

Bench:

Mr. Justice Bhishmadev Chakrabortty

Civil Revision No. 1565 of 2005

Mohammad Nazir Hossainpetitioner

-Versus-

SM Anisur Rahman and others.

.....opposite parties

No one appears for either party

Judgment on 15.02.2024

This Rule, at the instance of plaintiff 19, was issued calling upon opposite party 1 to show cause as to why the judgment and order dated 10.05.2005 passed by the District Judge, Dhaka in Miscellaneous Appeal No.130 of 2005 allowing the appeal by reversing the order dated 10.04.2005 passed by the Assistant Judge, Court No.1, Dhaka in Title Suit No.99 of 2005 allowing the application for temporary injunction shall not be set aside and or such other or further order or order passed by this Court may seen fit and proper.

At the time of issuing the Rule, operation of the appellate judgment and order was stayed for a limited period which was subsequently extended till disposal of the Rule.

Facts relevant for disposal of the Rule, in brief, are that the plaintiffs instituted the suit praying for declaration that they are entitled to use the corridor as detailed in schedule-‘Kha’ to the plaint with further prayer that the defendants be restrained by an order of permanent injunction of creating any obstruction in using

aforesaid corridor which connects Ismail Mansion Super Market and Golden Plaza Super Market. They further prayed for declaration that the affidavit dated 05.05.2004 was inoperative and illegal and that defendant 2 is bound by the conditions of registered deed dated 31.05.2004 and 28.07.2004 and that the agreement between defendants 1 and 2 dated 30.10.2004 for use of the land of schedule-Ka is also not binding upon them.

In that suit the plaintiffs filed an application praying for injunction restraining the defendants from creating any disturbance in using the aforesaid 'Kha' schedule corridor stating reasons therein. The defendants objected the said application in writing denying the statements made therein. However, the Assistant Judge after hearing allowed the said application for temporary injunction and restrained the defendants from creating any obstruction upon the plaintiffs in using the said corridor; they were further restrained from locking it. The defendants preferred appeal before the District Judge against the aforesaid judgment and order. Learned District Judge after hearing allowed the appeal and set aside the judgment and order of injunction passed by the Assistant Judge. The plaintiff 19 then approached this Court with the present revision and obtained this Rule with an interim order of stay of the appellate judgment and order which still subsists.

No one appears for either party.

This Rule was issued in 2005, about 19 years ago against order and as such it is taken up for disposal on merit.

It transpires that the original suit was filed for declaration of title with further prayer that the defendants are to be restrained by an order of permanent injunction from creating any obstruction in using the corridor which connected two markets as detailed to Schedule-‘Kha’ of the plaint. In the application for temporary injunction the plaintiffs assigned reason that if the corridor is locked by the defendants on the strength of some agreement and registered deeds it will cause injury for the shop keepers of both the markets. Therefore, they prayed for an injunction restraining the defendants from locking the gate of the corridor. The learned Assistant Judge after hearing allowed the said application for temporary injunction and restrained the defendants from creating any obstruction in using the said corridor by locking it. In appeal, the appellate Court tried to enter into the merit of the case. He unnecessarily gave emphasis on the agreement signed between defendants 1 and 2 and other 2(two) registered documents and opined that without taking evidence in the suit the ownership of the corridor cannot not be decided. Finally, he allowed the appeal and vacated the order of injunction passed by the Assistant Judge.

To allow an application filed under Order 39 Rule 1 of the Code of Civil Procedure (the Code) praying for temporary injunction the Court is to see whether there is a *prim face* arguable case and balance of convenience and inconvenience in favour of the plaintiffs and whether the plaintiffs would suffer irreparable loss and injury if injunction is not granted. The Assistant Judge considered the grounds for granting temporary injunction and restrained the defendants from creating any disturbance in using the corridor as detailed in schedule-‘Kha’ to the plaint but the Court of appeal below without reversing the findings of the trial Court for granting injunction traveled in a different way and allowed the appeal and set aside the order of injunction. In holding so, the Court of appeal below committed error of law resulting in an error in such order occasioning failure of justice which is required to be interfered with by this Court.

Furthermore, it is found that the order passed by the appellate Court has been stayed by this Court and the Rule is pending before this Court for last 20 years and that the order of injunction still subsists.

In view of the discussion made hereinabove, we find merit in this Rule and accordingly the Rule is made absolute. The judgment and order passed by the lower appellate Court in Miscellaneous Appeal No.130 of 2005 is hereby set aside and the

order passed by the Assistant Judge is upheld. The order of stay stands vacated.

However, the trial Court is directed to dispose of the suit expeditiously, if the suit is still pending.

Communicate the judgment and order to the Court concerned.