

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

CIVIL REVISION NO. 2208 OF 2002

In the matter of:

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

AND

In the matter of:

A.F. Mujibur Rahman Foundation

... Petitioner

-Versus-

Evertt Stemship corporation and others

...Opposite-parties

None appears

...For the petitioner

None appears

...For the opposite parties

Heard on 29.07.2024
and Judgment on 30.07.2024

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

Md. Mozibur Rahman Miah, J:

This matter has been referred by the Hon'ble Chief Justice of Bangladesh by his office order.

At the instance of the defendant no. 3, A.F. Mujibur Rahman Foundation, this rule was issued calling upon the opposite-parties to show cause as to why the order no. 45 dated 19.01.2002 passed by the learned Joint District Judge, 1st court, Khulna rejecting the application so filed by the said defendant no. 3 under Order 7 Rule 11 of the Code of Civil

Procedure should not be set aside set aside and/or such other or further order or orders be passed as to this court may seem fit and proper.

It is at that state, the said defendant no. 3 as petitioner came before this court and obtained the instant rule and order of stay.

The precise facts so have been narrated the instant revisional application are:

The present opposite party nos. 1-2 as plaintiffs filed the suit being Title Suit No. 54 of 1995 before the then subordinate judge now Joint District Judge 1st court, Khulna seeking following reliefs:

(a) A decree be passed that the document described in the schedule 'A' below is void fraudulent with ulterior motive to defeat the claim of creditor/ creditors.

(b) That all cost of the suit be passed.

(c) Any other relief or reliefs to which the plaintiff is legally any equitably fund entitled be passed

In the plaint it has been stated that, that the defendant nos. 1 and 2 was the shipping agent of the plaintiff opposite party nos. 1 and subsequently the said agencyship was terminated on 1st September 1991 and after that the plaintiffs by claiming an amount of taka 21,86,06682/- against those defendants filed a Money Suit being Money Suit No. 12 of 1992 on 29.03.1992. Since during the pendency of the said suit, the defendant no. 1 of the said suit transferred the land so described in schedule 'A' to the plaint in favour of the defendant no. 3 vide registered deed of gift bearing no. 3454 dated 20.12.199, the plaintiffs thus compelled to file the instant Title Suit No. 54 of 1995.

In order to contest the said suit the defendant nos. 1 and 2 as well as defendant no. 3 filed separate sets of written statement denying all the material averments so made in the plaint and prayed for dismissing the suit.

During pendency of the said suit the defendant no. 3 filed an application under Order 7 Rule 11 of the Code of Civil Procedure before the learned judge of the trial court on 20.05.2001 stating inter alia that, the suit is not maintainable under the provision of section 39 and 42 of the Specific Relief Act and there has been no cause of action in the suit which is why the plaint is liable to be rejected.

Against that application, the plaintiff opposite party nos. 1 and 2 also filed written objection denying all the material averment so made in the application for rejection of the plaint.

However, the learned judge of the trial court took up the said application for hearing and vide impugned order being no. 45 dated 11.01.2002 rejected the same finding that, there has been clear cause of action in the suit having no scope to reject the plaint.

It is at that stage, the defendant no. 3 as petitioner came before this court and obtained the instant rule.

None appeared either for the petitioner or for the opposite parties to press or oppose the rule.

Be that as it may, we have perused the revisional application and all the document so appended therewith including the impugned judgment and order. On going through the application so filed under Order 7 Rule 11 of the Code of Civil Procedure we find that, it is the chief contention asserted in the application that, there has been no cause of action in the suit for which the plaint is liable to be rejected. But on going through the

impugned judgment and order we find that the learned judge has very clearly asserted that, in the plaint in particular paragraph no. 17 thereof there has been assertion with regard to the cause of action and since the self-same plaintiffs-opposite parties filed a Money Suit being no. 12 of 1992 claiming an amount of taka 21,86066.82 and during pendency of the said Money Suit, the defendant no. 1 has transferred its property in favour of the defendant no. 1 3 only to deprive the plaintiff to get back its claim made in the Money Suit, the property has been transferred and in order to prevent the said defendant no. 1 in realizing the money to be decreed the plaintiffs have compelled to file the instant suit. Further we have also very meticulously gone through the impugned judgment and order and also perused the plaint in particular paragraph no. 17 thereof and find that there has been clear cause of action in that paragraph. Then again, in paragraph no. 16 as well the plaintiffs also made a vivid description with regard to the cause for filing the suit having no scope to say that there has been no cause of action in the suit.

Regard being had to the above facts and circumstances we don't find any illegality or impropriety in the impugned judgment and order which is liable to be sustained.

Accordingly, the rule is discharged however without any order as to costs.

The learned judge of the trial court is directed to dispose of the suit as expeditiously as possible preferably within a period of 02(two) months from the date of receipt of the copy of the judgment if in the meantime the suit has not been disposed of.

Let a copy of this order be communicated to the court concerned forthwith.

Md. Bashir Ullah, J:

I agree.

Kawsar /A.B.O