

Present:-

Mr. Justice Mahmudul Hoque

Civil Revision No. 4406 of 2022

Md. Nuruzzaman Milon

... Petitioner

-Versus-

Md. Enamul Haque and others

...Opposite-parties

Mr. Mohiuddin M. A. Kader, Advocate

...For the petitioner

Mr. Md. Shahidul Islam with

Mr. Md. Salim Azad, Advocates

...For the opposite-party No. 1.

**Heard on 29.01.24, 05.02.24, 06.02.2024 and
judgment on 7th February, 2024.**

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued at the instance of the petitioner calling upon the opposite parties to show cause as to why the impugned judgment and order dated 28.08.2022 passed by the learned Additional District Judge, 2nd Court, Dinajpur in Miscellaneous Appeal No. 11 of 2022 allowing the appeal and thereby reversing the order dated 06.02.2022 passed by the Assistant Judge, Phulbari, Dinajpur in Other Suit No. 11 of 2020 rejecting the application for mandatory injunction filed by the defendant No. 1 and allowing the application for injunction filed by the petitioner

should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

Facts relevant for disposal of this Rule, in short, are that the petitioner, as plaintiff, filed Other Suit No. 11 of 2020 in the Court of Assistant Judge, Phulbari, Dinajpur against the opposite-party No. 1, as principal-defendant along with 3 others, as proforma-defendants, for a decree of permanent injunction, claiming that the disputed Deep Tubewell was installed by his father on getting the same through Bangladesh Government as the donation of Kingdom of Saudi Arabia, for benefit of local cultivators. Accordingly, after installation he used to serve the local cultivators by giving required water for irrigation keeping the same under his management and control. For proper administration, the local cultivators formed a Samity named Jhokjhaka Korai Govir Nalkup Samity of which present plaintiff is manager. Initially his father obtained electricity connection in his own name. Subsequently, the connection has been changed in the name of Samity. The defendant No. 1 along with some local peoples conspiring against the plaintiff and trying to take control and management of the project forcibly ousting him, for

which he filed the instant suit. The plaintiff filed an application under Order 39 Rules 1 and 2 of the Code of Civil Procedure praying for an order of injunction against the defendant No. 1. The trial court after hearing passed an order of status-quo which is still subsisting.

During pendency of the suit all of a sudden electricity connection was disconnected on the plea of technical problem in the project. In spite of repeated prayers and requests the proforma-defendant No. 4 killing time to restore connection in connivance with the defendant No. 1. Consequently, the plaintiff filed an application under Section 151 of the Code of Civil Procedure praying for restoration of electricity connection in the project directing the defendant No. 4 on 13.01.2022. On the same day the defendant No. 1 also filed an application praying for an order of mandatory injunction against the defendant No. 4 to give electricity connection in his name. Both the applications were heard by the learned trial court and after hearing by its order dated 06.02.2022 allowed the application of the plaintiff under Section 151 of the Code of Civil Procedure and rejected the application filed by defendant No. 1 praying for mandatory injunction.

Being aggrieved by and dissatisfied with the impugned judgment and order of the trial court, the defendant No. 1, filed Miscellaneous Appeal No. 11 of 2022 before the Court of learned Senior District Judge, Dinajpur. Eventually, the said appeal was transferred to the Court of learned Additional District Judge, 2nd Court, Dinajpur for hearing and disposal who after hearing by the impugned judgment and order dated 28.08.2022 allowed the appeal and granted mandatory injunction against the defendant No. 4 directing him to give electricity connection in the name of defendant No. 1 and set aside the order of the trial court. At this juncture, the petitioner, moved this Court by filing this revision against the order of the appellate court and obtained the present Rule and order of stay.

Mr. Mohiuddin M. A. Kader, learned Advocate appearing for the petitioner submits that in original suit an order of status-quo is subsisting against the defendant in suit, meaning thereby, the plaintiff still functioning as manager of the Samity. Moreover, electricity connection was obtained in the name of Samity not in the name of any individual like the plaintiff or any other person. The

plaintiff being manager of the Samity and in the management and control of the irrigation project he continues in the same position. When the electricity connection was dislodged, as manager of the Samity he rightly filed an application seeking direction upon the defendant No. 4 to restore electricity connection. The defendant No. 1 is nobody to file any application for mandatory injunction to compel the defendant No. 4 to give a new connection in his own name, consequently, the trial court considering facts and circumstances of the case rightly allowed the application of the plaintiff and rejected the application of defendant No. 1, but the appellate court while allowing the appeal unfortunately, failed to understand the status of electricity connection and unreasonably allowed the appeal granting mandatory injunction directing defendant No. 4 to give electricity connection in the name of defendant No.1, whereas, the electricity connection is still remains in the name of the Samity. He argued that the order passed by the trial court is not appealable order, but the appellate court while deciding the appeal failed to appreciate the provisions of law and disposed of

the appeal on merit allowing the same directing defendant No. 4 to give connection of electricity in the name of defendant No. 1.

Mr. Md. Shahidul Islam with Mr. Md. Salim Azad, learned Advocates appearing for the opposite-party No. 1 submit that the Deep Tubewell was installed for the benefit of local cultivators and at the first instance the management was at the hands of father of the plaintiff. Thereafter, the plaintiff was serving as manager of the Samity, but he adopted malafide in running the Deep Tubewell and badly treated the local farmers in distributing water equally. Consequently, the Samity by holding a meeting decided to remove the present plaintiff from the post of manager and in his place unanimously elected the defendant No. 1, Enamul Haque as manager of the irrigation project. Therefore, the plaintiff at present has no right and interest in the irrigation project, as such, he has no locus standi to file any application for injunction seeking direction against defendant No. 4 to restore electricity connection in his name in the project, the trial court failed to appreciate the facts, but the appellate court while allowing the appeal rightly held that a person having no post and position in the Samity cannot be a plaintiff or an applicant

and cannot file an application seeking direction against the defendant No. 4 to restore electricity connection in his name. He further submits that earlier one Azahar Ali and another filed Other Suit No. 02 of 2005 for declaration challenging a decision of defendant No. 2 for taking over the project under their control, in which the trial court passed an order of injunction against the government authorities not to disturb with the project. Against the order of the trial court the defendant preferred F.M.A.T. No. 284 of 2005 wherein, an order of status-quo was passed in Civil Rule No. 19(F) of 2005 which is still subsisting, as such, because of existence of an order passed by this Court in earlier proceeding subsequent order in favour of the plaintiff cannot be passed. As such, the appellate court rightly allowed the appeal and set aside the judgment and order of the trial court.

Heard the learned Advocates of both the sides, have gone through the revisional application, plaint in suit, application under Section 151 of the Code of Civil Procedure filed by the plaintiff, application praying for mandatory injunction filed by the defendant No. 1, supplementary affidavit and the annexures thereto and the impugned judgment and order of both the courts below.

Admittedly, present petitioner, as plaintiff, filed Title Suit 11 of 2020 in the Court of Assistant Judge, Phulbari, Dinajpur praying for a decree of permanent injunction against the defendant No. 1. In the suit an order of status-quo was passed by the trial court on the prayer of the plaintiff which is still subsisting. During pendency of the suit electricity connection in the irrigation project was disconnected. Consequently, function of the project has come at stake. Since the project become useless for want of electricity connection the plaintiff in suit came with an application before the trial court under Section 151 of the Code praying for an order against the defendant No. 4 directing him to restore electricity connection in the project of the Samity. On the same day, the defendant No. 1 also filed an application for mandatory injunction against the proforma-defendant No. 4 to give electricity connection in his own name instead of restoration of electricity line in the name of the Samity. The trial court after hearing allowed the application filed by the plaintiff under Section 151 of the Code to restore electricity connection in the project as it is in the name of Samity and rejected the application filed by the defendant No. 1. An order passed by the

trial court on an application under Section 151 of the Code allowing the same and rejecting an application for mandatory injunction filed by the defendant No. 1 is not an appealable order. But the defendant No. 1 instead of preferring revision filed appeal before the learned District Judge. While the appeal was heard by the learned Additional District Judge he failed to take notice to the fact that the appeal in its present form is incompetent and ignoring the provision of law he took the matter for hearing and after hearing by the impugned judgment and order allowed the appeal by setting aside the judgment and order of the trial court allowing application for mandatory injunction in favour of the defendant No. 1. Where a dispute in respect of status of the plaintiff and the defendant No. 1 in the Samity is under adjudication before a court of law, how the appellate court can pass an order directing defendant No. 4 to give electricity connection in the name of defendant No. 1 instead of restoring the electricity connection in the name of the Samity. Is there any opportunity left for the court to change the customer's name in restoring electricity connection? The answer is no.

Apart from this, admittedly, the project is being run and managed by a Samity named Jhokjhaka Korai Govir Nalkup Samity and the plaintiff is a manager. The plaintiff filed the application for restoration of the electricity connection not in his own name, but in the name of the Samity as it is. Ignoring such facts the appellate court in one hand heard an incompetent appeal and on the other hand, utterly failed to understand the status of the electricity connection and directed the proforma-defendant No. 4 to give electricity connection in the name of the defendant No. 1 instead of maintaining the electricity connection in the name of Samity.

It is to be noted that in the original suit there is an order of status-quo, meaning thereby, the plaintiff in suit is in the management and control of the project. By the impugned judgment and order the appellate court ignored the order of status-quo and most illegally allowed the application for mandatory injunction in favour of defendant No. 1 who is not a plaintiff before the trial court.

From the above observations, I find that the appellate court committed serious error in law in the decision occasioning failure of justice.

Taking into consideration the above, I find merit in the Rule as well as in the submissions of the learned Advocate for the petitioner.

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

The judgment and order of the appellate court is hereby set aside and the judgment and order of the trial court is hereby restored.

Order of *stay* granted at the time of issuance of the Rule stands vacated.

Communicate a copy of the judgment to the Court concerned at once.