

Bench:

Mr. Justice Md. Ruhul Quddus

Civil Revision No. 4835 of 2005

Md. Abdul Kadir

... Petitioner

-Versus-

Md. Abul Kalam Azad and others

... Opposite Parties

Mr. A R M Hasanuzzaman, Advocate

...for the petitioner

No one for the opposite parties

Judgment on 29.07.2024

The rule under Section 115 (1) of the Code of Civil Procedure was issued calling in question order number 3 dated 10.11.2005 passed by the District Judge, Netrokona in Miscellaneous Appeal Number 212 of 2005 rejecting (actually fixing next date) the petitioner's application for staying operation of the judgment and decree dated 11.10.2005 passed by the Assistant Judge, Mohangonj, Netrokona in Other Suit Number 22 of 2003 decreeing the suit.

Facts for disposal of the rule, in brief, are that opposite party number 1 Md. Abul Kalam Azad instituted Other Class Suit Number 22 of 2003 in the Court of Assistant Judge, Mohangonj, Netrokona for declaration and mandatory injunction. The suit was decreed by judgment and decree dated 11.10.2005, challenging which the principal defendant number 1 Md. Abdul Kadir (petitioner herein) preferred Other Appeal

Number 212 of 2005 before the District Judge, Netrokona and filed an application for staying operation of the impugned decree. Learned Judge fixed the application to be heard on next 12.01.2006 by order dated 09.11.2005. On the next day, the appellant filed two applications put up the record and another for stay of the decree under appeal. Learned Judge fixed it for hearing on the next fixed date i.e. 12.01.2006. Challenging the said order, petitioner approached this court with the present revisional application and obtained the rule with an interim order of status quo.

Mr. A R M Hasanuzzaman, learned advocate for the petitioner presses the rule and submits that in view of the urgency of the matter, learned District Judge ought to have passed an interim order of stay. Instead, he fixed the application for hearing long after two months and thereby committed error of law.

Heard the learned advocate and gone through the original judgment and decree of the trial court as well as the impugned order. It appears that earlier the appellant filed another application for stay, which was taken up for hearing, but his advocate was not present before the Court despite filing hajira. As a result, learned District, Judge suo motu fixed it for hearing on 12.01.2006. On the following day, the petitioner filed the two applications without offering any explanation as to why he was absent on the previous day. However, learned Judge did not reject the application but fixed it to be heard on the next fixed date i.e 12.01.2006 after the long vacation. Under the circumstances, we do not find any unreasonableness or error of law in the impugned order.

Accordingly, the rule is discharged. The order of status quo passed earlier stands vacated. Communicate the order to the court below.