

Present:

Mr. Justice A.K.M. Asaduzzaman

Civil Revision No. 3675 of 2022

S.M. Habibur Rahman and another

..... Petitioners.

-Versus-

Executive Director, Western Gas
Company Ltd. and others

.....Opposite parties.

Ms. Olia Ferdous, Advocate

.....For the petitioners.

Mr. S.M. Saiful Islam, Advocate

..... For the opposite parties.

Heard and judgment on 28th July, 2024.

A.K.M.Asaduzzaman,J.

This rule was issued calling upon the opposite parties to show cause as to why the judgment and order dated 09.06.2022 passed by the District Judge, Sirajgonj in Miscellaneous Appeal No. 19 of 2020 affirming those dated 12.11.2020 passed by the Senior Assistant Judge, Sadar, Sirajgonj in rejecting an application

for temporary injunction under Order 39 Rule 1 and 2 of the Code of Civil Procedure should not be set aside.

Petitioner as plaintiff filed Other Class Suit No. 17 of 2020 before the Court of Assistant Judge, Sirajgonj for permanent injunction against the opposite parties.

Plaint case in short, inter alia, is that the owner of the suit land was Ali Akber, who was the father of the plaintiffs and defendant No.4 and as they enjoying the property jointly they took the gas connection in the name of their elder brother namely S.M. Alauddin (defendant No.4) but in the map marking as 'K' of the connection there was clearly shown that there are three gas burner which were using by these three brothers from 25.06.2007 and since then the plaintiff No.1 and 2 and the defendant No.4 are enjoying the gas connection peacefully and at the time when the defendant No.4 started to constructing his 4 storied building by demolishing his tin shed house, the gas connection of the plaintiffs were temporarily suspended on an written application to the defendant No.4 but in this situation, the defendant No.4 with the collusion of the defendant No.1-3 took the connection of the plaintiffs in his 4 storied building and after knowing that the

plaintiffs gave written objection and the connection was disconnected by the defendant No.1-3 and thereafter the defendant No.4 many times trying to connect the gas connection of the plaintiffs and made Shalish in the Chairman office and in that Shalish it was decided by both the parties by executing a Shalish Nama that plaintiffs No.1-2 will use two connections and defendant No.4 will use the other one but the defendant No.4 without comply of the condition of the Shalish illegally and unlawfully trying to connect the gas connections of the plaintiffs to his buildings with the collusion of the defendant No.1-3 and in this situation, the plaintiffs are compelled to file the instant suit of permanent injunction. Hence the case.

On 19.02.2020 plaintiff filed an application under Order 39 Rule 1 and 2 of the Code of Civil Procedure for an order of temporary injunction in the terms of not connecting the gas connection illegally and forcefully by the defendant Nos. 1-3 to the defendant No.4 beyond the plan/map in the schedule land.

By the order dated 12.11.2020, the Assistant Judge rejected the said application finally.

Challenging the said order plaintiff petitioner preferred Miscellaneous Appeal No. 19 of 2020 before the Court of District Judge, Sirajgonj, who by the impugned judgment and order dated 09.06.2022 dismissed the appeal and affirmed the judgment of the trial court.

Challenging the said judgment and order petitioner obtained the instant rule.

Ms. Olia Ferdous, the learned advocate appearing for the petitioner drawing my attention to the judgment of the trial court submits that trial court totally failed to consider that property was inherited by the plaintiffs and the defendant No.4 from their father, wherein conjugative gas connection was obtained in the name of the defendant No.4 and subsequently as and when a multistoried building was constructed in the suit land by the defendant No.4 and a gas connection was stopped/ disconnect by the defendant Nos. 1-3 but thereafter defendant No.4 with the help of Defendant Nos.1-3 try to reconnect the gas line illegally and thereby plaintiffs were going to deprive from getting gas connection as such the plaintiffs filed the application for temporary injunction not to give an illegal connection but the

court below totally failed to consider the nature and feature of the case and most illegally held that the balance of convenience and inconvenience not in favour of the plaintiffs illegally. The impugned judgment is thus not sustainable in law, which is liable to be set aside.

Mr. S.M. Saiful Islam, the learned advocate appearing for the opposite party, on the other hand submits that court below rightly held that plaintiffs by way of an undertaking given on 26.06.2007 a gas connection was been given to defendant No.4 in the suit land and since the plaintiffs allowed to obtain connections to the defendant No.4, court below rightly found that the plaintiffs has admitted the connection of the defendant No.4 as well as waived out their right to challenge the connection given to the defendant No.4. Noticing the same court below committed no illegality in refusing to grant injunction in favour of the plaintiff. The impugned judgment contains no illegality, rule contains no merits, it may be discharged.

Heard the learned advocate and perused the judgment and the documents annexed to the application.

In a suit for permanent injunction, plaintiff prayed for temporary injunction on the point that defendant No. 1-3 may not give illegal gas connection to the defendant No.4 in the suit premises. Trial court while deciding the application for injunction has seen the file of the connection line of the gas connections as been produced by the defendant No.1-3.

Going through the said records, trial court observed that the gas connection in the suit premises was given on the application filed by the plaintiffs and the defendants as well as connection has given in favour of the defendant No.4 in his name on the undertaking given on 27.06.2007 by the plaintiff. Plaintiffs allowed the gas company to connect the gas connection in the name as well as in favour of defendant No.4 accordingly court below found that balance of convenience or inconvenience to obtain injunction in favour of the defendants. The connection as been given to defendant No.4 contains no illegality.

Admittedly suit property was belonged to the father of the defendants and a gas connection was obtained while there was a tin shed in the name of the defendant No.4 where plaintiff allowed to get connection by the defendant No.4 in his name by an

undertaking given on 27.06.2007 but thereafter defendant No.4 made a further construction by way of high-rise building wherein he also required further connection on his buildings along with plaintiffs, who are the admitted brother of the defendant No.4, who also needs to have their separate connection into their names. It is the business of the defendant No.1-3 to provide new connection or additional connection in the gas line on a suit premises, wherein obviously plaintiffs has got the legal claims to get separate connection when the suit property as been demarked and partitioned amongst their brothers plaintiff Nos. 1-2 with defendant No.4.

The gas company obviously considered the prayer of the plaintiff together their connection in the premises. The learned advocate Mr. S.M. Saiful Islam appearing for the defendant No.4 agreed on behalf of his client to help the plaintiffs to get gas connection in the suit premises.

However in the order passed by the court below on refusing to grant injunction in favour of the plaintiffs not to reconnect the gas lines to defendant No.4 since contains no illegality. I find no merits in the rule.

In the result, the Rule is discharged.

However the trial court is hereby directed to dispose of the case expeditiously as early as possible in the meantime defendant Nos. 1-3 gas connection company will take the application of the plaintiff to get gas connection to the premises of the plaintiff No. 1 and 2.

The order of status-quo granted earlier is hereby recalled and vacated.

Communicate the judgment at once.