

In the Supreme Court of Bangladesh  
High Court Division  
(Civil Revisional Jurisdiction)

Present:

**Mr. Justice Md. Jahangir Hossain.**

**Civil Revision No.1132 of 2003**

Executive Engineer, Public Health, Perojpur  
.....Petitioners.

Vs.

Messers Sathi Enterprise and others

..... Opposite-Parties.

None appears

..... For the petitioner.

Mr. Md. Abdul Aziz Miah (Minto), D.A.G

..... For the state

**Heard on 24.07.2023 and 25.07.2023**  
**Judgment on 31<sup>st</sup> July, 2023.**

This Civil Revision No. 1132 of 2003 has been filed under section 115(1) of the Code of Civil Procedure. The rule was issued on 22.03.2003 as follows:

Let a Rule be issued calling upon the opposite party No.01 to show cause as to why the order No. 03 dated 17.07.2002 passed by the learned Joint District Judge, 1<sup>st</sup> Court, Barisal in Title Suit No. 56 of 2002 should not be set aside and / or such other or further order or orders passed as to this court may seem fit and proper.

At the time of issuance of the rule the operation of the impugned order dated 17.07.2002 was stayed for a period of 02 (two) months.

Case was ready for hearing on 09.07.2007. It reveals from the record that this case is an old case and by this time 21 (twenty one) years has been elapsed. None appears on behalf of the opposite party.

Considering the old age of the case, case is taken up for disposal and the learned Deputy Attorney General appears on behalf of the petitioner that is the Executive Engineer, Public Health, Engineering Department, Perojpur and submits that the condonation of delay has been condoned by the court earlier.

We have gone through the record the least fact of the revision case the opposite party No. 01 as plaintiff filed a suit for declaration that the memo No. 914 dated 06.07.2002 issued by the defendant No. 04 was illegal without judicial and not binding upon the plaintiff. Defendant No. 04 issued work order to the plaintiff time to time from July, 1995 to June, 2001 for installation of Deep and P.S.F Tubewell. According the rules framed by the Government. Later on plaintiff installed the Tubewell and submits some bill of installation the Tubewell. The defendant No. 5 and the defendant No. 4 issued Memo No. 665 dated 14.05.2002 asking the plaintiff submits some documents with an intention to pay arrear bill.

Plaintiff did not comply the order of the defendant No. 4 as he firmly believed that for undue bribe the defendant issued letter and to deposit Tk. 12,53,300/- to the government treasury within 07 (seven) days in default criminal proceeding would started in the plaintiff. Upon such plaintiff brought this suit for declaration that the alleged memo is illegal. Thereafter plaintiff filed an application under section 151 of the Code of Civil Procedure praying for stay of the operation of alleged Memo which is the subject matter of the suit. There are the learned trial court allowed the application and stayed the operation of the alleged Memo. The learned Deputy Attorney General submits that before establish the right of the plaintiff court cannot stay the operation of the subject matter of the suit by an interim order exercising inherent power in the section 151 of the Code of Civil Procedure. Further he submits that the court below committed an error of law in exercising the inhering power jurisdiction. Lastly he submits to set-aside the impugned order and made the Rule absolute.

None appears on behalf of the defendant opposite party.

We have gone through the record perused the document and order passed by the learned court it transpire that declaration suit has been filed by the plaintiff challenging the impugned memo issued by the executive engineer Public Health Pirojpur district Pirojour. Further it appears the plaintiff obtain an order from the

Public Health to installed the Tubewell as per Rules. Thereafter the Public Health department issued a letter to submit some documents otherwise they are going to starting a criminal proceeding against the plaintiff.

Upon such as per prayer of the plaintiff the learned lower court passed an order and stay the operation of the impugned memo as because this order has been challenged in the main suit. It is now a settle principle by our Apex Court that pending civil suit it not hinder to run the criminal case. So it appears the Public Health department has option to file a criminal case against the plaintiff or any other person if there is any criminal offence conducted by the accused. But in this case the memo has been challenged by the plaintiff stating some grounds in the plaint that the defendant issued the impugned memo with ulterior motive and illegally issued the memo and pending civil suit is within the seisin of the learned trial court. The learned trial court stay the operation of the memo temporarily for disposal of the main declaration suit which is pending before that court. It would be the proper justice for both the parties if the suit is disposed of the trial court as early.

Considering the fact of the case which is surmised to us just a simple matter elapsed this case twenty one years. However we do not find any illegality in the order of the trial court, justice will be

met if the matter is disposed within a short period by the trial court preferably with 04 (four) months after receiving the order.

The trial court is directed to dispose the matter as per law.

Upon such the Rule is discharged.

Send down the copy of the judgment of the court below at once.