

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

Present:

Mr. Justice Md. Mozibur Rahman Miah
And
Mr. Justice Md. Bashir Ullah

Civil Revision No. 1131 of 2021

IN THE MATTER OF:

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

And

IN THE MATTER OF:

Dird Felt (Pvt.) Ltd., represented by its Managing
Director

... For the Plaintiff-petitioner.

-Versus-

M/S. Hossain and Sons, represented by its Proprietor
M.A Halim and others

... Defendants-opposite parties.

Mr. Md. Nurul Huda, Advocate

... For the petitioner.

None represented

... For the opposite parties.

Heard on 25.11.2024 & 01.12.2024

Judgment on: 02.12.2024

Md. Bashir Ullah, J.

At the instance of the plaintiff in Money Suit No. 07 of 2020,
this Rule was issued calling upon the opposite parties to show cause

as to why the order dated 23.05.2021 passed by the learned Joint District Judge, First Court, Dhaka in the above-mentioned suit rejecting the application of the plaintiff-petitioner filed under Order XXXVIII, Rule 5 of the Code of Civil Procedure for attachment of payable bill of the defendant nos. 1-3 from defendant no. 4 should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

At the time of issuance of the Rule, defendant-opposite party no. 4 was directed to maintain *status quo* in respect of payment of bills in favour of defendant-opposite party nos. 1 to 3 to the extent of Taka 14,05,80,000/- for a period of 06(six) months which was subsequently extended from time to time and it was lastly extended on 11.11.2024 for another 03(three) months.

The salient facts, relevant for the disposal of the Rule are:

The plaintiff company is a manufacturer of Geo Textile Bag. It sells and supplies such products to various private and Government Offices. The defendant no. 1 is a proprietorship concern of defendant no. 2 and the defendant no. 3 is brother of defendant no. 2 and said defendant nos. 2 and 3 jointly represent defendant no. 1 and operate the business and they have visited the plaintiff company on several occasions. Defendant no. 4, Dockyard

and Engineering Works Ltd. is an enterprise under the Bangladesh Navy.

Defendant no. 1 entered into a contract with defendant no. 4 to supply Geo Bags for dumping and constructing a protective dam under Upazilla Dohar to prevent erosion of the Padma River. Defendant nos. 1 to 3 purchased and collected Geo Bags valuing Taka 21,52,80,000/- (Taka twenty-one crore fifty two lakh eighty thousand) from 18.10.2016 to 08.04.2018 and delivered the same to defendant no.4. The plaintiff sent a bill against the delivered Geo Bags on 22.04.2018 of the said payable amount which was fully supported by challans and other documents annexed to the plaint as Annexure-‘Ka’. Against the said bill the defendant nos. 1-3 paid Taka 7,47,00,000/-, having dues stood at Taka 14,05,80,000/-. After that, the defendant nos. 1-3 started delaying payment of the said outstanding bill, for which the plaintiff-petitioner informed that to defendant no. 4 by letter dated 05.04.2017 alleging non-payment of the said dues by defendant nos. 1 to 3 and on the same day defendant no. 4 on 05.4.2017 instructed the defendant nos. 1-3 to make payment of the bill to the plaintiff with a caution that if they fail then the defendant no. 4 would make payment of the arrear bill of the plaintiff by deducting the same from the payable bill of defendant no. 1.

Thereafter, defendant no. 1 on 06.05.2017 issued a cheque payable with Jamuna Bank Ltd. bearing no. 8036152, dated 06.05.2017 for Taka 11 crores but the cheque was dishonoured resulting which the plaintiff has filed C.R Case No. 85 of 2018 under section 138 of the Negotiable Instruments Act, in the Court of Chief Metropolitan Magistrate, Dhaka. After that, the defendant nos. 1-3 issued another cheque of N.C.C Bank Ltd. for Taka 50 lakh bearing no. 78023917, dated 08.03.2018 but that cheque was also dishonored resulting which a C.R Case No. 526 of 2019 has been filed in the Court of Chief Metropolitan Magistrate, Dhaka. However, issuing various legal notices, the plaintiff has been constrained to file the Money Suit No. 07 of 2020 claiming an amount of Taka 14,05,80,000/-.

Thereafter, the plaintiff filed an application on 08.03.2020 under Order XXXVIII, Rule 5 read with Section 151 of the Code of Civil Procedure for attachment of bill payable to defendant nos. 1 to 3 as obtainable from the defendant no. 4. It is stated in the application that the defendant nos. 1 to 3 have *prima facie* case to succeed. In that event the plaintiff is able to collect the bill amount from the office of defendant no. 4 otherwise there will be no possibility of payment of the bill amount of the plaintiff as the defendant nos. 1 to 3 have no assets whatsoever for satisfaction in

execution of decree and it would be impossible to obtain payment even if a decree is given in money suit and as such the plaintiff had been constrained to file application for attachment of bill payable to defendant nos. 1 to 3 from the office of defendant no. 4 specifying in the schedule to the application containing a full description of the payable bill.

The summons of the suit and that of the notices on the application for attachment before judgment have been duly served upon the defendants but the defendants have neither filed any written statement nor shown any cause on the application for attachment.

However, upon hearing the parties, the learned Joint District Judge, First Court, Dhaka rejected the application of the plaintiff-petitioner filed under Order XXXVIII, Rule 5 of the Code of Civil Procedure for attachment of the bill payable to defendant nos. 1-3 from the defendant no. 4 on 23.05.2021.

Being aggrieved by and dissatisfied with the order dated 23.05.2021, passed by the learned Joint District Judge, First Court, Dhaka in Money Suit No. 07 of 2020 the plaintiff as petitioner filed the instant civil revision.

Mr. Md. Nurul Huda, learned Advocate appearing on behalf of the plaintiff-petitioner contends that the trial Court failed to

consider that the plaint and the application for attachment contained a full description and particulars of the payable bill to be attached and as such committed an error of law resulting in an error in the decision occasioning failure of justice in rejecting the application for attachment before judgment.

Mr. Huda further contends that the defendant nos. 1-3 admitted the outstanding dues payable to the plaintiff and hence they issued two cheques but those were dishonoured. On the other hand, the defendant no. 4 has also instructed the defendant nos. 1-3 to pay the bill otherwise it would pay the bill to the plaintiff and there is a *prima facie* case of the plaintiff to get the bill on the face of the record. Moreover, the said defendants have no assets anywhere to the satisfaction of the decree if the same is ultimately passed in the suit and in such a situation the plaintiff would suffer irreparable loss and injury. With such submission, he finally prays to make the Rule absolute by setting aside the impugned order.

None represented for the opposite parties to oppose the Rule.

We have heard the learned Advocate for the petitioner, perused the civil revision, plaint, application for attachment of

the bill under Order XXXVIII, Rule 5 of the Code of Civil Procedure, impugned order and other materials on record.

Learned Joint District Judge rejected the application dated 08.03.2020 filed by the plaintiff-petitioner praying for attachment of the bill under Order XXXVIII, Rule 5 of the Code of Civil Procedure holding that there was no description of bill payable by defendant nos. 1-3 in the plaint and there was no description as to what amount is receivable by the defendant nos. 1-3 from defendant no. 4. The trial Court further held that the bill which to be attached was vague and unspecific. However, upon perusal of the record, we find that the plaintiff has categorically stated in paragraph nos. 4 and 11 that he supplied Geo Bags valuing Taka 21,52,80,000/- to the defendant nos. 1 to 3 and the defendant nos. 1 to 3 paid Taka 7,47,00,000/- and thus the dues stood at Taka 14,05,80,000/-. The plaintiff specifically stated in paragraph no. 17 of the plaint that defendant no. 1 would receive an amount of Taka 18,95,09,511.50 from defendant no. 4 which is evident from the letter issued under Memo no. 1967, dated 19.11.2018 by the defendant no. 4, which is also mentioned in the schedule to the

application. Thus, we find that the trial Court without considering the statements made in the plaint vis-a-vis the application for attachment has very wrongly passed the impugned order and the finding and reasoning made by the trial Court appears to be not justified.

Further, it is evident from the letter dated 05.04.2017 issued by the defendant no. 4, Dockyard and Engineering Works Ltd., Bangladesh Navy, Sonakanda, Bandar, Narayangonj that defendant no. 4 also instructed defendant nos. 1-3 to make payment to the plaintiff otherwise it would pay the dues payable to the plaintiff by deducting the amount from their (Defendant nos. 1-3) bill.

It is on record that the defendant nos. 2 and 3 earlier issued two cheques to the plaintiff to adjust the outstanding bill but both were dishonoured. So, it appears that the conduct of the defendant nos. 1-3 is not fair where admittedly the claim of the plaintiff appears to be genuine. The defendant-opposite party nos. 1 to 3 have no substantial assets within the jurisdiction of the Court and the bill sought to be attached is the only identifiable asset. However, the Court below without

considering the said material aspect and the relevant provision of law illegally rejected the application and thus committed an error of law which has ultimately caused failure of justice. So, the finding of the Court below is liable to be interfered with by this Court as well.

Given the above facts and circumstances, we find merit in the Rule.

As a result, the Rule is made absolute, however no order as to costs.

The impugned order dated 23.05.2021 passed by the learned Joint District Judge, First Court, Dhaka in Money Suit No. 07 of 2020 is set aside.

The order of *status quo* granted earlier by this Court stands recalled and vacated.

The learned Joint District Judge, First Court, Dhaka is hereby directed to take necessary steps for attaching the bill as mentioned in the application filed by the plaintiff for attachment before judgment under Order XXXVIII, Rule 5 of the Code of Civil Procedure in accordance with law.

Let a copy of this judgment and order be communicated to the Court concerned forthwith.

Md. Mozibur Rahman Miah, J.

I agree.

Md. Sabuj Akan/
Assistant Bench Officer