

*Present:*

*Mr. Justice A.K.M. Asaduzzaman*

*Civil Revision No.3967 of 2023*

*Md. Razu Ahammed.*

*.....Petitioner.*

*-Versus-*

*The Chairman, Bangladesh Inland  
Water Transport Authority and others.*

*.....Opposite parties.*

*Mrs.Aynunnahar Siddiqua, Adv.*

*.....For the petitioner.*

*Mr. Md. Mokhleshur Rahman, Adv.*

*.....For the Opposite parties.*

*Heard and Judgment on 06.06.2024.*

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 06.08.2023 passed by the Additional District Judge, 5<sup>th</sup> Court, Dhaka in Miscellaneous Appeal No. 223 of 2022 reversing those dated 17.05.2022 passed by the Joint District Judge, 3<sup>rd</sup> Court, Dhaka in Title Suit No. 90 of 2022 directing the parties to maintain status-quo in respect of position and possession of the suit land should not be set aside.

Petitioner as plaintiff filed Title Suit No. 90 of 2022 before the Court of Joint District Judge, 3<sup>rd</sup> Court, Dhaka for compensation of Tk. 95,66,520/- against the opposite parties.

Plaint case in short inter alia, is that, defendants are the conservators of Inland Water Transport Authority by Ordinance No. LXXXV of 1958 through Section 1(1) of the Port Act 1908, who gave lease around 300 ghat point. Plaintiff-petitioner took lease Aminbazar Landing Station and Labour Handling Point for toll receiving by way of contract for the year 2021-2022 on renewal of the said contract. For lockdown and pandemic, plaintiff suffered loss. Since the defendants thereafter assured plaintiff to renew the lease for the next year but on avoiding the same, defendants tried to lease out the same to others and accordingly publish a notice for tender. Plaintiff filed several application for getting the extension period on the loss suffered due to pandemic but failed. Thereafter petitioner filed an application under Order 39 Rule 1 and 2 read with section 151 of the Code of Civil Procedure for temporary injunction.

Learned Trial Court upon hearing the application issued a show cause notice upon the defendants to make a reply within 10(ten) days and in the meantime passed an order of status-quo vide it's order dated 17.05.2022.

Challenging the said order defendant preferred a Miscellaneous Appeal No. 223 of 2022 before the Court of District Judge, Dhaka, which was heard on transfer by the Additional District Judge, 5<sup>th</sup> Court, Dhaka, who allowed the appeal and after reversing the judgment of the trial court, set aside the order of status-quo passed by the trial court.

Challenging the said order plaintiff-petitioner obtained the instant rule and also an order of stay from this court.

Mrs. Aynunnahar Siddiqua, the learned advocate appearing for the petitioner drawing my attention to the order passed by the court below submits that trial court infact committed no illegality on issuing a notice to show cause for a period of 10(ten) days and in the meantime parties were directed to maintain status-quo, thereby committed no illegality but it was not been properly considered by the Appellate Court and set aside the said order passed by the trial court most illegally and as such the impugned judgment is thus not sustainable in law, which is liable to be set aside. She thus prays for making the rule absolute.

On the other hand, Mr. Md. Mokleshur Rahman, the learned advocate appearing for the opposite parties drawing my attention to the judgment of the Appellate Court submits that since an order of status-quo was given by the trial court most arbitrarily without

hearing the parties, which is a clear violation of Order 39 Rule 5(A)(1) of the Code of Civil Procedure. The Appellate Court committed no illegality in setting aside the said order. The impugned judgment is thus contains no illegality, he finally prays that rule contains no merits, it may be discharged.

Heard the learned Advocate of both the sides and perused the impugned judgment of the court below.

A suit for damage was filed on 17.05.2022. On the very day of filing this suit, plaintiff filed an application for injunction. Trial court after hearing the application gave a show cause notice for 10(ten) days to make a reply. In the meantime, he also passed an order of status-quo to maintain by both the parties. Which has challenged in appeal. Appellate Court after noticing the provision of Order 39 Rule 5(A)(1) of the Code of Civil Procedure found that the order was not proper in as much as the defendant BIWTA is a statutory body of the public authority and court is under obligation not to grant any injunction against the government or any institute of public authority, if such order is in any way will prejudice or interfere with a desire to implement in any development programme or any development work or otherwise harmed any public interest, without hearing any pleader or any authorized by the government. In the instant suit on the very day of filing the suit, the order of status-quo, which is also an order of

injunction, being passed against the statutory public authority. Without hearing the government or any lawyer for the Bangladesh Inland Water Transport Authority, the order enfacie is illegal.

The Appellate Court thus set aside the said order. In the said order of setting aside the order of the trial court, Appellate Court committed no illegality and rightly reversed, considering the true aspect of legal position of the case.

However, the trial court while passing that order travelled far away and made some remarks, which is not desirable and practically frustrated the suit. The matter is in seicine before the trial court and parties are not yet to adduce any evidence to prove their case. Trial court while deciding the suit obviously need to assess the pleadings of the parties upon considering the evidences and the documents placed before him and will form his independent opinion of the suit. Accordingly the observations and findings of the Appellate Court in relating to merit of the case is hereby expunged. However since the Appellate Court committed no illegality in setting aside the order of the trial court. I find no merits in this rule. Accordingly the Rule is discharged. The judgment and order passed by the Appellate Court is hereby affirmed.

Moreover, in the rule obtained on an application for violation, it has been submitted by the petitioner that he has got instruction from his client not to press this rule and the rule issued on 18.02.2024 is hereby disposed of as being not pressed. The trial Court is hereby directed to conclude the suit expeditiously as early as possible.

Let the order of stay granted earlier by this court is hereby recalled and vacated.

Communicate the judgment to the court below at once.