

Present:

MR. JUSTICE S.M. EMDADUL HOQUE

CIVIL REVISION NO. 431 OF 2019.

IN THE MATTER OF:

An application under Section 115(1) of the Code of Civil Procedure, 1908.

- AND -

IN THE MATTER OF:

Md. Abdul Momen

....Defendat-petitioner.

-Versus -

Moulavi Md. Anisur Rahman and others.

....Plaintiff-opposite parties.

Mr. Md. Tajul Islam, Advocate, with

Mr. Mrs. Sabikun Naher, Advocate with

Mr. Abu Hena Mostafa Kamal, Advocate.

..... For the petitioners.

Mr. Subrata Saha, Advocate with

Mr. Kamal Hossain, Advocate with

Ms. Madhuri Saha, Advocate.

..... For opposite parties.

Heard on: 22.01.2024, 28.01.2024, 05.02.2024 and Judgment on 12.02.2024.

On an application of the petitioner, Md. Abdul Momen, under section 115 (1) of the Code of Civil Procedure, 1908, the Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and order dated 13.01.2019, passed by the learned District Judge, Natore in Miscellaneous Appeal No. 2 of 2018, dismissing the appeal and thereby affirming the judgment and order dated 26.11.2017, passed by the learned Joint District Judge, 1st Court, Natore in Other Class Suit No. 55 of 2017, allowing an application for temporary injunction,

should not be set aside and/or such other or further order or orders passed as to this court may seem fit and proper.

Facts necessary for disposal of the Rule, in short, is that the opposite party No.1 as plaintiff instituted Other Class Suit No. 55 of 2017 in the court of Joint District Judge, 1st Court, Natore for seeking declaration that the circular being No. 279 dated 09.07.2013, issued by defendant No.1 mentioned in the schedule "Kha", regarding the appointment of Nikah Registrar vide Memo No. 05.50.6944.000.18. 023.15-129, dated 09.02.2016 and also the notice dated 20.12.2015, is fraudulent and not binding upon the plaintiff. The plaintiff claimed that he was appointed as Nikah Registrar for entire Lalpur Upazilla on 02.10.1988. The defendant No.2 obtained a license of Nikah Registrar from the Ministry for the same area of the plaintiff and against the said appointment of the defendant No.2 as Nikah Registrar, the plaintiff instituted Other Class Suit No. 96 of 1993 and 101 of 1994, both of which were dismissed by the Assistant Judge, Lalpur. Against those judgments, the plaintiff filed the Title Appeal No. 67 of 1996 and 68 of 1996 and both the appeals were allowed by the District Judge, Natore. The defendant No.2 filed Civil Revision No. 2101 of 1997 in the High Court Division of Supreme Court against those judgments and the Rule was issued and parties were directed to maintain status-quo. On 20.12.2015, the defendant No. 1, Upazilla Nirbahi Officer, Lalpur, Natore, appointed the

defendant No.2, as Nikah Registrar of the Lalpur Union and then the plaintiff instituted the present suit to challenge the order.

Thereafter the plaintiff filed an application, under Order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908, for a temporary injunction. The defendant No.2 appeared in the said suit and filed written objection against the prayer for the temporary injunction, denying all the material assertions made in the application.

The defendant No. 2 claimed that the plaintiff was initially appointed as Nikah Registrar for the whole Lalpur Upazilla. But subsequently the defendant was appointed as Nikah Registrar for the 4 Unions, curtailing the same from the jurisdiction of the plaintiff and thereafter the authority of the Government curtailed three Unions from the defendant No.2 and now he was appointed as Nikah Registrar only for Lalpur Union and the Government has every right to curtail and alter the jurisdiction of the Nikah Registrar, thus the application for injunction should be rejected.

The learned Joint District Judge, Natore, after hearing the parties and considering the facts and circumstances of the case, allowed the said application for temporary injunction by its judgment and order dated 26.11.2017.

Against the said judgment and order of the trial court, the defendant No.2 as appellant preferred Miscellaneous Appeal No. 02 of 2018 before the learned District Judge, Natore.

The learned District Judge, Natore, after hearing the parties and considering the facts and circumstances of the case, dismissed the said appeal and thereby affirming the judgment and order of the trial court by its judgment and order dated 13.01.2019.

Being aggrieved by and dissatisfied with the impugned judgment and order of the courts below the defendant No.2 as petitioner filed this revisional application under Section 115(1) of the Code of Civil Procedure, 1908 and obtained the Rule and the court also directed both the parties to maintain status-quo.

Mr. Subrata Saha, the learned Advocate along with Mr. Kamal Hossain, learned Advocate and Ms. Madhuri Saha, learned Advocate appearing on behalf of the plaintiff-opposite party through vokalatnama to oppose the Rule.

Mr. Md. Tajul Islam, the learned Advocate, along with Mrs. Sabikun Naher, learned Advocate and Mr. Abu Hena Mostafa Kamal, learned Advocate appearing on behalf of the defendant-petitioner submits that both the courts below has committed error of law resulting in an error in the decision occasioning failure of justice. He further submits that the petitioner was initially appointed as Nikah Registrar for four Unions, which was curtailed from the jurisdiction of the plaintiff opposite party No.1 and subsequently the Government, considering the provision of Rule 13 of Muslim Marriages and Divorces (Registration) Rule, 2009 and section 4 of Muslim Marriages and Divorces (Registration) Act, 1974, finally appointed

the present petitioner for one Union and the Government has every right to curtail or alter the territorial jurisdiction of the Nikah Registrar. He further submits that the petitioner was appointed as Nikah Registrar for four Unions but subsequently he was finally appointed as the Nikah Registrar for one area, that is Lalpur Union under Rule 13 of Muslim Marriages and Divorces (Registration) Rule, 2009. Thus the application filed by the petitioner for injunction is not at all maintainable, whereas, both the courts below, without considering the said provision of law, erroneously passed the impugned order. He prayed for making the Rule absolute.

On the contrary Mr. Subrata Saha, the learned Advocate appearing on behalf of the opposite parties submits that the plaintiff challenged the appointment of the petitioner as Nikah Registrar of Lalpur Union and since he was initially appointed for the said Union and as per Rule 10 of Muslim Marriages and Divorces (Registration) Rules, 1993, the appointed Nikah Registrar should remain in the said jurisdiction until his retirement from his office or unless the position becomes vacant. He further submits that the aforesaid Rule has already been amended by Muslim Marriages and Divorces (Registration) Rules, 2009. He further submits that it is better to dispose of the Rule, directing the trial court to dispose of the suit expeditiously maintaining the order of status-quo.

I have heard the learned Advocate of both the sides, perused the impugned judgment and the order of the courts below, the provision of law and the papers and documents as available on the record.

In this instant case, the plaintiff challenged the appointment of the defendant petitioner, who was appointed as Nikah Registrar for Lalpur Union. It appears that earlier he was appointed as Nikah Registrar for four Unions, all of which fall within the jurisdiction of the plaintiff opposite party's area. In response, the plaintiff opposite party filed several suits and which was also disposed of and lastly the plaintiff challenged the appointment of the defendant petitioner as Nikah Registrar for Lalpur Union.

We have considered the provision of section 4 of Muslim Marriages and Divorces (Registration) Act, 1974, furthermore, in the meantime the Government amended the Rule of Muslim Marriages and Divorces (Registration) Rule, 2009. The amended Rule 13, which is as follows: “এই বিধিমালার অধীন প্রদত্ত নিকাহ রেজিস্ট্রারের লাইসেন্সে যাহা কিছুই থাকুক না কেন, একজন নিকাহ রেজিস্ট্রারকে নিম্নবর্ণিত এলাকার জন্য লাইসেন্স প্রদান করা যাইবে, যথাঃ-

- (ক) সিটি কর্পোরেশনের ক্ষেত্রে, একটি ওয়ার্ড;
- (খ) ‘ক’ শ্রেণীর পৌরসভার ক্ষেত্রে, দুইটি ওয়ার্ড;
- (গ) ‘খ’ শ্রেণীর পৌরসভার ক্ষেত্রে, তিনটি ওয়ার্ড;
- (ঘ) ‘গ’ শ্রেণীর পৌরসভার ক্ষেত্রে সমগ্র এলাকা;
- (ঙ) ইউনিয়ন পরিষদ এলাকার ক্ষেত্রে একটি ইউনিয়ন।”

In the case of Abu Siddique Vs. DM Habibur Rahman, reported in 70 DLR (HCD)-812, his lordship held: *“A person cannot be a Nikah Registrar for more than one Union Parishad but the present petitioner has been a Nikah Registrar for two Unions which is not permissible under the above new law. The settled principle in this regard is that everyone must abide by the law introduced for any purpose and the present petitioner cannot get any benefit which the prevailing law does not permit.”*

We have considered the provision from where it is found that under the newly amended Rule, no one can serve as Nikah Registrar for more than one Union Parishad and for City Corporations, no one can serve no more than one Ward. In the case of Paurashava of “A” category, the limit is two Wards; for Paurashava of “B” category, it is three Wards and for Paurashava of “C” category, one can serve for the entire Paurashava.

In this instant case it is found that the petitioner was appointed only for one Union, in such a case, there is no illegality committed by the authority to appoint him as Nikah a Registrar for Lalpur Union Parishad. Furthermore, it appears that the authority earlier appointed him as Nikah Registrar for four Unions and thereafter the authority also curtailed three Unions from his jurisdiction, so, now he is continuing as a Nikah Registrar for only one Union and since he has appointed as Nikah Registrar for only one Union and in such a case no illegality has been committed by the authority and he has the right to continue as Nikah Registrar only for one Union. However, we have also considered the provision of law and the

impugned judgment of the courts below and after considering the circumstances of the suit, we have taken a view that it is better to direct the trial court to dispose of the suit as early as possible preferable within 6 (six) months from the date of receipt of this order.

In the result the Rule is made absolute. The impugned judgment and order dated 13.01.2019, passed by the learned District Judge, Natore, in Miscellaneous Appeal No. 2 of 2018 is hereby set-aside.

Since this is a long pending case the trial court is directed to dispose of the suit as early as possible preferable within 6 (six) months from the date of receipt of this order.

The order of status-quo granted earlier by this court should continue till disposal of the suit.

Communicate the order at once.

M.R.