

Bench:

Mr. Justice Bhishmadev Chakraborty

Civil Revision No. 632 of 2022

Doctor Md. Kamruzzaman and another

..... petitioners

-Versus-

Farzana Afroz Sathi and others

..... opposite parties

Mr. SM Obaidul Haque, Advocate

..... for the petitioners

Ms. Preyanka Mohalder, Advocate

..... for the opposite parties

Judgment on 10.06.2024

Leave was granted and rule was issued calling upon opposite party 1 to show cause as to why the Additional District Judge, Court No. 2, Khulna in passing the judgment and order on 04.04.2021 in Civil Revision No. 02 of 2019 rejecting the revision and affirming the judgment and order of the Senior Assistant Judge, Sadar, Khulna passed on 10.01.2019 in Title Suit No. 80 of 2018 staying dismissal order of plaintiff has committed error on an important question of law which has resulted in an erroneous decision occasioning failure of justice and and/or such other or further order or orders passed to this Court may seem fit and proper.

At the time of granting leave and issuing rule operation of the impugned revisional judgment was stayed till disposal of the rule.

The material facts for disposal of the rule, in brief, are that the defendants appointed the plaintiff as Pharmacist in Khulna Shishu Hospital Private Limited on 01.04.2015. After appointment defendant 2, superintendent of the hospital started ill behaving with the plaintiff. Since she did not make any response to the illicit proposals of defendant 2, the latter started harassing her in different ways. She raised objection against some irregularity in the pharmacy of the hospital. Being aggrieved by defendant 2 directed her to leave the job and deputed her in the post of nurse supervisor and in sometimes at front desk counter. Defendant 2 proposed the plaintiff to join a job in a different hospital but she refused and consequently he threatened her and ordered to resign from service. The plaintiff was present in the office on 01.04.2018 but defendant 2 showing her absent issued a show cause notice upon her for that reason. She then lodged a GDE with the concerned police station on the same day. In its result, defendant 1 issued a show cause notice on 09.04.2018 and suspended her. Thereafter he issued a second show cause notice on 23.06.2018 asking her as to why she should not be removed from service permanently. Hence the suit challenging the show cause notice dated 23.06.2018.

During pending of the second show cause notice, the authority on 09.09.2018 dismissed her from service. The plaintiff then filed an application in the suit under section 151 of the Code of Civil

Procedure (the Code) for staying operation of the dismissal order. The Assistant Judge upon hearing the parties by the order dated 10.01.2019 allowed the application and stayed the order of dismissal. Defendants then filed revision before the District Judge under section 115(2) of the Code challenging the aforesaid order. The District Judge rejected the revision and affirmed the order passed by the Assistant Judge which prompted the petitioners to approach this Court with this revision under section 115(4) of the Code upon which leave was granted rule was issued and an *ad interim* order passed.

Mr. SM Obaidul Haque, learned Advocate for the petitioners taking me through the judgment and orders passed by the Courts below submits that in the suit the plaintiff has challenged a show cause notice issued by defendant 1. In the meantime, she has been dismissed from service. The suit in the present from challenging a show cause notice is not maintainable. Since the suit is not maintainable the plaintiff cannot get an order of stay therein. Both the Courts below committed error on an important question of law which is required to be interfered with in this revision.

Ms. Preyanka Mohalder, learned Advocate for opposite party 1 on the other hand opposes the rule. She submits that in the suit the plaintiff challenged the second show cause notice issued upon her as to why she should not be dismissed from service. The plaintiff filed an application therein for temporary injunction praying for restraining the

defendants from passing any further order. The defendants appeared in the suit and prayed for time but despite pending of show cause in the suit upon them, they dismissed the plaintiff from service by order dated 09.09.2018. The Assistant Judge correctly allowed the application and stayed the aforesaid order of dismissal which was affirmed by the revisional Court below. There is no error on point of law for which the judgment passed by the revisional Court may be interfered with. The rule, therefore, having no merit would be discharged.

I have considered the submissions of both the sides, gone through the impugned orders and other materials on record.

In the midst of hearing of the rule Ms. Mohalder, learned Advocate for opposite party 1 reported that after issuance of the order of dismissal and passing the order of stay by the Assistant Judge the plaintiff filed an application in the suit on 02.10.2018 for amendment of the plaint. In the application they prayed to incorporate in the prayer of the suit that the order of dismissal dated 09.09.2018 is collusive, illegal, inoperative and for its cancelation. The application was allowed on the same day and accordingly the plaint was amended.

Be that as it may, now the prayer of the suit stands that the order of dismissal dated 09.09.2018 issued by defendant 1 is to be declared collusive, fraudulent, illegal, inoperative and it should be set aside. The dismissal order issued by defendant 1 which was stayed at

the instance plaintiff and subject matter of this rule is to be decided in the original suit on trial. Therefore, I find that there is no necessity of staying the aforesaid order. This rule virtually has become infructuous according to the changing position of the prayer of the suit. Therefore, this rule should to be discharged being infructuous.

Consequently, the rule is discharged being infructuous and the order of stay of the impugned order stands vacated. There will be no order as to costs.

However, the Senior Assistant Judge, Sadar, Khulna is directed to dispose of the suit expeditiously, preferably within 06 (six) months from date of receipt of this judgment and order. In dealing with the suit the Assistant Judge shall not allow either party any adjournment without dire necessity.

Communicate this judgment to the Courts concerned.