portion of the plot to other purchaser including the pre-emptee Nos. 1 and 2, the instant case is not barred under the law as our apex court has decided in various cases, partial pre-emption is maintainable where the holding are separate from each other.

He finally argued that right of pre-emption is a statutory right, this cannot be taken away on the ground of waiver and acquiescence where before transfer of the property no cause of action arises. Therefore, whatever the pre-emptor acted or known about the transfer has no basis at all before sale of the property. In support of such submissions he has referred to the cases of *Fazaruddin vs. Maijuddin and others* reported in *44 DLR (AD) 62*, *Dewan Ali (Md) vs. Md. Jasimuddin and others* reported in *60 DLR (AD) 73*, *Abdul Aziz vs. Unideb (BD) Limited and others* reported in *13 LM(AD) 61*, *Syed Abdul Karim and another vs. Harendra Chandra Dhupi and others* reported in *14 DLR 847*, *Akhtarun Nessa vs. Habibullah and others* reported in *31 DLR (AD) 88*, *Sushil*

Kumr Ghosh vs. Md. Nurul Hawlader and others reported in *14 BLT (AD)69*, *Kamaruddin vs. Ataur Rahman and others* reported in *24 BLC 465*, *Karimunnessa Begum Chowdhurani and others vs. Nirranjan Chowdhury and another* reported in *43 DLR (AD) 108* and *M.A. Majid vs. Shahab Uddin and others* reported in *XX ADC 524*.

He submits that the opposite parties in their written objection as well as on oath did not utter a single word that the property was offered for sale to the petitioner or the pre-emptor was present in the alleged local salish. Rather OPW No. 1 in cross admitted that at the salish the pre-emptor was not present, therefore, the plea of waiver and acquiescence is not attracted in the instant case.

He submits that the appellate court rightly observed that the case is not barred by limitation and defect of parties and it is not barred by waiver and acquiescence as the cause of action for filing of pre-emption case arises only after registration of the sale deed. As such, the appellate court has committed no illegality or error of law in the decision occasioning failure of justice.

Heard the learned Advocates of both the sides, have gone through the revisional application under Section 115(1) of the Code of Civil

Procedure, application for pre-emption, written objection and amendment thereto, evidences both oral and documentary available in lower court records and impugned judgment and order of both the courts below.

Fact of the case need to be reproduced again, admittedly, the case Plot No. 43 under Khatian No. 38 belonged to Gafur Ullah who died leaving four sons Kanku Mia, Abdur Rashid, Abul Hashem, Mojibur Rahman and daughter Karpun Nessa. By subsequent transfer of the share of Karpun Nissa, four brothers equally inherited and owned the case plot. Among four brothers Abdur Rashid, predecessor of the pre-emptor died leaving opposite party No. 3 and the petitioner as sons, Sahara Khatun wife, who inherited the share of Abdur Rashid. Son of Abdur Rashid named Salim and his uncle Abul Hashem entered into two separate agreements for sale on 17.03.1989 and 23.12.1989 with the pre-emptee Nos. 1 and 2. From evidences led by both the parties it is found that there has been local salish as the opposite party Nos. 3 and 4 did not come forward to execute and register the sale deed in favour of pre-emptees. Following local salish they agreed to execute the sale deed on receipt of further amount of Tk. 30,000/- (Thirty thousand) from the pre-emptees and executed and registered the sale deed No. 9844 dated 28.07.1996

transferring three sataks land to the pre-emptees. Fact of salish has been admitted by Pt.W-1 and OPW-1 in cross on behalf of petitioner. It is also admitted by Pt.W-1 in his cross that the deed in question was executed and registered being influenced by local Chairman, Mozaffar Hossain.

From the evidences, it appears that the transfer in question started from 1989 and finalized in the year 1997. The property in question was a pond, the pre-emptees after getting delivery of possession filled up the same with sand and also constructed three shop houses on a portion of land. In the instant case only two question have to be decided; whether the case property is at all necessary for the pre-emptor or the pre-emptees and whether by act and conduct the pre-emptor has waived and acquiesced his right of pre-emption and whether the attorney Liakat Ali has filed the present case at his own initiative with his money to get the property pre-empted using the name of Jalal Ahmed. To appreciate and decide the questions I have gone through the evidence of Pt.W-1 Liakat Ali who is attorney of pre-emptor Abdul Jalil. Liakat Ali in cross stated that total property in Plot No. 43 is measuring 2.03 acres, out of said quantum of land, the co-sharers who are in possession of what quantum of land he cannot say. The pre-emptor Abdul Jalil now in the country for one year,

he used to bear all the costs and expenses for the case, he has filed the case by signing application for pre-emption and deposited all money in court from his own pocket. He did not inform anything about the case to Abdul Jalil since its filing, if Jalil wants to know he says that the case is going okay. I have a market on the east of the case property. Abdul Jalil is my nephew through my cousin sister, my home is four kilometer away from the case property.

He also stated that the petitioner Abdul Jalil has no property surrounding the case property and also stated that the case property is also necessary for opposite party No. 1 pre-emptee. The pre-emptee has a two storied building with four storied foundation just on the north-east of the case property. The case property situated on the west of the building of the pre-emptees on the same plot. There is a house constructed by Jhorna Akhter who is also a purchaser of the property from other co-sharer. He also admitted that no case has been filed against transfers of the property by other co-sharers to Abu Bakkar and others. Residential house of opposite party Nos. 1 and 2 is now two storied and the same is situated adjacent to the north of the case property. He also stated that he does not know whether the seller opposite party Nos. 3 and 4 further received Tk.

40,000/- (forty thousand) in excess of price for registration of the property from the pre-emptees and admitted that on the date of execution and registration of the sale deed Mozaffar Hossain Chairman was present, who compelled the sellers to execute and register the deed. All these evidences admitting the fact and circumstances and filing of the case by attorney established that the pre-emptees right from 1986 by different deeds purchased portion of the case plot from the co-sharer and constructed residential building thereon and residing with family. So the pre-emptees have become co-sharer in the case property by purchase and nobody including the petitioner himself did not raise any objection or file any case for pre-emption. Moreover, evidences established that the case property is not at all adjacent to the property of the pre-emptor and necessary for him, but it is necessary for the pre-emptees.

It is not denied that the plot contain 2.03 acres of land out of which original owner Gafur Ullah during his life time sold out 17 sataks of 10 gondas of land by a registered deed No. 4071 dated 28.10.1944 to one Samed Ali who died leaving only daughter and full brother Hamed Ali. Hamed Ali exchanged his share with his step brother Mansur Ali by a deed of exchange No. 9471 dated 12.12.1968. Thereafter, Monsur Ali and

Kanku Mia, uncle of pre-emptor sold one gonda land to opposite party No. 1 Nazrul Islam by registered deed No. 11623 dated 21.08.1988. Again Mansur Ali Kazi transferred half gonda land to opposite party No. 1 by deed No. 6319 dated 13.09.1986. Said Kanku Mia transferred one gonda land to opposite party No. 2 Nazma Akhter by deed No. 6333 dated 13.09.1986 and by way of purchase opposite party Nos. 1 and 2 acquired a portion of the property under Plot No. 43 and by the disputed deed they also purchased three sataks of land from Abul Hashem and Md. Salim. All the transactions whatever made in between pre-emptees and other co-sharer of the pre-emptor covered by same Plot No. 43. Evidences led by both the parties established that the pre-emptees after purchase got the land developed, constructed residential building and constructed three tin shed shops on the case property. Since 1986 the pre-emptees are in continuous possession and enjoyment of the part of the plot No. 43 which is obviously well known to the pre-emptor, but he did not even raised objection or wanted to pre-empt the property already transferred by Mansur Ali Kazi, Kanku Mia, Hamed Kazi to the petitioner and also two other persons.

Apart from this after execution and registration of the deed under pre-emption mother of pre-emptor named Sahara Khatun by a registered deed No. 10226 dated 05.08.1996 transferred his share to one Azimun Nessa. Before that Kanku Mia also transferred some of the property to Jhorna Akhter by registered deed No. 4023 dated 12.04.1994. All those five deeds was executed and registered right from 1986 to 1996, but the petitioner did not feel aggrieved for transfer of such property by different deeds to the pre-emptees, Jhorna Akhter and Azimun Nessa. He feels aggrieved for transfer of three sataks land to the pre-emptees by deed No. 9844 dated 28.07.1996. Where other transfers and purchase of the property by the pre-emptee has not caused any inconvenience to the petitioner, I failed to understand why and how transfer of this small piece of three sataks land has caused inconvenience to the pre-emptor who has no property surrounding the case land.

Mr. Alim tried to impress upon the court by referring cases of *Karimunnessa Begum Chowdhurani and others vs. Niranjan Chowdhury and another* reported in *43 DLR (AD) 108*, *Fazaruddin vs. Maijuddin and others* reported in *44 DLR (AD) 62* and *Akhtarun Nessa vs. Habibullah and others* reported in *31 DLR (AD) 88*, submitting that

because of non filing of any pre-emption case seeking pre-emption for portion of the property transferred by other co-sharers right from 1986-1996 will not defeat the case of the present pre-emptor as partial pre-emption is allowed by law as has been decided in the cases referred above. To appreciate the submissions of the learned Advocate for the opposite party, I have gone through those decisions. In the case reported in *43 DLR (AD) 108* the property transferred by the co-sharer comprising five holdings by a single sale deed and consideration money of each holding was shown separately. Out of five holdings the petitioner sought pre-emption for four holdings by depositing the consideration money for the same. The court allowed the pre-emption holding that out of five holding the pre-emptor can seek pre-emption for four holdings, as the holding are separate from each other.

In the instant case, the holding is same, the plot is same and the property transferred by other co-sharers earlier to the pre-emptees from the same plot. All those transfers made between 1986-1996 was not under pre-emption by any of the co-sharer including the present pre-emptor, but only the instant sale deed of the year 1996 has been sought pre-empted by the petitioner leaving all those earlier transfers made to the pre-emptees.

In the cases report in *44 DLR (AD) 62* and *31 DLR (AD) 88* the pre-emptor prayed for pre-emption of the properties as contiguous owner of the land, where he claimed some plots leaving other plots which are not adjacent to his property and in those cases the court allowed pre-emption as contiguous owner, not owner in the plot by way of inheritance. Where the plots are different, holding are different, the court can allow pre-emption for a separate holding leaving other holdings which has independent valuation and consideration separately, but in the present case the plot is same and portion of the plot transferred by other co-sharer to other persons including the pre-emptees of the instant case. Therefore, the case of the petitioner is well barred by principle of waiver and acquiescence and this is not a case of partial pre-emption, but it is a case of waiver and acquiescence as earlier transfers by the co-sharer has not been challenged or no pre-emption has been sought for by the petitioner, meaning thereby, the petitioner pre-emptor has given a go bye to earlier transfers which was purchased by the pre-emptees and have become co-sharer by purchase in the case plot.

Finally, it appears that Pt.W-1 is an attorney of pre-emptor petitioner who on his own motion voluntarily admitted in evidence that

the case has been filed by the attorney duly appointed by the petitioner, when he was living in Saudia Arabia. Subsequently, the petitioner came in country and when he was deposing the petitioner was living in the country. He admitted that the case has been filed with his money, he deposited the money from his own pocket and now he is the person who is pursuing the case and he does not know whether the original petitioner is at all in the know of position of the case now and he told that the property under pre-emption is necessary for him as he has a market just north-east of the case property and also said that the pre-emptor has no property surrounding the case property and the property is also necessary for the pre-emptees.

Now the question has come when the opposite party as purchaser of some other property under same plot constructed a residential house and living therein and caused no inconvenience for the petitioner, for purchase of the case property subsequently from co-sharer of the petitioner how has created inconvenience to the pre-emptor. All these facts and circumstances amply established that the petitioner right from 1986 to till today waived and acquiesced his right of pre-emption by admitting the pre-emptees as co-sharer by purchase from other co-sharer

as well as allowing him to reside on a portion of the plot by constructing residential building. The appellate court while allowing the appeal and pre-emption in favour of the petitioner, failed to consider and notice the fact in its entirety and in a very slip shod manner without adverting and controverting the evidences led by the parties and discussed by the trial court allowed the appeal, as such, I find that the appellate court has committed error of law in the decision occasioning failure of justice.

Taking into consideration the above, I find merit in the Rule as well as in the submissions of the learned Advocate for the petitioners.

In the result, the Rule is made absolute, however, without any order as to costs.

The judgment and order of the appellate court is hereby set aside and the judgment and order of the trial court is hereby restored.

The order of stay granted at the time of issuance of the Rule stands vacated.

Communicate a copy of this judgment to the court concerned and send down the lower court records at once.