

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

Civil Revision No. 1326 of 2019

IN THE MATTER OF

Abdul Kader Sheikh and others

.....Defendants-Petitioners

-Versus-

Sabita Dhali

.....Plaintiff-Opposite party

Mr. Shaikh Forhadul Haque, Advocate

.....For the petitioners

Mr. Ashutosh Kumar Sana, Advocate

.....For opposite party No.1

Heard on 29.05.23, 04.06.23, 05.06.23

and judgment passed on 06.06.2023

Present:

Mr. Justice Kazi Md. Ejarul Haque Akondo

Kazi Md. Ejarul Haque Akondo, J.

This Rule, under section 115(4) of the Code of Civil Procedure, 1908, was issued in the following terms:

“Record need not be called for. Let the leave be granted. Let a Rule be issued calling upon opposite party No. 1 to show cause as to why the impugned judgment and order dated 26.11.2018 passed by the learned Judge of Jana Nirapatha Bighnakari Aparadh Daman Tribunal (District and Sessions Judge) Khulna in Civil Revision No. 06 of 2018 allowing the civil revision and thereby setting aside the order dated 04.01.2018 passed by the learned Assistant Judge, Batiaghata, Khulna in Title Suit No. 182 of 2016 refusing to extend the order of stay

granted by order No. 2 dated 01.09.2016 on an application under section 151 of the Code of Civil Procedure should not be set aside 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 stayed the operation of the impugned judgment and order dated 26.11.2018 for 6(six) months from the date and in the meantime, the parties were directed to maintain status-quo in respect of possession and position of the suit land, which was lastly extended on 25.11.2019 till disposal of the Rule.

The present opposite party No. 1 as the plaintiff filed Title Suit No. 182 of 2016 in the Court of Learned Assistant Judge, Batiaghata, Khulna against the present petitioners and others for a declaration that the preliminary judgment and decree dated 27.10.2010 passed by the learned Assistant Judge, Dacope, Khulna in Title Suit No. 362 of 2008, and the judgment and decree dated 11.11.2013 passed by the learned Joint District Judge, 2nd Court, Khulna in Title Appeal No. 288 of 2010 and final decree dated 12.07.2015 and the order dated 14.08.2016 passed in Title Execution Case No. 01 of 2016 as mentioned in the Kha schedule is illegal, fraudulent, collusive and ineffective, and not binding upon the plaintiff.

Defendant Nos. 4-9 appeared in the suit and filed a written statement denying the material allegations made in the plaint for the reasons stated therein. Thereafter, on 31.08.2016, the plaintiff-opposite party No. 1 filed an application under section 151 of the Code Civil Procedure praying for staying the operation of the judgment and preliminary decree dated 11.11.2013 passed of Title Suit No. 362 of 2008 and its final decree dated 12.07.2015 along with Title Execution Case No. 01 of 2016. After hearing the same the learned Assistant Judge, Batiaghata, Khulna by order dated 01.09.2016 issued a show cause notice upon the defendants to show cause, and stayed the operation of the judgment and decree passed in Title Suit No. 362 of 2008 till 20.09.2016. Thereafter, on the day fixed for, that is on 20.09.2016 defendant Nos. 4-9 filed a written objection against the said application and, the learned Judge extended the said order of stay till 04.01.2018. Subsequently, on 04.01.2018 the plaintiff further prayed for an extension of the said order of stay but the learned Senior Assistant Judge rejected the prayer and fixed the next date on 01.02.2018 for framing issues.

Being aggrieved by the said impugned judgment and order dated 04.01.2018 the plaintiff preferred a civil revision before the learned

District Judge, Khulna, and the same was numbered as Civil Revision No. 06 of 2018 and after hearing the same the learned District Judge by his judgment and order dated 26.11.2018 allowed the civil revision by setting aside those of the Trial Court, and stayed all further proceedings of final decree of Title Suit No.362 of 2008 including all other activities of execution case till disposal of Title Suit No. 182 of 2016.

Being aggrieved by the said impugned judgment and order dated 26.11.2018 the defendants as the petitioners had preferred this civil revision before this Court and obtained the instant Rule which is before us for consideration.

Anyway, Mr. Shaikh Forhadul Haque, the learned Advocate appearing for the petitioners submits that before passing the order of stay on 01.09.2016, the learned Assistant Judge, Batiaghata, Khulna disposed of the suit with satisfaction by delivering possession in favor of the decree-holder by beating dram by but the Revisional Court below without considering this allowed the revision and stayed all further proceedings of Title Suit No. 362 of 2008 till disposal of Title Suit No. 182 of 2016 which is an anfractuous order since Title Suit No. 362 of 2008 has already been disposed of with satisfaction.

He also submits that the final decree of Title Suit No. 362 of 2008 was fully disposed of on 14.08.2016 and on the other hand, Title Suit No. 182 of 2016 was filed on 24.08.2016, that is to say, Title Suit No. 182 of 2016 was filed after disposal of the final decree of Title Suit No. 362 of 2008 so earlier proceedings of Title Suit No. 362 of 2008 cannot be stayed by filing an application for stay in a subsequent Title Suit No. 182 of 2016.

He lastly submits that the plaintiff-opposite party has no locus standi to apply to stay the final decree where the plaintiff was not a party. If the plaintiff proves his case in his subsequent suit, he would get relief there as prayed for and as such, the instant Rule is liable to be made absolute.

On the other hand, Mr. Ashutosh Kumar Sana, the learned Advocate appearing for plaintiff-opposite party No. 1 submits that the learned District Judge considering the facts and circumstances of the case rightly passed the impugned judgment and order and thereby committed no illegality. He further submits that the learned Judge of the Trial Court below at the initial stage stayed all further proceedings of Execution Case No. 01 of 2016 arising out of Title Suit No. 362 of

2008 but subsequently refused to extend the same illegally and thereby committed an error of law.

Heard the learned Advocates of the contending parties and have perused the materials on record. It appears from the materials on record that before passing the order of stay on 01.09.2016 by the learned Assistant Judge, Batiaghata, Khulna the Decree Execution Case No.1 of 2016 arising out of Title Suit No.362 of 2008 was finally disposed of on 14.08.2016 by the learned Assistant Judge, Dacope, Khulna with satisfaction by delivering possession of the suit land in favor of the decree-holder but the learned Judge of the Revisional Court below without considering this aspect of the case allowed the revision and stayed all further proceedings of Title Suit No. 362 of 2008 till disposal of Title Suit No. 182 of 2016. It also appears that the final decree of Title Suit No. 362 of 2008 was disposed of on 14.08.2016 and thereafter, the instant Title Suit No. 182 of 2016 was filed on 24.08.2016 after execution of the final decree of Title Suit No. 362 of 2008 and as such, there is no scope to stay the proceeding of Title Suit No. 362 of 2008 by filing an application for stay in a subsequent suit like Title Suit No. 182 of 2016. In the premises, it appears that the learned Judge of the Revisional Court below has taken an erroneous

decision in passing the impugned judgment and order occasioning a failure of justice.

Given the above, I find substance in the submissions made by the learned Advocate for the petitioners, and merit in the Rule. Accordingly, the Rule succeeds.

As a result, the Rule is made absolute without cost.

The order of stay and status quo are vacated.

The impugned judgment and order dated 26.11.2018 passed by the learned Judge of Jana Nirapatha Bighnakari Aparadh Daman Tribunal (District and Sessions Judge) Khulna in Civil Revision No. 06 of 2018 allowing the civil revision and thereby setting aside the order dated 04.01.2018 passed by the learned Assistant Judge, Batiaghata, Khulna in Title Suit No. 182 of 2016 refusing to extend the order of stay granted earlier is hereby set-side.

Communicate the judgment to the Court concerned at once.