

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISI inconvenience ON
(Civil Revisional Jurisdiction)

Present

Madam Justice Kashafa Hussain

Civil Revision No. 1115 of 2019

Hazi Md. Ali Hossain Mia

.....petitioner

-Versus-

Samsea Begum and others

..... Opposite party

Mr. Qazi Zahed Iqbal, Advocate

..... For the petitioner

Ms. Oli Ferdous, Advocate

..... For the Opposite Party

Heard on: 18.07.2023, 23.07.2023,
25.07.2023 and

Judgment on 31.07.2023

Rule was issued calling upon the opposite party to show cause as to why the impugned Judgment and decree dated 14.10.2021 passed by the learned Additional District Judge, 5th Court, Dhaka in Title Appeal No. 106 of 2016 disallowing the appeal and thereby affirming the judgment and decree dated 14.01.2016 passed by the learned Assistant Judge, 3rd Court, Dhaka in Title Suit No. 09 of 2014 should not be set aside and or pass such other or further order or orders as to this court may seem fit and proper.

The instant opposite party as plaintiff filed Title Suit No. 09 of 2014 in the court of Assistant Judge, 3rd court, Dhaka impleading the instant petitioner as defendant in the suit. The trial court upon hearing the parties, taking depositions, adducing

evidences, framing issues etc. allowed the suit by its judgment and decree dated 14.01.2016. Being aggrieved by the judgment and decree of the trial court the defendant appellant in the suit (petitioner here) filed Title Appeal No. 106 of 2016 which was heard by the Additional District Judge, 5th Court, Dhaka. The appellate court after hearing the appeal however disallowed the appeal by its judgment and decree dated 20.11.2018 and thereby affirmed the judgment and decree of the trial court passed earlier. Being aggrieved by the judgment and decree of the courts below the defendant as petitioner filed a civil revisional application which is presently before this court for disposal.

The plaintiff's case inter alia is that the plaintiff-opposite party is the owner of the disputed scheduled property as heirs and on 01.06.2009 he rented the disputed scheduled property to defendant petitioner for a period of 03 (three) years till 31.05.2012 by fixing monthly rent amounting Tk. 5,000/- (five thousand) through a deed which has been signed by eligible witnesses. After expiry of the rented period the plaintiff opposite party requested the defendant petitioner for vacating the rented shop but the defendant petitioner did not pay any heed into it. Thereafter, the plaintiff opposite party sent a legal notice to the defendant petitioner under Section 106 of the Transfer of Property Act, 1882 but the defendant petitioner has not vacated.

Hence cause of action arose and the plaintiff opposite party filed the instant Title Suit.

That the present petitioner as defendant contested the suit by filing a written statement denying all the material allegations against him stating inter alia that the plaintiff (opposite party) case is false, fabricated and not maintainable.

The trial court upon framing issues, examined the witness and documents were also produced as exhibits.

Learned Advocate Mr. Qazi Zahed Iqbal appeared for the defendant petitioner here while Ms. Olia Ferdows represented the plaintiff as opposite party.

Learned Advocate Mr. Qazi Zahed Iqbal for the petitioner submits that both courts below upon non consideration of materials on record came upon wrong finding and therefore the judgment of the courts below are not sustainable and ought to be set aside. He submits that it is clear from the materials that the plaintiff and the defendant shared long tenant agreement since their predecessor's time and subsequently a tenancy agreement was agreed upon between the parties. He contends that it is also clear from the materials that the defendant was never a defaulter and he also paid the rent regularly. He draws this court's attention to the materials and submits that it appears that a dispute arose between the parties which was ultimately settled by

the local chairman of the owner welfare association and pursuant to settlement of the dispute the plaintiff also agreed to receive rent and continue the tenancy with the defendant. He next argues that although the defendant eventually attempted to pay rent to the plaintiff by money order but however it is clear from the records that the plaintiff did not accept the money order. He submits that therefore in absence of default of payment of rent nor any other lacunas on the defendant's side, the defendant is entitled to continue the tenancy as per provisions of the relevant laws particularly the provisions of the Premises Rent Control Act, 1991. He submits that the tenancy is a lawful tenancy but the court however overlooked such legal entitlement of the defendant and the judgments of the courts below ought to be set aside and the Rule bears merit and ought to be made absolute for ends of justice.

On the other hand learned Advocate Ms. Olia Ferdous for the opposite parties opposes the Rule and submits that the courts below upon proper scrutiny into the relevant rules came upon their findings and those need not be interfered with in revision. She draws this court's attention to the materials and submits that there is no lacuna on the plaintiff's part given that before filing the suit the plaintiff opposite party fulfilled the requisites of the law including the provisions of Transfer of Property Act, 1882. Upon elaborating her submissions she points out that before

filing the suit the plaintiff opposite party duly issued a notice upon the defendant (petitioner) under Section 106 of Transfer of Property Act, 1882 by notice dated 14.07.2020. She submits that however it is also evident from the materials that the defendant did not take any steps and the plaintiff petitioner served a 2nd notice dated 07.08.2020. She argues that it was only after the defendant's failure to respond to the 2nd notice that the plaintiff owner filed the instant suit for ejection of the defendant tenant.

She next argues that the most important factor to adjudicate upon this suit is that the plaintiff needs the property for his bonafide requirement. She submits that it is the provision of law under the provisions of the Premises Rent Control Act that in case of bonafide requirement by the owner a tenant is bound to vacate the premises and give up the tenancy. She submits that in this case both courts concurrently found that the plaintiff owner needs the premises for bonafide requirement for his own purpose. She draws this court's attention to Section 18(1)(E) of the Premises Rent Control Act, 1991. She assails that from Section 18(1)(E) it is clear that in case of bonafide requirement by the owner, the owner is entitled to extinguish the tenancy following the proper provisions of the relevant law. She reiterates that in this case notice under Section 106 of the Transfer of Property Act was duly served but however it is also clear that the defendant remained passive. She submits that

therefore both courts below relying on the main ground of bonafide requirement correctly came upon their finding and the judgment and decree of the courts below need no interference and the Rule bears no merit and ought to be discharged for ends of justice.

I have heard the learned Advocates for both sides, also perused the application and materials on records. Whatsoever be the background of the tenancy between the predecessors of the parties presently it is admitted fact that the plaintiff is the owner and the defendant is tenant and it is also clear that the plaintiff filed a suit for eviction. Before filing of the suit the plaintiff duly issued notice under Section 106 of the Transfer of property Act, 1882 which the defendant could not controvert. However the defendant remained passive even after issuance of the notice. Apart from other factors both courts below concurrently made observation on the issue of the ground of bonafide requirement of the premises taken by the plaintiff owner. Both courts concurrently found that the plaintiff owner proved that he needs the premises for his bonafide requirements. Section 18 (1) (E) of the Premises Rent Control Act, 1991 expressly provide that in case of bonafide requirements a owner may lawfully decline to renew the tenancy agreement at the end of tenancy whatsoever. Section 18 (1) (E) of the Premises Rent Control Act, 1991 is reproduced here under:

“বাড়ীর নির্মান বা পুনর্নির্মানের জন্য অথবা নিজ দখলের জন্য অথবা যাহার উপকারার্থে বাড়ীটি রাখা হইয়াছে তাহার দখলের জন্য বাড়ীটি বাড়ী মালিকের পৃকতই প্রয়োজন হয় অথবা বাড়ী মালিক এমন কোন কারণ দর্শাইতে পানে যাহা আদালতের নিকট সন্তোষজনক বলিয়া গণ্য হয়।”

Under the facts and circumstances and relying on the concurrent finding of the judgment of the courts below, I am of the considered view that both courts correctly gave the judgments. I do not find any merits in the Rule.

In the result, the Rule is discharged without any order as to costs.

The order of stay granted earlier by this court is hereby recalled and vacated.

Send down the Lower Court Records at once.

Communicate the order at once.

Shokat (B.O)