

Civil Rule No. 305(FM) of 2022
(arising out of F.M.A.T. No. 140 of 2022)

Present:

Mr. Justice Muhammad Abdul Hafiz

08.12.2022

Regent Spinning Mills Limited and others
Appellants-Petitioners

-Versus-

Uttara Finance and Investments Limited and others
Respondents-Opposite Parties

No one appears
for the petitioners

Mr. Md. Sameer Sattar, Advocate
for the opposite party No. 5

Mr. Minhazul Hoque Chowdhury, Advocate
for the opposite party No. 06

Mr. Moloy Kumar Roy, Advocate with
Mr. Ashish Kumar Mondal, Advocate
for the opposite party No. 10

Mr Nur Muhammad Azami, Advocate
for the opposite party No. 11

Mr. Chowdhury Mokimuddin Khan Jahan Ali, Adv.
for the opposite party No. 12

Mr. Sanjoy Kumar Biswas, Advocate
for the opposite party No. 14

Judgment on: 08.12.2022

This is an application for discharging the Rule and another application for vacating the order of injunction dated 26.4.2022.

In the instant Case Rule was issued in the following terms:-

“Let a Rule be issued calling upon the opposite parties to show cause as to why an order of injunction should not be granted restraining the opposite party Nos. 1-17 and 20-21 from reporting, circulating and publishing the names of the petitioners in the CIB of Bangladesh Bank classifying as the defaulter borrower in the capacity of the Borrower and/or Guarantor and/or such other or further order or orders passed as to this Court may seem fit and proper.”

No one appears on behalf of the petitioners despite this matter appearing in the daily cause list of this Court with the names of the learned Advocates for the parties for the last several days.

Heard the learned Advocates for the opposite parties and perused the application. The reasons stated in the application appears to be satisfactory and thus the application is allowed.

Considering the facts and circumstances of the case I find no substance in the Rule.

Accordingly, the Rule discharged.

The ad-interim order of injunction granted at the time of issuance of the Rule i.e. on 26.4.2022 is hereby vacated.

Communicate the judgment at once.

The learned Advocate for the petitioners submits that for vacating the order of injunction on 26.04.2020 passed by this Court.

All the learned Advocates submits that Article 41 of Bangladesh bank Order, 1972 manifestly bars the institutions and entertainment of any suit or legal proceeding on any court against the bank for anything which is done in good faith or intended to be done in pursuance of the provisions of Chapter IV, Bangladesh Bank Order, 1972. That it is pertinent to mention here that one of the core objective of the legislature behind setting up process of CIB was to minimize the extend of default loans by providing the participants (banks) with timely reports on credit information. In order to enable to respondent to perform their CIB related duties smoothly and effectively, the legislature had enacted the provision of Articles 41 by debarring the institutions of any suit against the bank for

anything which is done in good faith or intended to be done in pursuance of provisions of Chapter IV, Bangladesh Bank Order, 1972. If the instant rule is not discharged, the petitioner will get the opportunity to avail loan facility (which is basically public money) instead of being a loan defaulter which will not only defeat the provision of section 27 kaka of Banking Companies Act, 1991, but also the intention of the legislature to prevent a defaulter borrower from grabbing public money and ultimately justice will be defeated. It is already a well settled principle of law that whenever a legislature expressly barred the institution of any suit in any court, the appropriate recourse for the court is to follow the “ Hands of doctrine” and reject the petition at its threshold otherwise chaos and anomaly would prevail leading to all sort of complications and confusion, Article 41 of Bangladesh Bank Order, 1972 is as follow:

“41(1) No suit or other legal proceeding shall lie against the Bank or any of its Officer for anything which is in good faith done or intended to be done in pursuance of Article 36 or Article 37 of Article 38 or Article 39 or Article 40 or in pursuance of the provisions of chapter IV.

2) No suit or other legal proceeding shall lie against the Bank or any of its Officer for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of Article 36 or Article 37 or Article 38 or Article 39 or Article 40 or in pursuance of the provision of chapter IV.

Heard the learned Advocate for the opposite parties-applicants and perused the application.

From the record, it appears that the process of enlistment of any defaulters name in the CIB list is a continuing process within the meaning of section 5 Ga read with section 27 ka of Banking Companies Act, 1991 and also under Article 42 of Bangladesh Bank Order, 1972. If all these provisions are read together one and only inference could be made and that is if any person or a company is indebted to in any manner with any financial institution and the debt remains unpaid. It is the duty of the financial institution to report the same to the Bangladesh Bank and the Bangladesh Bank is under obligation to enlist the name of the defaulter borrower in the CIB list. The appellant-petitioner was irregular in repaying the loan amount since availing the same through Bangladesh Bank by publishing

various DFIM circulars gave opportunity to the defaulter borrower to regularize the loan but the appellant-petitioner paid no heed to the same and remained silent and information of the present status of the instant appellant-petitioner needs to be supplied to the Bangladesh Bank as per existing laws of Bangladesh for securing the public money.

Lastly the appellant-petitioner was given opportunity of DFIM circular issued by the Bangladesh Bank and it is second loan under agreement was made unclassified as it repaid the 15% of outstanding installment of that loan. But the appellant-petitioner did not pay any singly installment and they are facing huge trouble in repaying the depositors. As a result, the appellants-petitioners in the CIB Bangladesh Bank classifying as the defaulter borrower.

It is apparent that the suit is expressly barred by law and as such no order of injunction can be granted in favour of the petitioner. It is well settled principle of law that of a suit is not maintainable and if the Court has no jurisdiction to entertain the suit, the Court can neither give any final decision nor the interlocutory decision i.e. injunction in the said suit.

Considering the facts and circumstances I do not find substance in this application.

In the result, Civil Rule No. 305(FM) of 2022 is discharged.

The ad interim order of stay passed at the time of issuance of the Rule is hereby vacated.

Communicate the order at once.