

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.1730 of 2023.

In the matter of:

An application under section
115(1) of the Code of Civil
Procedure.

Md. Shah Alam Bhuiyan

...Petitioner

-Versus-

Jamuna Bank Ltd and others

...opposite parties

No one appears

....For the petitioner

Mr. Minhazul Hoque Chowdhury, Advocate

...For opposite party No.3

Mr. Touhidul Hasan, Advocate

...For the opposite party No.4

Mr. Munshi Moniruzzaman, Advocate

....For the opposite party No.1

Heard & Judgment on: 27.11.2024.

This Rule was issued calling upon the opposite parties to show cause as to why the impugned order bearing No.08 dated 01.03.2023 passed by the learned Additional District and Sessions Judge and Deulia Bisoyak Adalat, Dhaka in Deulia Suit No.16 of 2022 rejecting the application for protection order filed under section 35 of the Deulia Bisoyak Ain, 1997 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 in short are that the petitioner as plaintiff instituted above suit in the Deulia Bisoyak Adalat, Dhaka on 30.06.2022 for declaring himself as a bankrupt and in above suit he filed a petition on 24.01.2023 for passing an ad-interim safety order under section 35 of the Deulia Ain, 1997 restraining his lenders, the defendant Nos.1-5, from issuance of any warrant for civil imprisonment till disposal of above suit.

The learned Judge of the Deulia Bisoyak Adalat rejected above petition vide impugned order dated 01.03.2023.

Being aggrieved by and dissatisfied with above judgment and order of the trial court above plaintiff as petitioner moved to this court with this petition under section 115(1) of the Code of Civil Procedure and obtained this rule.

No one appears on behalf of the petitioner when this matter was taken up for hearing although this matter appeared in the list for hearing on several dates

Mr. Minhazul Hoque Chowdhury learned Advocate for the opposite parties submits that above petition of the petitioner under section 35 of Deulia Bisoyak Ain, 1997 as well as this impugned Civil Revision are misconceived and not tenable in law. A petition for safety measures of a bankrupt is available only after declaring him plaintiff a bankrupt by the court on

conclusion of trial. But the petitioner filed above petition after filing of the suit and before conclusion of the trial. Moreover every judgment and order passed by a Deulia Bisoyak Adalat under Deulia Bisoyak Ain, 1997 is subject to appeal to a Bench of this court specifically empowered in this regard. But the petitioner has filed this revision before the Bench not specifically empowered. In view of above materials on record this civil revision is liable to be rejected and the rule issued in this connection is liable to be discharged.

I have considered the submissions of the learned Advocate for the opposite party and carefully examined all materials on record.

As mentioned above the petitioner as plaintiff instituted above suit under Deulia Bisoyak Ain, 1997 to Deulia Bisoyak Adalat, Dhaka for declaration that the plaintiff is a bankrupt and before conclusion of trial of above suit and declaring the plaintiff as a bankrupt the plaintiff filed above petition under section 35 of the Deulia Bisoyak Ain, 1997 for interim safety measure against the issuance of any warrant for civil imprisonment against the plaintiff.

Section 35 of Deulia Bisoyak Ain, 1997 starts with the words "any creditor who has been declared as bankrupt" can resort to above provision in order to protect himself from civil imprisonment. Since undisputedly the plaintiff was not declared bankrupt he

had no locus-standi to resort to above provision of the Deulia Bisoyak Ain, 1997.

Section 96 of Deulia Bisoyak Ain clearly mentions that any judgment and order passed under the Deulia Bisoyak Ain is subject to appeal to this court. But instead of preferring an appeal the petitioner has preferred this civil revision under section 115(1) of the Code of Civil Procedure which is misconceived and not tenable in law.

In above view of the facts and circumstances of the case and materials on record I do not find any substance in this civil revision and the rule issued in this connection is liable to be discharged.

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

Let a copy of this judgment be transmitted down to the Court concerned at once.