

Bench:

Mr. Justice Bhishmadev Chakrabortty

Civil Revision No. 260 of 2008

Md. Mobarak Hamidi ..... petitioner

-Versus-

Md. Nurul Huda ..... opposite party

No one appears for the either party

Judgment on 11.03.2024

In this rule opposite party 1 was called upon to show cause as to why the judgment and order of the District Judge, Nilphamari passed on 19.12.2007 in Miscellaneous Appeal No. 01 of 2007 allowing the appeal reversing the judgment and order of the Assistant Judge, Kishoregonj, Nilphamari passed on 05.11.2006 in Miscellaneous Case No. (violation) 27 of 2005 rejecting the case under Order 39 Rule 2(3) of the Code of Civil Procedure (the Code) for violation of the Court's order should not be set aside.

Facts relevant for disposal of the rule, in brief, are that opposite party 1 as plaintiff instituted Other Class Suit No. 05 of 2004 in the Court of Assistant Judge, Kishoregonj, Nilphamari against the defendant-petitioner and others praying for permanent injunction. The case of the plaintiff, in short, is that he is the Marriage and Divorce Registrar of Bahagili and Chadkhana Union Parishad of police station Kishoregonj within the District of Nilphamari. He filed the suit for permanent injunction against

defendant 1 along with others for restraining them from registering marriage and divorces within the plaintiff's area. During pending of the suit, the plaintiff filed an application praying for temporary injunction restraining defendant 1 and others from performing as kazi within the plaintiffs area till disposal of the suit. Learned Assistant Judge heard both the parties and by its judgment and order passed on 25.04.2004 allowed it and passed restraintment order as prayed for. Defendant 1 and others knowing fully well about granting of temporary injunction have been working as Kazi within the plaintiff's area and registered a marriage on 11.02.2005 of Omar Ali son of Jonab Ali with the Shelina daughter of Shahidul at Chadkhana Union parishad with in the District of Nilphamari showing Kazi office of Taragonj police station within the District of Rangpur. Defendant 1 registered the marriage of defendant 2 and thus violated the Court's order of temporary injunction. The plaintiff collected the certified copy of the nikahnama and filed the application under 39 Rule 2(3) of the Code against defendants 1 and 2 bringing allegation of violating the Court's order. The defendants 1 and 2 contested the miscellaneous case by filing written objection denying all material allegation made in the miscellaneous case.

The Assistant Judge framed two issues to adjudicate the matter dispute. During trial, the plaintiff examined two witnesses

and produced their document exhibit-1 but the defendant examined none. However, the Assistant Judge considering evidence and other materials on record rejected the miscellaneous case for violation. The plaintiff preferred miscellaneous appeal before the District Judge against the aforesaid judgment and order. The District Judge after hearing allowed the appeal, set aside the judgment and order passed by the Assistant Judge and finally convicted defendant 1, petitioner herein, under Order 39 Rule 2(3) of the Code sentencing him to suffer 1 (one) month's civil prison. The aforesaid judgment and order of the District Judge prompted the petitioner to approach this Court upon which the rule was issued an ad interim order of stay of the impugned appellate judgment and decree was passed which still subsists.

No one appears for either party, although the matter has been appearing in the cause list for last two days with the name of learned Advocate for the petitioner. This is a very old matter against order and as such it is taken up for disposal on merit.

It transpires that the plaintiff instituted the suit for permanent injunction for restraint order against the defendants from registering any marriage or divorce within the plaintiff's area where he has been appointed as nikah registrar. In the said suit he filed an application for temporary injunction restraining the defendants from registering any marriage or divorce within the

plaintiffs area. The Assistant Judge allowed the said application and restrained the defendants temporarily as prayed for. In the miscellaneous case the plaintiff brought allegation that while the aforesaid order of temporary injunction was in force, the defendants registered a marriage within his (plaintiff's) constituency and thus violated the Court's order punishable under Order 39 Rule 2(3) of the Code. In the trial of the miscellaneous case the plaintiff examined two witnesses and exhibited the *kabinnama* exhibit-1, on the other hand the defendants examined none. In disposing the miscellaneous case the Assistant Judge framed two issues:

- ১) প্রতিপক্ষদ্বয় আদালতের অস্থায়ী নিষেধাজ্ঞার আদেশ লংঘন করে দন্দনীয় অপরাধ করেছেন কি না?
- ২) ১ ও ২ নং প্রতিপক্ষকে দেওয়ানী কার্যবিধির ৩৯ আদেশের ২(৩) বিধি অনুযায়ী দণ্ড প্রদান করা যায় কিনা?

However, the learned Assistant Judge found that the petitioner of the miscellaneous case failed to prove his case of violation and as such rejected the miscellaneous case. In the appeal, preferred by the plaintiff, the District Judge framed only one issue, i.e., “বিজ্ঞ সহকারী জজ কর্তৃক মিস ২৭/০৫ নং মোকাদ্দমায় ইং ০৫/১১/২০০৬ তারিখের তর্কিত আদেশটি হস্তক্ষেপযোগ্য কিনা?” and finally allowed the appeal setting aside the judgment and order passed by

the Assistant Judge and convicted defendant 1 to suffer civil prison for one month.

It is well settled position of law that a violation miscellaneous case is *quasi criminal* in nature because the person against whom the allegation has been brought should have to be confronted with a charge or issue disclosing exact, definite and precise allegations, so that he can understand the extent and nature of the allegations, without any ambiguity whatsoever. It is to be remembered that a proceeding under Order 39 rule 2(3) of the Code is, in fact, if not fully criminal, then certainly it is *quasi criminal* in nature and in determining the guilt or otherwise of the person(s) at fault, the well settled principles for the administration of justice must be followed [reliance placed on Abdul Matin and others vs. AKM Badruzzaman & others, 12 BLD 544; Sultan Ahmed Howlader & others vs. Habibur Rahman Munshi, 7 BLD 73 and Md. Mamurul and others vs. Budhan Mohammad, 13 BLD 532]. In a proceeding like the present one, the person charged must be presumed to be innocent unless his guilt or fault is proved beyond all reasonable doubt and, further, the onus of proving the allegations of disobedience is always on the prosecution. The above provision of law has not at all complied with in disposing the aforesaid violation miscellaneous case although the Assistant Judge finally rejected the case. The District Judge, Nilphamari on

misconception of law and fact allowed the miscellaneous case filed under Order 39 rule 2(3) of the Code on the finding that the defendant-respondent 1 has violated the Court's order of temporary injunction and ordered him to suffer civil prison for one month.

On perusal of the application of miscellaneous case, I do not find any specific date and time when defendant 1 violated the Court's order. The framing of issues in the case is found defective. Issues should be framed keeping in view that the alleged violator can make reply to it. The findings and decision of the District Judge convicting the petitioner appears vague, unspecific and as such the judgment is not tenable in law. The impugned appellate judgment is, therefore, required to be interfered with.

Consequently, I find merit in this rule. Accordingly, the rule is made absolute. However, there will be no order as to costs. The judgment and order passed by the District Judge, Nilphamari is hereby set aside and that of the Assistant Judge is restored.

The order of stay stands vacated.

Communicate this judgment and order to the concerned Courts.