

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Civil Appellate Jurisdiction)**

CIVIL RULE NO. 351 (FM) OF 2016

In the matter of:

An application for injunction.

And

In the matter of:

S.K. International, represented by its Proprietor-
A.H.M. Kamal Hossain Chowdhury, son of late
Saleh Ahmed Chowdhury of 29, Tamakumondi
Lane, Professor Market (1st Floor), Reazuddin
Bazar, Police Station- Kotwali, Chittagong-4000
and others.

... Petitioners

-Versus-

Al-Arafah Islami Bank Ltd. Head Office, 36,
Dilkusha Commercial Area, Dhaka-1000 and
others.

... Opposite parties

No one appears

... For the petitioners

Mr. Tirtha Salil Pal, Advocate

....For the opposite-party nos. 1-4

Heard and Judgment on 10.02.2025.

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

Md. Mozibur Rahman Miah, J:

At the instance of the plaintiffs in Other Class Suit No. 178 of 2014, this rule was issued calling upon the opposite parties to show cause as to why they should not be restrained from taking any further steps in respect of Schedule-‘B’ cheques and/or such other or further order or orders passed as to this Court may seem fit and proper.

At the time of issuance of the rule, the opposite parties were restrained by an order of injunction from taking further step in respect of Schedule-‘B’ cheques or in any way in connection of the case against the cheques in question till disposal of the application.

The salient facts leading to issuance of the instant rule are:

The present petitioners as plaintiffs originally filed the aforesaid suit for declaration to the effect that the liability of the plaintiff no. 1 with defendant no. 2 since adjusted so the plaintiff is entitled to release the security documents which has been scheduled as schedule-‘A’ to the plaint and the property so mortgaged be redeemed with a further declaration that the defendant-opposite party nos. 1-4 are liable to give delivery of 56500 metric ton of scrap material goods as per schedule worth taka 25,68,66,740/-. After filing of the said suit, the plaintiffs-petitioners also filed an application for temporary injunction under order XXXIX, rule 1 and 2 read with section 151 of the Code of Civil Procedure for injunction restraining the defendant nos. 2 and 4 from using the security cheques so have been issued in favour of the defendant no. 2 as security to repayment of the loan so availed by the plaintiffs from the defendant no. 2. That application was taken up for hearing on several occasions when the present opposite party nos. 1-4 who are the defendants in the suit prayed for

adjournment. Ultimately, on 28.04.2016, the learned Judge of the trial court allowed the adjournment fixing the next date on 29.06.2016. Challenging said order dated 28.04.2016 treating the said order to be rejection of the petition of injunction application, the plaintiffs then preferred an appeal being First Miscellaneous Appeal Tender No. 308 of 2016 (though the respective First Miscellaneous Appeal being No. 09 of 2017 was registered later on on 09.01.2017). The appellants as petitioners then filed application for injunction making self-same prayers so made in the trial court that is, restraining the defendant-opposite party nos. 1-4 from taking any step in respect of the cheques so scheduled in schedule-‘B’ to the application for injunction. Upon hearing the petitioners, this court vide order dated 30.05.2016 issued the above rule and interim order as has been stated hereinabove.

None appeared for the petitioners to press the rule though the matter has been appearing at the top of the list for hearing with the name of the learned counsel for the parties.

On the contrary, Mr. Tirtha Salil Pal, the learned counsel appearing for the opposite party nos. 1-4 by filing a counter-affidavit annexing judgment and order dated 03.07.2022 at the very outset submits that since the original suit has already been dismissed on rejecting the plaint on an application filed by the present opposite parties under order VII, rule 11 of the Code of Civil Procedure so the rule itself has become infructuous and therefore, the rule is liable to be discharged.

The learned counsel in his second leg of submission also contends that as a security of repayment of the loan availed by the present petitioners

against a loan amounting to taka 27,77,33,000/- which ultimately went outstanding whereby a suit being Artha Rin Suit No. 369 of 2014 was filed by the opposite parties and it has still been pending and even against dishonouring of the cheques, as many as 6(six) C.R. cases were filed against the petitioners before the respective Judicial Magistrate under section 138 of the Negotiable Instruments Act, 1881 so the suit filed by the petitioner can never be proceeded with so the rule has lost its efficacy and finding those very legal grounds in favour of these opposite parties, the learned Judge of the trial court has rightly rejected the plaint resulting in, dismissed the suit. On those two legal counts, the learned counsel finally prays for discharging the rule.

Be that as it may, we have considered the submission of the learned counsel for the opposite-party nos. 1-4 and perused the application for injunction on which the instant rule was issued vis-à-vis the order passed dated 03.07.2022 in the suit through which the plaint of Other Class Suit No. 178 of 2014 was rejected.

There has been no gainsaying the fact that no order on the application for injunction has ever been passed by the learned Judge of the trial court in the suit rather an application for adjournment so filed by the present opposite parties who are the defendants in the suit was allowed on 28.04.2016 fixing 29.06.2016 for next date. In spite of the fact, the said order dated 28.04.2016 was called in question before this court stating that the same was tantamount to rejection of the petition. However, since there has been no existence of the suit right at the moment, so we don't find any reason to proceed with the rule which itself has become infructuous.

On top of that, since the cheques which have been scheduled in schedule-‘B’ to the application for injunction filed before the trial court were dishonoured and for that 6 different criminal cases were filed and are now pending so there has been no scope to pass any restrained order by a civil court upon a matter which is pending before the criminal courts.

Against the above backdrop, we don’t find any shred of merit in the rule.

In the result, the rule is discharged however without any order as to costs.

In any case, the order of injunction granted at the time of issuance of the rule stands recalled and vacated.

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

Md. Bashir Ullah, J:

I agree.