

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION

(CIVIL REVISIONAL JURISDICTION)

Civil Revision No. 2271 of 2023

In the matter of:

Iqbal Mahmud.

...Petitioner.

-Vs-

Present
Mr. Justice Mamnoon Rahman

The Chairman (Additional Secretary), Bangladesh
Jute Corporation and another.

...Opposite parties.

Mr. Rokanuddin Mahmud, Sr. Adv. with

Mr. Mustafizur Rahman Khan, Sr. Adv.

Mr. Zulhas Uddin, Adv.

Mr. Muhammad Rejaul Husain (Morshed), Adv.

...For the petitioner.

Mr. S.M. Ariful Islam, Adv.

...For the opposite party No. 1.

Mr. Mokarramus Shaklan, Adv. with

Md. Al-Amin, Adv. with

Ms. Rukshana Parvin Kabita, Adv.

...For the opposite party No. 2.

Heard on: 13.06.2023

Judgment on: The 7th December, 2024

In an application under section 115(1) of the Code of Civil Procedure, 1908 rule was issued calling upon the opposite party Nos. 1 and 2 to show cause as to why the impugned judgment and order dated 11.04.2023 passed by the learned District Judge, Chattogram in Miscellaneous Appeal No. 71 of 2023 disallowing the appeal and thereby affirming the order dated 02.02.2023 passed by the learned Senior Assistant Judge, Court No. 2, Chattogram in Other Class Suit No. 955 of 2022 rejecting an application for temporary injunction filed by the plaintiff-appellant-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.

The short facts relevant for the disposal of this rule, is that, the present petitioner as plaintiff instituted Other Class Suit No. 955 of 2022 in the court of Senior Assistant Judge, Second Court, Chattogram impleading the opposite party as defendant with the following prayers;

ক) তপশীলোক্ত সম্পত্তিতে বাদী লীজ ভীড মূলে ১৯৮৫ সাল হইতে ভোগদখলে থাকাকালীন এবং ২০২২ ইং সালের ভাড়া পরিশোধিত থাকাবস্থায় অন্যায় ও বেআইনীভাবে বিগত ০৭/০৬/২০২২ ইংরেজী তারিখ ১নং বিবাদী ২নং বিবাদীর সহিত সম্পাদিত চুক্তিপত্র বেআইনী, অকার্যকরী, ফেরবী ও বাতিলযোগ্য বলিয়া ঘোষনামূলক ডিক্রী হয়।

খ) তপশীলোক্ত সম্পত্তি হইতে বিবাদীগণ যেন বাদীকে উচ্ছেদ করিতে না পারে কিংবা বেআইনীভাবে বেদখল করিতে না পারে কিংবা বেআইনীভাবে তপশীলোক্ত সম্পত্তিতে অনুপ্রবেশ করিতে না পারে কিংবা ২নং বিবাদী যেন বেআইনীভাবে তফসিলোক্ত সম্পত্তিতে কোন নির্মান কাজ করিতে না পারে তৎমর্মে বিবাদীগণের বিরুদ্ধে স্থায়ী নিষেধাজ্ঞার ডিক্রী হয়।

গ) তপশীলোক্ত সম্পত্তি বাদী ১৯৮৪ সাল হইতে লীজ ভীড মূলে দখলে থাকিয়া নিয়মিত ভাড়া তথা ২০২২ ইংরেজী সাল পর্যন্ত ভাড়া পরিশোধিত থাকায় তপশীলোক্ত সম্পত্তিতে বাদীর ব্যবসা প্রতিষ্ঠান পরিচালনা করাকালীন শত কোটি টাকা বিভিন্ন ক্রেতাগণের নিকট পাওনা থাকায় তপশীলোক্ত সম্পত্তি বাদীর সহিত লীজ ভীড পুনঃ পুনঃ নবায়ন করার জন্য ১নং বিবাদীকে নির্দেশ প্রদান করা ঘোষনামূলক ডিক্রি হয়;

ঘ) বাদী আইনতঃ ও ন্যায়তঃ আর যে যে প্রতিকার পাওয়ার হকদার তাহা দেওয়ার ডিক্রী হয়।

*৩) আদালতের ন্যায় বিচারে মোকদ্দমার যাবতীয় খরচ
বিবাদীগণের বিরুদ্ধে ডিক্রি হয়।*

After filing of the suit the defendant-opposite parties are contesting the same by filing power. During pendency of the suit the present plaintiff-petitioner pressed an application under Order 39 rule 1 and 2 of the Code of Civil Procedure, 1908 for injunction before the trial court. The same was contested by the opposite party-defendant by filing written objection. The court below proceeded with the same. The trial court after hearing the parties, considering the facts and circumstances, materials on record vide the judgment and order dated 02.02.2023 rejected the application for injunction. Against which the present plaintiff as appellant preferred Misc. Appeal No. 71 of 2023 before the District Judge, Chattogram and the same was heard and disposed of by the said Judge who vide the impugned judgment and order dated 11.04.2023 dismissed the appeal and thereby affirmed the judgment and order passed by the trial court. Being aggrieved by and dissatisfied with the aforesaid judgment and order passed by the lower appellate court the present petitioner moved before this court and obtained the present rule.

Mr. Mustafizur Rahman Khan, the learned senior counsel appearing on behalf of the petitioner submits that both the courts below without applying their judicial mind and without considering the facts and circumstances most illegally and in an arbitrary manner passed the impugned judgment and order rejecting the prayer of the injunction and

thereby both the courts below committed an error which requires interference by this court. He submits that both the courts below while rejecting the application for injunction failed to consider and appreciate the legal position as well as the claim of the plaintiffs. He further submits that in the present case in hand if there is no order of restraintment the suit itself become infructuous because of the entry of 3rd party in the suit premises. The learned counsel also pressed a supplementary affidavit and submits that in the meantime they offered certain lease money and the same was received and accepted by the opposite party defendant which clearly shows that the relationship in between the petitioner and opposite party still existing and as such the petitioner plaintiff is entitled to get an order of restraintment till disposal of the suit for ends of justice. The learned counsel also referred the provisions as laid down in the Specific Relief Act and submits that the present suit is very much competent and maintainable in its present form and the plaintiff is about to prove the right and title in the suit property and for ends of justice an interim order is very much necessary.

Mr. Mokarramus Shaklan, the learned counsel appearing on behalf of the opposite party vehemently opposes the rule. He submits that in the instant case in hand both the courts below considered the material aspects, legal position, nature of the suit as well as nature of the contract executed in between the parties and came to a clear conclusion that in the present situation the plaintiff petitioner is not

entitled to get an order of injunction. He submits that both the courts below on proper appreciation of the facts and circumstances and materials on record by concurrent finding of facts and law rejected the application thus the judgment and order passed by the courts below is liable to be maintained for ends of justice. The learned counsel referred the papers and documents including the counter-affidavit and submits that the petitioner tried their level best in different forum to invoke their right, but failed, finding no other alternative filed the instant suit just to frustrate the function of the defendant-opposite party.

I have heard the learned counsels for the petitioner as well as the opposite parties. I have perused the impugned judgment and order passed by the District Judge, Chattogram, judgment and order passed by the trial court, revisional application, grounds taken thereon, papers and documents annexed along with the revisional application specifically the plaint, counter affidavit, supplementary-affidavits filed by the parties.

On perusal of the same, it transpires that the present plaintiff filed a suit in the form of permanent injunction in the trial court. The prayers of the petitioner-plaintiff made in the plaint are mentioned hereinabove. So, it transpires that basically the plaintiffs are trying to renew their lease to stop any further lease in between the defendant and the 3rd party. Whether the suit is maintainable or not is to be decided by the trial court in its due course. However, before granting an order of injunction the court is to see the strong *prima-facie* case led by the

parties on the basis of the pleadings and other legal aspects. In the present case in hand admittedly the petitioner is a lessee under the defendants. It transpires that being a lessee now the petitioner-plaintiffs are trying to prevent the further lease agreement regarding the suit property in between the principle defendant and other prospective lessees also in the suit the petitioner-plaintiff.

So, it transpires that the legal character of the plaintiff-petitioner is a lessee of a Non-agricultural Tenancy agreement which is to be decided by the trial court. Whether the suit is maintainable by a lessee against the landlord as there are other laws available as remedy. However, it also transpires that the petitioner before filing of the instant suit filed Writ Petition being 259 of 2017 before the High Court Division and their lordships of our High Court Division issued rule and passed an interim order and ultimately their lordships vide judgment and order dated 18.11.2021 discharged the rule. While dealing with the writ petition the High Court Division held as follows;

We have noted that petitioner No. 1 admitted that the deed of agreement between respondent No. 3 and petitioner expired and the concerned authority did not enter into new lease agreement with petitioner No.1 or with anyone else. Hence, it was open for any potential applicant to apply for the lease in respect of the property in question. Therefore, this Court found no irregularity on part of the respondent No. 3 to accept the application dated 01.01.2017 of respondent No. 8 for granting the lease in his favour and thereby granting the same by respondent No. 3 by

cancelling the lease of the petitioner No. 1, on the basis of the opinion dated 02.01.2017 of the Purchase Officer of the Bangladesh Jute Corporation, Rally Press House Chittagong. Thereafter, respondent No. 3 issued a letter vide memo No. 24.08.0000.004.28.182.16/879(1) dated 03.01.2017 to respondent No. 8 for leasing out the suit property in his favour and handed over possession of the property in question to respondent No. 8 vide letter dated 05.01.2017.

Their lordships further held;

We have also taken note from the argument of learned Counsel for the petitioner No. 2 and respondent No. 8 that the nature of the business of the petitioner No. 1 has been changed from sole trader to partnership to company. The lease was originally issued in favour of the Messer's Continental Agencies (of which father of the petitioner was proprietor) and later the said business was run by the petitioner No.1. However, due to insolvency, petitioner No. 1 merged his business with petitioner No. 2 and started 'partnership business' in 2014 of which petitioner No. 2 was Managing Partner and had 50% share. Subsequently, the nature of the said business was converted from 'partnership' to 'company' and petitioner No. 2 became the Managing Partner. Surprisingly, petitioner No. 1 changed the nature of the business twice without informing and taking prior permission from the concerned authority. As the nature of the business of arrear rent had been changed long ago, hence, the said business lost its identity. Therefore, the lease agreement with the petitioner became ineffective long ago.

Their lordships further held;

We have carefully scrutinized the impugned letters and found that the deed of agreement was cancelled because petitioner No. 1 illegally kept the property in question even after the rent agreement was terminated due to non-payment of rent and thus breached the rent agreement by not handing over the suit property to the authority concerned. We have also found that in memo No. 24.08.0000.004.28.182.16/878(4) dated 03.01.2017 respondent No. 3 also pointed out the reason for terminating the deed of agreement with petitioner No. 1's business organization which are: non-renewal of the agreement in due time, transferring the property from Messer's Continental Agencies to Continental Agency Ltd. without any knowledge of the authority, creating disputes between Messer's Continental Agencies to Continental Agency Ltd., procuring false documents by showing the tenure of lease agreement as 10 (ten) years in place of 1 (one) year and an application for loan with the said fraudulent document.

We have scrutinized the documents annexed and found the fraudulent representation of petitioner No. 1 regarding the Order passed by the Hon'ble Division Bench of High Court Division on 03.10.2018 and through the said fraudulent representation, the petitioner entered into a new lease agreement for 3 (three) years with the concerned authority while the Rule issued in the instant writ petition was pending.

So, it transpires that their lordships of our High Court Division considered the case of the plaintiff raised in the present suit and came to a conclusion that there is no case available to the petitioner on merit

regarding the lease deed in question. It further transpires that against the said judgment the petitioner also pressed a Civil Petition for Leave to Appeal being No. 664 of 2021 wherein the Hon'ble Chamber Judge of our apex court passed no order and ultimately the same was dismissed on 27th October, 2022 by the regular Bench of their lordships of our apex court. It has been mentioned earlier that the High Court Division has already come to a conclusion regarding the right and character of the present petitioner who is a mere lessee in the case in hand. Apart from that it further transpires that the courts below on concurrent findings of fact and law rejected the application for injunction under section 151 of the Code of Civil Procedure, 1908 and as such there is no reason to interfere if there is no misreading or misinterpretation of the facts and law by the trial court.

It is now well settled proposition of law is that by exercising the power conferred under section 115 of the Code of Civil Procedure, 1908 this court cannot go into the factual aspects even if in a case of reversal of judgment and decree. On perusal of the revisional application and the grounds taken thereon, I do not find any materials point of law or gross misreading of evidence raised by the petitioner in the case in hand.

To believe or disbelieve a witness as well as documentary evidence is within the jurisdiction of the Court's below and this Court sitting in a revision cannot interfere in such jurisdiction unless there is non-consideration of material evidence affecting the ultimate decision

of the Court's below. On perusal of the application, it appears that the petitioner would not show any non consideration of material evidence by the Court's below. The finding arrived at and the decisions as made by the courts below do not call for any interference by this court under section 115 of the Code of Civil Procedure, 1908. The findings of the courts below having been based on proper appreciation of evidence on record do not call for any interference.

However, the attempt of payment or acceptance will not create any right in the present case in hand.

Considering the facts and circumstances, I find no reason to interfere with the same. Accordingly, the instant rule is discharged and the impugned judgment and order passed by the courts` below is hereby affirmed.

However, there shall be no order as to cost.

(Mamnoon Rahman,J:)

Emdad.B.O.