

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

Present:

**Mr. Justice Md. Mozibur Rahman Miah
and
Mr. Justice Mohi Uddin Shamim**

Civil Rule No. 260 (F) of 2019

AND

In the matter of:

Nazim Asadul Haque, son of Mohammad
Aminul Haque and Nazma Haque of House
No. C EN (F) - 13, Road No. 104, Gulshan-
2, Dhaka - 1212

.... Plaintiff-appellant-petitioner

-Versus-

Bangladesh Bank represented by its
Governor, Bangladesh Bank Bhaban,
Motijheel C/A, Dhaka and others

.... Defendants-respondents-opposite parties

No one appears

... For the plaintiff-appellant-petitioner

Mr. Ruhul Ameen, Advocate with

Mr. Md. Rokonuzzaman (Mamun), Advocate

.... For the defendant-respondent-opposite party No.7

Heard on: 04.02.2024 and

Judgment on: 05.02.2024

Mohi Uddin Shamim, J.

At the instance of the plaintiff-appellant-petitioner this rule was issued calling upon the opposite parties to show cause as to why the opposite parties should not be restrained by an order of injunction from circulating and

publishing the name of the plaintiff-appellant-petitioner as defaulter borrower in the CIB (Credit Information Bureau) report of Bangladesh Bank till disposal of the Appeal and/or pass such other or further order or orders as to this court may seem fit and proper.

At the time of issuance of the Rule, this Court also passed an ad-interim order of injunction restraining the defendants-respondents-opposite parties in publishing and circulating the name of the plaintiff-appellant-petitioner as defaulter borrower in the CIB report of Bangladesh Bank for a period of 06 (six) months from date; which has subsequently been extended from time to time and lastly on 27.12.2023 it was extended till disposal of the rule.

Facts relevant for disposal of the Rule, in short, are that the present petitioner with others as plaintiffs filed a title suit being Title Suit No.267 of 2019 before the learned Joint District Judge, 5th Court, Dhaka for declaration to the effect that publication of its name in the Credit Information Bureau, hereinafter referred to as CIB, report of Bangladesh Bank classifying the petitioner as defaulting borrower is illegal, collusive, mala-fide, without lawful

authority and not binding upon the plaintiff. After filing the suit, the plaintiff also filed an application under Order XXXIX, rules 1 and 2 read with section 151 of the Code of Civil Procedure, 1908 (hereinafter referred as the Code) for temporary injunction for restraining the defendants from circulating and publishing the name of the petitioner in the CIB report of Bangladesh Bank as defaulter borrowers. Both the suit and the application for injunction were taken up for hearing together by the learned Joint District Judge, 5th Court, Dhaka on 13.05.2019 and ultimately rejected the plaint under Order VII, rule 11(d) of the Code, relying upon section 27 KaKa of the Banking Companies Act, 1991 and Article 42-48 of Chapter IV of the Bangladesh Bank Order, 1972 and made no order upon the application for injunction since the suit was rejected.

Being aggrieved by and dissatisfied with the said order of rejection of the plaint i.e. dismissal of the suit as well as the application for injunction, the plaintiff as appellant preferred the instant First Appeal No.343 of 2019. Soon after preferring appeal, the appellant as petitioner filed an application under order XXXIX, rule 1 and 2 of the Code for injunction on the self-same

averments and prayers as earlier and obtained the instant Rule and order of injunction.

No one appears to press the Rule though the matter has been appearing at the top of the daily cause list for hearing with the name of the learned counsels for the contending parties.

Mr. Ruhul Ameen, learned advocate appears with Mr. Md. Rokonzaman (Mamun), Advocate on behalf of the opposite party No.7 to oppose the Rule, taking us to the application for injunction, Rule issuing order and all other connected materials available on record contends that, under the provision of section 27 KaKa of the Banking Companies Act, 1991, the Banks and the Financial Institutions are in its statutory obligation to send the name of defaulting borrower(s) to Bangladesh Bank, and Bangladesh Bank in its turn, is under statutory obligation to insert the names of those defaulting borrowers in its' CIB report and circulating the said names and report to all the Banks and Financial Institutions of the country, having no illegality in it.

The learned counsel next contends that, since there has been legal embargo in challenging the propriety of any action and steps taken by

Bangladesh Bank and its officers with good faith under article 41(2) of chapter IV of the Bangladesh Bank Order, 1972 and as such there is no scope to challenge the inclusion and publications of the defaulting borrowers name in the CIB report.

The learned Counsel for the opposite party No.7 further contends that the petitioner in his injunction application took a plea that he resigned from the company directorship in year the of 2017 complying with all the necessary formalities prescribed by law. So inclusion of his name in the CIB report of Bangladesh Bank is illegal. However, the same is untrue and an evasive submission, as, the respondent bank had never given any sanction to him to resign as director, or transfer his shares to others and finally prays for discharging the Rule.

We have heard and considered the submission so advanced by the learned counsel for the opposite party No.7, perused the application for injunction and the Rule issuing order. We have also gone through the provisions of law and according to section 27 KaKa of the Banking Companies Act, 1991, it is the statutory obligation of the Banks and the

Financial Institutions to send its' defaulting borrowers name to the Bangladesh Bank time to time and in this way Bangladesh Bank is in under legal obligation to include the names of the defaulting borrows to the CIB report and circulating the same to the Banks and Financial Institutions of the country. According to the provisions of article 41(2) of chapter IV of the Bangladesh Bank Order, 1972, there is a clear bar to any legal proceeding against any action or steps taken by Bangladesh Bank and its' officers against defaulting borrowers with good faith, which was enunciated in the decisions reported in **73 DLR 554** along with other reported cases. As regards of plea of resignation from the company directorship and transferring of his shares is a very evasive submission, since, no evidence(s) has been produced in support of pre-sanction from the opposite party-bank as required by section 27 Ka of the Banking Companies Act, 1991. Given such a legal embargo, we are not inclined to discuss such settled issue further and we also do not find any legal grounds for which the impugned order can be called into question.

Considering the discussions made hereinabove, we do not find any merit in the Rule.

In the result, the Rule is **discharged** however without any order as to cost.

The order of injunction granted at the time of issuance of the Rule is hereby recalled and vacated.

Communicate a copy of this judgment to each of the opposite parties forthwith.

Md. Mozibur Rahman Miah, J.

I agree.

Syed Akramuzzaman
Bench Officer