

In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)

Present:

Mr. Justice Muhammad Abdul Hafiz

Civil Revision No. 5268 of 2022

Abdul Jalil Sikder
Defendant-Respondent-Petitioner

-Versus-

Heera Publications, represented by its
owners:

Mosammat Jannatul Ferdous Heera and
others

Plaintiffs-Appellants-Opposite parties

Mr. Tirtha Salil Pal, Advocate
Defendant-Respondent-Petitioner

Mr. Md. Tazul Islam, Advocate
Plaintiffs-Appellants-Opposite parties

Judgment on: 04.06.2023

This Rule was issued calling upon the opposite parties to show cause as to why the impugned Judgment and Order dated 10.11.2022 passed by the Senior District Judge, Dhaka in House Rent Appeal Suit No. 53 of 2022 allowing the appeal and thereby reversing the Judgment and Order dated 16.08.2022 passed by the Rent Controller and Senior Assistant Judge, 1st Court, Dhaka in House Rent Suit No. 22 of 2022 rejecting the application of the plaintiffs-appellants-opposite parties for direction upon the police to unlock the suit premises should not be set aside and/ or such

other or further order or orders passed as to this Court may seem fit and proper.

The opposite parties as plaintiffs filed House Rent Suit No. 22 of 2022 before the Rent Controller and learned Senior Assistant Judge, 1st Court, Dhaka, stating, inter alia, that they have been engaging in book selling business by taking rent of the shop owned by the defendant-respondent-petitioner by executing multiple rent agreements since 2014. Lastly, they executed rent agreement on 12.09.2020 for a period of 2 years. In that agreement it was agreed between the parties that as the rent of the shop the plaintiffs will pay Tk. 30,000/- per month. Accordingly, the plaintiffs were paying rents regularly and the defendant was receiving the same duly. However, after receiving the rent for March, 2022 the defendant denied to receive any more rents at the existing rate and claimed to give him Tk. 50,000/- per month. In such circumstances, the plaintiffs tried to give rents to the defendant both directly and through money order but failed in every attempt. Hence, the plaintiffs filed the suit.

During pendency of the said House Rent Suit No. 22 of 2022, on 07.08.2022 the plaintiffs submitted an application before the learned Court alleging that at the night on 30.07.2022 the defendant and his people sealed the lock of the shop. The plaintiffs

requested the defendant to open the seal from the lock but he denied. Therefore, the plaintiffs prayed to the learned Court for passing an order upon the local police station to open the shop.

Thereafter on 16.08.2022, upon hearing the plaintiffs the learned Court rejected the said application vide Order No.8 dated 16.08.2022 and hence the plaintiffs as appellants preferred House Rent Appeal Suit No. 53 of 2022 before the Court of learned District Judge, Dhaka. On 11.09.2022 the plaintiffs-appellants submitted an application to the learned District Judge, Dhaka praying for direction upon the defendant-respondent to remove all obstacles from entering the plaintiffs-appellants into the shop. On 25.09.2022 upon hearing of the plaintiffs-appellants the learned Senior District Judge allowed the said application in ex-parte. Subsequently, on 04.10.2022 the defendant-respondent appeared in the suit by filing Wokalatnama and submitted an application for recalling the Order dated 25.09.2022. The defendant-appellant also filed written objection. Afterwards, on 10.11.2022 upon hearing of the parties the learned District Judge, Dhaka allowed the appeal and additionally imposed fine of Tk. 5,00,000/- (Five Lac) upon the defendant-respondent and reversing the Order dated 16.08.2022 passed by the Rent Controller and learned Senior Assistant Judge, 1st Court, Dhaka in Hose Rent Suit No. 22 of 2022

and thus the defendant-respondent as petitioner moved before this Court with an application under section 115(1) of the Code of Civil Procedure and obtained this Rule.

Mr. Tirtha Salil Pal learned Advocate for the defendant-respondent-petitioner submits that the original House Rent Suit No. 22 of 2022 was instituted under section 19(1) of the Premises Rent Control Act, 1991 for the purpose of depositing rents in the Court claiming that the owner is not receiving the rents. In such suit there is no scope at all for passing any order for recovery of possession. The learned Trial Court rightly discussed this vital issue and rejected the application of the plaintiffs-opposite-parties for opening the suit premise. But the learned Appellate Court below most illegally reversed the said order of the learned Trial Court and passed the impugned Judgment and Order. Mr. Pal then submits that any complaint of dispossession of the opposite parties might bring the issue of separate cause of action which may be dealt by any competent Court other than a Court under the Premises Rent Control Act, 1991. Dealing with the issue of possession in a suit under the Premises Rent Control Act, 1991 and allowing remedy therein is colorable exercise of jurisdiction by the learned Appellate Court below completely travelling beyond its lawful authority and jurisdiction under the said Act. He further

submits that while the plaintiffs-opposite parties claimed for dispossession from the suit premise, there cannot be any issue of easement rights. Without considering this vital issue the learned Appellate Court below passed the impugned judgment and order for ensuring easement rights of the opposite parties and imposed fine of Tk. 5,00,000/- (Five Lac) upon the petitioner. The irony is that in the entire Premises Rent Control Act, 1991, there is no provision and scope at all to impose such a huge fine upon the landlord. A fine of maximum Tk. 1,000/- (One Thousand) can be imposed for repeated breach of easement rights of the tenant as per section 24 of the said Act. Thereby, it is an absurd of fining Tk. 5,00,000/- (Five Lac) to a landlord what can only be imposed if the landlord breaches the easement rights of the tenant for more than 500 times, such order of fine is palpably unlawful and a result of complete ignorance of law. He next submits that admittedly the concerned rent agreement is valid till 30.06.2022 and the opposite parties were allegedly dispossessed on 31.07.2022 i.e. after one month of expire of the rent agreement. As such, there is no scope to allow the opposite parties any right of possession over the suit premise as they already became illegal occupant over the same. Without considering this fundamental fact in a suit under the Premises Rent Control Act, 1991, the learned Appellate Court

below passed the impugned judgment and order. He lastly submits that the vital facts may carefully be considered that in the concerned rent agreement there was mention of a bank account of the wife of the landlord-petitioner for depositing monthly rents. But the tenant-opposite parties never attempted to deposit any rents to that bank account. However, just before 2(two) months of expiry of rent agreement, the opposite parties filed House Rent Suit No. 22 of 2022 under section 19(1) of the Premises Rent Control Act, 1991 for the purpose of depositing rents in the court claiming that the owner is not receiving the rents. Besides, even after expiry of the rent agreement the opposite parties got time of about 1 month to leave the suit premise before locking up the same by the local shop Owner's Association, but the opposite parties did not leave the possession of the suit premise. It may be noted that in course of hearing of the instant civil revision before this Division, settlement proposal was agreed by the learned Advocates of the parties but eventually the opposite parties vehemently denied any settlement and expressed their decision to contest the suit till the end. All these facts and actual situations clearly depict the heinous and mala fide intention of the opposite parties of being driven by absolute dishonesty and ill determination for illegally holding the possession of the suit premise without making any payment to the

landlord-petitioner and that too by abusing the law and procedure of Court.

Mr. Md. Tazul Islam learned Advocate for the plaintiffs-appellants-opposite parties submits that the original Rent Suit No. 22 of 2022 is pending before the learned Trial Court that the suit is related to the law concerned as under sections 19(1), 21 and 24 of the House Rent Control Act, 1991 so the instant suit should be disposal on merit through or by the evidence as well as documents but unfortunately the defendant-petitioner have come up before this Court against interlocutory matter. He further submits that the plaintiffs-opposite parties have been regularly paid rent through chalan before the concerned court he never defaults in paying the rent that the opposite parties owner of the Herra Publication which is renowned for publication and selling of law books in all over Bangladesh that due to illegal lock with iron welding of the suit shop by the defendant-petitioner for that reason the opposite parties has been suffering huge loss in business as quantity of books valuing about Tk. 1,00,000,00/- (One Crore) are kept inside the shops which were ready for delivery to different buyers of the books and as such the defendant-petitioner to remove all obstacles in entering the suit shop of the plaintiffs-opposite parties to continue her business otherwise the books and other materials

inside the shop as well as business goodwill would be ruin. He further submits that the earlier plaintiffs-opposite parties have paid rent regularly in cash and also defendant-petitioner received salami (advance money) 12,000,00/- (Twelve Lac) from the plaintiffs-opposite parties but in the Covid-19 pandemic situation he could not run the business but paid the rent regularly. That with malafide instigation of others anti Nilkhet business people intent the defendant-petitioner filed the instant civil revision case and he lastly submits that the Appellate Court below after scrutinizing the case documents rightly passed the impugned judgment and order as such the instant Rule may be discharged with costs.

Heard the learned Advocates both the sides and perused the record.

Admittedly, the aforesaid rent agreement was valid till 30.6.2022. As such, there is no scope to allow the plaintiffs-appellants-opposite parties for any right of possession over the suit premise. Without considering this most vital fact in this suit under the Premises Rent Control Act, 1991 the learned Appellate Court below passed the impugned judgment and order, thus, I find substance in the submissions of the learned Advocate for the defendant-petitioner.

In the result, the Rule is made absolute.

The impugned Judgment and Order dated 10.11.2022 passed by the Senior District Judge, Dhaka in House Rent Appeal Suit No. 53 of 2022 allowing the appeal and reversing the Judgment and Order dated 16.08.2022 passed by the Rent Controller and Senior Assistant Judge, 1st Court, Dhaka in House Rent Suit No. 22 of 2022 is hereby up held.

The order of stay granted earlier by this Court is hereby vacated.

Communicate the judgment to the concerned Court below at once.