

In the Supreme Court of Bangladesh
High Court Division
(Civil Revision Jurisdiction)

Present:

Mr. Justice Jahangir Hossain

Civil Revision No. 138 of 2012

In the matter of:

An application under Section 115(4) of the Code of
Civil Procedure

In the matter of:

Md. Quamruzzaman Talukdar

..... Defendant-petitioner

-VERSUS-

Md. Motiur Rahman and others

.....Plaintiff-Opposite Parties

No one appears

Judgment on 16th November, 2020

Leave was granted by this court on 22.01.2012 to consider whether the judgment and order under challenge suffers from an error of law resulting in an erroneous decision occasioning failure of justice. By this order, the petitioner was also directed to put in requisites within 48 hours, in default, the Rule shall stand discharged.

In fact, by its implication a Rule was issued upon the opposite party No. 01 by this court on 22.01.2012. At the time of leave granting order this court also stayed all further proceedings of Misc. Case No.02 of 2001(violation) for a period of 6[six] months and the same was further extended from time to time and it was lastly extended by order dated 26.01.2014 for a period of 06[six] months with effect from 21.01.2014. Since then, no step was taken by the petitioner for extension of stay.

No one appears to support or oppose the Rule [leave granting order] when it is taken up for hearing. In the order dated 22.01.2012 it is found that the learned Advocate for the petitioner was directed to furnish certified copies of the relevant papers at the time of hearing but nothing has been submitted as yet.

In the application, the petitioner has stated that the opposite party No. 01 as plaintiff instituted a suit being Other Class Suit No. 50 of 2010 in the court of learned Assistant Judge, Bhuapur, Tangail for declaration that the schedule meeting held on 14.10.2010 by taking a decision for suspension against him was illegal and not binding upon him and for further declaration that he was still holding the post as principal of Shaheed Zia Women College, Bhuapur, Tangail.

During pendency of the said suit, the plaintiff filed an application for temporary injunction under Order XXXIX Rule 1 of the Code of Civil Procedure supported by an affidavit. The defendant-petitioner also filed an application for rejection of plaint under Order VII Rule 11 before the trial court and both the applications were heard together. The trial court rejected the application for rejection of plaint and allowed the application for temporary injunction as the resolution dated 14.10.2010 had a prima-faice case to be illegal and malafide. The trial court also opined that this illegality would be decided by taking evidence from both the sides in order to come to a conclusive decision.

As the defendant did not obey the order dated 01.03.2011 of the trial court, the opposite party No. 01 filed a violation case vide Misc. Case

No. 01 of 2011 [violation] against the defendants. Thereafter, the defendants filed an application in the said violation case under Order VII Rule 11 for rejection of plaint of the violation case. The said application was eventually rejected by the trial court on 16.10.2011 stating that there was no ingredient for rejection of violation suit as required under order VII Rule 11 of the Code of Civil Procedure.

Against which the defendant filed a Civil Revision No. 56 of 2011 before the learned District Judge, Tangail under section 115(2) of the Code of Civil Procedure. Upon hearing the parties, the learned District Judge by his order dated 29.11.2011 rejected the revision application summarily. Being aggrieved by and dissatisfied with the said impugned order, defendant-petitioner filed an application before this court under section 115(4) of the Code of Civil Procedure and obtained a Rule [leave granting order] with an order of stay noted above earlier.

Having gone through the order of the courts below, it appears that the opposite party No. 01 by filing a suit challenged the order of suspension of his service taken by the governing body of the institution.

The trial Court in its rejection order opined that the resolution of the governing body for suspension of the opposite party No. 01 is questionable. It was further observed that only 5 members signed the resolution out of 12 members and out of these 5 members, 2 were disputed teacher- representatives who signed the resolution of the meeting to fill up the quorum and there was no impartial member in the meeting held on 14.10.2010.

It also appears that the opposite party No. 01 was competent to file the violation case against the defendants as they did not follow the order of the trial court. Learned District Judge also did not find any error of law or impropriety in the order of the trial court, holding in the Civil Revision No. 56 of 2011. If the order of suspension is found to be prima-facie illegal, then the court is competent to act for preventing any injustice to be made by the defendants. Therefore, this court finds no illegality in the impugned order passed by the learned District Judge, Tangail on 29.11.2011. The impugned order challenged by the petitioner does not suffer from any error of law resulting in an erroneous decision occasioning failure of justice.

Accordingly, the Rule [leave granting order dated 22.01.2012] is, hereby, discharged without any order as to costs.

The order of stay granted earlier by this court shall stand vacated.

Let a copy of this judgment and order be communicated at once.

[Jahangir Hossain, J]