

Present:

Mr. Justice A.K.M. Asaduzzaman

Civil Revision No.4309 of 2023

*Md. Shahidul Islam (Shahid) and another
.....Petitioners.*

-Versus-

*Roton Agro Industries Limited and others.
.....Opposite parties.*

*Mr. Sayeed Abdullah Al Mamun Khan. Adv.
.....For the petitioners.*

*Mrs. Jobaida Parvin, Advocate. with
Mr. Md. Jahangir Alam, Adv.*

.....For the Opposite party.

Heard and Judgment on 19.05.2024.

A.K.M.Asaduzzaman,J.

This rule was issued calling upon the plaintiff-respondent-Opposite Party No. 1 to show cause as to why the judgment and order dated 26.06.2023 passed by the Senior District Judge, Mymensingh in Miscellaneous Appeal No. 29 of 2023 dismissed the appeal as well as modified the Order No. 11 dated 03.05.2023 passed by the Assistant Judge, Bhaluka, Mymensingh in Other Class Suit No. 15 of 2023 granting the temporary injunction should not be set aside.

Opposite party as plaintiff filed Other Class Suit No. 15 of 2023 against the petitioner for declaration of title and recovery of khas possession before the Court of Assistant Judge, Bhaluka, Myemensingh. That suit was contested by the defendants by filing written statement denying the plaint case.

During pendency of the suit on 29.01.2023, plaintiff-opposite party filed an application under Order 39 Rule 1 and 2 along with section 151 of the Code of Civil Procedure against the defendant-petitioner for a temporary injunction asking for restraining them from carrying out any construction work upon the suit land.

Although petitioner opposed the said application but by the order dated 03.05.2023 Assistant Judge, Mymensingh allowed the said application for temporary injunction against the defendant nos. 1 and 2 and thereby restrained them from carrying out any soil filling and construction work in the suit land.

Challenging the said order defendant-petitioner preferred Miscellaneous Appeal No. 29 of 2023 before the Court of District Judge, Mymensingh, who by the impugned judgment and order dated 26.06.2023 rejected the miscellaneous appeal upon modifying the order passed by the Trial Court dated 03.05.2023 of

granting temporary injunction to an order of status-quo in the instant suit land to be maintained by both the parties.

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

Mr. Sayeed Abdullah Al Mamun Khan, the learned advocate appearing for the petitioners drawing my attention to the supplementary affidavit submits that after getting the order of stay from this court, petitioner has filled up the earth in the suit premises and made a tin shed room upon mutating their names and possession thereon. In that view of the matter, the cause of action of an application for injunction became infructuous. Drawing my attention to the fact narrated in the main application, the learned advocate further submits that since at the time of issuing the rule, petitioner undertakes that the suit was for declaration of title and recovery of khas possession admittedly defendants-petitioners are possessing in the suit premises. If the construction is made thereon by defendant, it would be dispossessed by the defendants. If plaintiffs obtained a decree as prayed for, he will get the entire suit land along with construction, which were made by the defendants at their risk and upon the assertion, they obtained the order of stay from this court and

finally made the construction thereon as per their requirements in the suit premises. He finally prays that since the order of status-quo is an ad-interim order of injunction, the rule obviously contains merits and it may be absolute.

Mrs. Jobaida Parvin, the learned advocate appearing for the opposite party opposed the rule and submits that plaintiff is a limited company and if the defendants made a permanent construction in the suit premises, which creates a multiplicity of suit and considering the balancing of convenience and inconvenience courts below passed an order of injunction in their favour and the order of status-quo granting upon them and thereby committed no illegality in passing an order in their favour. Since the rule contains no merits, it may be discharged.

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

This is a suit for declaration of title and recovery of khas possession. Admittedly defendants are possessing the suit premises. Court below while passing an order of injunction in favour of the plaintiff obviously failed to understand the nature and character of the suit premises. However, since it is apparent from the supplementary affidavit that defendant has completed their earth filling as well as making a semi pacca tin shed room in

the suit premises, the cause of action for initiating a proceedings to temporary injunction has come to an end. Suit filed by the plaintiff is required to be completed expeditiously, if the plaintiffs succeed to prove his title and can prove that he is illegally dispossessed by the defendants obviously he get a decree by the trial court and if any construction is been made in suit premises by the defendants on his illegal possession as to be held by the court below after evidence on the prove of the plaintiff if any the plaintiffs will get the entire the suit land together with the construction at all there, which has been made by the defendants. However, since the defendants undertake that they have completed their construction and they will not further proceed in the suit premises and the order of injunction and status-quo as been granted by the court below apparently found to be infructuous together with the undertaking given by the defendants of not making further construction.

Accordingly the rule contains no merits, which is hereby disposed of.

I hereby like to give a direction to the trial court to proceed and disposed of the suit expeditiously as early as possible without giving any adjournment to any parties and the order passed by the court below since became infructuous to, it is hereby disposed of.

The order granted earlier by this court is hereby recalled and vacated.

Some original copy was submitted along with the supplementary affidavit. The learned advocate for the petitioner is hereby permitted to take back the original certified copy in placing of the Photostat copy thereof.

Communicate the judgment to the court below at once.