

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)

CIVIL REVISION NO. 6141 OF 2023

In the matter of:

An application under Section 115(1) of the Code of Civil Procedure, 1908.

AND

In the matter of:

Md. Asadun Nabi @ Muhammad Asadunnabi, son of late Nurun Nabi of Village- Islampur, Police Station- Kotwali, District- Comilla; at present: House: 14, Road- 1/B, Avenue-1, Section-1, Block-B, Post Office-Mirpur- 1212, Shah Ali, Dhaka North City Corporation, Dhaka.

.... Petitioner

-Versus-

Bangladesh Water Development Board, Dhaka represented by the Executive Engineer, Bera W.D. Division, BWDB, Bera, District- Pabna and others

...Opposite-parties

Mr. Ashfaqur Rahman, Advocate

... For the petitioner

Heard and Judgment on 04.02.2024.

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Mohi Uddin Shamim

Md. Mozibur Rahman Miah, J:

At the instance of the defendant no. 9 in Money Suit No. 02 of 1996, this rule was issued calling upon the opposite-party no. 1 to show cause as

to why the order no. 18 dated 14.09.2023 passed by the learned Joint District Judge, 1st Court, Pabna in the said suit refusing to pass any order on merit upon two applications filed by the defendant-petitioner one, under order XI, rule 14 of the Code of Civil Procedure for production of documents and other under order XIV, rule 5 of the Code of Civil Procedure for amending or re-framing additional issues, and thereby, keeping both the applications with record to be disposed of at the time of adjudication of the suit (which is tantamount to rejection of the said applications) should not be set aside and/or such other or further order or orders be passed as to this court may seem fit and proper.

At the time of issuance of the rule, all further proceedings of the suit was stayed for a period of 2(two) months directing to serve the notice of the rule through special messenger. From the office note, we find that, the notice of the rule has duly been served upon the opposite-party.

The short facts leading to issuance of the rule are:

The present opposite-party no. 1 as plaintiff filed the aforesaid suit claiming an amount of taka 13,25,93,861/29 seeking following reliefs:

“(a) That the learned court be pleased to pass a decree for an amount of Tk. 13,25,93,861/29 against the defendants and in favour of the plaintiff for realization of the said amount with cost and interest;

(b) that the learned court be further pleased to pass a decree for entire cost of the suit and other

relief which the plaintiff is entitled under law and equity.”

In the said suit initially defendant no. 2 entered appearance by filing written statement on 14.09.2003 denying all the material statements so made in the plaint. After long time, in the year 1996, the present petitioner as defendant no. 9 entered appearance in the suit and filed written statement also denying all the material averments so made in the plaint and prayed for dismissing the suit. Thereafter, on 21.08.2023, the defendant no. 9 filed two applications one under order XIV, rule 5 of the Code of Civil Procedure praying for re-framing additional issues and another under order XI, rule 14 of the Code of Civil Procedure for directing the plaintiff to produce certain documents so described in paragraph no. 6 to the application.

Both the applications were taken up for hearing by the learned Judge of the trial court on 14.09.2023 but kept those applications with the record holding those will be disposed of at the time of adjudication (বিচারামলে সিদ্ধান্ত গৃহীত হবে).

It is at that stage, the defendant no. 9 as petitioner came before this court and obtained instant rule and order of stay.

Mr. Ashfaqur Rahman, the learned counsel appearing for the petitioner upon taking us to the plaint, written statements so filed by the defendant no. 2, defendant no. 9 and two impugned applications at the very outset contends that, the plaintiff-opposite-party no. 2 in its plaint particularly, in paragraph no. 18 has clearly asserted that, the defendant no. 2 was the real owner of a proprietorship concern titled “M/S Nirmanbid”

but the predecessor of the defendant nos. 7-11 namely, Nurun Nabi was only an ostensible owner of that proprietorship concern whose name various credit facilities were merely obtained from Uttara Bank as well as all project work was completed at the instance of the defendant no. 2 so undertaken by the Bangladesh Water Development Board, the plaintiff, having been financed by Uttara Bank.

The learned counsel by referring to the written statement so filed by the present petitioner in particular, paragraph no. 14 thereof also contends that, the assertion so made in the plaint in particular, in paragraph no. 18 where it mentioned that the defendant no. 2 is the real owner of the proprietorship concern has clearly been admitted in that paragraph no. 14 even though, the defendant no. 2 in paragraph no. 7 to the written statement controverted the said assertion leaving the court no option but to re-frame issue as proposed in paragraph no. 7 to the application so filed by the petitioner under order XIV, rule 5 of the Code of Civil Procedure.

The learned counsel by referring to paragraph no. 6 to the application filed under order XI, rule 14 of the Code of Civil Procedure next contends that, the documents so have been described therein was also very much required to fix the liabilities so leveled by the plaintiff in the plaint but without taking into consideration, the learned Judge simply in a slipshod manner kept the said application also with the record which is devoid of any legal basis.

In that respect, the learned counsel for the petitioner submits that, eventually if the suit is dismissed it will certainly go in favour of the present defendant no. 9-petitioner but the fact as to who actually became

the beneficiary of the money so claimed in the suit will not be unearthed and therefore, the learned Judge ought to have allowed the applications.

The learned counsel by referring to the written statement so filed by the defendant no. 9-petitioner in particular, paragraph nos. 31 and 33, the observation so made by the High Court Division in Writ Petition No. 769 of 1999 as well as the Appellate Division in civil petition for leave to appeal no. 150 of 2003 respectively that arose out of an order passed in Artha Rin Suit No. 275 of 2004 where it has clearly been observed that, the allegation as to the claim of the plaintiff (as to who is liable for the monetary claim) cannot be resolved in an Artha Rin Suit rather it can well be adjudicated in a properly framed appropriate suit so in view of those observations if the proposed issues were not framed and the documents which were sought in the application to be produced under order XI, rule 14 of the Code of Civil Procedure is not allowed, there has been every possibility for the petitioner to be prejudiced.

The learned counsel further contends that, there has no straightjacket rules not to re-frame any issue if proposed by any parties to the suit rather it is the long standing practice to be followed by the court below to re-frame issue if the circumstance demands at any point of time for effective disposal of the suit but the learned Judge has missed that legal proposition.

The learned counsel further contends that, since from the plaint and written statement filed by the defendant no. 2 and this defendant, it is crystal clear that, all the transaction in obtaining loan from bank and carrying out the project work has been made by the defendant no. 2 so the

learned Judge of the trial court should have re-framed issue so proposed and submitted by the defendant no. 9-petitioner.

The learned counsel wrapped up his submission contending that, since the report so submitted by the plaintiff, the Bangladesh Water Development Board went in favour of the defendant no. 1 vis-à-vis the predecessor of the defendant nos. 7-11 so the trial court should have fixed the liability of the claim of the plaintiff-opposite-party by allowing two applications of the defendant no. 9-petitioner and finally prays for making the rule absolute.

Records shows that, in spite of serving notice through special messenger upon the opposite-party no. 1, the plaintiff in the suit it has not turned up to oppose the rule.

However, we have considered the lengthy submission so placed by the learned counsel for the petitioner and perused the documents so appended with this application thoroughly. We have also gone through the plaint in particular, paragraph no. 18, paragraph no. 7 of the written statement so filed by the defendant no. 2 and paragraph nos. 14 and 17 onwards of the written statement so filed by the defendant no. 9 vis-à-vis the applications filed under order XIV, rule 5 as well as order XI, rule 14 of the Code of Civil Procedure.

We have also examined the impugned order no. 18 dated 14.09.2023. It is on the record that, soon after filing of the written statement by the defendant no. 9 dated 25.01.2023, it was fixed on 22.02.2023 for framing issue but when we pose a question to the learned counsel for the petitioner if on that very date if issue is framed as depicts from the order then how the

petitioner became prejudiced, the learned counsel then very robustly asserts that, on that very date, no issue was actually framed rather the issue which had been framed earlier after filing written statement by the defendant no. 2 which was reproduced in paragraph no. 6 to the revisional application just put on place and no further issue has been framed and for such obvious reason, issue proposed by the petitioner has to be re-framed in order to fix the liability of the claim made by the plaintiff.

We find ample substance to the said submission placed by the learned counsel for the petitioner on the back of the observation made by this court as well as the Appellate Division as discussed hereinabove for the sake of fixing the liability of the claim and effective disposal of the instant money suit on the heels of assertion and denial of the plaint in particular, paragraph no. 18 and paragraph nos. 7 and 9 of the written statement so filed by the defendant nos. 2 and 9 respectively. In any view of the matter, two applications have not been disposed of by the trial court yet rather those were kept with the record so it is the bounden duty for the learned Judge of the trial court to dispose of the those applications first taking into consideration of the plaint, written statements so filed by the defendant nos. 2 and 9 and the observations so made by the High Court Division and the Appellate Division as discussed and observed in the foregoing paragraphs.

Regard being had to the above facts and circumstances, we find merit in this rule which is liable to be made absolute.

In the result, the rule is made absolute however without any order as to cost.

The impugned order no. 18 dated 14.09.2023 passed by the learned Joint District Judge, 1st Court, Pabna passed in Suit No. 02 of 1996 stands set aside.

At any rate, the order of stay granted at the time of issuance of the rule stands recalled and vacated.

However, the learned Joint District Judge, 1st Court, Dhaka is hereby directed to dispose of the applications so filed under order XI, rule 14 as well as order XIV, rule 5 of the Code of Civil Procedure within a period of 1(one) month from the date of receipt of the copy of this order and then to proceed with and dispose of the Money Suit No. 02 of 1996 as expeditiously as possible preferably within a period of 6(six) months from date as well.

Let a copy of the judgment be communicated to the learned Joint District Judge, 1st Court, Dhaka forthwith.

Mohi Uddin Shamim, J:

I agree.