

Present:

Mr. Justice A.K.M. Asaduzzaman

Civil Revision No. 338 of 2020

Md. Kabirul Haque

.....Petitioner.

-Versus-

Most. Amena Khatun and others

.....Opposite parties.

Mr. Aminul Islam, Advocate

.....For the petitioner.

Mr. Md. Ahsan Habib, Advocate

.....For the opposite party.

Heard and judgment on 31st May, 2023.

A.K.M.Asaduzzaman,J.

This rule was issued calling upon the opposite party No.1-4 to show cause as to why the judgment and order No.13 dated 29.01.2020 passed by the Additional District Judge, 1st Court, Gazipur in Miscellaneous Appeal No. 29 of 2019 allowing the application filed by the plaintiff for vacating the order of stay

granted earlier on 28.11.2019 and directing the parties to maintain status-quo in respect of suit land should not be set aside.

Opposite parties No.1-4 as plaintiff filed Title Suit No. 05 of 2018 before the Court of Assistant Judge,, 2nd Court, Gazipur for permanent injunction against the defendant petitioner.

During pendency of the suit on 08.01.2018 an application under Order 39 Rule 1 read with section 151 of the Code of Civil Procedure was filed by the plaintiff for temporary injunction in respect of suit land restraining the defendants by an order of permanent injunction from evicting them, construction and boundary wall or any construction, cut the trees or mud, change the nature and character of the suit land, to sell the suit land or disturbing the peaceful possession of position of the plaintiffs.

After hearing the application, the learned Assistant Judge on the same date issued a show cause notice upon the defendant petitioner as to why by an order of temporary injunction should not be passed against them within 15(fifteen) days from the date. The petitioner appeared before the court and opposes the applications.

By the order dated 02.05.2019 the learned Assistant Judge after hearing the applications and the parties allowed the said application for temporary injunction and directed the parties to maintain status quo in respect of possession and position of the suit land till next date.

Being aggrieved by the said order, defendant petitioner preferred Miscellaneous Appeal No.29 of 2019 before the Court of District Judge, Gazipur and also filed an application for staying the operation of the impugned order dated 2.5.2019 passed by the Assistant Judge, 2nd Court, Gazipur in Title Suit No. 05 of 2018. Although initially the said order was stayed by the District Judge but finally the Additional District Judge, 1st Court, Gazipur to whom it was transferred for hearing, vacated the order of stay granted earlier on an application filed by the plaintiffs and extended the order of status-quo by the impugned order dated 29.1.2020.

Challenging the said judgment and order, defendant petitioner obtained the instant rule and also obtained the order of stay operation of the impugned judgment and order dated

29.01.2020 passed by the Additional District Judge, 1st Court, Gazipur on 10.02.2020.

Challenging the said order, plaintiff opposite parties went to the Appellate Division in Civil Petition for Leave to Appeal No. 682 of 2020, and by the order dated 20.07.2020, the said petition was dismissed, upon holding that:

“there is no legal infirmity in the impugned order factually and legally calling for interference by this court.”

The matter again taken up by this court for hearing.

Mr. Aminul Islam, the learned advocate appearing for the petitioner drawing my attention to the factual aspect of the case submits that since the order of stay granted earlier by this court for staying operation of the order of status-quo as been granted by the appellate court in miscellaneous appeal not been interfered with by the Appellate Division, the order passed by the Additional District Judge appears to be passed illegally and it may be set aside and the appellate court may be given a direction to dispose

of the appeal after staying the operation of the impugned order before him.

Mr. Md. Ahsan Habib, the learned advocate appearing for the opposite party, on the other hand although opposes the rule but considering the factual aspect of the case found it difficulties to oppose the rule. However finally he prays that a direction may be given to the Additional District Judge to dispose of the miscellaneous appeal expeditiously as early as possible.

Heard the learned Advocate and perused the impugned judgment.

It appears that this is a suit for permanent injunction. On an application for temporary injunction, Trial Court appears to pass an order of status quo, which was stayed by the District Judge on a miscellaneous appeal filed against the said order. As and when the said order of stay was vacated on the application filed by plaintiffs, defendant petitioner obtained the instant rule and an order of stay on 10.02.2020. Since the said order of stay was not been interfered with by the Appellate Division, without entering into the merit, I am also holding the view that the order or stay

granted by this court contains no illegality and the judgment passed by the Additional District Judge in miscellaneous appeal contains illegality in vacating the order of stay, and granting an order of status-quo by the impugned order dated 29.01.2020.

I thus find merits in this rule.

In the result, the rule is made absolute. The judgment and order passed by the Additional District Judge on 29.01.2020 for vacating the order of stay granted earlier by the District Judge and passing the order of status-quo in respect of the suit land is hereby set aside and the order of stay as has been granted by the District Judge is hereby upheld.

The Additional District Judge is hereby directed to dispose of the appeal on merit expeditiously as early as possible preferably within a period of 3(three) months.

The order of stay granted earlier is hereby recalled and vacated.

Send down the judgment to the courts below at once.