

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

Present:
Mr. Justice Md. Mozibur Rahman Miah

CIVIL REVISION NO. 2589 OF 2016.

In the matter of:

An application Under Section 115(1) of the Code of
Civil Procedure.

AND

In the matter of:

Md. Ferdous Alam

..... Petitioner

-Versus-

Mr. In Muk Park and another

..... Opposite Parties

None appears

... For the petitioner

None appears

.....or the opposite parties

Heard and Judgment on 20.02.2024.

Md. Mozibur Rahman Miah, J:

At the instance of plaintiff in Money Suit No. 22 of 2012, this rule was issued calling upon the opposite parties to show cause as to why the order dated 29.05.2016 passed by the learned Joint District Judge, 1st court, Chattogram in that Money Suit rejecting an application filed under Order 38 Rule 5 of the Code of Civil Procedure attachment

of the suit property before judgment should not be set-aside and/or pass such other or further order or orders as to this court may seem fit and proper.

The short facts leading to issuance of the instant rule are:

The present petitioner as plaintiff originally filed the aforesaid suit claiming an amount of taka 45,00000/- seeking following reliefs:

(ক) বাদী কর্তৃক ১নং বিবাদীকে বিভিন্ন তারিখের agreement মূলে প্রদানকৃত ১(ক) তফসিলে লিপিকৃত সংখ্যা মতে ৪৫,০০,০০০/- (পয়তাল্লিশ লক্ষ) টাকা আদায়ের নিমিত্ত বাদীর অনুকূলে ও ১নং বিবাদীর বিরুদ্ধে ডিক্রী হয়;

(খ) অত্র মামলা দায়েরর কাল হইতে আদায়তক ১নং বিবাদীর বিরুদ্ধে ১(কে) অফসিলোক্ত ৪৫,০০,০০০/- (পয়তাল্লিশ লক্ষ) টাকার উপর ব্যাংক রেইচে ক্ষতিপূরণ প্রদানের ডিক্রী হয়;

(গ) আদালতের ন্যায় বিচারে বাদী আইনতঃ ও ন্যায়তঃ আর যে যে প্রতিকার পাওয়ার হকদার তাহা দেওয়ার ডিক্রী হয়।

(ঘ) মামলার খরচ ১নং বিবাদীর বিরুদ্ধে দেওয়ার বিহীন মর্জি হয়।

On the date of filing the suit dated 04.11.2012 the plaintiff also filed an application under Order 38 Rule 5 of the Code of Civil Procedure praying for attaching the schedule 1 property where a shoe factory is located or to transfer the share of the said shoe company to anybody else other than the plaintiff-petitioner or to misappropriate the money invested by the plaintiff in the schedule 'ka' factory. The learned judge of the trial court however took up the said application on

29.05.2016 for hearing and passed the impugned order holding that, there has been no particulars of the property to be attached either in the plaint or in the application filed under Order 38 Rule 5 of the Code of Civil Procedure.

It is at that stage the plaintiff as petitioner came before this court and obtained the instant rule.

None appeared either for the petitioner or for the opposite parties to press or oppose the rule.

However, I have gone through the grounds so have been couched in the revisional application. It is the case of the plaintiff that, the defendant no. 1 is a Korian national who had shoe factory in Gazipur and out of the close relationship with the said defendant no. 1 the plaintiff invested an amount of taka 17,00000/- following the commitment from the defendant no. 1 that, he would be given shares in the said company vis-a-vis the profit to be accrued from the company. In the midst of investment, the defendant also promised to paid an amount of taka 45,00000/- to the plaintiff but since on repeated reminders, the defendant did neither make any payment of taka 45,00000/- give any share to the plaintiff that compelled him to file the Money Suit. During pendency of the suit since the plaintiff got suspicious that, the defendant could leave the country and to secure his claim the factory located in Gazipur is required to be attached before passing the judgment. However, on going through the impugned and order I find that, an application for attachment before judgment was earlier rejected by the trial court on 18.11.2012 for not making payment of the advalorem court

fee. Subsequently, another application was filed on 26.11.2012 when the learned judge of the trial court initially issued a show cause notice upon the defendant giving it 15 days time to explain and ultimately the said application was taken up for hearing by the learned judge when the plaintiff remained absent and on merit passed the judgment finding that, no full particulars of the property to be attached is giving in the application. Be that as it may on going through the grounds taken by the petitioner I don't find that, the petitioner has taken any ground controverting the reason assigned by the learned judge of the trial court rather several grounds have been taken which I find to be evasive which cannot be sustained in law. Furthermore, on going through the schedule so have been described in the plaint as well as in the application for attachment before judgment I find from schedule no. 1 mentioning District and Police Station and the name of the company belonged to the defendant no. 1 having no description in regard to khatian number, plot number, holding number and approximate value of the schedule factory which is *sine qua non* to pass an order of attachment. So I don't find any irregularity and illegality in the impugned order as the schedules itself implies that it is totally vague and unspecified one on which no interim order like attachment before judgment can be passed for which the impugned judgment and order is liable to be sustained.

In the result, the rule is discharged however without any order as to costs.

The learned judge of the trial court is hereby directed to dispose of the suit within a period of 3(three) months from the date of receipt of the copy of this order if by the time the suit is not disposed of.

Let a copy of this order be communicated to the trial court forthwith. .

Kawsar /A.B.O