

Bench:

Mr. Justice Bhishmadev Chakrabortty

And

Mr. Justice Md. Akhtaruzzaman

First Misc Appeal No. 66 of 1997

With

Civil Rule No.146(FM) of 1997

Hazi Khurshid Alam appellant

-Versus-

Ahida Khatun Bibi and another respondents

Mr. Md. Emdadul Haque Kazi with

Mr. Saiful Islam Sumon, Advocates

..... for the appellant

No one appears for the respondents

Judgment on 05.02.2024

Bhishmadev Chakrabortty, J.

Since the parties to the appeal and the Rule are same and common question of fact and law are involved in both, these have been heard together and are being disposed of by this judgment.

This appeal, at the instance of defendant 1, is directed against the judgment and order dated 22.03.1997 passed by the District Judge, Feni in Miscellaneous Case No. 01 of 1993 allowing the case filed under Order 39 rule 2(3) read with section 151 of the Code of Civil Procedure (the Code) finding this appellant guilty for violating the Court's order of *status quo* ordering him to civil prison for 7 (seven) days and to attach his property.

At the time of admission of appeal, the above rule was issued and operation of the impugned judgment and order was stayed till disposal of the appeal.

Facts relevant for disposal of the appeal as well as the Rule, in brief, are that respondent 1 as plaintiff instituted Title Suit No. 24 of 1992 (subsequently re-numbered as Title Suit No. 33 of 1994) in the Court of the then Subordinate Judge, Feni praying for declaration of title in respect of 'Kha' schedule land with further prayer for recovery of possession of 'Ga' schedule and permanent injunction upon 'Gha' schedule land of the plaintiff.

During pending of the said suit, the plaintiff filed an application under Order 39 rule 1 read with section 151 of the Code praying for temporary injunction restraining the defendants from making any construction work over 'Gha' schedule land. The application was rejected by the Joint District Judge against which the plaintiff preferred miscellaneous appeal before the District Judge, Feni with an application for temporary injunction with similar prayer as made earlier. The District Judge admitted the appeal, rejected the prayer for temporary injunction but directed the respondent to maintain *status quo* until further order.

The plaintiff thereafter filed aforesaid miscellaneous case under Order 39 rule 2(3) read with section 151 of the Code on 03.01.1993 against the defendants for violating the Court's order dated

01.12.1992 passed in the aforesaid miscellaneous appeal. She alleged there that after service of the notice of *status quo* defendant 1 with the help of other defendants violated the Court's order and constructed a building over the disputed suit land. This appellant opposed the said miscellaneous case by filing written objection denying the facts stated therein. Learned District Judge appointed Mr. Nurul Islam as Advocate Commissioner to investigate into the matter who submitted a report. The learned Judge examined six witnesses for the petitioner and allowed the case finding opposite party 1 guilty for violating the Court's order of *status quo* and, accordingly, sentenced him for 7 (seven) days' civil prison and ordered to attach his property which has been challenged in this appeal.

Mr. Saiful Islam Sumon, learned Advocate for the appellant takes us through the materials on record and submits that a violation miscellaneous case under Order 39 rule 2(3) read with section 151 of the Code is *quasi criminal* in nature. In disposing such a case, the learned Judge is to frame issue specifying the time and date of violation. Here, learned District Judge framed issues without mentioning any date of violation. The framing of issues are, therefore, defective. The issues should be framed keeping in view that the violator can make reply to it. He refers to the cases of *Abdul Matin and others v. A.K.M. Badruzzaman and others*, 12 BLD 544; *Sultan Ahmed Howlader & ors v. Habibur Rahman Munshi*, 7 BLD 73 and

Md. Mamrul and others v. Budhan Mohammad, 13 BLD 532 and relied on the *ratio* laid therein. He finally submits that the proceeding under Order 39 rule 2(3) of the Code is *quasi criminal* and non-examination of the plaintiff renders the complaint unreliable and out of consideration. Therefore, the impugned judgment is required to be interfered with by this Court. The appeal, therefore, should be allowed and the Rule be made absolute.

No one appears for the respondents to oppose the appeal and the Rule. This is a very old matter and taken up for disposal upon hearing the appellant only.

We have considered the submissions of the learned Advocate for the appellant and gone through the materials on record. It transpires that the Joint District Judge rejected the application for temporary injunction filed in the original suit. The plaintiff then preferred a miscellaneous appeal in the Court of District Judge. She filed therein an application under Order 39 rule 1 read with section 151 of the Code praying for temporary injunction. The learned District Judge passed order upon it as under:

“Heard. Perused. Admit. Notify the respondent and call for the L.C.R. Fixing 4.2.1993 for S.R. and L.C.R. The petition under Order 39 rule 1 of the Code is rejected. But the petition under section 151 of the Code may be allowed.

The respondent be directed to maintain *status quo* until further order.”

In the above quoted order it is found that the learned District Judge rejected the application filed under Order 39 rule 1 of the Code but allowed the application under section 151 of the Code directing the respondent to maintain *status quo* until further order.

The order of *status quo* passed by the learned District Judge in the above manner appears vague and unspecific because in that order he did not direct the respondent to maintain *status quo* in respect of possession or position of the suit land or any other manner. In the application filed under Order 39 rule 2(3) read with section 151 of the Code the plaintiff asserted the fact that the aforesaid order dated 01.12.1992 was served upon defendant 1 on 06.12.1992 and thereafter by violating the order they hurriedly constructed a building over the suit land. On perusal of the application of miscellaneous case for violation, we do not find any specific date and time of the violation of the Court’s order has been mentioned therein. In the trial, the plaintiff examined 6 witnesses. The witnesses had to prove dates and time of violation but their evidence is found not corroborative on this point.

Learned District Judge framed 3 issues to adjudicate the matter in dispute which reads as under:

- ১। অত্র মামলা রক্ষণীয় কিনা ?
- ২। প্রতিপক্ষ কি স্থিতাবস্থা রাখার আদেশ ভংগ করিয়া নির্মাণ কাজ করিয়াছিলেন এবং উহা কি অব্যাহত রাখিয়াছিলেন ?

৩। আদেশ ভংগের অভিযোগ প্রমানিত হইলে এতদ বিষয়ে কি আদেশ দেওয়া হইবে ?

It is well settled position of law that a violation miscellaneous case is *quasi criminal* in nature because the person against whom the allegation has been brought should have to be confronted with a charge or issue disclosing exact, definite and precise allegations, so that he can understand the extent and nature of the allegations, without any ambiguity whatsoever. It is to be remembered that a proceeding under Order 39 rule 2(3) of the Code is, in fact, if not fully criminal, then certainly it is *quasi criminal* in nature and in determining the guilt or otherwise of the person(s) at fault, the well settled principles for the administration of justice must be followed as enunciated in the cases cited above. In a proceeding like the present one, the person charged must be presumed to be innocent unless his guilt or fault is proved beyond all reasonable doubt and, further, the onus of proving the allegations of disobedience is always on the prosecution. The above provision of law has not at all complied with in disposing the aforesaid violation miscellaneous case. The learned District Judge on misconception of law and fact allowed the miscellaneous case filed under Order 39 rule 2(3) read with section 151 of the Code finding that the appellant violated the Court's order of *status quo* and ordered him to civil prison attaching his property and as such it should be interfered with.

In view of the discussion made hereinabove, we find merit in this appeal. Accordingly, the appeal is allowed. However, there will be no order as to costs. The judgment and order passed by the District Judge in the aforesaid miscellaneous case is hereby set aside. The miscellaneous case for violation is therefore rejected. The connected Civil Rule 146 (fm) of 1997 is accordingly disposed of.

The order of stay stands vacated.

Communicate the judgment and order to the concerned Court.

Md. Akhtaruzzaman, J.

I agree.