



Case Summary:From

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Case Summary:

Revision

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1. Yeamin Nobi (Md) and others vs Moklesur Rahman and others (Civil), 67 DLR 281 [cite: cpc 2_20251022.txt]
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Case Brief 1: Revision

Siddique Mia vs. Md Idris Miah and others 60 DLR 20

Abstract

This case, decided by the High Court Division on January 28, 2007, addresses the principle of finality in interlocutory matters and the limits of judicial discretion in allowing amendments to pleadings. The dispute arose when a defendant, after having his first application to amend his written statement rejected by the trial court, filed a second, identical application instead of challenging the first rejection in a higher forum. The trial court also rejected the second application, but the District Judge, in revision, allowed it. The High Court Division set aside the District Judge's order, ruling that a matter decided at one stage of a suit cannot be re-agitated at a subsequent stage in the same court. The judgment reinforces that filing a successive, identical application is an abuse of the court's process and that the principle of finality, akin to *res judicata*, applies to different stages within the same litigation. The Court affirmed that revisional interference is only justified when there is an error of law that has caused a failure of justice, which was found in the District Judge's decision.

1. Court and Judges

- **Court:** High Court Division (Civil Revisional Jurisdiction).
- **Judges:** Siddiqur Rahman Miah, J. and Md Rezaul Haque, J.
- **Judgment Date:** January 28, 2007.

2. Parties

- **Petitioner:** Siddique Mia (Original Plaintiff).
- **Opposite Parties:** Md Idris Miah and others (Original Defendants).

3. Key Legal Provisions

- **Code of Civil Procedure (V of 1908):**
 - **Section 10:** Stay of suit, aimed at preventing multiplicity of proceedings.
 - **Section 115(4):** Revisional jurisdiction of the High Court Division.
 - **Order VI, rule 17:** Amendment of pleadings.
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- **Legal Principle:** The principle of finality (or *res judicata* between stages of the same suit), which prevents a party from re-agitating an issue that has already been decided at an earlier stage of the litigation.

4. Facts of the Case

- The petitioner, Siddique Mia, filed Title Suit No. 27 of 2000 for a declaration of title.
- During the trial, after the examination of a plaintiff's witness (PW1), Defendant No. 5 filed an application under Order VI, rule 17 to amend the written statement.
- The trial court (Joint District Judge) rejected this application on July 24, 2003, finding the proposed amendment irrelevant and contradictory to the original written statement.
- Defendant No. 5 did not challenge this rejection order in a higher court. Instead, on August 18, 2004, he filed a second, identical application for amendment.
- The trial court again rejected this second application on October 11, 2004, on the grounds that it was not maintainable as the prior rejection had not been challenged.
- Defendant No. 5 then filed Civil Revision No. 3 of 2005 before the District Judge against the *second* rejection order. The District Judge allowed the revision on April 27, 2005, and permitted the amendment.
- The original plaintiff challenged the District Judge's order by filing the present revision application before the High Court Division.

5. Issues

- Whether a party can file a second application for amendment with the same content after the first application was rejected and the rejection order was not challenged in a higher court.
- Whether the District Judge committed an error of law by allowing the revision and permitting the amendment, thereby overlooking the principle of finality.

- Whether the proposed amendment was necessary for determining the real questions in controversy between the parties.

6. Arguments

- **Petitioner's Argument:** The District Judge erred in law by allowing the revision. The defendant's second application was barred, as an issue decided at one stage of litigation cannot be re-agitated later. The principle of finality was violated.
- **Opposite Parties' Argument:** No one appeared for the opposite parties.

7. Court's Findings

- The High Court Division found that the defendant's course of action was improper. After the first amendment application was rejected, the correct legal remedy was to challenge that order in a revisional court. Filing a second, identical application in the same court was an abuse of process.
- The Court applied the principle that an issue decided at one stage of a litigation cannot be re-canvassed at a subsequent stage in the same suit. This principle, similar to *res judicata*, aims to achieve finality, prevent multiplicity of proceedings, and avoid conflicting decisions.
- The learned District Judge committed a clear error of law by failing to consider that the defendant had not challenged the first rejection order and by simply holding that an amendment can be allowed at any stage without examining the merits or the procedural bar.
- The High Court Division agreed with the trial court's original finding that the proposed amendment was contradictory to the written statement and not necessary for resolving the real controversy.
- The two conditions for exercising revisional jurisdiction under Section 115 were met: there was an error of law in the District Judge's decision, and this error occasioned a failure of justice.

8. Decision

- The Rule was made absolute.
- The impugned judgment and order of the District Judge dated April 27, 2005, were set aside.
- The order of the trial court (Joint District Judge) dated October 11, 2004, rejecting the second amendment application, was affirmed.

9. Significance

- This case reinforces the crucial principle of "res judicata between stages" or finality in interlocutory matters within the same lawsuit.
 - It clarifies that a party cannot repeatedly file identical applications hoping for a different outcome from the same court. The proper recourse is to appeal or revise the initial order of rejection.
 - The judgment serves as a guard against procedural abuse and multiplicity of applications that can delay the trial process.
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Case Brief 2: Revision

Syed Mayeenul Huq vs. M.A. Razzaque and others 60 DLR 704

Abstract

This decision by the High Court Division, delivered on February 25, 2008, clarifies the scope of a District Judge's pecuniary jurisdiction to hear revisions under Section 115(2) of the Code of Civil Procedure. The case arose when a District Judge admitted a revision application against an interlocutory order in a suit valued at Taka 60,00,000, which far exceeded the District Judge's appellate pecuniary limit of Taka 5,00,000. Citing a binding precedent from a Full Bench decision, the High Court Division held that a District Judge's revisional jurisdiction under Section 115(2) is not unlimited. Instead, it is co-extensive with their appellate pecuniary jurisdiction, which is determined by the valuation of the original suit. As the suit value exceeded this limit, the District Judge had no jurisdiction to entertain the revision. The judgment is a significant affirmation of the doctrine of precedent (*stare decisis*) and establishes a clear rule for determining the proper forum for civil revisions based on suit valuation.

1. Court and Judges

- **Court:** High Court Division (Civil Revisional Jurisdiction).
- **Judges:** M.A. Wahhab Miah, J. and Afzal Hossain Ahmed, J.
- **Judgment Date:** February 25, 2008.

2. Parties

- **Petitioner:** Syed Mayeenul Huq (Original Plaintiff).
- **Opposite Parties:** M.A. Razzaque and others (Original Defendants).

3. Key Legal Provisions

- **Code of Civil Procedure (V of 1908):**
 - **Section 115(2):** Confers revisional jurisdiction upon the District Judge over orders of subordinate courts from which no appeal lies.
- **Suits Valuation Act (VII of 1887):**
 - **Sections 8 and 11:** Relate to the valuation of suits to determine the jurisdiction of courts.

4. Facts of the Case

- A Title Suit, valued at Taka 60,00,000, was pending in the Court of the Joint District Judge, Dhaka.
- The Joint District Judge passed an interlocutory order on February 27, 2006, which, among other things, rejected the defendant's prayer for dismissal of the suit.
- The defendant-opposite party filed Civil Revision No. 136 of 2006 before the District Judge, Dhaka, challenging this order under Section 115(2) of the CPC.
- On April 3, 2006, the District Judge admitted the revision for hearing and issued an interim order staying all further proceedings in the title suit.
- The plaintiff-petitioner challenged the District Judge's order by filing the present revision application in the High Court Division, arguing that the District Judge lacked pecuniary jurisdiction to entertain the revision.

5. Issue

- Whether a District Judge has unlimited pecuniary jurisdiction to entertain a revision application under Section 115(2) of the CPC, or whether this jurisdiction is limited by the

value of the original suit and co-extensive with the District Judge's appellate pecuniary jurisdiction.

6. Arguments

- **Petitioner's Argument:** The value of the suit (Taka 60,00,000) exceeds the District Judge's appellate pecuniary jurisdiction (Taka 5,00,000). Citing the Full Bench decision in *AHM Khurshed Ali vs Md Hashem Ali* (58 DLR 211), the petitioner argued that the District Judge's revisional jurisdiction is tied to their appellate jurisdiction, and therefore, the District Judge had no jurisdiction to entertain the revision.
- **Opposite Party's Argument:** Section 115(2) grants the District Judge unlimited pecuniary jurisdiction for revisions. The principles of suit valuation apply to suits and appeals, not to independent revision applications. The Full Bench decision in *AHM Khurshed Ali* was not correctly decided and should not be relied upon.

7. Court's Findings

- The High Court Division held that it was bound by the decision of the larger Full Bench in the case of *AHM Khurshed Ali vs Md Hashem Ali*.
- The Full Bench had conclusively decided the exact same legal question, ruling that:
 1. The pecuniary jurisdiction of a District Judge under Section 115(2) is **not** unlimited.
 2. The revisional forum is determined by the valuation of the original suit, just as the appellate forum is. The revisional jurisdiction is therefore co-extensive with the appellate jurisdiction.
 3. The High Court Division retains revisional power under Section 115(1) for suits valued above the District Judge's pecuniary limit (Taka 5 lac).
- The Court explicitly rejected the opposite party's argument that the Full Bench precedent could be ignored, stating that to do so would lead to "judicial anarchy." A Division Bench is bound by the decision of a Full Bench.

- Since the value of the suit (Taka 60,00,000) was far beyond the District Judge's appellate pecuniary jurisdiction of Taka 5,00,000, the District Judge had committed a clear error of law by entertaining the revision.

8. Decision

- The Rule was made absolute.
- The impugned order of the District Judge, Dhaka, admitting the revision and staying the suit proceedings, was set aside.

9. Significance

- The judgment is a strong affirmation of the principle of *stare decisis* (judicial precedent), confirming that lower benches are bound by the rulings of larger benches.
 - It definitively clarifies that the pecuniary jurisdiction for civil revisions filed before a District Judge under Section 115(2) is determined by the valuation of the original suit and is limited to the court's appellate pecuniary jurisdiction.
 - It protects the hierarchical structure of the judiciary by ensuring that high-value cases are revised by the High Court Division, as intended by the legislative framework.
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Case Brief 3: Inherent Power

East West Property Development Private Limited and others vs. Md Akrab Ali

74 DLR 101

Abstract

This case, decided by the High Court Division on October 21, 2021, addresses the court's discretion to use its inherent power under Section 151 of the Code of Civil Procedure to condone delays in procedural matters. The issue arose when plaintiffs failed to amend their plaint within the 14-day period mandated by Order VI, rule 18. The trial court, instead of debarring the amendment, exercised its inherent jurisdiction to extend the time, imposing a cost on the plaintiffs. This decision was upheld by the lower revisional court (Additional District Judge). In a second revision before the High Court Division, the Court held that the trial court did not commit any illegality. It ruled that in an appropriate case, a court may use its inherent power to allow an amendment beyond the prescribed time limit to serve the ends of justice. The judgment also highlights the limited scope of a second revision under Section 115(4), which can only be invoked to correct an error on an important question of law that has resulted in a failure of justice.

1. Court and Judges

- **Court:** High Court Division (Civil Revisional Jurisdiction).
- **Judge:** Sheikh Abdul Awal, J.
- **Judgment Date:** October 21, 2021.

2. Parties

- **Petitioners:** East West Property Development Private Limited and others (Defendants).

- **Opposite Parties:** Md Akrab Ali (now deceased, represented by legal heirs) and others (Plaintiffs).

3. Key Legal Provisions

- **Code of Civil Procedure (V of 1908):**
 - **Section 151:** Inherent power of the court to make orders necessary for the ends of justice or to prevent abuse of the process of the court.
 - **Order VI, rule 18:** Mandates that if a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose, or if no time is limited then within fourteen days, he shall not be permitted to amend after the expiration of such period.
 - **Section 115(4):** Jurisdiction for a second revision before the High Court Division.

4. Facts of the Case

- The plaintiff-opposite parties filed Title Suit No. 122 of 2009 for a permanent injunction.
- During the suit, the plaintiffs' application to add a new plaintiff (No. 13) was allowed.
- However, the plaintiffs failed to carry out the necessary amendment to the plaint within the 14-day period prescribed by Order VI, rule 18.
- The defendant-petitioners then filed an application under Order VI, rule 18, asking the court to debar the plaintiffs from making the amendment due to the delay.
- The trial court (Senior Assistant Judge) rejected the defendants' application. Instead, it exercised its inherent jurisdiction under Section 151 to allow the plaintiffs to amend the plaint beyond the 14-day limit, subject to a cost of Taka 1,000.
- The defendants challenged this order by filing a revision before the District Judge, which was heard by the Additional District Judge. The revisional court affirmed the trial court's order.
- The defendants then filed this second revision application before the High Court Division under Section 115(4).

5. Issues

- Whether a trial court can exercise its inherent power under Section 151 to extend the time for amending a plaint, even when the time limit prescribed by Order VI, rule 18 has expired.

- Whether the lower revisional court committed an error of law occasioning a failure of justice by affirming the trial court's discretionary order.

6. Arguments


- **Petitioners' (Defendants') Argument:** The courts below acted illegally by not debarring the amendment. The time limit in Order VI, rule 18 is mandatory, and since the amendment was not made in time, the plaintiffs lost their right to do so.
- **Opposite Parties' (Plaintiffs') Argument:** The courts below acted correctly and justly. The delay was not intentional, and the court has the discretion to extend the time to ensure the real controversy is adjudicated.

7. Court's Findings

- The High Court Division found that the trial court had exercised its discretion properly. While Order VI, rule 18 sets a time limit, it does not oust the court's inherent power under Section 151.
- The Court explicitly held: "In an appropriate case the Court may in exercise of its inherent jurisdiction be able to allow the prayer to amend the plaint beyond the prescribed time-limit."
- The trial court's decision to extend the time upon payment of costs was a just exercise of discretion to prevent a procedural lapse from defeating the substantive rights of the plaintiffs.
- The lower revisional court (Additional District Judge) correctly found no illegality in the trial court's order.
- Furthermore, the scope of a second revision under Section 115(4) is very limited. The High Court Division can only interfere if the first revisional court committed an error on an "important question of law resulting in erroneous decision occasioning failure of justice." In this case, no such error was found.

8. Decision

- The Rule was discharged.

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- The order of stay granted earlier was vacated.
 - The trial court was directed to proceed with the suit expeditiously.

9. Significance

- The judgment clarifies that procedural rules with strict time limits, like Order VI, rule 18, are not absolute and can be relaxed by the court's inherent power under Section 151 to meet the ends of justice.
 - It affirms that procedural rules are the handmaidens of justice and should not be used to punish a party for a minor, non-prejudicial delay, especially when compensation through costs is possible.
 - The case also reinforces the very narrow and specific grounds for a second revision before the High Court Division.
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Case Brief 4: Appeal

Yeamin Nobi (Md) and others vs. Moklesur Rahman and others 67 DLR 281

Abstract

This First Miscellaneous Appeal, decided by the High Court Division on December 11, 2015, addresses legal principles surrounding pre-emption under Section 4 of the Partition Act, particularly the issue of limitation and the conduct of the pre-emptor. The trial court had dismissed a pre-emption case, finding it barred by limitation and that the property was not part of an undivided family dwelling. The High Court Division, in appeal, agreed with the appellants that, according to established law, there is no time limit for filing a pre-emption application under Section 4. However, the Court ultimately dismissed the appeal on other grounds. It found that the pre-emptor had himself sold portions of his share to strangers, undermining his claim that he needed the land as part of a dwelling house. Crucially, the Court also refused to remand the case for a fresh trial, holding that after a lapse of 16-17 years, giving the parties an opportunity to add further evidence would not improve the case's outcome and would only prolong litigation.

1. Court and Judges

- **Court:** High Court Division (Civil Appellate Jurisdiction).
- **Judge:** Sheikh Abdul Awal, J.
- **Judgment Date:** December 11, 2015.

2. Parties

- **Appellants:** Yeamin Nobi (Md) and others (Original Pre-emptors).
- **Respondents:** Moklesur Rahman and others (Original Purchasers/Opposite Parties).

3. Key Legal Provisions

- **Partition Act, 1893:**
 - **Section 4:** Gives a co-sharer in an undivided dwelling house the right to buy the share of another co-sharer that has been sold to a stranger.
- **Code of Civil Procedure (V of 1908):**
 - **Section 107 read with Order XLI, rule 23:** Powers of the appellate court, including the power to remand.
- **Limitation Act, 1908:** Article 180 (related to limitation, which the court found inapplicable).

4. Facts of the Case

- Two brothers, Yeamin Nobi (appellants' predecessor) and Rezaun Nobi (respondents' predecessor), owned an undivided property.
- Rezaun Nobi filed a partition suit and obtained a preliminary decree in 1980.
- While an appeal against the preliminary decree was pending, Rezaun Nobi sold his 50% undivided share to strangers (the respondents) through six different sale deeds in 1982.
- In 1989, Yeamin Nobi filed a Miscellaneous Case under Section 4 of the Partition Act to pre-empt the sales.
- The trial court dismissed the pre-emption case on May 17, 1998, on three main grounds:
 1. The property was not an undivided family dwelling, as the brothers had separate municipal holdings.
 2. The case was barred by limitation, having been filed 6-7 years after the sales, beyond the 3-year period presumed by the court.
 3. The pre-emption petition did not include a schedule of the land.
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- The pre-emptor's heirs filed this First Miscellaneous Appeal against the dismissal.

5. Issues

- Whether a pre-emption case under Section 4 of the Partition Act is subject to a limitation period.
- Whether the pre-emptor's claim was valid, considering he had also sold parts of his own share to strangers.
- Whether the case should be remanded for a fresh trial after a lapse of 16-17 years.

6. Arguments

- **Appellants' (Pre-emptors') Arguments:** The trial court erred in law by applying a limitation period, as precedents from the Appellate Division and other superior courts clearly state there is no time limit for an application under Section 4 of the Partition Act. The failure to include a schedule was an inadvertent mistake of the lawyer and should not penalize the litigant.
- **Respondents' (Purchasers') Arguments:** The trial court correctly dismissed the case. The property was already functionally divided. The pre-emptor did not come with "clean hands" as he himself had sold land to strangers, which contradicts his claim of needing the property for his dwelling house.

7. Court's Findings

- **On Limitation:** The High Court Division agreed with the appellants on the point of law. Citing precedents like *Syesta Bibi vs Juma Sha* (1 BLT AD 34), the Court held that "there is no time limit for filing an application under section 4 of the Partition Act." Therefore, the trial court's finding that the case was barred by limitation was erroneous.
- **On the Conduct of the Pre-emptor:** The Court found strong evidence (sale deeds) showing that the pre-emptor, Yeamin Nobi, had himself transferred part of his land from the same property to third-party strangers. The Court concluded that "it does not lie in the mouth of the pre-emptor petitioner that the land in question is a part of a dwelling house

of an undivided family or he needs more land badly." This action undermined the very basis of his pre-emption claim.

- **On Remand:** The appellants' lawyer requested that the case be sent back on remand for a fresh trial. The Court explicitly rejected this request, stating: "if after long lapse of 16/17 years the case is remanded to the trial Court below for deciding afresh in giving opportunity to the parties to add further evidence that will not improve the ultimate result of the case." The Court held that law helps the vigilant, not the indolent, noting the appellants waited over 16 years before even trying to amend the petition to include the schedule.

8. Decision

- The appeal was dismissed.
- The trial court's order disallowing the pre-emption case was upheld, though for different primary reasons than those given by the trial court (specifically, the pre-emptor's own conduct and the futility of a remand).

9. Significance

- The judgment reaffirms the established legal principle that there is no limitation period for filing a pre-emption case under Section 4 of the Partition Act.
 - It highlights that pre-emption is an equitable right, and the court will examine the conduct of the person seeking it. A pre-emptor who has himself sold property to strangers may lose their right to pre-empt.
 - It provides important guidance on the appellate power of remand, indicating that courts will not order a fresh trial after an inordinate delay (e.g., 16-17 years) if it is unlikely to change the outcome and would perpetuate litigation.
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Case Brief 5: Appeal

SMA Razzaque vs. Artha Rin Adalat 72 DLR 803

Abstract

This case, decided by the High Court Division's Special Original Jurisdiction, reinforces a fundamental legal principle regarding the finality of appellate court decisions, known as the doctrine of merger. The Court held that once a decree passed by a lower court is challenged and subsequently modified by a court of appeal, the original decree legally merges into the new, modified decree of the appellate court. Consequently, the lower court that issued the original decree loses all jurisdiction to interfere with or alter the matter further. The judgment declares that any action taken by the lower court subsequent to the appellate court's modification is "absolutely void." This case is significant for upholding the hierarchical structure of the judiciary and ensuring that the decisions of higher courts are final and binding on subordinate courts.

1. Court and Judges

- **Court:** High Court Division (Special Original Jurisdiction).
- **Judges:** Not specified in the provided text.
- **Judgment Date:** Not specified, but reported in 2020.

2. Parties

- **Petitioner:** SMA Razzaque.

- **Respondent:** Artha Rin Adalat.

3. Key Legal Provisions

- **Code of Civil Procedure (V of 1908):**
 - **Section 2(2):** Definition of "Decree."
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- **Legal Principle:** The Doctrine of Merger, which establishes that upon an appeal, the decision of the lower court merges with the decision of the appellate court, making the latter the only operative and enforceable decision.

4. Facts of the Case

- (Inferred from the decision) An Artha Rin Adalat (a special court for loan recovery) passed an original decree in a suit.
- This decree was challenged in an appeal.
- The appellate court modified the original decree.
- Subsequently, the lower court (the Artha Rin Adalat) attempted to interfere with or alter the decree that had already been modified by the appellate court.
- The petitioner challenged this subsequent interference by the lower court in the High Court Division.

5. Issue

- Whether a lower court has the jurisdiction to interfere with or modify a decree after that decree has been modified by a superior appellate court.

6. Arguments

- (Not specified in the text, but the petitioner's argument would have been that the lower court acted without jurisdiction).

7. Court's Findings

- The High Court Division stated it is a "settled principle of laws that once a decree has been modified by the Court of appeal there cannot be a subsequent interference by the court below."
- The Court applied the **doctrine of merger**, explaining that the original decree had "merged in the decision of the trial court" (a likely typo, meaning the *appellate court*).
- Once this merger occurs, the lower court becomes *functus officio* (its function is discharged), and it has no authority to alter the operative decree.
- The Court concluded that "anything done subsequent to that [the appellate modification] would be absolutely void."

8. Decision

- The subsequent interference by the lower Artha Rin Adalat was declared void and without legal effect.

9. Significance

- This case provides a clear affirmation of the doctrine of merger in the context of decrees modified on appeal.
- It reinforces the finality of appellate decisions and the strict hierarchical nature of the judicial system, preventing lower courts from undermining the authority of superior courts.
- The ruling ensures consistency and predictability in the enforcement of decrees, as it clarifies that only the final, appellate-level decree is operative.

