

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

CIVIL REVISION NO. 3138 of 2019

In the matter of:

An Application under Section 115(1)
(4) of the Code of Civil Procedure,
1908.

And

In the matter of:

Shamsul Haque (Ex Senior Officer,
Pubali Bank Limited.

..... Petitioner.

Vs.

S.M. Mahbubullah and others.

.....Opposite Parties.

Mr. Md. Nazmul Haque, Advocate

..... for the petitioner.

Mr. Mahmadul Alam Bhuiyan,
Advocate

...For the opposite Party No.1.

Mr. S.M. Alim, Advocate

..For the opposite party No.2.

Heard and judgment on
27.07.2023.

SHEIKH HASSAN ARIF, J

1. At the instance of defendant No. 3 in Money Suit No. 52 of 2018, pending before the Fifth Court of Joint District Judge, Dhaka, Rule was issued calling upon the opposite parties, including the plaintiff (opposite party No.1), to show cause as to why the impugned Order No. 5 dated 14.07.2019 passed by the said Court in the said suit rejecting the application filed by the petitioner under Order 1 Rule 10(2) of the Code of

Present :

Mr. Justice Sheikh Hassan Arif

And

Mr. Justice Biswajit Debnath

Civil Procedure for striking out his name as defendant No.3 from the plaint, should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

2. Facts, relevant for the disposal of the Rule, are that the opposite party No. 1, as plaintiff, filed the said Money Suit No. 52 of 2018 before the Fifth Court of Joint District Judge, Dhaka against Pubali Bank Ltd (defendant No.1) and two others, including this petitioner as defendant No. 3, contending, *inter alia*, that the plaintiff was a Deputy General Manager of Motijheel Branch, Dhaka of defendant No.1 Bank and the petitioner (defendant No.3) was then the Principal Officer of the said Branch. That the petitioner lodged an FIR on 11.04.2004 with the Motijheel Police Station, Dhaka alleging, *inter alia*, that while the plaintiff was in-charge of different branches of Pubali Bank Ltd., he misused his power and official post and, thereby, committed breach of trust and allowed huge excess over limit credit facilities in respect of 37 accounts in unauthorized way for his illegal gain

causing financial loss of Taka 101,73,25,556.20 to defendant No.1-bank. However, after investigation, police submitted final report therein as against which the petitioner (defendant No. 3) filed naraji, which was also rejected by the learned Magistrate concerned. The petitioner then filed criminal revision against the said order of the Magistrate which was allowed and, thereafter, the Magistrate directed the police station concerned to investigate the matter by another investigating officer. Thereupon, the Anti-Corruption Commission took over the charge of investigation on the ground that the alleged offence was scheduled offence under the Anti-Corruption Act, 2004 and the said investigation also ended up with final report against the plaintiff. However, the Anti-Corruption Commission recommended filing of charge-sheet against the plaintiff. Thereupon, the Special Judge commenced trial against plaintiff and framed charge against him by rejecting plaintiff's application for discharge. Being aggrieved by such charge, the plaintiff preferred criminal miscellaneous case before the High Court Division, being Criminal Miscellaneous

Case No. 14659 of 2009. Thereupon, a division bench of the High Court Division made the Rule absolute vide judgment dated 05.06.2017 and, thereby, quashed the said criminal proceeding against the plaintiff. That in quashing the said criminal proceeding, the High Court Division made some observations in favour of the plaintiff. It is further stated in the plaint that in the said FIR, the petitioner made some derogatory statements against the plaintiff as regards the said credit facilities alleging breach of trust and unauthorized exercise of power; that because of such false allegation, the social reputation of the plaintiff was destroyed and damaged and the same caused irreparable loss and injuries to the plaintiff. Thus, the plaintiff filed the said money suit for realization of compensation amount of Tk. ten crore and, accordingly, sought decree against all defendants with 10% interest till payment.

3. After registration of the said suit as Money Suit No. 52 of 2018, summons were issued by the Court below which fixed on 14.07.2019 for filing written statement

by the defendants. In the meantime, the petitioner (defendant No. 3) filed an application on 14.03.2019 (Annexure-D) for striking out his name as defendant in the said suit in view of the provisions under Order 1, Rule 10(2) of the Code of Civil Procedure, as against which the plaintiff filed written objection. Thereupon, the Court below, after hearing the parties, rejected the said application of defendant No.3 (petitioner) vide impugned order dated 14.07.2019 taking the view that since the plaintiff had brought specific case against defendant No.3, his name could not be stricken out without taking evidence. Being aggrieved by the said order, the defendant No. 3, as petitioner, moved this Court under revisional jurisdiction and obtained the aforesaid Rule. At the time of issuance of the Rule, this Court, vide ad-interim order dated 20.10.2019, stayed further proceedings of the said Money Suit No. 52 of 2018 for a period of 06 (six) months, which was subsequently extended time to time.

4. The Rule is opposed by plaintiff-opposite party No.1. However, learned advocate has frankly conceded that the petitioner could at best be a pro-forma defendant in the suit concerned as he apparently filed the said FIR and took up further steps on behalf of the Bank as an employee of the said bank. Opposite party No.2-Bank has supported the submission of opposite party No.1.

5. Mr. Md. Nazmul Haque, learned advocate appearing for the petitioner, has made elaborate submissions in favour of striking out the name of defendant No.3 from the plaint. For the sake of conciseness, we are avoiding specific reference to such submissions, particularly when the case of the petitioner is basically based on the averment in the plaint. Therefore, we have extensively examined the plaint dated 06.11.2018 (Annexure-A), as filed by the plaintiff before the Court below, to examine if the plaintiff has pleaded any cause of action against defendant No.3 (petitioner).

6. It appears from the said plaint that in paragraph-3 of the plaint, the plaintiff has categorically stated that “the defendant No.3, the then Principle Officer of Pubali Bank Limited, Motijheel Branch on behalf of the Pubali Bank Ltd. as informant, lodged first information report on 11.04.2004.....”). Therefore, it is admitted position that the defendant No.3 in fact lodged the said FIR on behalf of the defendant No.1, Pubali Bank Ltd., as an employee. The other paragraphs of the plaint also reflect the said position. In paragraph No.5, the plaintiff has stated that defendant No.3 filed naraji against the final report submitted by police. In other paragraphs, the plaintiff has stated that the defendant No.3 took some steps on behalf of the bank against the plaintiff, in particular filing of criminal revisional application etc.
7. Therefore, it is apparent from the body of the plaint that the plaintiff in fact does not have any specific case, or cause of action, against defendant No. 03. Therefore, we do not find any cogent reason as to why the plaintiff has impleaded the petitioner as

defendant No.3, particularly when, admittedly, he took such steps on behalf of the bank as an employee of the said bank. This being so, we are of the view that the Court below has committed illegality in stating in the impugned order that the plaintiff has brought specific case against defendant No.3, particularly when we have not seen any such specific case against defendant No.3. Rather, the specific case of the plaintiff is against the defendant No.1-Pubali Bank, which was the employer of defendant No. 3.

8. In view above, we find merit in the Rule and as such the same should be made absolute upon setting aside the impugned order.
9. In the result, the Rule is made absolute. Accordingly, the impugned Order No. 5 dated 14.07.2019 passed by the Fifth Court of Joint District Judge, Dhaka in Money Suit No. 52 of 2018 is, hereby, set aside. Accordingly, the Court below is directed to strike out

name of the defendant No. 3 (petitioner) from the
cause title of the plaint.

Communicate this.

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(Sheikh Hassan Arif, J)

I agree.

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(Biswajit Debnath, J)