

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

CIVIL REVISION NO. 1091 of 2020

In the matter of:

An Application under section 115(1) of the Code of Civil Procedure.

And

In the matter of:

Dr. Muntassir Uddin Khan Mamoon
alias Muntassir Mamoon.

..... Petitioner.

Vs.

Begum Munnujan Sufian(M.P.) and
others.

.....Opposite Parties.

Present (Physically in Court) :
Mr. Justice Sheikh Hassan Arif
And
Mr. Justice Ahmed Sohel

Mr. A.K. Rashedul Huq, Advocate
(Appearing Virtually and Physically).

....For the petitioner.

Mr. Md. Nurul Amin, advocate with
Mr. Md. Enamul Haque Molla,
Advocate (Appearing Virtually).

..For the opposite party No.1.

Heard on 27.09.2021 and 31.10.2021.
Judgment on 01.11.2021.

SHEIKH HASSAN ARIF, J

1. At the instance of the defendant No. 2 in Title Suit No. 40 of 2019, Rule was issued calling upon the plaintiff-opposite party No. 01 to show cause as to why the order dated 23.01.2020 passed by the Joint District Judge, Third Court, Dhaka in Title Suit No. 40 of 2019 rejecting petitioner's application filed under Order VII, rule 11 read with Section

151 of the Code of Civil Procedure for rejection of plaint, should not be set-aside.

2. Background Facts:

2.1 Facts, relevant for the disposal of the Rule, in short, are that the opposite party No. 1, as plaintiff, filed the said Title Suit No. 40 of 2019 against the petitioner and three others seeking declaration and compensation. The case of the opposite party No.1-plaintiff, in short, is that she is a member of Parliament and State Minister for Labour and Employment Ministry of the Government of Bangladesh. That a book named “Bangladesh Charcha/3” was edited by defendant No. 2, and published and printed etc. by defendant Nos. 1, 3 and 4. That the plaintiff received a copy of the said book on 25.06.2018 and found that the name of plaintiff’s father was listed therein at Serial No. 36 as a member of ‘Peace Committee’ during Liberation War. The plaintiff then visited the residence of defendant No. 2 and made query about it, who could not give proper reply. The plaintiff, thereafter, issued notice on defendant No. 2 on 01.07.2018 and the said notice was replied by defendant No. 2 in a very casual way. That the plaintiff is a highly reputed person and that although her father was a

freedom fighter and Awami League leader at the relevant time, the defendants have illegally shown his father as member of 'Peace Committee' in the said book which has caused serious damage to her reputation. Accordingly, the plaintiff sought a declaration to the effect that the said information at serial 36 in the list of Peace Committee members in the said book was illegal and untrue. Additionally, the plaintiff prayed for a decree of compensation for an amount of Tk. 50 crore as against the damage allegedly caused to her reputation by such publication.

2.2 Upon service of summons in the said suit, the petitioner entered appearance as defendant No. 2 and filed an application under Order VII, rule 11 read with Section 151 of the Code of Civil Procedure for rejection of the plaint mainly on the ground that the suit for compensation being a suit for damage for libel, the period of limitation is one year under Article 24 of the Limitation Act and as such the suit having been filed after 14 years of the publication of the said book, the same is barred by limitation. It is further contended by the defendant No. 2 that the individual who filed the said suit has claimed himself as authorized

person of the plaintiff and as such the plaint filed by such authorized person cannot be allowed to continue and that the plaintiff being in the service of profit of the government, the suit filed without prior permission of the government cannot be allowed to continue. Thereupon, the Court below, after hearing the parties, rejected the said application filed by defendant No. 2 vide impugned order dated 23.01.2020. Being aggrieved by such rejection, the defendant No. 2 has preferred this civil revisional application and obtained the aforesaid Rule.

- 2.1 The Rule is opposed by the plaintiff-opposite party No. 1 through learned advocate Mr. Md. Nurul Amin.

3. Submissions:

- 3.1 Mr. A.K. Rashedul Huq, learned advocate appearing for the petitioner, after placing the plaint in question and the impugned order, submits that in the schedule to the plaint, the plaintiff has categorically stated that the book in question was published in February, 2005. Therefore, according to him, on the very information given by the plaint as regards the month of publication of the said book, the suit was obviously barred by limitation. In this regard,

he has referred to Article 24 of the Limitation Act 1908 which prescribes for a period of one year for filing a suit for libel from the final publication of such libel.

3.2 Mr. Huq then submits that it is clearly averred in the plaint that the same has been filed on behalf of the plaintiff by an authorized person named Md. Jahangir Alam. According to him, since no averment has been made in the plaint as regards the nature of such authority of the said individual or as to how the said individual has been appointed as constituted attorney, the plaint cannot continue like this and as such, according to him, the Court below has committed gross illegality in not rejecting the plaint on such application filed by the petitioner. By referring to some decisions of this Court including our Appellate Division, namely the decision in **Faiez Ahmed and others vs. Nur Jahan Begum, 11 BLT, 2003-379, Nirmal Chandra Dutta vs. Ansar Ahmed and others, 10 MLR (HC) 2005-344 and the decision of our Appellate Division in BIWTC vs. M/S Seres Shipping, 4 BLD (AD) (1984)-222**, he submits that our courts, in a clear-cut case, has held that a plaint may be rejected on the point of limitation even though in some cases it has been held that the point of

limitation is a mixed question of facts and law. According to him, since this case falls under a clear-cut case category in that the plaint has specifically mentioned the month of publication of the said book and, admittedly, the plaint has been filed after about 14 years of such publication, the prayer in the plaint claiming compensation for such publication is clearly barred by limitation and as such the same should have at least been stricken out by the Court below.

3.3 As against above submissions, Mr. Md. Nurul Amin, learned senior counsel appearing for the plaintiff-opposite party No. 1, submits that it has time and again been decided by our superior Courts that the point of limitation is a mixed question of facts and law and such point can only be decided after examining evidences during trial. In support of his such submission, he has referred to various decisions of this Court and our neighboring Court, namely the decisions in **Dulal Sarker vs. Mrs. Nurjahan Begum, 35 DLR (1983)-217, Shahabuddin vs. Habibur Rahman, 50 DLR (AD) (1998)-99 and Md. Shahabuddin and others vs. Habibur Rahman and others, 16 DLR (AD) (1996)-279.** As regards the mentioning of time of

publication of the said book in the schedule to the plaint, Mr. Amin submits that the schedule is not the averment of the plaint. Therefore, according to him, a plaint cannot be rejected on the basis of information given in the schedule to it. In this regard, he has referred to the provisions under Order VII, rule 1 of the Code of Civil Procedure. Learned Advocate further submits that a plaint cannot be rejected in part and that even if it is found that some parts are barred by law, the plaint should be allowed to continue.

4. Deliberations, Findings and Orders of the Court:

4.1 Admittedly, the suit has been filed by the plaintiff through an authorized person. However, since there is no statement in the averment of the plaint as to how that authorized person has been authorized and since this issue has not been addressed by the Court below in the impugned order, we are not in a position to determine as to the nature of such authorization. On the other hand, even if the authorized person is not authorized properly, there is still time in favour of the plaintiff to get any such irregularity cured. Therefore, we are of the view that on this point, the plaint cannot be rejected.

4.2 Further admitted position is that the suit has been filed by the plaintiff seeking two reliefs, namely-

- (1) Prayer 'Ka': declaration to the effect that the information given at serial 36 of the list of peace committee members in the said book, namely "Bangladesh Charcha/3" is illegally, untrue etc. and
- (2) Prayer 'Kha': A decree of compensation for an amount of Tk. 50 crore as against the damage done to the plaintiffs by such publication.

4.3 Therefore, it is clear that the plaintiff has made the said prayer 'Kha' seeking a relief for the libel done by the said publication.

4.4 It further appears from the schedule to the plaint that the plaintiff has described the said book as well as the period of publication of the said book in the following terms: "প্রথম প্রকাশ ফেব্রুয়ারী/২০০৫". Therefore, it is clearly evident from this schedule to the plaint that it was very much within the knowledge of the plaintiff that the said book was published in 2005, although the plaintiff has made averment in the plaint that the copy of the said book came to her hand in 2018. The law of libel, in particular the period of limitation

applicable to a suit of libel is very clear by Article 24 of the first schedule to the Limitation Act, 1908 and the said period of limitation is one year. It does not say that the said one year period will start from the date of knowledge. Rather, it says that the said period will start from the publication of the said libel. Therefore, according to the information given by the plaintiff in the schedule to the plaint itself, the said libel was in fact published in February, 2005. Therefore, the period of limitation to file a suit seeking compensation for such libel expired in February, 2006. However, the suit was admittedly filed on 13 February, 2019. Therefore, the said relief sought by the plaintiff in the plaint is apparently barred by limitation.

4.5 Now, the question is whether such point of limitation can be decided at the earliest opportunity on an application filed under Order VII, rule 11 of the Code for rejection of plaint. In this regard, we have examined the decisions referred to by learned advocates of the parties. It appears that depending on the averments made in the plaint, some decisions of our Court are in favour of not rejecting such plaint at the earliest opportunity. As for examples in **Dulal Sarker's case** and **Shahabuddin's case** referred to

above, it was decided that the question of limitation being a mixed question of law and fact, plaint cannot be rejected at the earliest opportunity under Order VII, rule 11. However, in some other cases, namely in **Faiez Ahmed's case, 11 BLT, 2003-379, Nirmal Chandra's case 10 MLR (HC) 2005-344 and BIWTC case 4 BLD (AD) (1984)-222** referred to above, it appears that some division benches of the High Court Davison and our Appellate Division have allowed rejection of plaint at the earliest opportunity when the suit is apparently found to be barred by limitation. In those cases, it has been held that when it is clear from the very averment of the plaint that the suit is barred by limitation, there is no necessity for taking further evidences to reach such conclusion.

4.6 The case in hand is a case where the point of limitation can be decided on the very averment of the plaint, in particular its schedule. According to the plaint and its schedule, the book was published in 2005 and the copy of the book came to plaintiff's hand in 2018. But she filed the said suit in 2019. Therefore, the prayer 'Kha' in her plaint, which is in fact a prayer for compensation as against libel caused to her by such publication, is apparently barred by

limitation, namely by Article 24 of the first schedule to the Limitation Act, 1908. Therefore, since this prayer 'Kha' is clearly barred by limitation, we are of the view that this prayer cannot exist in the said plaint. We are further of the view that taking further evidence on the said point of limitation would in fact cause monetary and other loss to the parties, particularly when the plaintiff herself has mentioned the time of publication of the said libel in the plaint. In view of above, we find partial merit in the Rule and as such the same should be made absolute-in-part.

4.7 In the result, the Rule is made absolute-in-part. The impugned order dated 23.01.2020 passed by the Joint District Judge, Third Court, Dhaka in Title Suit No. 40 of 2019 is hereby set-aside to the extent it has rejected the prayer of the defendant No. 2 in respect of prayer 'Kha' in the plaint. Accordingly, the prayer 'Kha' in the plaint is hereby rejected and struck out. Office of the Court below is directed to delete the said prayer (prayer 'Kha') from the plaint. The Court below is also directed to dispose of the

suit expeditiously, preferable within a period of 06 (six) months from receipt of the copy of this order.

Communicate this.

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(Sheikh Hassan Arif, J)

I agree.

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(Ahmed Sohel, J)