

Present:

Mr. Justice Md. Kamrul Hossain Mollah

Civil Revision No. 1735 of 2023

IN THE MATTER OF:

An application under Section 115(4) of the Code of
Civil Procedure

- AND -

IN THE MATTER OF:

Md. Awal Molla

..... defendant-Petitioner

-Versus -

Md. Sayedur Rahman (Sayeed) and another

..... plaintiff-Opposite Parties

Mr. Rajib Kumar Goswami, Advocate

..... For the petitioner

Mr. Md.Mesbahul Islam, Advocate

..... For the Opposite Parties

Heard on 11.10.2023 and
Judgment on 12.10.2023

Md. Kamrul Hossain Mollah, J:

On an application filed by the petitioner, under Section 115(4) of the Code of Civil Procedure, leave is granted and this Rule was issued calling upon the opposite parties to show cause as to why the judgment and order dated 10.01.2023 passed by the learned Additional District Judge, second Court, Gazipur in Civil Revision No.06 of 2022 rejecting the revisional application and thereby affirming the judgment and order dated 08.02.2022 passed by the learned Senior Assistant Judge, Second Court, Gazipur in Title Suit No.96 of 2010 wherein rejecting an application made by the

defendant-petitioner not to hand over deed No.1222 dated 12.02.1971 which is safe custody in Title Suit No.96 of 2010 in favour to the Inspector of Police(NI) CID, Gazipur and also rejecting an application till filing the civil revision before the higher judiciary should not be set-aside and/or pass 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 this Court stayed the operation of the judgment and order dated 10.01.2023 passed by the learned Additional District Judge, second Court, Gazipur in Civil Revision No.06 of 2022 for a period of 04(four) months from date.

Facts necessary for disposal of the Rule, in short, are that the opposite parties as plaintiffs filed Title Suit No.96 of 2010 before the Senior Assistant Judge, 2nd Court, Gazipur sought for decree of recovery of khas possession against the defendant-petitioner and the defendant-petitioner contested the said suit by filing written statement and denying the material allegation made in the plaint and on consideration of pleadings of record, the learned trial Judge framing the issues and both the parties examined their witnesses and also exhibited their documents and during examination of the defendant-petitioner as D.W.1 exhibited deed No.1222 dated 12.02.1971 and upon application filed by the defendant-petitioner the said deed was in safe custody by order of the trial Court below and at the stage of argument, the plaintiff-opposite parties filed an application for amendment of the plaint and the said application was allowed and for which, the defendant-petitioner filed better written statement and that written statement was rejected by the learned trial Court below and that is

now pending before the Hon'ble Appellate Division, Supreme Court of Bangladesh being Civil Petition for Leave to Appeal No.1853 of 2021 and during pendency of the said application before the Appellate Division, Supreme Court of Bangladesh, the opposite parties again filed an application for amendment of the plaint and through his relation started a Criminal Case before the Chief Judicial Magistrate, Gazipur being C.R. Case No.898 of 2021 and through one Md. Shakhawat Hossain, BP NO.8511145950, Police Inspector (NI) CID, Gazipur filed an application to hand over defendant-petitioner's deed NO.1222 dated 12.02.1971. The learned trial Court allowed the said application for hand over defendant-petitioner's deed No.1222 dated 12.02.1971 by his judgment and order dated 08.02.2022.

Being aggrieved by and dissatisfied with the order dated 08.02.2022, the defendant-petitioner filed Civil Revision No.06 of 2022 before the Court of District Judge, Gazipur and it was transferred in the Court of Additional District Judge, 2nd Court, Gazipur. After hearing both the parties, the learned Additional District Judge, 2nd Court, Gazipur rejected the Civil Revision No.06 of 2022 and affirmed the order dated 08.02.2022 passed by the learned Senior Assistant Judge, 2nd Court, Gazipur in Title Suit No.96 of 2010 allowing the application for hand over defendant-petitioner's deed No.1222 dated 12.02.1971 by his judgment and order dated 10.01.2023.

Being aggrieved by and dissatisfied with the impugned judgment and order dated 10.01.2023 passed by the learned Additional District Judge, 2nd Court, Gazipur in Civil Revision No.06 of 2022 rejecting the civil revision

case, the petitioner filed this revisional application under section 115(4) of the Code of Civil Procedure and obtained the present Rule and order of stay.

Mr. Rajib Kumar Goswami, the learned Advocate appearing on behalf of the petitioner submits that the Courts below committed an error of law in not considering the provision of law regarding ‘safe custody’ as exhibited in Title Suit No.96 of 2010 and the revisional Court below was in error affirming the order of the learned trial Court on the view that “আদালতের অনুমতি সাপেক্ষে আদালতের সেফ কাস্টডিতে থাকা দলিল অন্য মামলার প্রয়োজনে নেয়া হলে এখানে বিবাদীর সংক্ষুদ হওয়ার কিছু নেই।” and as such the impugned judgment and order appears to have committed an error of law resulting in erroneous decision occasioning failure of justice.

He further submits that the learned Courts below committed an error of law in not considering the facts “সেফ কাস্টডিতে রক্ষিত দলিল নং-১২২২ তারিখ: ১২/০২/১৯৭১ দলিলটির দাতা সুরেশ চন্দ্র মন্ডল নয় কিংবা সি.আর মামলা নং-৮৯৮/২০২১ মামলার বাদী অত্র দেওয়ানী মোকদ্দমা নং-৯৬/২০১০ কোন পক্ষ নহেন।” and ignored the provision of law and the learned revisional Court below was in error affirming the order of the learned trial Court below on the view that “আদালতের অনুমতি সাপেক্ষে আদালতের সেফ কাস্টডিতে থাকা দলিল অন্য মামলার প্রয়োজনে নেয়া হলে এখানে বিবাদীর সংক্ষুদ হওয়ার কিছু নেই।” which is a non-speaking order and as such the revisional Court below committed an error of law, occasioning failure of justice requiring interference of this Court therewith.

The learned Advocate lastly submits that the learned revisional Court below committed an error of law in not considering the facts that during

pendency of the C.P. No.1853 of 2021 the learned trial Court as well as revisional Court below on go-by way passed the impugned judgment and order. Further, the learned Courts below without applying judicial mind passed the impugned order that the impugned deed No.1222 dated 12.02.1971 which is in under safe custody in Title Suit No.96 of 2010 and as such the impugned judgment and order appears to have committed an error of law resulting erroneous decision occasioning failure of justice. Accordingly, he prays for making the Rule absolute.

On the other hand, Mr. Md. Mesbahul Islam Asif, the learned Advocate appearing on behalf of the opposite parties submits that one Md. Shakhawat Hossain, BP No.8511145950, Police Inspector (NI) CID, Gazipur filed an application before the learned Senior Assistant Judge, 2nd Court, Gazipur in Title Suit No.96 of 2010 to hand over defendant-petitioner's deed No.1222 dated 12.02.1971 made by sub-registry office, Nandail, Mymwnsingh, which was in safe custody of Court in Title Suit No.96 of 2010 for the needs of the C.R. Case No.898 of 2021 of the learned Chief Metropolitan Magistrate Court, Gazipur and after hearing, the learned Senior Assistant Judge, 2nd Court, Gazipur allowed the said application mentioning that “আদালতের অনুমতি সাপেক্ষে আদালতের সেফ কাস্টডিতে থাকা দলিল অন্য মামলার প্রয়োজনে নেয়া হলে এখানে বিবাদীর সংক্ষুব্ধ হওয়ার কিছু নেই।” by his judgment and order dated 08.02.2022. Thereafter, the defendant-petitioner being aggrieved by and dissatisfied with the order dated 08.02.2022 filed Civil Revision No.06 of 2022 before the Court of District Judge, Gazipur and it was transferred in the Court of Additional District Judge, 2nd Court, Gazipur. After hearing both the parties, the learned Additional District

Judge, 2nd Court, Gazipur rejected the Civil Revision No.06 of 2022 and affirmed the order dated 08.02.2022 passed by the learned Senior Assistant Judge, 2nd Court, Gazipur in Title Suit No.96 of 2010 allowing the application for hand over defendant-petitioner's deed No.1222 dated 12.02.1971 by his judgment and order dated 10.01.2023 rightly, which is maintainable in the eye of law. Therefore, he prays for discharging the Rule.

I have perused the revisional application, the submissions of the learned Advocates for both the parties, the impugned judgment and order of the Court's below, the papers and documents as available on the record.

It appears from the record that one Md. Shakhawat Hossain, BP No.8511145950, Police Inspector (NI) CID, Gazipur filed an application before the learned Senior Assistant Judge, 2nd Court, Gazipur in Title Suit No.96 of 2010 to hand over defendant-petitioner's deed No.1222 dated 12.02.1971 made by sub-registry office, Nandail, Mymwensingh, which was in safe custody of Court in Title Suit No.96 of 2010 for the needs of the C.R. Case No.898 of 2021 of the learned Chief Metropolitan Magistrate Court, Gazipur and after hearing, the learned Senior Assistant Judge, 2nd Court, Gazipur allowed the said application mentioning that “আদালতের অনুমতি সাপেক্ষে আদালতের সেফ কাস্টডিতে থাকা দলিল অন্য মামলার প্রয়োজনে নেয়া হলে এখানে বিবাদীর সংক্ষুদ্ব হওয়ার কিছু নেই।” by his judgment and order dated 08.02.2022. Thereafter, the defendant-petitioner being aggrieved by and dissatisfied with the order dated 08.02.2022 filed Civil Revision No.06 of 2022 before the Court of District Judge, Gazipur and it was transferred in the Court of Additional District Judge, 2nd Court, Gazipur. After hearing both the

parties, the learned Additional District Judge, 2nd Court, Gazipur rejected the Civil Revision No.06 of 2022 and affirmed the order dated 08.02.2022 passed by the learned Senior Assistant Judge, 2nd Court, Gazipur in Title Suit No.96 of 2010 allowing the application for hand over defendant-petitioner's deed No.1222 dated 12.02.1971 by his judgment and order dated 10.01.2023.

Considering the above facts and circumstances and materials on record, it appears that there is nothing to be aggrieved by the petitioner, if the document in the safe custody of the Court is taken for the purpose of another case subject to the permission of the Court. Further, it appears that Suresh Chandra Mondol is not donor of safe custody deed No.1222 dated 12.02.1971 or the plaintiff of the C.R. Case No.898 of 2021 is not the party of Title Suit No.96 of 2010.

In the light of the above discussion, it is my view that the learned Additional District Judge, 2nd Court, Gazipur rightly passed the judgment and order dated 10.01.2023 in Civil Revision No.06 of 2022 rejecting the said civil revision is maintainable in the eye of law. So, I find substance in the submissions of the learned Advocate for the opposite parties and I do not find any substance to interference into the said judgment and order.

Accordingly, I do not find any merit in the Rule.

In the Result, the Rule is discharged.

The judgment and order dated 10.01.2023 passed by the learned Additional District Judge, 2nd Court, Gazipur in Civil Revision No.06 of 2022 rejecting the said civil revision is hereby upheld and confirmed.

The order of stay granted at the time of issuance of the Rule by this Court is hereby recalled and vacated.

Let a copy of this judgment and order be sent to the concerned Court below at once.

Md. Anamul Hoque Parvej
Bench Officer