

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.808 OF 2021

In the matter of:

An application under Section 115(4) of the Code of Civil Procedure.

And

Azizul Karim @ Dr. Abul Hossain @ Dr. Md. Abul Hossain

.... Petitioner

-Versus-

Md. Abdul Gafur and others

.... Opposite parties

Mr. Kamal Hossain, Advocate

.... For the petitioner.

Mr. Md. Mahabubur Rashid, Advocate

.... For the opposite party Nos.1

and 3-7.

Heard and Judgment on 13.07.2023

On an application under Section 115(4) of the Code of Civil Procedure this Rule was issued calling upon the opposite Nos.1-7 to show cause as to why the impugned judgment and order dated 04.02.2021 passed by the learned Senior District Judge, Jamalpur in Civil Revision No.3 of 2021 dismissing the revision and thereby affirming the order dated 06.12.2020 passed by the learned Senior Assistant Judge, 1st Court and S.C.C. Judge, Jamalpur in S.C.C. Execution Case No.2 of 2011 arising out of S.C.C. Suit No.15 of 1998

rejecting the application filed by the defendant-petitioner for staying all further proceedings of the Execution Case under Order 21 Rule 29 read with Section 151 of the Code of Civil Procedure.

Facts in short are that the petitioner who is the judgment debtor of Decree Execution Case No.2 of 2011 submitted a petition before the Executing Court under Order 21 Rule 29 of the Code of Civil Procedure for staying the proceedings of above execution case till disposal of Other Class Suit No.89 of 2020 filed by the petitioner as plaintiff challenging the legality and propriety of the judgment and decree and passed on 02.03.2011 in S.C.C. Suit No.15 of 1998 which was under execution in above case.

It was alleged that after passing of above judgment and decree in S.C.C. Suit No.15 of 1998 against the petitioner who was the defendant in above suit by the Small Causes Court the petitioner as plaintiff has filed Title Suit No.89 of 2020 for a decree declaring that above judgment and decree of the Small Causes Court is unlawful and not binding upon the plaintiffs.

It was further stated that for the disputed premises the opposite party has further filed Suit No.160 of 2010 for partition and Land Survey Tribunal Suit No.5671 of 2014 against erroneous record of the disputed premise in the names of the opposite party. As such execution

of above decree should be stayed till disposal of above three suits filed by the petitioner.

On consideration of submissions of the learned Advocates for the respective parties and materials on record the learned Judge of the Small Causes Court rejected above petition vide impugned judgment and order dated 06.12.2020.

Being aggrieved by above judgment and order the opposite party as petitioner preferred Civil Revision No.3 of 2021 before the learned Senior District Judge, Jamalpur who on consideration of the submissions of the learned Advocates for the respective parties and materials on record rejected above Civil Revision and affirmed the judgment and order of the Small Causes Court.

Being aggrieved by above judgment and order of the learned Senior District Judge above petitioner as petitioner moved to this Court and obtained this Rule.

Mr. Kamal Hossain, learned Advocate for the petitioner submits that opposite parties as plaintiffs instituted S.C.C. Suit No.15 of 1998 for eviction of the defendant-petitioner who was the tenant of the disputed premises and above suit was decreed on contest on 02.03.2011. Being aggrieved by above judgment and decree of the Small Causes Court the petitioner preferred Civil Revision No.1873 of 2011 to the High Court

Division but the Rule was discharged on 29.09.2014. Challenging the legality and propriety of above judgment and order of the High Court Division the petitioner preferred Civil Petition for Leave to Appeal No.3050 of 2014 to the Appellate Division of the Supreme Court of Bangladesh which was rejected on 08.05.2017. Thereafter challenging the legality and propriety of above judgment and decree dated 02.03.2011 passed in S.C.C. Suit No.15 of 1998 the petitioner has filed Title Suit No.89 of 2020 and the same is pending for trial. The petitioner has also filed a suit for partition being Partition Suit No.160 of 2010 and Land Survey Tribunal Suit No.5671 of 2014 in the Land Survey Tribunal which are also pending for trial. As such the petitioner filed above petition for stay of the proceedings of S.C.C. Execution Case No.2 of 2011. But the learned the learned Judge of the Small Causes Court has most illegally rejected above petition and the learned District Judge without an independent assessment of the materials on record most illegally dismissed the Civil Revision and affirmed above flawed judgment and order of the Execution Court which is not tenable in law.

On the other hand Mr. Md. Mahabubur Rashid, learned Advocate for the opposite party Nos.1 and 3-7 submits that the opposite parties as plaintiffs instituted S.C.C. Suit No.15 of 1998 for eviction of the petitioner who was a tenant of the opposite parties from the disputed

premises and the suit was decreed on contest on 02.03.2011. Above judgment and decree was affirmed by the Appellate Division by rejection of Civil Petition for Leave to Appeal filed by the petitioner. Opposite parties filed S.C.C. Execution Case No.2 of 2011 for executing above decree of S.C.C. Suit No.15 of 1998. But the petitioner has filed Title Suit No.89 of 2020 in the Court of Senior Assistant Judge challenging the judgment and decree of the S.S.C. Suit No.15 of 1998 which was decreed against him on contest and which was finally affirmed by the Appellate Division in the judgment and order passed in Civil Petition for Leave to Appeal No.3050 of 2014 which is unlawful and not tenable in law.

I have considered the submissions of the learned Advocates for respective parties and carefully examined all materials on record.

It is admitted that the opposite party Nos.1-7 as plaintiffs filed S.C.C. Suit No.15 of 1998 for eviction of the petitioner who was the sole defendant claiming that he was a defaulter tenant of the disputed premise and above suit was decreed on contest on 02.03.2011 and the petitioner preferred Civil Revision No.1873 of 2011 to the High Court Division challenging the legality and propriety of above judgment and decree of S.C.C. Suit No.15 of 1998 which was rejected vide judgment and order dated 29.09.2014.

It is also admitted that the petitioner challenging above judgment and order of the High Court Division passed in Civil Revision No.1873 of 2011 preferred Civil Petition for Leave to Appeal No.3050 of 2014 to the Appellate Division which was rejected on 08.05.2017.

As such the judgment and decree passed by the S.C.C. Court in S.C.C. Suit No.15 of 1998 was merged in the judgment and order of Appellate Division passed in Civil Petition for Leave to Appeal No.3050 of 2014.

The learned Advocate for the petitioner could not substantiate his claim that the petitioner is at all a party to the Partition Suit No.160 of 2010. Undisputedly the suit premise was recorded in the name of the opposite party. Since the petitioner was found a defaulter tenant of the opposite party finally by the Apex Court of the Court, the Appellate Division he was legally bound to handover over vacant possession to the opposite party before raising any new claim over the disputed premises.

The proceedings of Small Causes Court is a special and summary proceedings for expeditious disposal of small civil disputes and no appeal lies from the judgment and decree passed by a Small Causes Court.

Petitioner who was the sole defendant of S.S.C. Suit No.15 of 1998 and he contested above suit. The petitioner challenged the legality and propriety of the above judgment and decree of S.C.C. Suit No.151 of 1998 both to the High Court Division and to the Appellate Division by preferring Civil Revision No.1873 of 2011 and CPLA No.3050 of 2014 but of no avail. The Appellate Division has finally determined that the petitioner is a defaulter tenant of the disputed premises under the opposite parties.

But instead of abiding by above final and conclusive determination made by the Appex Court of the country and voluntarily handing over the vacant possession to the opposite party the petitioner filed above mentioned Title Suit No.89 of 2020 after about three years of above judgment and order of the Appellate Division.

The judgment and decree of a suit of the Small Causes Court cannot be challenged in a Civil Court by a party who participated in the above S.S.C. proceedings.

The petitioner has in fact challenged the authority and supremacy of the Supreme Court of Bangladesh, the Apex Court of this country by filing above mentioned Title Suit No.89 of 2020 in the Court of Senior Assistant Judge. This is not only unlawful it is highly contemptuous as well. It is not understandable as to how an Advocate could prepare and

present such a plaint which promotes the creation of judicial anarchy. The Senior Assistant Judge of Jamalpur should have rejected the plaint outright at the time of the presentation of the same and also imposed cost upon the plaintiff. If Title Suit No.89 of 2020 remaining alive and pending for hearing the proceedings of Execution Case No.2 of 2011 will be further delayed and the confidence of the people in our judicial system will continue to decline.

In above view of the materials on record I am unable to find any substance in this Civil Revision and the Rule issued in this connection is liable to be discharged.

In the result, the Rule is discharged.

The learned Senior Assistant Judge is directed to conclude the proceedings of Decree Execution Case No.2 of 2011 within 3(three) months from the date of receipt of this order without any fail.

The learned Senior Assistant Judge, Jamalpur is further directed to reject the plaint of Title Suit No.89 of 2020 forthwith after receipt of a copy of this order and also impose an exemplary cost upon the plaintiffs for filing about suit.

Communicate the judgment and order to the Senior Assistant Judge, Jamalpur at once.

Send down the lower Court's records immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER