

Bench:

Mr. Justice Bhishmadev Chakrabortty

And

Mr. Justice Md. Akhtaruzzaman

First Misc Appeal No. 32 of 2018

With

Civil Rule No. 645 (fm) of 2017

Ms. Khurshida Begum and another..... appellant

-Versus-

Bangladesh House Building Finance
Corporation (BHBFC) and others

..... respondent

Mr. Zaman Akter, Advocate

..... for the appellant

Mr. Md. Imam Hasan with

Mr. Md. Shahinul Islam, Advocates

..... for respondent 1

Judgment on 05.02.2024

Bhishmadev Chakrabortty, J:

Since the rule has arisen out of the above first miscellaneous appeal and parties thereto are same, these have been heard together and are being disposed of by this judgment.

The appeal, filed under Article 27 (10) of the Bangladesh House Building Finance Corporation Order, 1973 (President's Order No. 07 of 1973), is directed against the judgment and order of the District Judge, Kushtia passed on 11.09.2017 in Miscellaneous Case No. 154 of 1997 rejecting the appellants' application for adjournment and disposing the case *ex parte*.

At the time of admission of appeal, the appellants filed an application for stay of the operation of impugned judgment and order upon which the above rule was issued and an ad interim order of stay as prayed for was passed for a limited period which was subsequently extended till disposal of the rule.

Facts relevant for disposal of the appeal as well as the rule, in brief, are that respondent 1 as petitioner filed the aforesaid miscellaneous case against one Mujibur Rahman under President's Order No. 07 of 1973 for realization of debts with interest and also for according permission to sell the disputed property corresponding to CS khatian 725 plot 145, SA khatian 1004 plot 253 measuring an area of .0714 acres with a 3 storied building thereon. The present appellants were not parties to the miscellaneous case. The opposite party Md. Mujibur Rahman mortgaged the property to the Corporation and obtained the loan showing him as absolute owner of the property. The appellants came to learn about the said fact and filed an application to the learned District Judge for adding them as parties which was rejected. Then they approached this Court against aforesaid order and rule was issued in Civil Revision No. 1574 of 2002. Subsequently, the rule was made absolute and this Court passed order of direction upon the District Judge to dispose of the case making the applicants as opposite parties 3-6. Accordingly the present appellants and others were added as opposite parties to the miscellaneous case.

The miscellaneous case ultimately came up for hearing on 11.09.2017. The present appellants filed application therein seeking adjournment stating facts that their appointed learned Advocate had gone to Soudi Arabia to perform holy Hajj but failed to return this country in time and as such adjournment was required. The application was not moved and consequently it was rejected due to the absence of the learned Advocate for the applicants. The miscellaneous case was then taken up for disposal *ex parte*. The learned Judge examined one witnesses on behalf of the petitioner and allowed the case and directed the opposite parties to pay the amount mentioned within sixty days failing which the petitioner would be entitled to sell the suit property into auction to adjust the amount due to the Corporation. Against the aforesaid judgment and *ex parte* order added opposite parties 2 and 3 of the miscellaneous case approached this Court with this appeal with an application for stay upon which the rule was issued with an interim order of stay of the impugned order.

Mr. Zaman Akter, learned Advocate for the appellants taking us through the impugned order and other materials on record submits that the original borrower by committing fraud upon the present appellants mortgaged the suit property to the Corporation and took loan. Actually, he was not the absolute owner of the property mortgaged. The appellants being the heirs of original owner are sharers of the property. If the miscellaneous case is disposed of without their

absence they would suffer irreparable loss and injury. Their application for adding parties was rejected by the learned District Judge. They filed revision before this division against it and obtained an order of direction upon the District Judge to add them as opposite parties and accordingly they were added as parties. The case was fixed for hearing on 11.09.2017. The appellants' learned Advocate went outside the country for performing hajj and an application for adjournment was filed which was rejected by the learned District Judge and the miscellaneous case was finally disposed of *ex parte* upon taking evidence of the Corporation. The learned District Judge ought to have adjourned the matter shifting its date for hearing considering the grounds taken in the application. By not doing so and disposing the case *ex parte*, the learned District Judge erred in law and facts which may be interfered with by this Court in appeal. If the impugned judgment and order is not set aside and the appellants are not allowed to contest the miscellaneous case by bringing all the above facts before the Court, they would suffer irreparable loss and injury. The appeal, therefore, should be allowed and impugned judgment and order be set aside.

Mr. Md. Shahinul Islam, learned Advocate for respondent 1 on the other hand opposes the appeal as well as the rule. He submits that the appellants have deliberate laches in dealing with the case. At the order of the High Court Division passed in Civil Revision No. 1574 of

2002 the appellants were made parties to the miscellaneous case. This Court further directed the learned District Judge to hear and dispose of the miscellaneous case as early as possible preferably within 4(four) months from the date of receipt of the judgment without allowing adjournment to the parties. The learned District Judge had to comply with the order and direction passed by this Division and as such he had no scope to adjourn the matter even for a day. He submits that since the appellants appeared in the suit, therefore, the question of service of summonses properly upon them do not arise. If they remain present at the fixed date and their adjournment application is rejected, the Court can proceed with the case *ex parte* without shifting its date for disposal. The learned District Judge in rejecting the application for adjournment and disposing the suit *ex parte* did not commit any error of law for which it may be interfered with by this Court. The appeal, therefore, would be dismissed and the rule be discharged.

We have considered the submissions of both the sides and gone through the materials on record.

It transpires that the respondent Corporation filed original miscellaneous case against one Mujibur Rahman who took loan from the Corporation amounting to taka 5,95,000/-. At the time of taking loan and the land measuring .0794 acres with a 3 storied building was mortgaged to the Corporation. The present appellants brought allegation that the original borrower behind their back mortgaged the

suit property where they are co-sharers by inheritance. They wanted to be added as opposite parties and succeeded in obtaining an order of this Court passed in a civil revision. They were contesting the miscellaneous case as it appears from the impugned order. But they filed an application on 11.06.2017 seeking adjournment making prayer as under:

“আরজ এই যে উপরোক্ত নং মোকাদ্দমার অদ্য দরখাস্ত শুনানীর জন্য দিন ধার্য আছে। প্রতিপক্ষের নিযুক্ত আইনজীবী সাহেব পবিত্র হজ পালনের জন্য সৌদি আরবে যাওয়ায় ও ফিরিয়া আসিতে না পারায় অদ্য দরখাস্ত শুনানী করা সম্ভব হইতেছে না। সেই কারণে সময়ের একান্ত প্রয়োজন হইতেছে।”

The aforesaid prayer was rejected by the District Judge by the impugned order. In the application for adjournment, the appellants assigned the reason that their learned Advocate went to Saudi Arabia for performing holly Hajj but failed to return this country till date and for that reason prayer for adjournment was made. The reason stated in the application seeking adjournment appears acceptable. Learned District Judge ought to have allowed the application shifting date of hearing of the miscellaneous case. But he rejected the application and proceeded with *ex parte* hearing of the case. He allowed the miscellaneous case directing the opposite parties to the case for payment of taka 12,73,459.28/- with interest till realization. The *ex parte* judgment passed in the manner appears not satisfactory. The learned Judge did not discuss there, in brief, the documents produced

and exhibited by the petitioner Corporation. The judgment was passed in a *slipshod* manner. Under the facts and circumstances, we are inclined to interfere with the impugned judgment and order passed in the miscellaneous case. We, therefore, find merit in this appeal.

Accordingly, the appeal is allowed. The impugned judgment and order dated 11.04.2017 rejecting the appellants' application for adjournment and disposing the suit *ex parte* is hereby set aside. However, there will be no order as to costs. The miscellaneous case is restored to the position before passing of the impugned judgment and order. Accordingly, the connecting rule is disposed of.

The order of stay stands vacated.

However, the District Judge is directed to dispose of the miscellaneous case within 03(three) months from the date of receipt of this judgment and order. In disposing the case, learned Judge shall not allow either party any adjournment without extreme exigency.

Communicate the judgment and order to the concern Court.

Md. Akhtaruzzaman, J:

I agree.