

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

Present

Madam Justice Kashafa Hussain

Civil Revision No. 5757 of 2022

Md. Abu Jahed

.....petitioner

-Versus-

Md. Roshidul Islam and others

..... Opposite parties

Mr. Mohi Uddin Ahmed, Advocate

..... For the petitioner

Mrs. Tasmia Prodhan, Advocate

..... For the Opposite Parties

Heard on: 01.08.2023, 08.08.2023,
20.08.2023, 21.08.2023 and
Judgment on 29.08.2023

Rule was issued calling upon the opposite party No. 1 to show cause as to why the impugned Judgment and order dated 13.09.2022 passed by the District Judge, Panchagarh in Civil Revision No. 16 of 2022 dismissing the same and thereby affirming the order dated 16.06.2022 passed by the Senior Assistant Judge, Panchagarh in Election Tribunal Case No. 07 of 2021 rejecting the petition under Order 7 Rule 11 of the Code of Civil Procedure, 1908 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 parties as applicant filed Election Tribunal Case No. 07 of 2021 in the court of Senior Assistant Judge, Panchagarh impleading the instant petitioners as opposite party in the Election Tribunal Case. During pendency of the case

the instant petitioner as opposite party in the Election Tribunal Case filed an application under Order 7 Rule 11 of the Code of Civil Procedure, 1908 for rejection of plaint. The trial court upon hearing the application rejected the application under Order 7 Rule 11 of the Code of Civil Procedure, 1908 by its judgment and order dated 16.06.2022. Being aggrieved by the judgment and order of the trial court the opposite party in the case (petitioner here) filed a Civil Revision being Civil Revision No. 16 of 2022 which was heard by the court of District Judge, Panchagarh. The revisional court upon hearing the civil revision however dismissed the civil revision by its judgment and order dated 13.09.2022 and thereby upheld the judgment and order passed earlier. Being aggrieved by the orders of the courts below the instant opposite party in the Election Tribunal Case as petitioner filed a Civil Revisional application before this division which is presently before this Bench for disposal.

Although the matter appeared in the list for several days when the matter was taken up for hearing none appeared for the petitioner. However learned advocate Mrs. Tasmia Prodhan appeared for the opposite parties.

Learned Advocate Mrs. Tasmia Prodhan for the opposite parties opposes the Rule. She submits that both courts below upon correct application of the law came upon correct finding and therefore those need no interference with in revision. She submits that the forum of Election Tribunal case has been

granted by a special enactment of statutory law being স্থানীয় সরকার ইউনিয়ন পরিষদ আইন, ২০০৯ read along with স্থানীয় সরকার ইউনিয়ন পরিষদ বিধিমালা, ২০১০। She submits that being statutorily enacted to serve a special purpose, therefore the forum of an application under Order 7 Rule 11 of the Code of Civil Procedure for rejection of plaint is not applicable in an Election Tribunal Case. In support of her submissions she draws upon Section 53 of the নির্বাচন বিধিমালা, ২০১০ and asserts that Section 53 has categorically classified the nature of a petition in an Election Tribunal case. She submits that in an Election Tribunal Case the petition has been described as নির্বাচনী দরখাস্ত which means application. She points that the term দরখাস্ত (application) is clearly distinguishable from the term plaint (আর্জি) as contemplated in the Code of Civil procedure. She submits that Section 53 followed by Section 54, 55 inter alia other provisions consistently use the word দরখাস্ত which denotes that it is an application. She submits that particularly Chapter-4 (৪র্থ অধ্যায়) বিধিমালা-২০১০ categorically lays down the procedure to be followed in the event any case in the Election Tribunal is filed. In support of her submissions she cites a decision of our Apex Court in the case of Md. Afazuddin Fakir Vs. M.H. Rahman & Ors reported in 21 BLT (AD) 2013 page 407. She points out that an analogy may be drawn from the principle in the 21 BLT (AD) case although the 21 BLT (AD) case arose out of a preemption case and not from an Election Tribunal case. She concludes her submissions upon assertion that

therefore the courts below upon correct adjudication of the matter came upon their decision and those need no interference and the Rule bears no merits and ought to be discharged for ends of justice.

I have heard the learned Advocates for the opposite parties, also perused the application and materials. Evidently the instant case is an Election Tribunal case filed in the proper forum. Such statutory right to file an Election Tribunal case in the proper forum has been granted to any aggrieved person under the provisions of স্থানীয় সরকার (ইউনিয়ন পরিষদ) বিধিমালা, ২০১০ chapter-4. To properly assess the law I have examined chapter-4 of the bidhimala (বিধিমালা) inter alia Section 53, 54, 55, 56 including other sections. It is significantly noticed that all these provisions consistently use the word and describe the main application as নির্বাচনী দরখাস্ত। The literal meaning of দরখাস্ত is application.

Whereas in a regular civil suit filed under the Code of Civil Procedure, 1908 the initial petition is called a plaint (আর্জি). Therefore it is evident that a দরখাস্ত in a Election Tribunal case is clearly distinguishable from a plaint আর্জি in a regular civil suit filed in a typical civil court. Order 7 Rule 11 of the Code of Civil Procedure deals with the procedure where a defendant in a civil suit has been granted the right to file an application under Order VII Rule XI of the Code for rejection of plaint. Therefore it is evident that the word 'plaint' used in Order 7 Rule 11 of the Code of Civil Procedure denote a plaint within the meaning of a

regular civil suit filed in a civil court. Whereas a নির্বাচনী দরখাস্ত filed in an Election Tribunal is clearly an (দরখাস্ত) application and it is not a plaint within the meaning of Order 7 Rule 11 of the Code of Civil Procedure, 1908. As stated above a দরখাস্ত within the meaning of the নির্বাচন বিধিমালা, ২০১০ is clearly distinguishable from a ‘plaint’ within the meaning of a regular civil suit.

Such being the position of the law, I am of the considered view that forum of rejection of plaint under Order 7 Rule 11 of the Code cannot be availed in an Election Tribunal case under provisions of Chapter-4 of the নির্বাচন বিধিমালা, ২০১০.

The স্থানীয় সরকার (ইউনিয়ন পরিষদ) আইন, ২০০৯ read along with স্থানীয় সরকার (ইউনিয়ন পরিষদ) নির্বাচন বিধিমালা, ২০১০ are special statutory enactments and must be interpreted as per the clear language of the law and no inference may be drawn upon any presumption and assumption. Therefore I am of the considered view that in the instant case the courts correctly rejected the application under Order 7 Rule 11 of the Code of Civil Procedure for rejection of plaint.

I have also examined the judgment cited by the learned advocate for the opposite party in the case of Md. Afazuddin Fakir Vs. M.H. Rahman & Ors reported in 21 BLT (AD) 2013 page-407. The relevant portion is reproduced here under:

“the application for preemption under section 96 of the Act is mere a

proceeding which cannot be denoted as
plaint within the ambit of Order 7, of
the said Code although it has got all the
Trappings of a plaint- a proceeding
under Section 96 of the said Act
pending before a civil court not being a
plaint applicability of Order 7 Rule 11
of the Code would not be available to
reject the same.”

Upon perusal of the principle, I am inclined to draw an
analogy with the case I am presently dealing with. Although the
21 BLT (AD) 2013 case arise out of a preemption case under
section 96 of the SAT Act, but however an analogy may be
drawn from, since the basic principle behind the meaning of a
plaint (আর্জি) in that case and the case presently here are the same.

Under the facts and circumstances and relying on the
concurrent findings of the judgment of the courts below, I do not
find any merits in the Rule.

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

Communicate the order at once.

Shokat (B.O)