

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

Present:

**Mr. Justice Md. Mozibur Rahman Miah
and
Mr. Justice Mohi Uddin Shamim**

Civil Revision No. 4062 of 2016

In the matter of:

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

AND

In the matter of:

M. A. Hannan

.... Defendant-petitioner

-Versus-

Abdus Sattar Miji

.... Plaintiff-opposite-party

C. K. H. Salim

.... Defendant-proforma-opposite party

Area Manager

Bakhrabad Gas Sysetms Ltd. Warless Gate, Chandpur
and another

..... Proforma-defendant-opposite parties

Mr. M. Sayeed Ahmed, Senior Advocate with

Mr. Md. Tazul Islam, Advocate

..... For the defendant-petitioner

No one appears

..... For the opposite party

Heard on 15th November 2023 and

Judgment on 16th November, 2023

Mohi Uddin Shamim, J.

At the instance of the defendant petitioner, this Rule was issued calling upon the opposite party to show cause as to why the impugned order No.43 dated 02.11.2016 passed by the Joint District Judge, 1st Court, Chandpur in Title Suit No.72 of 2012 rejecting an application for allowing the defendant-petitioner to continue to construction work 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, this Court also passed an ad-interim order permitting the defendant petitioner to continue the construction work for a period of 03 (three) months which was subsequently been extended from time to time and it was lastly extended on 13.11.2017 for till disposal of the Rule.

The salient facts in the instant revisional application, in short, are that on 05.09.2012 the plaintiff opposite party instituted a Title Suit being Title Suit No.72 of 2012 before the Joint District Judge, 1st Court, Chandpur for declaration of title and cancellation of joint venture agreement No.8689 dated 25.10.2011. Thereafter, on 12.09.2012 the plaintiff-opposite party filed an application for temporary injunction under Order XXXIX, rules 1 and 2 of the Code of Civil Procedure

(CPC), after hearing the application on the very same day i.e. on 12.09.2012, learned Judge of the trial Court was pleased to pass an order to maintain status-quo. On 04.10.2012 the defendant petitioner filed a written objection against the said application for temporary injunction dated 12.09.2012 and after hearing the application on 15.10.2012, learned Joint District Judge, 1st Court, Chandpur was pleased to reject the application for temporary injunction and also recalled the order of status-quo dated 12.09.2012. Against the said order of rejection of the injunction application dated 15.10.2012 the plaintiff opposite party as appellant filed First Miscellaneous Appeal being First Miscellaneous Appeal No.44 of 2013 along with an application for stay, whereupon, Civil Rule 980 (FM) of 2012 was issued restraining the defendant petitioner from making any further constructions work and also directed the parties to maintain status-quo in respect of position of the suit land. Finally, First Miscellaneous Appeal No.44 of 2013 and connected Rule being No. 980 (FM) of 2012 was disposed of vide his judgment dated 29.01.2014 with direction to the Joint District Judge, 1st Court, Chandpur to dispose of the suit being Title Suit No.72 of 2012 as expeditiously as possible preferably within 06 (six) months from the date of receipt of

judgment and order of this court. Their lordships' were also pleased to order that the order of injunction shall be in enforced for 06 (six) months from the date of receipt of the judgment. If the Court fails to dispose of the suit within the period prescribed by this Division Bench, then in no circumstances the order of injunction so granted by this court shall be extended after expiry of that period i.e. 6 (Six) months.

Thereafter, the defendant petitioner filed an application on 25.11.2014 before the trial Court with a prayer for disposing of the suit as per judgment & order dated 29.01.2014. Thereafter, the defendant petitioner filed another application on 09.06.2015 with a prayer for allowing him to continue construction work in the suit property since the injunction order given earlier by this Court has already been expired in the meantime. The defendant-petitioner preferred further application on 18.10.2016 before the Court with the same prayers and after hearing the said application learned Judge of the Trial Court was pleased to reject the application dated 18.10.2016 vide order No.43 dated 02.11.2016.

Challenging the said order, the defendant-petitioner came before this Court and obtained the instant Rule and an ad-interim order of permission for continuing construction works for a period of 3 (Three)

month. Against the said ad-interim order the plaintiff opposite party filed Civil Petition for Leave to Appeal being No.3496 of 2022, before the Appellate Division and the Hon'ble Judge in Chamber of the Apex Court pronounced 'No Order' on 11.01.2023.

Mr. M. Sayeed Ahmed, the learned Senior Advocate along with Mr. Md. Tajul Islam, the learned Advocate appearing for the petitioner and submits that, the plaintiff-opposite party No.1 has filed an application on 31.10.2022 for vacating the ad-interim order passed by the High Court Division on 07.12.2016 and after hearing the application the Division Bench of this Court on 24.11.2022 rejected the application summarily stating hereinafter that,

"It appears that this Court passed the ad-interim order on 07.12.2016 to continue the construction work for a period of 03 (three) months. The said order was extended from time to time and lastly on 13.11.2017 it was extended till disposal of the Rule.

The applicant has slept for more than 06 (six) years in filing this application.

Accordingly, this application for vacating the aforesaid ad-interim order is rejected summarily."

The plaintiff opposite party challenging the said order dated 24.11.2022 filed a Civil Petition for Leave to Appeal being No.3496 of 2022 before the Chamber Judge of the Hon'ble Appellate Division and

after hearing the said application on 11.01.2023, the Hon'ble Appellate Division passed "No Order" and thereby affirmed the order of the High Court Division on 24.11.2022 and order dated 07.12.2016. He finally prays for making the Rule absolute.

No one appears to oppose the Rule, though the matter has been appearing in the daily cause list for consecutive dates with the name of the learned Advocate for both the sides.

It appears from the record that, the defendant-petitioner obtained the instant Rule on 07.12.2016 against the order rejecting an application for allowing the defendant-petitioner to continue the construction work in the land in question and at the time of issuance of the Rule, a Division Bench of this Court also passed an ad-interim order permitting the petitioner to continue the construction works for a period of 03 (three) months initially, which has subsequently been extended on 13.11.2017 till disposal of the Rule. It also appears that, the plaintiff-opposite party No.1 also filed an application for vacating the said ad-interim dated 07.12.2016 which was, thereafter, rejected on 24.11.2020. At the time of the Rule hearing the defendant-petitioner submits that, pursuant to the ad-interim order of the High Court Division dated 07.12.2016 the

constructions work has already been almost completed. It further appears from the record that, the plaintiff opposite party No.1 went to the Hon'ble Appellate Division against the said rejection order, filed a Civil Petition for Leave to Appeal No.3496 of 2022 and the Hon'ble Chamber Judge of the Apex Court passed "No Order." According to the submission of the learned Advocate for the petitioner no further steps has been taken by the opposite party No.1 for hearing of the said Civil Petition for Leave to Appeal.

On the other hand, it also appears that the plaintiff opposite party No.1 did not appear at the time of Rule hearing, though the matter appears in the daily cause list on several occasions with the name of the learned Advocate for the plaintiff-opposite party No.1, which shows that the opposite party has lost his interest in this case. It also appears from the record that, after issuance of the Rule dated 07.12.2016 but in the meantime long 07 years has already been passed since the rule and ad-interim order for permitting the order of construction work. Further, it appears from the record that, a Division Bench of this Court passed the judgment and order dated 29.01.2014 in First Miscellaneous Appeal being No.44 of 2013 with Civil Rule No.980 (FM) of 2012 which is

marked as Annexure-C to the revisional application, wherein, this Division Bench directed the trial Court to dispose of the suit being Title Suit No. 72 of 2012 as soon as possible preferably within 06 (six) months from the date of receipt of the judgment and order and also directed that the order of injunction shall be continued in enforce till that date, if the trial Court failed to dispose of the suit within the stipulated time framed by this High Court Division, thereafter no ad-interim order of injunction so granted shall be extended after expiry of the said period but the trial Court refused to allow the continuation of construction work and stated that, since the Court failed to dispose of the suit within the framed time, so the order of injunction passed by the High Court Division will continue though there was no legal basis for refusal of the application.

It is evident from the record that, in First Miscellaneous Appeal being No. 44 of 2013 and connected Rule being No. 980(FM) of 2012 a Division Bench of this Court on 29.01.2014 directed the trial Court to dispose of the suit within 06 (six) months and the order of injunction will continue till that period i.e. 06 (six) months if the trial Court failed to do so, in no circumstances injunction will be continued thereafter. So, referring the aforesaid injunction order and refusing permission to

continue the construction work after the specified period of time is not lawful, and to some extent is violative of the order of the High Court Division.

Considering the above facts and circumstances, we find merit in the Rule and we do not find any reason to uphold impugned judgment and order dated 02.11.2016.

In the result, the rule is made **absolute**, however without any order as to costs.

And the learned Judge of the trial Court is hereby directed to dispose of the case within a period of 06 (six) months from the date of receipt of the copy of this judgment and order of this Court without any fail.

In the meantime, the ad-interim order passed at the time of issuance of the Rule will continue till disposal of the suit.

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

Md. Mozibur Rahman Miah, J.

I agree.