

In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)

Present:

Mr. Justice Md. Riaz Uddin Khan
Civil Revision No. 1022 of 2010

IN THE MATTER OF :

An application under section 115(4) of the Code of
Civil Procedure.

-And-

In the Matter of:

Rahela Akhter (Rumi) and others

..... Petitioners

Versus

Md. Akter Ali

.....Opposite party

Mr. Chanchal Kumar Biswas, Advocate

.... For the petitioners

Mr. Uzzal Bhowmick, Advocate

..... For the Opposite party

Heard and Judgment on: 07.01.2019.

Md. Riaz Uddin Khan, J-

By this rule the opposite party was asked to show cause as to why the impugned Order No. 02 dated 02.03.2010 passed by the learned District Judge, Sylhet in Civil Revision No. 12 of 2010 admitting the revision and refraining from passing an interim order of stay all further proceedings of Title Execution Case No. 01 of 1998 arising out of order No. 50 dated 09.08.2009 and judgment and decree dated 20.04.1994 passed in Title Suit No. 06 of 1987 should not be set aside.

At the time of issuance of rule all further proceedings of the Title Execution No. 01 of 1998 was stayed.

The facts for disposal of this rule, in brief, is that on 09.04.1987 the opposite party as plaintiff filed suit for declaration of

Title in respect of 2nd schedule of the plaint and also for recovery of kash possession in respect of 3rd schedule land measuring 0.1 acre scheduled in the plaint. The trial court by its judgment and decree dated 20.04.1994 decreed the suit against which the Defendant No. 1 filed Title Appeal No. 116 of 1994 before the District Judge, Sylhet which was ultimately heard by the Additional District Judge, 3rd Court, Syhlet, who by his judgment and decree dated 12.04.1997 dismissed the appeal and affirmed the judgment and decree passed by the trail court. Against the said judgment and decree of the lower appellate court, the defendant filed Civil Revision No. 2835 of 1998 before the High Court Division and initially rule was issued but after hearing, the rule was discharged by the High Court Division with observation by its judgment dated 06.03.2008. Against the said judgment the defendant filed Civil Petition for Leave to Appeal No.884 of 2008 before the Honorable Appellate Division which was ultimately dismissed by the order dated 21.05.2009.

Meanwhile, the decree holder filed Execution Case No. 01 of 1998 before the trail court. Thereafter the decree holder on 19.02.2009 filed an application before the executing court for amendment of the plaint as well as the schedule of the property. The Defendant-Petitioner had no knowledge of such application. However, the said application was allowed by the executing court by its order no.50 dated 09.08.2009 after taking deposition from the plaintiff-decree holder.

Against the said order dated 09.08.2009 the present petitioners filed Civil Revision No. 12 of 2010 before the District Judge, Syhlet and filed 02 (two) applications one for condonation of delay under section 05 of the limitation Act and another for stay all further proceeding of the execution case no. 01 of 1998. The learned District Judge after hearing the present petitioners by his order dated 02.03.2010 was pleased to condone the delay of 110 days and also admit the revision, issued usual notices upon the opposite party fixing 30.03.2010 for its return. Being aggrieved by and dissatisfied with the said order dated 02.03.2010 the present petitioners filed the instant Civil Revision and obtained rule and order of stay as stated above.

Mr. Chanchal Kumar Biswash, the learned Advocate for the petitioners submits that the learned District Judge by his impugned order though was pleased to admit the revision after condoning of delay but refrained himself from passing any ad-interim order regarding the application for stay operation of the execution case no. 01 of 1998, amounting to rejection of the ad-interim prayer. In support of his contention he further submits that since the learned district judge passed an order that “Lower Court’s Record need not be called for” and in such circumstances if there is no order of stay the execution court will proceed in accordance with law. So, the lower revisional court should have passed an interim order regarding prayer for stay.

Mr. Uzzal Bhowmick, the learned advocate appearing on behalf of the opposite party submits that the present revisional application is a misconceived one and it is also a premature one as the learned District Judge by his impugned order did not reject the application for stay all further proceedings of Execution Case No.01 of 1998. He next submits that since the District Judge was pleased to fix 30.03.2010 as its next date, the present petitioner should have taken endeavor for hearing of the said application for stay before the learned District Judge.

I have heard the learned Advocates of both the parties, perused the revisional application along with the annexures. It appears from the impugned order that the learned District Judge was pleased to allow the application filed under section 05 of the Limitation Act by condoning the delay and was also pleased to admit the revision. It also appears from the order that the learned District Judge refrained himself from passing any order regarding the application for staying operation of all further proceedings of the Title Execution case no. 01 of 1998. Now the question before me is that, since the learned District Judge did not pass any interim order regarding the prayer for stay of further proceedings of Title Execution Case No. 01 of 1998, whether it amounts to refusal of the ad-interim prayer of the petitioners. The application for stay is still pending before the learned district judge. If a relief is claimed in ad-interim form, but is not expressly granted, it shall be deemed to have been refused and the aggrieved party can take appropriate recourse of law against that

implied rejection. This view of mine got support in a number of cases decided by our apex court. In the case of KRS Works Vs. Sonali Bank reported in 42 DLR (AD) 294 our Appellate Division held that if a relief is claimed in a suit, but is not expressly granted in the decree, it shall be deemed to have been refused. Where in a writ petition declaration was sought to the effect that the sale deed was void, but the court did not issue Rule in respect of the sale deed, our apex court held in the case of Bangladesh Vs. Luxmi Janardhan Jew Thakur, reported in 7 BLC (AD) 114 that the relief claimed shall be deemed to have been denied. In such circumstances, I am of the view, that since the learned District Judge did not pass any interim order regarding the prayer for stay, it tantamounts to rejection of interim prayer against which the petitioner rightly filed the instant Revision.

In the result the Rule is made absolute.

All further proceeding of Title Execution Case No. 01 of 1998 now pending before the learned Assistant Judge, Fenchugong, Sylhet is stayed till hearing of the substantive application of the stay pending before the learned District Judge.

The learned District Judge is hereby directed to dispose of the application for stay of further proceeding of Title Execution Case No. 01 of 1998 at first and thereafter dispose of the revisional application itself within 06 (six) months from receipt of this judgment and order.

Communicate the judgment and order at once.