

District: Chattogram

In the Supreme Court of Bangladesh

High Court Division
(Civil Revisional Jurisdiction)

Present

Mr. Justice Md. Zakir Hossain

Civil Revision No. 4926 of 2023

Mohammad Nasir Uddin

.....Plaintiff-Appellant-Petitioner

-Versus-

Messers Peace Properties Development
represented by its Proprietor, Ershadul Haque
and others

.....Principal Defendant-Respondent-Opposite Parties

Mr. Moteen Uddin Anwar, Advocate

..... For the petitioner

Mr. Ehata Samul Karim , Advocate

..... For the opposite party No. 1

Heard on: 09.06.2024

Judgment on: 11.07.2024

At the instance of the petitioner, the Rule was issued by this Court to examine the legality and propriety of the judgment and order dated 16.04.2023 passed by the learned Additional District Judge, Sixth Court, Chattogram dismissing Miscellaneous Appeal No. 550 of 2022.

Facts leading to the issuance of the Rule are *inter alia* that in Other Class Suit No. 431 of 2009, the petitioner being plaintiff filed an application for temporary injunction. The defendant Nos. 1-11 resisted the petition for temporary injunction denying the material allegations set forth in the injunction petition. Upon hearing, the learned Joint District Judge, First Court, Chattogram was pleased to reject the injunction petition. Impugning the judgment and order of the learned Joint District

Judge, the petitioner preferred Miscellaneous Appeal No. 550 of 2022 before the Court of the learned District Judge, Chattogram. After admitting the Appeal, the learned District Judge was pleased to transmit the record to the learned Additional District Judge, Sixth Court, Chattogram for disposal of the appeal. After hearing, the learned Additional District Judge was pleased to dismiss the said appeal and thereby affirmed the judgment and order of the learned Joint District Judge. In the above backdrop, the petitioner moved this Court and obtained the aforesaid Rule.

Heard the submissions advanced by the learned Advocates of the petitioner and the opposite party No. 1 at length and perused the materials on record with due care and attention and seriousness as they deserve. The convoluted question of law embroiled in this case has meticulously been waded through.

The learned Joint District Judge delving into the matter in depth dismissed the injunction petition with the following the observations:

“অস্থায়ী নিষেধাজ্ঞার দরখাস্ত বিবাদীপক্ষের আপত্তি ও পক্ষগণ কর্তৃক দাখিলী কাগজাদি পর্যালোচনায় বাদীপক্ষের নিষেধাজ্ঞার দরখাস্তে বর্ণিত নালিশী ভূমিতে বাদীপক্ষের আপাতঃ স্বত্ব দখল থাকা প্রতীয়মান হয় না। বাদীপক্ষের দাখিলী নিষেধাজ্ঞার দরখাস্ত ও উভয়পক্ষের বিজ্ঞ কৌশলীর বক্তব্য শ্রবণান্তে বেং দাখিলী কাগজাত সার্বিক পর্যালোচনায় নালিশী ভূমিতে বাদীপক্ষের চাইতে ১নং বিবাদীর অনুকূলে প্রাইমাফেসি কেইস থাকা, সুবিধা-অসুবিধার ভারসাম্য অধিক হওয়া এবং অস্থায়ী নিষেধাজ্ঞার আদেশ বহাল হলে বাদীপক্ষের তুলনায় বিবাদীপক্ষের অপূরণীয় ক্ষতির আশংকা থাকা প্রতীয়মান হয়। এমতাবস্থায় সার্বিক বিবেচনায় এ পর্যায়ে বাদীপক্ষ অস্থায়ী নিষেধাজ্ঞার আদেশ পেতে

পারেন না মর্মে সিদ্ধান্ত নিয়ে বিবেচ্য বিষয় নং ১-৪ বাদীপক্ষের
প্রতিকূলে নিষ্পত্তি করা হল।”

The learned Additional District Judge assigning cogent reason concurred with decision of the learned Joint District Judge.

On my independent assessment on materials on record, it appears that the plaintiff has got no prima facie arguable case. The balance of convenience and inconvenience is in favour of the defendant and if the injunction is not granted, he will not suffer from irreparable loss and injury.

Having regard to the facts and circumstances of the case, I am of the view that no illegality has been spelt out within the four walls of the impugned judgment and order and therefore, the Rule is liable to be turned down.

In the result, the Rule is discharged, however, without passing any order as to costs. The earlier order of stay and status quo granted by this Court thus stands recalled and vacated.

Let a copy of the judgment be transmitted to the Courts below at once.

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Md. Zakir Hossain, J