

Present:

MR. JUSTICE S.M. EMDADUL HOQUE

CIVIL REVISION NO. 5852 OF 2022.

IN THE MATTER OF:

An application under Section 115 (4) of the Code of Civil Procedure.

- AND -

IN THE MATTER OF:

Asma Rahman alias Asma Akhter.

....Defendant-Petitioner.

-Versus –

Most. Rabeya Akhter and others.

.....opposite-parties.

Mr. Prabir Halder, Advocate

..... for the petitioner.

Mr. Mohammad Isharat Hossain, Advocate

..... for the opposite parties.

Heard and Judgment on: 04.02.2024.

The defendant-petitioner filed this revisional application under Section 115(4) of the Code of Civil Procedure challenging the impugned judgment and order dated 18.10.2022 passed by the Senior District Judge, Dhaka rejecting the Civil Revision No.160 of 2022 and thereby affirming the judgment and order dated 06.06.2022 passed by the Senior Assistant Judge, 6th Court, Dhaka in Title Suit No.751 of 2021 accordingly the leave was granted and consequently the Rule was issued.

Facts necessary for disposal of the Rule, in short, is that the opposite party No.1 as plaintiff instituted Title Suit No.751 of 2021 impleading the petitioner and the opposite party Nos.2-4 as defendants

praying for decree that she along with the defendant Nos.3-4 are the legal heirs and are entitled to get decree of the schedule amounts of Tk.16,89,918/- and for further direction not to disburse the said amounts to the defendant No.1 since she has claimed the nominee of the deceased account holder.

The defendant No.1 the present petitioner appeared in the suit by filing written statement denying all the material assertions made in the plaint and claimed that she is the nominee of the deceased Mustafizur Rahman and is entitled to withdraw the schedule amounts and the suit is not maintainable in its present form and liable to be dismissed.

The defendant petitioner thereafter filed an application for rejection of the plaint under Order VII rule 11 of the Code of Civil Procedure claiming that as per Section 103(1) of the Banking Companies Act, 1991 the nominee is entitled to withdraw the money of the deceased depositor and as such the plaint should be rejected.

The trial Court after hearing the parties, considering the facts and circumstance of the case rejected the said application by its judgment and order dated 06.06.2022.

Against the said order the defendant petitioner filed Civil Revision No.160 of 2022 under Section 115 (2) of the Code of Civil Procedure before the learned District Judge, Dhaka, who after hearing the parties and considering the facts and circumstance of the case summarily rejected the revisional application by its judgment and order dated 18.10.2022.

Being aggrieved by and dissatisfied with the impugned judgment of the Courts below the defendant No.1 as petitioner filed this revisional application under Section 115(4) of the Code of Civil Procedure and accordingly leave was granted and consequently Rule was issued.

Mr. Mohammad Isharat Hossain, the learned Advocate entered appeared on behalf of the opposite party No.1 through vokalatnama to oppose the Rule.

Mr. Prabir Halder, the learned Advocate submits that the petitioner is the nominee of the deceased Mustafizur Rahman for the schedule amounts. He further submits that as per provision of Section 103(1) of the Banking Companies Act, 1991 the petitioner is entitled to withdraw the entire amounts and the said matter has already been decided in the case of *Ziauddin Ahmed and others Vs. Arab Bangladesh Bank and others reported in 6 MLR (AD)-188* and the decisions reported in 52 DLR (HCD)-36. He further submits that the suit is not maintainable since after the death of the deceased Mustafizur Rahman the plaintiffs and the defendant Nos.2-4 ought to have filed successions case but without filing the succession case they filed the declaratory suit which is not maintainable in law. He further submits that both the Court did not consider the aforesaid provision of law passed the impugned judgment. He prayed for making the Rule absolute.

On the contrary, Mr. Mohammad Isharat Hossain, the learned Advocate submits that the plaintiff and the defendant Nos.2-4 are the

legal heirs of deceased Mustafizur Rahman and after the death of deceased Mustafizur Rahman the wife and the brother and sisters became the legal heirs. He submits that the plaintiff filed the suit claiming that they are the legal heirs of deceased Mustafizur Rahman but the defendant No.1 has claimed she is the nominee of deceased Mustafizur Rahman and accordingly the plaintiffs filed the suit with a prayer for title of the schedule amounts and also prayed for a direction not to disburse the said amounts in favour of the defendant No.1.

He submits that there is no bar to file suit and suit is quite maintainable. He submits that both the Court rightly passed the impugned judgment and did not commit any error of law resulting in an error in the decisions occasioning failure of justice. He prays for discharging the Rule.

I have heard the learned Advocate of both the sides, perused the impugned judgment of the Courts below, the provision of law and the papers and documents as available on the record.

The plaintiffs filed the suit claiming that she and defendant Nos.2-4 are the legal heirs of deceased Mustafizur Rahman who was the account holder of the schedule accounts. It appears that the plaintiff without filed the succession case filed this suit claiming for their title and a direction not to disburse the said amount to the defendant No.1 who has claimed the nominee of deceased Mustafizur Rahman the husband of the plaintiff.

The defendant No.1 entered appeared and filed written statement. Thereafter, filed application for rejection of the plaint under Order VII rule

II of the Code of Civil Procedure claiming that suit is not maintainable and plaintiff should be rejected. The trial Court rejected the said application and the revisional Court also upheld the order of the trial Court.

The petitioner only challenging the judgment and order rejecting the application for rejection of the plaintiff under Order VII rule 11 of the Code of Civil Procedure. The Order VII rule II of the Code of Civil Procedure as under:

(a) where it does not disclose a cause of action:

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court fails to do so:

(c) where the relief claimed is properly valued, but the plaintiff is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so:

(d) where the suit appears from the statement in the plaintiff to be barred by any law.

The main provision states that the plaintiff should be rejected where it shall does not disclose a cause of action, furthermore, where the appellants from the statement in the plaintiff to be barred by any law and some other reasons. Defendant Nos.2-4 are the brother and sisters of deceased Mustafizur Rahman and they are the legal heirs of deceased Mustafizur Rahman who maintained the schedule accounts wherein the

scheduled amounts is available. Admittedly the defendant No.1 is not the heir of deceased Mustafizur Rahman she is the sister of the deceased wife of Mustafizur Rahman but she is the nominee of him.

It appears that the Courts below took view that none of the provision of Order VII rule 11 has been stated in the application for rejection of the plaint and also opined that all the matter should be considered by taking evidence.

It is now settled principle that the matter whether the suit is maintainable or not and the other facts should be considered by the trial Court by taking evidence. And if it is found that the suit is not maintainable as per law then Court by framing proper issue may rejected the plaint.

It appears that the plaintiff is the wife of deceased Mustafizur Rahman and D.W-2-4 are the brother and sisters of said Mustafizur Rahman and before his death he deposited the schedule amounts to the Bank but he appointed the defendant No.1 as nominee and defendant No.1 claimed that she is only the authority to withdraw the amounts the said matter is not a ground for rejection of plaint rather the same issue should be disposed of by the trial Court by framing proper issue.

The suit filed by the legal heirs of the deceased Mustafizur Rahman and in such a case whether the plaintiff filed suit in a wrong forum and the provision of Section 103(1) of the Banking Companies Act, 1991 also should be considered by the trial Court at the time of disposal of the suit.

However, the Courts below after consideration of law and facts of the case rightly decided the matter rejecting the application for rejection of the plaint under Order VII rule 11 of the Code of Civil Procedure filed by the defendant No.1.

Having considered the facts and circumstance of the case, and the discussions as made above. I find no merit in the Rule.

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

The order of *status-quo* granted earlier by this Court is hereby recalled and vacated.

Communicate the order at once.