

Bench:

Mr. Justice Bhishmadev Chakrabortty

Civil Revision No. 2206 of 2016

Md. Hasmat Ali petitioner

-Versus-

Chairman, Alhaj Moyjan Bibi Junior Secondary
Girls School and others

..... opposite parties

Mr. Md. Nawaj Sharif, Advocate

..... for the petitioner

Mr. Nazrul Islam Khandaker, Advocate

..... for the opposite parties 1 and 2

Judgment on 15.02.2024

Bhishmadev Chakrabortty, J:

This rule was issued calling upon opposite parties 1 and 2 to show cause as to why the judgment and order dated 30.03.2016 passed by the Additional District Judge, Sherpur in Miscellaneous Appeal No. 08 of 2015 dismissing the appeal affirming the judgment and order dated 10.02.2015 passed by the Assistant Judge, Jhinaigati, Sherpur in Other Class Suit No. 69 of 2014 rejecting the plaintiff's application under order 39 rule 1 and 2 of the Code praying for temporary injunction shall not be set aside.

Facts relevant for disposal of the rule, in brief, are that the name of the defendant school was Alhaj Moyzan Bibi Nimno Madhyamik Balika Bidyalaya and they took admission only girls. In the year 2013 they changed the name as Alhaj Moyzan Bibi Nimno Madhyamik Bidyalaya and started admission of students both boys and girls. Then

the suit was filed praying for declaration that the changing of the name of defendant's school is void and illegal. When the aforesaid renamed school started admitting the students both boys and girls, the plaintiff filed an application for temporary injunction restraining them from starting co-education and admission of the girls students. Defendants 1 and 2 contested the application by filing written objection. Learned Assistant Judge after hearing both the parties rejected the application for temporary injunction. The plaintiff then filed miscellaneous appeal before the District Judge which was heard on transfer by the Additional District Judge, Sherpur. The transferee Court after hearing dismissed the appeal and affirmed the judgment and order passed by the Assistant Judge. In the premises above, plaintiff approached this Court and obtained this rule.

Mr. Md. Nawaz Sharif, learned Advocate appearing Advocate for Mr. Md. Abdul Barik Chowdhury for the petitioner submits that the defendant Alhaj Moyzan Bibi Nimno Madhyamik Balika Bidyalaya a girls school was established in the year 1995 within 50 (fifty) yards of the plaintiff's school. Subsequently, the defendant school in connivance with defendants 5 and 6 changed the name as Alhaj Moyzan Bibi Nimno Madhyamik Bidyalaya (co-education) and started admitting students both boys and girls. There could be no reason of establishing a school of co-education within the area of 50 yards of the plaintiff's school, and as such they are required to be

restrained by an order of injunction. The justified prayer was not considered by the Courts below. In the premises above, the judgment and order passed by the Courts below should be set aside and the rule be made absolute and the defendants be restrained by an order of temporary injunction from admitting the boys students in the aforesaid school.

Mr. Nazrul Islam Khandaker, learned Advocate for opposite parties 1 and 2, on the other hand opposes the rule and submits that the defendant school is running and students both boys and girls have been admitted in the meantime. The balance of convenience and inconvenience is not in favour of the plaintiff and they have no *prima facie* arguable case. The trial Court rightly rejected and the application for temporary injunction which was affirmed by the lower appellate Court. This rule, therefore, having no merit would be discharged.

I have heard the learned Advocates for both the sides and gone through the materials on record.

It transpires that the plaintiff school instituted the aforesaid suit challenging the changed name of the defendant school as Alhaj Moyzan Bibi Nimno Madhyamik Bidyalaya and prayed for declaration that it was illegal, *void-ab-initio* and not binding upon it. In that suit the plaintiff filed an application praying for temporary injunction restraining the defendants from admitting boys and starting of co-education. The application was objected by the defendants

denying the statements made therein. Learned Assistant Judge rejected the application for temporary injunction which was affirmed by the lower appellate Court. The present plaintiff obtained this rule from this Court but no ad interim order of injunction or *status quo* was passed.

It transpires that the plaintiff failed to make out any *prima facie* arguable case to get an order of temporary injunction. It further appears that the balance of connivance and inconvenience is not in favour of the plaintiff. The plaintiff will not suffer irreparable loss and injury, if temporary injunction as prayed for is not granted. Moreover, a Court cannot pass any restraint order directing the defendant from taking admission of the students in the school. The Assistant Judge correctly rejected the application for temporary injunction which was affirmed by the lower appellate Court. We find no error in the impugned judgments and orders passed by the Courts below for which those can be interfered with by me in revision.

This rule, therefore, bears not merit. Accordingly, the rule is discharged without any order as to costs. The judgment and order passed by the Courts below are hereby affirmed.

Communicate this judgment and order.