

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

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

Civil Revision No. 3387 of 2019

IN THE MATTER OF:

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

And

IN THE MATTER OF:

Eagle Box Carton Manufacturing Company
Limited.

... Petitioner

(Defendant No.1 in Money Suit No.33
of 2009 and Plaintiff in Title Suit No.
129 of 2010).

-Versus-

Bangladesh, represented by the Secretary, Ministry
of Industries and others

... Opposite Parties

(Plaintiffs in Money Suit No.33 of 2009
and defendants in Title Suit No.129 of 2010).

Mr. Muhammad Riaz Uddin, Advocate

--- For the petitioner.

Mr. S.M. Shakhawat Hossain, Advocate

--- For the Opposite Party No.2.

Mr. Rafiqul Islam Montu, DAG with

Mr. Mohammad Shafiqur Rahman, DAG with

Mr. Sheikh Mohammad Faizul Islam AAG with

Mr. Md. Mizanur Rahman, AAG with

Mr. Md. Ershad Hossain (Rashed), AAG with

Mr. Md. Husni Mubarak (Rocky), AAGs

--- For the Opposite Party No.1

Heard on 04.09.2024
Judgment on: 05.09.2024

Md. Bashir Ullah, J

At the instance of defendant No.1 in Money Suit No. 33 of 2009, this Rule was issued calling upon the opposite parties to show cause as to why the judgment and order dated 26.08.2019 passed by the learned District Judge, Dhaka in Transfer Miscellaneous Case No. 362 of 2019 rejecting an application filed under section 24 of the Code of Civil Procedure for analogous hearing of Money Suit No. 33 of 2009, pending before the Joint District Judge, 4th Court, Dhaka with Title Suit No.129 of 2010 pending before the Joint District Judge, 5th Court, Dhaka should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

At the time of the issuance of the Rule, the proceedings of the Money Suit No.33 of 2009, pending before the 4th Joint District Judge, Dhaka and Title Suit No. 129 of 2010 pending before the 5th Joint District Judge, Dhaka were stayed by this Court for a period of 06 (six) months and the same was subsequently extended from time to time and it was lastly extended on 23.09.2021 for another 06 (six) months but no further extension was taken.

The salient facts, leading to issuance of the instant Rule are:

The opposite Parties, as Plaintiffs, instituted the Money Suit No. 33 of 2009 in the Court of 4th Joint District Judge, Dhaka against the defendant-present Petitioner for recovery of TK 35,78,97,032/- with interest thereon seeking the following reliefs:

- a) a decree against the defendants for Tk. 15,62,78,729/- as on 31.07.2009 with interest at the rate of 13.50% from 01.08.2009 payable to Government of the People's Republic of Bangladesh, the plaintiff No.1.
- b) a decree against the defendants for Tk. 20,16,18,303/- as on 31.07.2009 with interest at the rate of 13.50% from 01.08.2009 payable to BCIC, the plaintiff No.2.
- c) a decree in favour of the plaintiffs against the defendants for making payment of the aforesaid amount within a specific period of time, failing which the plaintiffs will be entitled to realize the decretal amount with interest by selling movable and immovable properties of the defendants through Court.
- d) cost of the suit.
- e) any other relief or reliefs which the defendants are entitled in law and equity.

The case of the plaintiffs-opposite parties as stated in Money Suit No. 33 of 2009 in brief is that the plaintiff No. 1 is the Government of the People's Republic of Bangladesh, represented by the Secretary, Ministry of Industries (briefly 'GOB'). The plaintiff No. 2 is the Bangladesh Chemical Industries Corporation (briefly 'BCIC'). The defendant No. 1 namely, the Eagle Box Cartoon Manufacturing

Company Ltd. ("Eagle Box") is a public company limited by shares incorporated under the Companies Act, 1913 and was set up in 1959. After independence, it became an abandoned concern and the Government of Bangladesh took over under P.O.No. 27 of 1972. Subsequently, it was placed under the management of "BCIC". All its shares were owned and held by GOB and BCIC.

In 1988, a prospectus was issued for sale of 49% share of GOB/BCIC in Eagle Box to the public including the workers. Before it, the assets and the increased value were shown as Quasi Equity Loans, which were disclosed and shown in the prospectus. It was the appreciated value of the assets and properties and it was due to GOB from Eagle Box. GOB could realize it from Eagle Box at the time of public offer but considering the financial status it was not so realized, and hence, remained due.

BCIC continued to manage Eagle Box and as such it did not demand/charge interest on the said Quasi Equity Loan. In 1993, GOB decided to sell its remaining 51% share in Eagle Box by floating a tender. In the tender schedule, the Quasi Equity Loan was mentioned as payable with 13.5 % interest per annum. The decision to charge 13.5 % interest for Quasi Equity Loan was taken in an EGM. The purchaser purchased the said 51% shares in terms of an agreement. It was one of the conditions of sale that Company would repay the Quasi Equity Loan by issuing of debentures with 13.5% interest per annum. For repayment of the value of debentures with interest a Trust Deed was

signed and executed by defendant No. 1. A sale deed was also executed on 3.8.93.

Accordingly, Eagle Box issued two series of debentures; one series of debentures in favour of GOB being Nos. 01-5253 i.e. 5253 valued at Tk. 5,25,30,000/- (Taka five crore twenty five lac thirty thousand) in respect of Quasi-Equity Loan and another series of debentures to BCIC in respect of the BCIC's dues being Nos. 5254-12030 i.e. 6777 debentures valuing Tk. 6,77,70,000/- (Taka six crore seventy seven lac seventy thousand). Interest is applicable at the rate of 13.5% per annum. Dues of GOB stood Tk. 15,62,78,729/- and dues of BCIC stood Tk.20,16,18,303/- with interest as on 31.07.2009.

The defendants are obliged to pay a total amount of Tk. 35,78,97,032/- as on 31.07.2009 and it was decided by judgment and order dated 17.05.2009 by the Appellate Division in Civil Appeal No.172 of 2000. The plaintiff served legal notice upon the defendants on 23.08.2009 but the defendants kept silent.

The defendants kept on avoiding payment for making illegal gain with an ulterior motive though they are obliged to make payment of their admitted liability and having no other alternative remedy they have compelled to file the money suit.

On the other hand, the petitioner as plaintiff instituted Title Suit No. 129 of 2010 in the Court of 5th Joint District Judge, Dhaka impleading, the opposite parties as defendants seeking the following reliefs:

a) Pass a decree in favour of the Plaintiff and against the Defendants declaring that the Trust Deed being No. 8978 dated 14.12.1994 made between the Plaintiff Company and the named trustees therein and the Debentures issued by the Plaintiff Company in favour of the Defendant No.1, Government of Bangladesh represented by the Secretary, Ministry of Industries being Nos. 01-5253 and the Debentures issued by the Plaintiff Company in favour of the Defendant No.2, Bangladesh Chemical Industries Corporation being Nos. 5254-12030 respectively, are illegal and void and the Defendants have no legal or other right to rely upon the said instruments.

b) Pass a decree in favour of the Plaintiff and against the Defendants ordering that the Trust Deed being No.8978 dated 14.12.1994 made between the Plaintiff Company and the named trustees therein and the Debentures issued by the Plaintiff Company in favour of the Defendant No.1, Government of Bangladesh represented by the Secretary, Ministry of Industries being Nos. 01-5253 and the Debentures issued by the Plaintiff Company in favour of the Defendant No.2, Bangladesh Chemical Industries Corporation being

Nos.5254-12030 respectively be delivered up to the Court by the Defendants and be cancelled.

c) Pass a decree ordering the Defendant No.4, Sub-Registrar, Demra, Dhaka to cancel the registration of the Trust Deed being No. 8978 dated 14.12.1994 made between the Plaintiff Company and certain named trustees therein.

d) A decree in the sum of Tk. 10, 00,000/-(Taka ten lac only) against the Second Defendant as being due after adjustment of the BCIC dues.

e) Interest on Tk. 10,00,000/- at the rate of 10% from 12 December 1992 to the date of filing this suit and thereafter interest as *litem* and after judgment in this suit interest until payment.

f) A decree directing the Defendants to pay the costs incurred by the Plaintiff on a full indemnity basis.

g) Any further or other relief or remedies as the learned Court may deem appropriate.

The case of the plaintiffs in Title Suit No.129 of 2010 is that:

A Trust Deed dated 14.12.1994 was executed by Eagle Box with the Trustees named therein and the nominated Directors of the Government of Bangladesh (briefly GOB). By the Trust Deed, the GOB secured the debentures over the property, undertaking and assets of Eagle Box. On 15.12.1994, 51% shares were transferred to the purchaser by a Sale Deed. The GOB, therefore, received the value of

the assets within Eagle Box including the value for the Quasi-Equity Loan.

The Quasi-Equity Loan is an asset of Eagle Box and belongs to it and not to any particular member or any group of members. Eagle Box is entirely distinct from its members. When the GOB was the 100% shareholder in 1988 at the time of revaluation of the assets of Eagle Box even then it could not take out the Quasi-Equity Loan as this became part of the capital of Eagle Box.

The action of GOB and BCIC in relation to the creation of the said Trust Deed and the issuance of debentures are against the provisions of the Companies Act as the directors in taking the decision in this regard had not acted in the interest of Eagle Box but only for the interest of GOB and BCIC. Eagle Box did not benefit from this transaction at all and all benefit went to GOB and BCIC at the expense of Eagle Box.

The Quasi-Equity Loan is not a loan of any kind. A loan in the true sense is a debt or financial facility accommodation granted by a creditor to a debtor. Neither GOB nor BCIC has provided Eagle Box any financial facility or accommodation. Therefore, no consideration was given by the GOB or BCIC for the Quasi-Equity Loan. Thus, the debentures and the Trust Deed are not supported by any consideration. Absent any consideration for the Quasi-Equity Loan, it is not enforceable in any way either by the debentures, the Trust Deed or otherwise as against Eagle Box. Further a loan can never be an asset to

a company. It is simply a liability. A liability cannot be created without a proper transaction between the parties.

The Quasi-Equity Loan is a book entry that arose out of a revaluation of the assets of Eagle Box by its Chartered Accountants. 49% purchasers and the 51% purchasers of the shares of Eagle Box had already paid for the net worth when they paid the purchase price for the shares to the GOB. If the GOB is allowed to enforce the Trust Deed and the debentures, it would be receiving payment for the assets of Eagle Box twice: once, for the shares and secondly for the debentures. This is manifestly unjust. Therefore, payment of the Quasi-Equity Loan again by Eagle Box is wrong and inequitable. The Trust Deed and the debentures being No. 01-5253 and 5254 -12030 issued by Eagle Box in favour of GOB and BCIC are illegal and void and Eagle Box is not liable to pay them. Hence, the suit has been filed.

The defendant-petitioner as applicant filed Transfer Miscellaneous Case No. 362 of 2019 before the learned District Judge, Dhaka under section 24 of the Code of Civil Procedure praying for an order transferring Money Suit No. 33 of 2009 and Title Suit No. 129 of 2010 in one competent Court for an analogous or simultaneous trial/hearing.

It is stated in the application that the parties and subject matter of both the suits are same and identical. The deed, documents related to the suits are same. If the suits are tried separately, the parties will face serious problems in producing required documents before the two courts for which the parties will be highly prejudiced.

Upon hearing the petitioner, the learned District Judge, Dhaka rejected the Transfer Miscellaneous Case summarily holding that since the issues & subject matter of those two suits are not the same, the analogous trial of those suits by one court is unnecessary.

Being aggrieved by and dissatisfied with the judgment and order dated 26.08.2019 passed by the learned District Judge, Dhaka in Transfer Miscellaneous Case No. 362 of 2009 the petitioner preferred the instant civil revision before this Court and obtained Rule and stay.

Mr. Muhammad Riaz Uddin, learned Advocate appearing for the petitioner submits that the parties of Money Suit No. 33 of 2009 and Title Suit No. 129 of 2010 are the same, the disputes arose out of self-same subject matter, cause of actions in both the suits are identical as such, both the suits are required to be tried either analogously or simultaneously by one court.

He further submits that if the suits are tried separately, then it will pose the risk of passing contradictory judgment on the same matter and will create multiplicity of litigations among the parties but the learned District Judge, Dhaka failed to appreciate that and thus the court has committed error of law resulting in an error in passing the impugned order occasioning failure of justice while rejecting the application filed by the petitioner under section 24 of the Code of Civil Procedure. With the submissions, the learned Advocate finally prays for making the Rule absolute.

Per contra, Mr. S.M.Shakhawat Hossain, learned Advocate appearing for the opposite party no. 2 opposes the contention taken by

the learned Advocate for the petitioner and submits that, the learned District Judge has rightly passed the impugned judgment rejecting the Transfer Miscellaneous Case.

He further submits that the issues, causes of actions and parties of the suits are not the same and as such neither of the suits can be tried analogously or simultaneously and finally prays for discharging the rule.

Mr. Mohammad Shafiqur Rahman, learned Deputy Attorney General appearing on behalf of the opposite party no.1 submits that the parties of the suits are not same. The statements and submissions made in the instant Civil Revision are misconceived and misleading and hence the rule is liable to be discharged.

We have considered the submission so advanced by the learned Advocates for the parties, perused the Revisional application, supplementary affidavit, counter affidavit, impugned judgment and order and other materials on record.

It appears from the plaint of Money Suit No.33 of 2009 that the suit was filed by the Government of Bangladesh represented by the Secretary, Ministry of Industries and Bangladesh Chemical Industries Corporation (BCIC), impleading Eagle Box and Carton Manufacturing Company Limited and its managing director, namely Helalur Rahman. On the other hand, Eagle Box and Carton Manufacturing Company Limited filed Title Suit No. 129 of 2010 impleading the Government of Bangladesh represented by the Secretary, Ministry of Industries and Bangladesh Chemical Industries Corporation (BCIC), Registrar of Joint

Stock Companies and Sub-Registrar, Demra, Dhaka as defendants. In the Title suit, the principal defendants are the Ministry of Industries and Bangladesh Chemical Industries Corporation (BCIC). So, it is crystal clear that the parties in the above-mentioned suits are almost identical.

It is claimed in the plaint of Money Suit No. 33 of 2009 that the cause of action of the suit arose on 14.12.1994 when Trust Deed was executed; on 15.12.1994 when the Sale Deed was executed and on 17.05.2009 when the Appellate Division of the Supreme Court declared the Quasi Equity Loan and debentures are lawful. On the other hand, it is claimed in the plaint of Title Suit No.129 of 2010 that the cause of action arose on 12.12.1992 when the letter of intent was issued to the purchaser of 51% shares; on 14.12.1994 when the Trust Deed was executed, on 15.12.1994 when the sale deed was executed and 51% shares were transferred. Thus, it transpires that the causes of actions of both suits are almost identical. Since two entities filed suits against each other in different courts on the same cause of action, it is desirable that a single Court should try the suits.

It is divulged that the subject matter of the suits are the same and related to the payment of Quasi Equity Loan by Eagle Box and Carton Manufacturing Company Limited, Trust Deed being No. 8978 dated 14.12.1994; Sale Deed executed on 15.12.1994 and debentures being serial No. 01 to 5253 and 5254 to 12030 issued in favour of Government of Bangladesh and Bangladesh Chemical Industries Corporation respectively.

The learned District Judge, Dhaka failed to consider the balance of convenience of the parties. Since the parties of the suits are same, if the same Court tries and hears the suits simultaneously, it will be convenient for the parties. In this regard, reliance may be placed in the case of *Sadrul Amin Budhu Vs. Asaduzzaman and others*, reported in *4BLC (1990) 340*, wherein this court observed:

“It is true that, under the provision of section 24 of the Code of Civil Procedure, the learned District Judge has wide and ample discretion to either allow or reject the application but that must be exercised judiciously and for reasons of common convenience of the litigating parties.”

Besides, the Title Suit should be transferred to avoid multiplicity of proceedings or arriving any conflicting decisions. In this regard we may refer to the decision passed in the case of *Indian Overseas Bank Vs. Chemical Construction Co. and others*, reported in AIR 1979 SC 1514 wherein it was held:

“... where two suits raising common questions of facts and laws between parties common to both the suits, are pending in two different courts, it is generally in the interest of justice to transfer one of those suits to the other forum to be tried by the same court with consequent avoidance of multiplicity in

the trial of the same issues and the risk of conflicting decisions thereon.”

As both the suits were filed over the selfsame subject-matter and the parties are same and both the suits were filed in two different courts so for all fairness, a single court should hear these two suits. In view of the matter, we hold that Title Suit No. 129 of 2010 will be withdrawn from the Court of 5th Joint District Judge, Dhaka and transfer it to the court of 4th Joint District Judge, Dhaka to be tried simultaneously, with Money Suit No. 33 of 2009.

At the time of pronouncement of the judgment the learned Advocate appearing on behalf of the opposite party submits that the next date of Money Suit No. 33 of 2009 has been fixed on 12.09.2024 for FPH (Further Peremptory Hearing) and the next date of Title Suit No. 129 of 2010 has been fixed on 06.01.2025 for PH (Peremptory Hearing). In this regard we are of the view that same date should be fixed for both the suits for the convenience of simultaneous hearing. So, the 4th Joint District Judge, Dhaka is directed to fix same date for two suits.

On our careful reading of the impugned order and in view of the aforesaid principle of law as laid down by this court, we find that the impugned judgment and order suffers from non-application of judicial mind and it is liable to be set aside.

We find substance in the aforesaid Rule.

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

The impugned judgment and order dated 26.08.2019 passed by the learned District Judge, Dhaka in Transfer Miscellaneous Case No. 362 of 2019 rejecting the application filed under section 24 of the Code of Civil Procedure is hereby set aside and Title Suit No. 129 of 2010 is hereby withdrawn from the Court of 5th Joint District Judge, Dhaka and is transferred to the court of 4th Joint District Judge, Dhaka for dispose of the suits simultaneously.

The Joint District Judge, 4th Court, Dhaka is directed to try Money Suit No.33 of 2009 with Title Suit No. 129 of 2010 simultaneously and the Court is further directed to dispose of the suits as expeditiously as possible, preferably within 6(six) months, without allowing any adjournment to any parties except for valid reasons.

The order of stay granted at the time of issuance of the Rule is recalled and vacated.

Let a copy of this judgment be communicated to the concerned court forthwith.

Md. Mozibur Rahman Miah, J.

I agree.