

Bench:

Mr. Justice Bhishmadev Chakrabortty

And

Mr. Justice Md. Akhtaruzzaman

Civil Revision No.480 of 2019

Farid Ahmed and others ...petitioners

-Versus-

Md. Mamun Al-Rashid Talukder (Milon) and others

...opposite parties

Mr. Shahnoor Ahmed with

Mr. Md. Enamul Hossain Sumon, Advocates

.... for the petitioners

Mr. Md. Zakir Hossain with

Mr. Md. Hekam Ali, Advocates

...for opposite party 1

Judgment on 20.11.2023.

Bhishmadev Chakrabortty, J.

At the instance of the plaintiffs, this Rule was issued calling upon the opposite parties to show cause as to why order dated 12.08.2018 passed by the Joint District Judge, 4th Court, Dhaka in Title Suit No. 673 of 2015 rejecting the application under section 151 of the Code of Civil Procedure (the Code) for depositing Taka 35,80,806.53 in Court as share of rent from 01.09.2014 to 01.07.2018 should not be set aside 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 petitioners as plaintiffs instituted the aforesaid suit in the above named Court praying for partition of the suit property measuring .0249 acres and a five storied building thereon claiming their saham to the extent

of .010778 acres as detailed to the schedule of the plaint. Amongst other they contended that the defendants are enjoying all income of the building including rent of the flats and godowns in which the plaintiffs are entitled to get share. The suit is still pending for disposal.

In the aforesaid suit, the plaintiffs on 23.07.2018 filed an application under section 151 of the Code praying for a direction upon the defendants to deposit in the Court the plaintiffs' share of rents collected from 01.09.2014 to 31.07.2018 in total Taka 35,80,806.53 along with Taka 10 lac as security.

The defendants contested the said application by filing written objection denying the statements made in the application. They mainly contended that the plaintiffs are not entitled to the share unless and until the suit is decreed; that the plaintiffs' claim is vague and indefinite and that earlier the Court appointed a receiver for the aforesaid purpose but the order was set aside by the higher Court and, therefore, present application for the same purpose is not maintainable.

However, the learned Joint District Judge by order dated 12.08.2018 rejected the said application against which the plaintiffs moved in this Court with the present revision and obtained this Rule.

Mr. Shahnour Ahmed, learned Advocate for the petitioners taking us through the annexures and the impugned order submits that the plaintiff-opposite parties have been collecting rents from the

tenants and enjoying the whole without providing any share to the plaintiffs although they are the legal heirs of the original owner late Abdul Wazed Talukder. The rents collected by the defendants have been described in the application categorically. The defendants have been enjoying the suit property depriving the plaintiffs. The Court of law has every power to ensure justice to the plaintiffs by passing an order directing the defendants to deposit plaintiffs' share of rent in the Court. The trial Court ought to have allowed the aforesaid application and pass order as per prayer. But the Court without considering the principle of equity and natural justice most illegally and whimsically passed the order which has resulted in an error in such order occasioning failure of justice.

Mr. Ahmed nextly submits that if the defendants take away the whole collected amount without paying the share of the plaintiffs without depositing the share in the Court it will be difficult for the plaintiffs to realize the amount in future, if the suit is decreed. The Court ought to have allowed the application under its inherent power to secure the ends of justice. The impugned order, therefore, should be set aside and the Rule be made absolute.

Mr. Md. Zakir Hossain, learned Advocate for opposite party 1 contests the Rule by filing counter affidavit denying the statements made in the Rule petition. He submits that earlier a similar application under Order 40 Rule 1 read with section 151 of the Code was moved

in the trial Court which was allowed on 18.09.2016 and a receiver was appointed for the management of the suit building. Against it defendants filed Miscellaneous Appeal No. 141 of 2016 before the learned District Judge, Dhaka which was dismissed and the order of appointment of receiver passed by the trial Court was affirmed. Against which the defendants moved in this Court in Civil Revision 3320 of 2016. The Rule issued in the aforesaid revision was made absolute on 06.03.2017 and the judgment and order passed by the Courts below was set aside. The plaintiffs went to the Appellate Division in Civil Petition for Leave to Appeal (CPLA) No. 1708 of 2017 against it. The Appellate Division summarily dismissed the leave petition and affirmed the judgment and order passed by the High Court Division. The plaintiffs subsequently filed the instant application before the trial Court under section 151 of the Code almost with similar prayer. The trial Court on going through the materials on record rejected the application. There is no error in the impugned order for which it can be interferable with by this Court in revision.

We have considered the submissions of both the sides, gone through the annexures appended with the application and the impugned order. We have also gone through the documents annexed with the counter affidavit.

It transpires that the plaintiffs brought the suit for partition claiming their saham in the suit building as detailed in the schedule of the plaint. In the trial of the suit, it is to be decided whether the plaintiffs are entitled to the share as claimed. It further appears that the plaintiffs earlier filed an application before the Joint District Judge under Order 40 Rule 1 read with section 151 of the Code praying for appointment of receiver to collect rents of the houses, shops and godowns and to deposit the same to the Bank account or in the Court. Although the Court had allowed the said application and appointed a receiver, but the order was set aside by this Division in Civil Revision No. 3320 of 2016 which was also affirmed by the Appellate Division.

The present application under section 151 of the Code was filed seeking for a direction upon the defendants to deposit in the Court, the share of rents of the plaintiffs collected from the houses, shops and godowns from 01.09.2014 to 01.07.2018 amounting to Tk. 35,80,806.53 with security of Tk. 10 lac. We have scrutinized the application filed previously and the present application under section 151 of the Code. We find that the prayer and purpose of filing both applications are almost similar. Since the order of appointment of receiver for collecting rents and depositing it to the Court or Bank passed earlier has been set aside by this Division, the instant application almost with the similar prayer for the same purpose is not at all maintainable. Moreover, the statements made in the application

are vague, indefinite which cannot be allowed. Where there is specific provision of law, the application can not be allowed on the principle of equity and natural justice. We find no error in the impugned order passed by the Joint District Judge which occasioned failure of justice.

Therefore, we find no merit in this Rule. Accordingly, the Rule is discharged but there will be no order as to costs.

However, we direct the trial Court to dispose of the suit within 1 (one) year from the date of receipt of this judgment and order. In dealing with the suit, the trial Court shall not allow either party any adjournments without extreme exigency.

Communicate this judgment and order to the Court concerned.

Md. Akhtaruzzaman, J.

I agree.