

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

CIVIL REVISION NO. 55 OF 2024

In the matter of:

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

AND

In the matter of:

Nazneen Husain

.... Petitioner

-Versus-

Ruhi Murshid Ahmed and others

....Opposite-parties

Mr. Mustafizur Rahman Khan, Senior Advocate

With

Ms. Mehreen Hasan, Advocate

With

Ms. Sumaiya Ifrit Binte Ahmed, Advocates

... For the petitioner

Dr. Naim Ahmed, senior Advocate

with

Mr.Md. Saidul Alam Khan, Advocates

...For the opposite party nos. 1 and 2

Heard on 12.01.2025, 16.02.2025

and Judgment on 16.02.2025

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

Md. Mozibur Rahman Miah, J:

At the instance of the opposite party no. 1 namely, Nazneen Husain
@ Nazneen Murshid Hussain of Civil Miscellaneous Case No. 512 of
2023, this rule was issued calling upon the opposite-parties to show cause

as to why the judgment and decree dated 02.01.2024 passed by the learned District Judge, Dhaka in the said Miscellaneous Case decreeing the suit on contest against the opposite party no. 1-petitinoer and *ex parte* against the opposite-party Nos. 3-11, declaring the opposite party no. 1's appointment as Chairperson of Khodeza Hermat Trust (shortly, KHT) being lawful, valid and binding and the opposite party no. 1-petitioner's representation as Chairperson as illegal, unlawful and amounting to breach of trust, ordering the officers of the trustees as provided under scheduled 'C' to the plaint of the said suit and also approving the new management schedule of KHT as mentioned in schedule 'D' on hearing the application for ad interim injunction under XXXIX, rule 1 and 2 read with section 151 of the Code of Civil Procedure, 1908 and the written objection of the opposite party no. 1-petitioner to the said application and thereby disposing of the suit without giving the opposite-parties an opportunity of being heard should not be set aside 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, the operation of the impugned judgment and decree dated 02.01.2024 was stayed for a period of 3(three) months.

It is worthwhile to mention here that, subsequently on an application filed by the opposite party no. 1 for vacating the order of stay passed at the time of issuance of the rule dated 18.01.2024 this court on 20.03.2024 modified it directing to run the expenses of different projects under the trust maintained with different bank accounts by the opposite party no. 1 and other signatories as the case may be, for a period of 2

(two) months and said modified order was subsequently extended on 07.01.2025 for another 1(one) month.

The salient fact leading to issuance of the instant rule are:

The present opposite party nos. 1 and 2 as petitioners originally filed a case being Civil Miscellaneous Case No. 512 of 2024 ostensibly under the provision of section 92 of the Code of Civil Procedure read with section 34 of Trust Act, 1882 seeking following reliefs:

- (A) *To pass an order that taking charge of chairperson of the Trust by the petitioner no. 1, Ms. Ruhi Murshid Ahmed is in compliance with the Trust Deed dated May 27, 1989 and thus her appointment is lawful. Valid and binding, and the alleged claim and representation of the opposite party No. 1, Mrs. Nazneed Murshid Husain as a chairperson of the same Trust is illegal and unlawful and amounts to breach of trust.*
- (B) *To pass an order that the offices of the trustees as provided under the schedule 'C' of this petition are vacated pursuant to the provisions of the Trust Act, 1882.*
- (C) *Pass an order appointing the trustees, named in the Schedule 'B' of the petition in place of the trustees as named under Schedule of 'C' of this petition.*

(D) To pass an order to approve, the new management scheme of the Khodeza Hermat Trust (KHT) as mentioned under Schedule- 'D'.

(E) Pass any other order or orders to which the petitioners may be found entitled as per law and equity.

On the date of filing of the suit dated 17.09.2023, the opposite party nos. 1-2 who is the petitioners in the original Miscellaneous Case, filed an application for injunction under Order 39 rule 1 and 2 read with section 151 of the Code of Civil Procedure for restraining the opposite party No. 1 (herein the petitioner) from interfering with the function of the petitioner no. 1 as chairperson of Khodeza Hermat Trust (KHT) and to introduce herself as a chairman of the trust. The said application for temporary injunction was resisted by the opposite party no. 1 of the said Miscellaneous Case (herein the petitioner) by filing written objection. The learned District Judge though heard the said petition of injunction on 31.11.2023 from both the petitioner and the opposite party and then fixed on 02.01.2024 for passing order.

However, the learned District Judge vide impugned judgment and decree dated 02.01.2024 decreed the suit on contest against the opposite party no. 1 and ex parte against the rest without any order as to costs declaring the petitioner of the Miscellaneous Case namely, Ms. Ruhi Murshid Ahmed as chairperson of the trust finding is appointment as lawful, valid and the representation of the opposite party no. 1 herein petitioner, Ms. Nanzeen Murshid as illegal and unlawful and amounting to breach of trust.

It is at that stage the opposite party no. 1 of the Miscellaneous Case as petitioner came before this court and obtained instant rule and order of stay as has been stated herein above.

Mr. Mustafizur Rahman Khan, the learned senior counsel appearing for the petitioner upon taking us to the revisional application at the very outset submits that, the learned District Judge committed a grave illegality in disposing of the original suit while disposing of an application for temporary injunction initiated by the present opposite party no. 1.

The learned counsel by taking as through the order sheet of the Miscellaneous Case also submits that, though on 23.11.2023 the present petitioner who is the opposite party no. 1 in the Miscellaneous Case filed written objection against the application filed by the opposite party for temporary injunction and also found the said written objection has not been served upon all the opposite parties and then fixed on 30.11.2023 for hearing of the application for injunction on condition of serving copy of the written objection to the other side, yet on 23.11.2023, the learned judge heard the petitioner and the opposite party when he found that, the opposite party nos. 2 and 5 of the said Miscellaneous case prayed for adjournment for filing written objection but in spite of that, after hearing the petitioner and the opposite party no. 1 he then fixed for passing order on the application for injunction. However, he decree the suit vide impugned judgment and decree most illegally without disposing of the application for temporary injunction which he actually heard even though no notice was served upon as many as 10 defendants in the Miscellaneous Case and therefore committed error of law resulting in an error in the decision that occasioned failure of justice.

The learned counsel next contends that, though in disposing of the Miscellaneous Case, the learned District Judge framed different issues which is also illegal as the issues were supposed to be framed on assessing the pleadings of the parties that is to say, upon assessing the written statement filed by the defendants and that of upon receiving proposed issues by the parties to the suit, so the issues framed by the learned District Judge on its own volition is also illegal and therefore the judgment and decree impugned in the revisional application can never be sustained. When we pose a question to the learned counsel for the petitioner with regard to modification of the interim order, the learned counsel then candidly submits that, the petitioner got no objection if the trust is run by the present opposite party no. 1 smoothly for the welfare of the trust without making any prejudice to any of the parties. With that submission, the learned counsel finally prays for making the rule absolute by setting aside the impugned judgment and decree.

On the contrary Mr. Naim Ahmed, the learned senior counsel appearing for the opposite party nos. 1 and 2 opposes the contention taken by the learned senior counsel for the petitioner and by taking us to the provision of order 15 rule 3 of the Code of Civil Procedure submits that such Miscellaneous Case has to be disposed of summarily and for that obvious reason, the learned District Judge has disposed of the suit instead of disposing the application for temporary injunction. When we pose a question to the learned senior counsel whether the trial court could dispose of the suit by framing issues in absence to any written statement of the defendants and serving summons upon all the defendants of the Miscellaneous Case, the learned counsel then contends that, since some of

the defendants have been residing outside of the country, so it would be very difficult to serve summons/ notice upon those defendants and for that obvious reason, perhaps the learned District Judge has disposed of the suit instead of disposing of the application for temporary injunction. However, the learned senior counsel submits that, if a direction is made upon the District Judge by sending the case back on remand to the court for holding retrial giving a time frame, the opposite parties have got no objection. Insofar as regards to the order modifying the earlier order of stay passed at the time of issuance of the rule, the learned senior counsel then contends that, if the modified order is retained, none of the parties to the suit will be prejudiced and finally prays for discharging the rule.

We have considered the submission so advanced by the learned senior counsels for the parties and perused the revisional application in particular, the impugned judgment and decree.

There has been no gainsaying the facts that the summons of the suit has only been served upon the defendant nos. 1, 2 and 5 out of 10 defendants in the case. Furthermore, though the opposite party nos. 2 and 5 of the said Miscellaneous Case on 30.11.2023 prayed for an adjournment enabling them to file written objection against the application for temporary injunction, yet their said application for adjournment was rejected and the learned District Judge then went on to hear the application for injunction and ultimately upon hearing the petitioner and the opposite party no. 1 and then fixed next date on 02.01.2024 for passing order. So it was genuinely presumed that, on the next date, the learned District Judge will pass order on the application for injunction since the application was heard earlier date. But without doing

so the learned judge by framing different issues on his own accord, disposed of the suit which cannot be sustained as the Code of Civil Procedure as well as the Trust Act does not authorize the learned District Judge to dispose of the suit without serving notice/ summons upon all the defendants and framing of particular issues by taking into account of the written statement supposed to be filed by the defendants of the case. But in the instant case the learned District Judge has very whimsically disposed of the Miscellaneous Case as per the prayer of the present opposite party no. 1 when in section 92 of the Code of Civil Procedure and 34 of the Trust Act does not exonerate to follow the provision provided in order 5 rule 1-20 of the Code of Civil Procedure meant for serving summons upon the defendants of any Miscellaneous Case since the procedure provided in the Code of Civil Procedure has been made applicable in disposing of the Miscellaneous Case. So invariably the learned District Judge should have complied with all the procedure followed in disposing of a Title Suit but without doing so the learned District Judge disposed of the Miscellaneous Case pretty arbitrarily instead of disposing of the application for temporary injunction. Though the learned senior counsel for the opposite party nos. 1 and 2 made reference to the provision provided in order 15 rule 3 of the Code of Civil Procedure terming the Miscellaneous Case as a summary suit but we don't find in the said provision that any exemption has been provided therein not to serve notice/ summons upon the defendant while disposing of the civil Miscellaneous Case.

Regard being had to the above facts and circumstances, we don't find any iota of substance in the impugned judgment and decree.

Accordingly, the rule is made absolute however without any order as to costs.

The impugned judgment and decree dated 02.01.2024 passed by the learned District Judge, Dhaka in civil Miscellaneous Case No. 512 of 2023 is thus set aside.

Since the case has not been disposed of on contest and merit. so it would be wise if the Miscellaneous Case is disposed of on merit and contest by sending back the Miscellaneous Case on remand back to the learned District Judge for holding re-trial upon due compliance of the respective provision provided in the Code of Civil Procedure.

In view of the above, the learned District Judge is hereby directed to dispose of the civil Miscellaneous Case No. 512 of 2023 as expeditiously as possible by giving opportunity to the defendants to file written statement in the Miscellaneous Case. Since the learned senior counsels for the petitioner and the opposite parties have no objection with regard to retaining modified interim order passed by this court dated 20.03.2024 so the said order will retain till disposal of the case.

However, the opposite party No. 1 is hereby directed to run the trust diligently keeping in mind the wellbeing of the beneficiaries of different project run under the trust

Let a copy of this order be transmitted to the court concerned forthwith.

Md. Bashir Ullah, J:

I agree.