

Present:

Mr. Justice A.K.M. Asaduzzaman

Civil Revision No. 2721 of 2023

Md. Rasel Bhuyan and others

..... Petitioners.

-Versus-

Most. Ayesha Akter Minu and others

.....Opposite parties.

Mr. Md. Rafiqul Islam Faruque, Adv.

.....For the petitioners.

Mr. Md. Abdullah Al Mamun, Advocate

..... For the Opposite Parties

Heard and judgment on 27th November, 2023.

A.K.M.Asaduzzaman,J.

This rule was issued calling upon the opposite parties to show cause as to why the judgment and order dated 31.05.2023 passed by the District Judge, Munshigonj in Miscellaneous Appeal No.24 of 2023 staying the order of status-quo dated 30.04.2023 passed by the Senior Assistant Judge, Sadar Court, Munshigonj in Title Suit No. 414 of 2021 allowing the application

for temporary injunction of the defendant Nos. 37-39 under Order 39 rule 1 and 2 of the Code of Civil Procedure.

Fact relevant for disposal of the rule are that opposite party Nos. 4-5 as plaintiff instituted Title Suit No. 414 of 2021 against the petitioner and opposite party Nos. 1-3 and proforma opposite parties for declaration of title and partition.

During pendency of the suit on 09.04.2023 defendant Nos. 37-39 filed an application under Order 39 rule 1 and 2 of the Code of Civil Procedure against the defendant Nos. 33-35 with the allegation that since they are tried to dispossess the applicants, who are in possession in the suit property by way of registered deed of heba, an order of temporary injunction is required to be issued against them otherwise they will be prejudiced in the suit, which was objected by the defendant Nos. 33-35 by filing written objection.

By the judgment and order dated 30.04.2023 the Assistant Judge allowed the application and granting an order of status-quo in the suit property.

Challenging the said order, defendant Nos. 33-35 preferred an appeal before the Court of District Judge, Munshigonj, which

was registered as Miscellaneous Appeal No. 24 of 2023. The learned District Judge, by the impugned order dated 31.05.2023 stayed the operation of the order of status-quo dated 30.04.2023 passed by the Assistant Judge, Munshigonj.

Being aggrieved by the said order of stay defendant Nos. 37-39 petitioner obtained the instant rule.

While placing the rule Mr. Md. Rafiqul Islam Faruque, the learned advocate appearing for the petitioner try to make submission that upon taking the order of stay, the defendant Nos. 33-39 continuing with the construction and thereby the order of status-quo granted by the trial court is going to be frustrated and the petitioner will suffer irreparable loss and injuries but having considered the position of the appeal before the appellate court and the impugned order passed therein found it difficult to place the rule.

Mr. Md. Abdullah Al Mamun, the learned advocate appearing for the opposite party, on the other hand opposes the rule and submits that the allegation made by the petitioner has got no basis at all and the rule contains no merits, it may be discharged.

Heard the learned Advocate and perused the documents annexed to the application as well as supplementary affidavit.

In a suit for declaration of title and for partition, the defendant Nos. 37-39 filed an application for injunction against the other defendant Nos. 33-35 claiming that the construction has been disturbed by them and got an order of status-quo from the trial court. While granting an order of status-quo, trial court formed an opinion that both the parties claim their respective possession as being the successive heirs of the co-sharer and in order to avoid the further hindrance of the matter, trial court granted order of status-quo, which is under challenge in the appeal by the defendant Nos. 33-35. It is the usual course that if an order is challenged before in the appellate forum, appellate court has got no alternative rather to grant an order of stay of the impugned order even for limited period, otherwise appeal become infructuous.

Having given to my anxious thought to the order passed by the appellate court, I found that the appellate court committed no illegality in passing an order of stay for a limited period, it was wise and befitting with the parties in the appeal. Without taking a

prompt action to place their appeal as well as finish the appeal, if they are at all been aggrieved, instead of placing the appeal, obtain this rule from this court and placing this matter before this court is nothing but to delay the appeal pending before the appellate court, which is not desirable.

Considering all these aspect of this case, I am of the view that the impugned order contains no illegality.

I thus find no merits in the rule.

In the result, the Rule is discharged.

However the appellate court is hereby directed to dispose of the appeal expeditiously as early as possible preferably within 3(three) months after receiving of the judgment.

The order of stay granted earlier is hereby recalled and vacated.

Communicate the judgment at once.