

Present:-

Mr. Justice Mahmudul Hoque

Civil Revision No. 1792 of 2019

Rafik Ahamad and another
..... Petitioners

-Versus-

Mohammad Sirajudullah Chowdhury being
dead his heirs:

1(a) Jahan Ara Siraj and others
..... Opposite-Parties

No one appears

... For the Petitioners

Mr. Hasan Mohammed Reyad, Advocate

... For the Opposite Party No. 1

Judgment on 13.03.2025

In this revision Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and order dated 08.04.2019 passed by the learned Additional District Judge, Bankruptcy Court, Chattogram in Miscellaneous Appeal No. 10 of 2018 rejecting the application for stay of the proceeding of Other Execution Case No. 02 of 2017 should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

Facts relevant for disposal of this Rule, in short, are that predecessor of opposite party No. 1 named Mohammad Sirajudullah Chowdhury filed Other Suit No. 86 of 1982 against the present petitioner and other opposite parties, as defendant, for a declaration of easement

right in the suit property which was decreed on contest. The defendant also filed Other Suit No. 87 of 1982 against the predecessor of the opposite party No. 1 for a decree of permanent injunction which was dismissed. After long time the defendant judgment debtor on 20.12.2000 created obstruction on the pathway by erecting pucca wall. Consequently, the opposite party filed Other Suit No. 20 of 2001 in the Court of 5th Senior Assistant Judge, Chattogram for a decree of mandatory injunction. The suit was decreed on contest on 29.08.2013. Thereafter, the petitioners filed Other Appeal No. 254 of 2013 before the District Judge, Chattogram. Eventually, the appeal was transferred to the court of Additional District Judge and Bankruptcy Court, Chattogram for hearing and disposal. In usual course the appeal was fixed for hearing on 23.01.2017 subject to payment of C.P. cost by the appellant. On the date fixed the appellant did not take any step for hearing and deposit of C.P. cost. The appellate court on repeated calls found the appellant absent, consequently, the appeal was dismissed for default and for non-payment of C.P. cost, consequently, decree was put in execution by filing Execution Case No. 02 of 2017. Thereafter, the appellant came with an application for re-admission of the appeal at a delay of 666 days with an

application under Section 5 of the Limitation Act, praying for condonation of such delay. It was registered as Miscellaneous Case No. 10 of 2018.

The appellate court by its order dated 13.01.2019 admitted the case provisionally subject to consideration of the application for condonation of delay at the time of hearing. On an off date i.e, on 08.04.2019 the appellant- applicant filed an application for putting up the record which was allowed by the court and filed an application praying for stay further proceeding of Execution Case No. 02 of 2017. The appellate court by the impugned judgment and order dated 08.04.2019 rejected the application. At this juncture, the petitioner moved this Court by filing this revisional application under section 115(1) of the Code of Civil Procedure and obtained the present Rule and order of stay.

None appears for the petitioners to press the Rule.

Mr. Hasan Mohammed Reyad, learned Advocate appearing for the opposite party No. 1 submits that the petitioners only to harass the opposite party and to keep the pathway obstructed filed Miscellaneous Case No. 10 of 2018 after 666 days and filed an application on an off date

praying for stay proceeding in Execution Case No. 02 of 2017. The appellate court taking into consideration the very attitude and conduct of the petitioners rejected the application, thereafter, they by filing this revisional application obtained an order of stay of execution case. However, the petitioner could pursue early hearing of the Miscellaneous Case No. 10 of 2018, but taking plea of filing this revision and granting order of stay delayed disposal of the miscellaneous case. He apprised the court that the miscellaneous case is now at the stage of further hearing. In this situation, he submits that the appellate court may be directed to dispose of the miscellaneous case within a shortest possible time.

Heard the learned Advocate for the opposite party, have gone through the revisional application under Section 115(1) of the Code of Civil Procedure, plaint in Other Suit No. 20 of 2001, the judgment and decree passed by the trial court, order of dismissal of appeal and the impugned judgment and order of both the courts below.

From perusal of annexures, like plaint and judgment of the trial court, it appears that the opposite party in an earlier Other Suit No. 86 of 1982 got a decree of easement right against the present petitioners and others which was maintained by the appellate court. By virtue of decree,

the opposite party and other inhabitants of the locality have been enjoying the benefit of pathway for ingress and outgress to their homestead. The petitioner and others being failed in their attempt to create obstruction by process of law, after a long time of having decree by the opposite party No. 1, suddenly on 20.12.2000 created obstruction on the pathway by erecting pucca wall creating inconvenience to the opposite party. Consequently, he was compelled to file Other Suit No. 20 of 2001 against the present petitioner and others for a decree of mandatory injunction. The defendants contested the suit by filing written statement and after hearing, the trial court decreed the suit directing the defendants to remove the obstruction created by them on the pathway. The petitioner, as defendant, preferred Other Appeal No. 254 of 2013 before the appellate court, but repeatedly took adjournment when the appeal was fixed for hearing.

Finally, the appellate court allowed time imposing C.P. cost to the appellant and fixed on 23.01.2017 for hearing the appeal subject to payment of C.P. costs. On the date fixed the appellant did not take any step even deposited C.P. cost as per order of the court and when the appeal was taken up for hearing on repeated calls found absent, resultantly, the appellate court dismissed the appeal for default and for

non-deposit of C.P. cost. Thereafter, the appellant remained silent for long time and all of a sudden came with an application for re-admission of appeal by filing an application at a delay of 666 days with an application for condonation of such delay. The case was registered as Miscellaneous Case No. 10 of 2018 and fixed on 13.01.2019 for hearing maintainability of the case and on the date fixed, the case was provisionally accepted subject to hearing of limitation matter at the time of final hearing. Thereafter, the appellant after three months on an off date filed an application praying for stay further proceeding in Execution Case No. 02 of 2017. The appellate court after hearing rejected the same and then the petitioner moved this Court in revision and obtained the present rule and order of stay.

From rule issuing order it appears that this Court stayed proceeding in Execution Case No. 02 of 2017, but did not stay any further proceeding of Miscellaneous Case No. 10 of 2018, therefore, there was no embargo upon the court or the appellant to get the miscellaneous case heard and disposed of, but the appellant-petitioner did not take proper step to get the miscellaneous case heard and disposed of and also failed to take step to get the rule heard and disposed of. This Rule has been fixed at the

instance of opposite party and appearing in the delay cause list with the name of the learned Advocates of both the parties for a couple of days.

When the matter is taken up for hearing, on repeated calls, learned Advocate for the petitioners found absent, consequently, I have heard the learned Advocate for the opposite party. This litigation started from 1982 in a suit for declaration of easement right which was decreed in favour of the plaintiff of that suit and maintained by the appellate court. Thereafter, for a long time the plaintiff in that suit enjoyed easement right of the suit pathway. The defendant of that suit all of a sudden on 20.12.2000 obstructed the pathway by constructing pucca wall, consequently, the opposite party, as plaintiff, again filed Other Suit No. 20 of 2001 for a decree of mandatory injunction, which was decreed on 29.08.2013 after long 13 years. Thereafter, the defendant in suit preferred Other Appeal No. 254 of 2013, but about four years the appeal was pending for hearing for lack of proper step on the part of the appellant and taking adjournment repeatedly with C.P. cost. Finally, the appeal was fixed on 23.01.2017 for hearing and deposit of C.P. cost. On the date fixed the appellant did not take any step, consequently, the appeal was dismissed for default.

After dismissal of the appeal the appellant remained silent, consequently, the decree holder put the decree in execution by filing Execution Case No. 02 of 2017. When the execution case was proceeding the appellant came with an application for re-admission of the appeal at a delay of 666 days. However, the appellate court registered the application as Miscellaneous Case No. 10 of 2018 and provisionally admitted the case for hearing subject to hearing of the condonation of delay at the time of disposal. The petitioner in miscellaneous case came with an application for stay execution proceeding in Execution Case No. 02 of 2017, the appellate court finding very conduct of the appellant refused to stay the execution proceeding. Thereafter, they obtained the present rule and order of stay.

From the very conduct of the petitioner, it appears that they moved before the appellate court by filing appeal and then got the appeal dismissed for default, then filed miscellaneous case after two years and being failed to get stay filed this revision and obtained stay order, not with a view to succeed in the case, but to delay execution of the decree and to put the decree holder in trouble by different means and tactics. Therefore,

I find that the petitioner is an indolent party not entitled to get any undue advantage before court of law.

In view of the above, I find no merit in the Rule calling for interference by this Court.

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

The order of stay granted at the time of issuance of the Rule stands vacated.

The appellate court is hereby directed to dispose of Miscellaneous Case No. 10 of 2018 within 01 (one) month from the date of receipt of this judgment and order without fail.

Communicate a copy of this judgment to the court concerned at once.