

District: Habiganj

In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)

Present

Mr. Justice Md. Zakir Hossain

Civil Revision No. 161 of 2020

Muzammel Hussain

..... Decree Holder-Petitioner

-Versus-

Shaheda Begum and others

..... Judgment Debtor-Opposite Parties

Mr. Md. Zakir Hossain, Advocate

..... For the petitioner

Mr. Sheikh Muhammad Maju Miah, Advocate

..... For the opposite parties

Heard on: 29.11.2023

Judgment on: 20.05.2024

At the instance of the petitioner, the Rule was issued with the following the terms:

“Leave is granted.

Records be called for.

Let a Rule be issued calling upon the opposite party Nos. 1-7 to show cause as to why the judgment and order dated 26.08.2019 passed by the learned Additional District Judge, Hobiganj in Civil Revision No. 47 of 2013 disallowing the revisional application affirming the order dated 09.09.2013 passed by the learned Assistant Judge, Nabiganj, Hobiganj in Title Execution Case No. 02 of 2012 rejecting the case on the ground of maintainability should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.”

Facts leading to the issuance of the Rule are *inter alia* that the predecessor of the petitioner being plaintiff filed Title Suit No. 64 of 1999 for specific performance of contract. The defendant No. 6 contested the suit. After conclusion of the trial, the learned Assistant Judge was pleased to dismiss the suit. Being aggrieved by and highly dissatisfied with judgment and decree of the learned Assistant Judge, the plaintiff preferred Title Appeal No. 55 of 2003 before the Court of the learned District Judge, Habiganj. After admitting the appeal, the learned District Judge was pleased to transmit the record of the same to the learned Joint District Judge, Second Court, Habiganj for disposal. The appeal was decreed in part as per the terms of *solenama*. On the basis of *sole* decree, the decree holder put the decree into execution being Execution Case No. 02 of 2012. The learned Assistant Judge was pleased to dismiss the Execution Case holding the view that it cannot be granted any relief beyond the decree and the Executing Court also held that the decree is barred by limitation. Challenging the legality and propriety of the judgment and order of the learned Assistant Judge, the petitioner preferred Revisional Application No. 47 of 2013 before the Court of the learned District Judge, Habiganj. After admitting the revisional application and observing all the formalities, the learned District Judge was pleased to transmit the record of the same to the learned Additional District Judge, Habiganj for disposal. The learned Additional District Judge rejected the revisional application holding the view that the Execution Case is barred by limitation. Impugning the

judgment and order of the learned Additional District Judge, the petitioner moved this Court and obtained the leave and Rule therewith.

Heard the submissions advanced by the learned Advocates of the parties at length and considered the materials on record thoroughly. The convoluted question of law embroiled in this case has meticulously been waded through in order to reach a just decision.

The moot issue is as to whether the case is barred by limitation or not.

It appears from the record that the appeal was decreed in part on 25.06.2008 and the learned Assistant Judge, Nabiganj, Habiganj received the record of the Title Appeal No. 55 of 2003 on 20.05.2009. as per the letter dated 25.03.2024 issued by the learned Assistant Judge, Nabiganj, Habiganj. Admittedly, the Execution Case was filed on 01.04.2012, therefore, it can easily be held that the Execution Case was filed within the stipulated period of limitation as envisaged under Article 182 of the Limitation Act. But the Courts below miserably failed to compute the period of limitation as per the mandate of the Limitation Act. The period of limitation has to be computed from the date of receipt of the copy of the judgment and decree of the Appellate Court. It is inherent that the decree in a suit for Specific Performance of Contract, the decree holder shall obtain registered sale deed and possession of a decreetal land by way of execution. If the judgment debtor does not execute sale deed and hand over the possession, the Executing Court can enforce the decree as per the terms of compromise decree. The

Executing Court cannot go behind the decree. This dictum is not absolute. It has got few exceptions such as (i) if the decree is obtained by practicing fraud or (ii) the decree passed by the court having no jurisdiction or (iii) the decree was passed against the dead men or (iv) the decretal property is unspecified, vague and indefinite etc. In this Case, the learned Assistant without applying his judicial mind rejected the Execution Case and the learned Additional District Judge shutting his eyes and without delving into the facts and legal ramification of the decree of specific performance of contract most illegally endorsed the order of the learned Assistant Judge, though the Execution Case was within time.

In our continent, the actual sufferings of the decree holder start after obtaining decree. The judgment debtor resisted the decree holder so that he cannot enjoy the fruits of a long cherished decree.

Having regard to the facts and circumstances of the case, I am constraint to hold that the impugned judgment and order is not sustainable in the eye of law, therefore, the Rule is liable to be made absolute.

In the result, the Rule is made absolute, however, without passing any order as to costs. The earlier order of injunction granted by this Court, thus, stands recalled and vacated. The Executing Court is directed to dispose of the said Execution Case with utmost expedition preferably

within 06(six) months from the date of receipt of the copy of the judgment.

Let a copy of the judgment along with the LCRs be transmitted to the Courts below at once.

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Md. Zakir Hossain, J

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