

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)

CIVIL REVISION NO. 1732 OF 2010

In the matter of:

An application under Section 115(1) of the Code of Civil
Procedure.

AND

In the matter of:

Executive Engineer

.... Petitioner

-Versus-

Khan Moklessur Rahman and others

....Opposite-parties

Mr. Md. Rafiqul Islam (Montu, DAG with

Mr. Mohammed Shafiqur Rahman, DAG with

Mr. Sheikh Mohammad Faizul Islam, AAG with

Mr. Md. Mizanur Rahman, AAG with

Md. Ershad Hossain (Rashed), AAG with

Mr. Md. Husni Mubarak (Rocky), AAG

... For the petitioner

Mr. Nur Mohammad Talukder, Advocate

....For the opposite party no. 16.

Heard on 01.09.2024 02.09.2024

and Judgment on 02.09.2024

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

Md. Mozibur Rahman Miah, J:

At the instance of the plaintiff in Money Suit No. 02 of 1997, this
rule was issued calling upon the opposite-party nos. 1-14 to show cause as

to why the order no.59 dated 07.09.2009 passed by the learned Joint District Judge, 1st court, Satkhira in the said Money suit allowing ÊH application under Order 1 rule 10(2) read with section 151 of the Code of Civil Procedure for striking out the names of the opposite party nos. 1-14 (defendant nos. 3-16 in the original suit) from the plaint should not be set aside set aside and/or such other or further order or orders be passed as to this court may seem fit and proper.

At the time of issuance of the rule, the operation of the said order dated 07.09.2009 was stayed till disposal of the rule.

The salient facts leading to issuance of the instant rule are:

The present petitioner namely, the Executive Engineer local government and engineering department, Satkhira as plaintiff filed the aforesaid Money Suit against the present opposite party nos.1-14 impleading them as defendant nos. 3-16 and those of the opposite party nos. 15-16 as defendant nos. 1 and 2 claiming an amount of taka 50,71,248/- seeking following reliefs:

(ক) বিবাদীগ-নর বিরুদ্ধ বাদীর পাওনা ৫০,৭১,২৪৮/- (পঞ্চাশ লক্ষ একাত্তর হাজার দুইতশ আট চল্লিশ) টাকা বাবদ বাদীর অনুকূলে টাকার প্রাথমিক ডিক্রিপ্রদানের মর্জি হয়।

(খ) বাদীর সোনালী ব্যাংক সাতক্ষীরা শাখার উপরোক্ত বৈধ একাউন্ট হই-ত প্রতারণা জালিয়াতি ও যোগসাজশিক ভা-ব আত্মসা-তর উদ্দেশ্যে ১নং বিবাদীর নামীয় সোনালী ব্যাংক সাতক্ষীরা শাখায় জালিয়াতি চলতি হিসাব নং ৫০৪৮/৩ একাউ-ন্ট আটককৃত অবশিষ্ট ব্যা-লন্স টাকা ১১,৮৪,৯৮৬,০০ মাত্র এবং ১নং বিবাদীর আলমারী হইতে উদ্ধারকৃত এবং বর্তমা-ন জব্দকৃত ২১,৫৬৮,০০ টাকা বাদীর সোনালী ব্যাংক, সাতক্ষীরা

শাখার চলতি হিসাব নং ৫০৭২/৩ উক্ত সরকারী বৈধ একাউন্টে স্থানান্তর
ক্রমে সমন্বয় করিবার ডিক্রী আদের প্রদান মর্জি হয়।

(গ) বিবাদীগ-নর স্থাবর/অস্থাবর সম্পত্তি প্রয়োজনে নিলামযোগে
বিক্রয় দ্বারা ডিক্রীর টাকা আদায় বাবদ হুকুম হয় এবং মোকদ্দমা চলাকালে
উহা এটাচ-মন্ট আ-দর দা-ন মর্জি হয়।

(ঘ) অত্র মোকদ্দমা বাবদ যাবতীয় খরচা সহ নালিশী আমানতের
টাকার উপর উক্ত অর্থ আদালতের কাল পর্যন্ত ব্যাংকিং রেটে প্রাপ্য সুদ ও
সরকারী টাকা আত্মসাত আদারে হয়রানী হেতু দৃষ্টান্ত মূলক খরচার ডিক্রী
প্রদা-ন মর্জি হয়।

(ঙ) মাননীয় আদাল-তর সুবি-বচনায় বিচার কা-ল আর যে সকল
প্রতিকার পাইতে বাদী হকদার সাব্যস্থহন তদবাবদ ডিক্রী প্রদানে মর্জি হয়।

In order to contest the suit, the defendant no. 3, defendant nos. 5,6 7 and 13, defendant nos. 8-11, defendant no. 15 and defendant no. 16 filed separate sets of written statement denying all the material averments so made in the plaint and finally prayed for dismissing the suit.

When the suit was at the stage of peremptory hearing, the defendant nos. 3-16 on 07.09.2009 filed an application under Order 1 rule 10(2) read with section 151 of the Code of Civil Procedure for striking out their name from the plaint stating inter alia that, challenging the propriety of the charge sheet so have been submitted against all those defendants they (that is defendant nos. 3-16) filed separate Miscellaneous Case bearing no. 150 of 1998 and 342 of 1998 for quashing the criminal proceeding initiated against them, and the rules of those two Miscellaneous Cases were ultimately made absolute quashing the criminal cases initiated against them so they are in no way involved in the misappropriation of funds as alleged by the plaintiffs-petitioner against those defendant nos. 3-16 which is why

they cannot be impleaded as defendants in the civil suit. It has further been alleged that, since the defendant no. 1 gave confessional statement under section 164 of the Code of Criminal Procedure admitting the offence committed, so only the defendant no. 1 could be involved in the corruption alleged by the plaintiff-petitioner having no scope to implead the defendant nos. 3-16 in the suit. Basing on that application, the learned judge heard the said defendants-herein opposite party nos. 1-14 and vide impugned judgment and order dated 07.09.2019 allowed the application resulting in struck out their name from the plaint holding that, since in two quashment applications, the involvement of the defendant nos. 3-16 have not been found so they cannot be impleaded as defendants in the suit. It is at that stage, the plaintiff as petitioner came before this court and obtained instant rule and order of stay as has been stated herein above.

Mr. Mohammed Shafiqur Rahman, the learned Deputy Attorney General by taking us to the impugned judgment and order and that of the application so filed under Order 1 rule 10(2) and 15 of the Code of Civil Procedure and the document appended therewith the reviseional application, at the very outset submits that, since the suit is pending for taking evidence of the respective parties and the required documents have not yet been produced for proving involvement of the opposite parties in misappropriation of funds so striking out the name of the defendant nos. 3-16 from the plaint finding that they have not misappropriated funds and grabbing the government properties are totally erroneous and thereby the learned judge of the trial court has committed error of law in passing the impugned order which cannot be sustained in law.

The learned Deputy Attorney General goes on to submit that, the trial court committed an error of law in not considering the settled proposition that, the decision of a criminal court is not relevant and binding upon a civil court in adjudication a civil suit and therefore the name of the defendant nos. 3-16 cannot be struck out from the plaint on the sole ground of quashing of the criminal proceedings initiated against the opposite party nos. 1-14.

The learned Deputy Attorney General wrapped up his submission contending that, there have been specific liabilities leveled against all the defendants including the defendant nos. 3-16 and hence they are the proper and necessary party whose presence the suit is required to be disposed of but that very legal point has clearly been sidetracked by the learned judge while passing the impugned order which cannot be sustained in law and prays for making the rule absolute.

On the contrary, Mr. Nur Mohammad Talukder, the learned counsel appearing for the opposite party no. 16 who was earlier granted permission to contest the rule, by filing an application for discharging the rule at the very outset submits that, since before filing of the application for striking out the name, the defendant no. 7 died so the instant rule cannot be proceeded against all the defendants opposite parties though that very facts has not been disclosed while filing the instant revision and thus prays for discharging the rule.

We have considered the submission so advanced by the learned Deputy Attorney General for the petitioner and that of the learned counsel for the opposite party no. 16. Together, we have also gone through the impugned judgment and order vis-à-vis the application filed under Order 1

rule 10(2) read with section 151 of the Code of Civil Procedure through which the defendant nos. 3-16 herein the opposite party nos. 1-14 sought in striking out their name from the plaint. On going through the application we find that, only on the ground that, they have all been exonerated from the offence committed for misappropriation of money of the plaintiff by filing a quashment application, so they are not required to be impleaded as defendants in the suit and the learned judge while passing the impugned order has just given a go by to alleged assertion of the said defendants without considering the legal point that a criminal case only deals with the commission of offence when a civil suit, the court is to examine liability of the defendant as claimed by the plaintiff and that the nature of relief so sought in a civil suit is totally different from that of a criminal case having no scope to strike out the name of the defendant nos. 3-16 from a plaint of a civil suit merely considering that the charge brought against those defendant nos. 3-16 in a criminal case has been quashed. However, that very simple principle has not been taken into consideration by the learned judge of the trial court while striking out the name of the defendant nos. 3-16 from the plaint. On top of that, since the provision so provided in Order 1 rule 10(2) of the Code of Civil Procedure does not at all attract in striking out the name of the defendants hence we don't find any shred of legal substance in the impugned judgment and order which is liable to be struck down.

Accordingly, the rule is made absolute however without any order as to costs.

The impugned judgment and order dated 07.09.2009 passed by the learned Joint District Judge, 1st court, Satkhira in Money Suit No. 02 of 1997 is thus set aside.

The order of stay granted at the time of issuance of the rule stands recalled and vacated.

The learned judge of the trial court is hereby directed to dispose of the suit as expeditiously as possible preferable within a period of 03(three) months from the date of receipt of the copy of this order by impleading all the defendants of the suit.

Let a copy of this order be transmitted to the court concerned forthwith.

Md. Bashir Ullah, J:

I agree.