

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

First Miscellaneous Appeal No. 212 of 2018

(Memorandum of appeal from original order)

In the matter of:

Md. Nasir Uddin

...Defendant No.1-appellant

-Versus-

1. Tohidul Islam

.....Plaintiff-respondent

2. Al-Arafah Islami Bank Limited, represented
by its Managing Director 63, Purana Paltan,
Dhaka and others

... Proforma defendants-respondent No. 2-7

Mr. Md. Abdun Nur, Senior Advocate with

Mr. Md. Anwar Hossain, Advocate

... For the defendant No.1-appellant

Mr. S. M. Atikur Rahman, Advocate with

Mr. Mohammad Mosfequs Salehin, Advocate

..... For the respondent No. 1

Mr. Md. Shakhawat Hossain, Advocate with

Mr. A. M. Asadul Hoque, Advocate

..... For the respondent No. 3

Heard and Judgment on: 26th May, 2024

Present:

Mr. Justice Kazi Md. Ejarul Haque Akondo

and

Mr. Justice Mohi Uddin Shamim

Mohi Uddin Shamim, J.

This appeal is directed against the judgment and order dated
29.03.2018 passed by the learned Joint District Judge, 4th Court, Dhaka in
Money Suit No. 06 of 2018.

By the impugned judgment and order, the learned Joint District Judge, 4th Court, Dhaka restrained the defendant No. 1-appellant from withdrawing money from accounts mentioned in schedule “A” and “B” and also restraining him from selling out his property mentioned in schedule “C” of the petition till disposal of the suit by allowing an application for temporary injunction filed by the plaintiff.

At the time of admission hearing of the appeal, the appellant filed an application for stay of the judgment and order dated 29.03.2018. After hearing, the appeal was admitted and the operation of the impugned judgment and order was stayed till disposal of the appeal.

Facts leading to disposal of the appeal, in short, are that the respondent No. 1 as plaintiff filed Money Suit being No. 06 of 2018 before the Court of the learned Joint District Judge, 4th Court, Dhaka on 07.03.2018 stating *inter-alia* that the plaintiff and the defendant was known to each other since 2015. The defendant No. 1 is a first class contractor and supplier who explained that he got the opportunity to supply stone at Padma Bridge and Energy Sector as a sub-contractor. However, the defendant No. 1 for business purpose asked for personal loan of Tk. 2,00,00,000/- (two crore) to the plaintiff for a certain period. Afterwards, the defendant No. 1 received the said amount on 15.05.2016 and on the same date an agreement was accordingly executed and notarized by Notary

Public of Bangladesh. At one stage, the plaintiff requested the defendant No. 1 to adjust his loan liabilities but he took a dilly-dally technique for not paying or adjusting the said loan. As a result, the plaintiff filed the Money Suit against the defendant No. 1-appellant for recovery of Tk. 2,00,00,000/- (two crore).

In the suit, the plaintiff filed an application under Order XXXIX, rules 1 and 2 read with section 151 of the Code of Civil Procedure with a prayer of temporary injunction, whereupon, the learned Judge of the trial Court was pleased to pass an order of injunction on 29.03.2018. Challenging which the defendant No.1 as appellant filed this instant appeal and obtained order of stay and also an order of status-quo on a subsequent date i. e. on 09.08.2018.

Mr. Mohammad Mosfequs Salehin, the learned Advocate appears on behalf of the plaintiff respondent No. 1 filed an application for dismissing the appeal. Since the appeal is ready for hearing that is why it is posted in the daily cause list for hearing along with the application for dismissing the appeal on 23.05.2024 for hearing but no one appeared to oppose the application or press the appeal. So, this Court adjourned the matter and fixed next date for hearing the matter on 26.05.2024 and asked the learned Advocate for the appellant to be present before this Court on the very day and today i. e. 26.05.2024 Mr. Md. Anwar Hossain, the learned Advocate

on behalf of Mr. Md. Abdun Nur, learned Senior Advocate appears before us on behalf of the defendant No.1-appellant.

Mr. Mohammad Mosfequs Salehin, the learned Advocate appears for the respondent No. 1-plaintiff referring to the application for dismissing the appeal at the very outset submits that, this appeal has been arisen out of an ad-interim order dated 29.03.2018 passed by the learned Joint District Judge, 4th Court, Dhaka in Money Suit being No. 06 of 2018. Since the said suit i. e. Money Suit No.06 of 2018 has already been non-prosecuted by the plaintiff due to his personal difficulties on 07.05.2024 vide Order No.25, the impugned order has lost its legal force and efficacy and consequently the instant appeal has become infructuous, hence the appeal should be dismissed for being infructuous. He finally prays for dismissing the appeal by allowing the application.

In the contrary, Mr. Md. Anwar Hossain, the learned Advocate on behalf of Mr. Md. Abdun Nur, the learned Senior Advocate appearing for the appellant-defendant No.1 finds it difficult to oppose the submission so advanced by the learned Advocate for the respondent No. 1-plaintiff.

Mr. Md. Shakhawat Hossain, the learned Advocate along with Mr. A. M. Asadul Hoque, the learned Advocate appearing for the respondent No. 3 adopted the submission of the learned Advocate for the respondent No. 1.

We have heard the learned Advocate for both the sides at length, perused the application for dismissing the appeal filed by the plaintiff respondent No. 1 and all other connected materials available on record and also submissions forwarded by the learned Advocates for both the parties.

On perusal of Annexure-Z to the application, it appears that on an application filed by the plaintiff-respondent No. 1 herein the learned Joint District Judge, 4th Court, Dhaka vide his order dated 07.05.2024 dismissed the suit for non-prosecution.

Since the original suit was non-prosecuted, the instant appeal arising out of the said suit has become infructuous. Accordingly, we find merit in the application which is liable to be allowed.

In the result, the application for dismissing the appeal is allowed and consequently the appeal is dismissed as being infructuous without any order as to costs.

Since the appeal is dismissed the order of stay and status quo granted earlier by this Court as an interim order of the appeal hearing are hereby, recalled and vacated.

Communicate a copy of this judgment to the Court of learned Joint District Judge, 4th Court, Dhaka forthwith.

Kazi Md. Ejarul Haque Akondo, J.

I agree.