

Bench:

Mr. Justice Bhishmadev Chakrabortty

And

Mr. Justice Md. Akhtaruzzaman

Civil Revision No. 887 of 2018

Md. Tofazzal Hossain being death his heirs:

1(a) Akter Jahan and others petitioners

-Versus-

Pubali Bank Limited and others

.....opposite parties

Mr. Md. Hamidur Rahman, Advocate

..... for the petitioners

Mr. Abdur Razaque Khan, Senior Advocate

with Mr. Md. Nazmul Haque, Advocate

..... for opposite parties 1-3

Judgment on 30.11.2023

Bhishmadev Chakrabortty, J.

In this Rule the opposite parties were called upon to show cause as to why order dated 30.10.2017 passed by the Joint District Judge, Court No.5, Dhaka in Title Execution Case No.04 of 2010 disposing the case should not be set aside with a direction upon them to pay all service benefit to the petitioner upon calculating as per pay scale with increment as applicable to the petitioner from time to time, including provident fund, bonus etc. as well as to pay back Taka 3,100.00 with interest as deducted from 30.06.1978 to 31.12.1980 and/or such other or further order or orders passed to this court may seem fit and proper.

Facts relevant for disposal of the Rule, in brief, are that the petitioner was appointed as Assistant Cashier of the then Mercantile Bank Ltd. (now Pubali Bank). He was dismissed from service on

30.12.1980. He then instituted Title Suit No.149 of 1981 in the Court of the then Subordinate Judge, Court No.3, Dhaka making the present opposite parties as defendants. The suit was subsequently transferred to the Court of Subordinate Judge and Commercial Court No.1, Dhaka and renumbered as Title Suit No.92 of 1984. However, the suit was decreed on contest and the dismissal order of the petitioner was declared illegal and void. It was further ordered that he was still than in service of the bank. The plaintiff then went to join in the service but bank did not accept him. Against the judgment and decree the bank preferred Title Appeal No.338 of 1984 before the District Judge, Dhaka. The appeal was heard on transfer by the Additional District Judge, Court No.1, Dhaka. The transferee Court dismissed the appeal and affirmed the judgment and decree passed by the trial Court. The bank then moved in this Division in Civil Revision No.5892 of 2001. The Rule issued in the aforesaid revision was discharged where this Division directed the bank to pay arrear benefits of the instant petitioner within 03(three) months. A decree in the revision was drawn up to the effect that the plaintiff is entitled to get all his arrear service benefit.

The bank then calculated the petitioner's service benefit and sent a pay order of Taka 7,54,316.00 to him. He received the pay order but wrote to the bank about his dissatisfaction to the amount and requested the bank for calculation his service benefits as per law. The

bank did not pay any heed to it. He then sent a legal notice to the bank on 16.03.2009 requesting to pay Taka 73,01,083.62 as his arrear service benefits as per up-to-date calculation. Subsequently, the petitioner filed Title Execution Case No.04 of 2010 on 23.03.2010 claiming due arrear of Taka 73,01,083.62. The executing Court on 09.05.2017 directed the decree holder to furnish a statement of claim. He submitted claim of Taka 2,92,61,492.76. The bank submitted written objection against the aforesaid claim contending that the decree holder accepted the pay order of Taka 7,54,316.00 without raising any objection and as such he cannot claim any amount by way of filing this execution case. The calculation as made is vague and as such the execution case should be disposed of once for all.

The executing Court heard the parties and by its order dated 30.10.2017 rejected the claim of the petitioner and disposed of the case holding that the petitioner is entitled to the arrear but he cannot get salary and arrear in the higher post without getting promotion therein. He is entitled to have the arrear for the post he served lastly which the debtor bank has already paid to him and as such he disposed of execution case with the full satisfaction of the decree holder.

Against the aforesaid judgment and order the petitioner approached this Court and obtained this Rule.

Mr. Md. Hamidur Rahman, learned Advocate for the petitioner takes us through the materials on record and submits that to dispose of an execution case with satisfaction, the satisfaction lies upon decree-holder petitioner. Here, the petitioner being dissatisfied with the payment of the bank filed the execution case and as such the Court committed error of law in disposing the execution case with the full satisfaction of the petitioner. He then submits that the bank authority did not calculate the service benefit of the petitioner in accordance with service regulation, 1981. The petitioner submitted his claim in detail as per direction of this Court passed in the civil revision but the executing Court erroneously ignored the claim of the petitioner and disposed of the execution case. He then submits that as per the petitioner's last position in the service his scale was at Taka 900.00 but the bank arbitrarily calculated it in the pay scale of Taka 625.00 which is apparent on the face the record but it has been accepted by the Court. The bank also did not calculate amount of Taka 3100.00 which was deducted from the petitioner's salary as Taka 100.00 per month. The deduction was illegal because the petitioner's dismissal order was set aside and, therefore, the bank is in legal obligation to pay the amount with interest. He finally submits that in the calculation the bank did not show any amount of provident fund and benevolent fund of the petitioner which he was legally entitled to. The order passed by the executing Court in disposing the execution case with the

satisfaction of the decree-holder is apparently an error of law resulting in an error in such order which occasioned failure of justice. Therefore, the impugned order should be set aside and the petitioner is entitled to have the amount as per the statement he submitted to the Court.

Mr. Abdur Razaque Khan, learned Senior Advocate for opposite parties 1-3 takes us through the counter-affidavit filed by the bank and submits that in the last position of petitioner's service he was a junior officer and as such he will get the service benefit in the said post. The executing Court cannot go beyond the decree. The High Court Division in the decree signed in the civil revision directed the bank to pay all arrear service benefits to the petitioner. The petitioner after passing the judgment and decree in the revision himself approached the bank and assisted in calculating his claim. He received pay order of Taka 7,54,316.00 without raising any objection but subsequently filed the execution case claiming Taka 73,01,083.62. It is apparent in the execution case that he received the amount which he was entitled to but filed the execution case claiming the amount which has no basis. Although, in the execution case he claimed the aforesaid amount but at the direction of the Court he submitted claim of Taka 2,92,61,492.76. Mr. Khan then takes us through the statements of the petitioner made in paragraph 17 of this revisional application and submits that the petitioner claimed the amount by making it double

after every 6 years. He refers to the provisions of Or.21 r.17(2) of the Code of Civil Procedure (the Code) and submits that the petitioner cannot make such claim without amending the execution case. He refers to the cases of Chandra Mohan Chowdhury and others Vs. Abbasuddin Chowdhury and others, 14 DLR 649 and in the case of Abbasuddin Chowdhury Vs. Chandra Mohan Chowdhury and others, 18 DLR 535 and submits that sub-rules 1 and 2 of rule 17 of Order 21 of the Code provides that it is the duty of the executing Court to ascertain whether the requirements of rules 11 to 14 of the aforesaid Order were fulfilled. If they are not fulfilled then it is the Court's discretion to reject the application or to allow the defect to be remedied then and there or within a time to be fixed by the Court. In the instant case, the Court ought to have rejected the execution case relying the provisions of sub-rule 2 of rule 17 of Order 21 of the Code. The decision passed by the executing Court which has been challenged in this Rule is ultimately correct. The claimed amount of the petitioner is vague, indefinite and not as per the existing rules and regulations. The Rule, therefore, having no merit would be discharged.

We have considered the submissions of both the sides, gone through the materials on record and consulted with the law and *ratio* of the cases cited.

It is admitted position of fact that the petitioner while was in the service of the bank was dismissed from service. The order of dismissal was challenged by the petitioner in the civil suit. The suit was contested by the bank and after trial it was decreed and the dismissal order was set aside with the finding that the petitioner was still then in service with the defendant bank. The bank then preferred appeal challenging the aforesaid judgment and decree. The appeal was dismissed on merit and the judgment and order passed by the trial Court was affirmed. The bank then filed civil revision before this Division and rule was issued. A Bench of this Division after hearing discharged the Rule and affirmed the judgment and decree passed by the trial Court. This Division in the aforesaid revision ordered that the petitioner is entitled to get all his arrear service benefits and the bank was directed to pay it to him within 03(three) months. It appears that after passing the aforesaid judgment by this Division, the defendant-bank calculated the arrear service benefits of the petitioner and sent him a pay order of Taka 7,54,316.00 on 19.12.2007. Admittedly, the petitioner received the said pay order through post. The bank alleged that the petitioner received the amount being satisfied without raising any objection. But the fact is this that the petitioner, thereafter, sent notices to the bank about his dissatisfaction and filed the execution case on 23.03.2010, *i.e.*, within the statutory period of limitation claiming Taka 73,01,083.62 as unpaid arrear service benefits. If he

was satisfied with the payment there could be no reason of failing the execution case.

In the execution case, the claim of the petitioner appears to us more or less vague. He did neither make any statement of claim in the execution case nor filed any application in the execution case to that effect. It further appears that at the order of the executing Court the petitioner subsequently submitted statement of his claim as has been quoted in paragraph 17 of this revisional application. In the aforesaid calculation and claim, it is found find that the petitioner demanded amount of Taka 2,92,61,492.76 which is much much bigger than the amount claimed by him in the execution case. The petitioner did not amend the execution case to increase the claim which he could have done, but for that reason the execution case cannot be dismissed. Therefore, the provisions of law of Order 21 Rule 17(2) of the Code as referred to and the *ratio* of the cases cited by Mr. Khan do not match this case. In both the cited cases the execution case was remanded to the executing Court to dispose of it as per law. In this case the executing Court by the impugned order disposed of the execution case on the ground that the petitioner is not entitled to get arrear in the post where he could have been promoted. It was further held that the bank has paid his all arrear benefit and he had received it with satisfaction and as such execution case was disposed of with full satisfaction of the petitioner. The finding of the learned Judge to the

effect that the petitioner is not entitled to get salary in the post where he was not at all promoted is correct. But the findings of the learned Judge to the effect that the petitioner has been paid the payable amount and that he was satisfied with the payment is not correct.

On perusal of the statements of calculation of the bank submitted in the Court and paid to the petitioner, we find that in calculation the bank did not at all bring there the amount of Taka 3100.00 which was deducted from petitioner's salary while he was dismissed. Moreover, nothing in the statement is found whether the petitioner was entitled to get the benevolent fund and provident fund. It is further not found from the banks calculation whether the arrear was calculated as per the scale while the petitioner would have gone to retirement in the post where he lastly served and that whether he went on retirement in the scale of Taka 900.00 or Taka 625.00. The learned Judge ought to have examined the aforesaid claim of the petitioner and then dispose of the execution case accordingly. But without doing so committed error of law which has resulted in an error in such decision occasioning failure of justice. The petitioner has been seriously affected and prejudiced by the impugned order. We, therefore, hold that the impugned judgment and order passed by the executing Court should be set aside and the case be remanded therein to be disposed of considering the claim of the petitioner, if any, as

discussed above. In dealing with the case, the executing Court shall be at full liberty to take decision considering the case of each party.

Accordingly, the Rule is made absolute. The judgment and order passed by the Joint District Judge, Court No.5, Dhaka in Execution Case No.04 of 2010 is hereby set aside. The executing Court is directed to dispose of the execution case within 06(six) months from the date of receipt of this judgment and order in the light of the observations and directions made in the body of this judgment.

Communicate this judgment to the concerned Court.

Md. Akhtaruzzaman, J.

I agree.