

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

Present:

**Mr. Justice Md. Mozibur Rahman Miah
and**

Mr. Justice Md. Bashir Ullah

Civil Revision No. 138 of 2024

In the matter of:

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

And

In the matter of:

Farhad Ahmed and another

---Defendant Nos. 1-2 Petitioners.

-Versus-

Haji Md. Bahar Uddin and others.

---Plaintiff-Opposite parties.

Mr. Uzzal Bhowmick, Advocate

---For the petitioner.

Mr. Mohammad Nazrul Islam with

Ms. Salina Akhter, Advocates

--- For the opposite party No.1.

Heard on 05.06.2024

Judgment on: 06.06.2024

Md. Bashir Ullah, J

At the instance of the defendant Nos. 1 and 2 in Title Suit No.660 of 2016, this rule was issued calling upon opposite party No.1 to show cause as to why the order dated 23.08.2023 passed by the learned Joint District Judge, First Court, Dhaka in the above-mentioned suit directing Hari Madhob Mondal, the executant of Power of Attorney of defendant No.1 to appear before the Court with his NID should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

At the time of issuance of the rule, the operation of the impugned order dated 23.08.2023 passed by the learned Joint District Judge, First Court, Dhaka in Title Suit No. 660 of 2016 was stayed for six months.

Facts, relevant for the disposal of the instant rule, are:

One, Haricharan Mondal, son of Gorachan Mondal was C.S. recorded tenant of 1.54 acres of land, including the suit land described in schedule- 'Ka' to the plaint and the S.A. record was prepared in the name of Haricharan Mondal in four plots. However R.S. record was published in the name of the Government of Bangladesh, represented by the Deputy Commissioner, Dhaka corresponding to R.S. Plot No.2907/3362 measuring 30 decimels of land. Hence, the plaintiff prayed for a decree of declaration that, the R.S. record was prepared erroneously. The heirs of Haricharan Mondal sold out 39 decimals of land under C.S. plot No. 1782 to Ishrafil Bepari, Son of Abdul Jabbar, by registered deed No. 12870 on 11.12.1956. Ishrafil Bepari then sold out the suit land and other lands to his two sons, Mohammad Shahid Ullah and Rahmat Ullah by registered deed No.7177 on 20.03.1973. Thereafter 32.96 decimals of land out of 39 decimals were recorded in the name of Shahid Ullah and Rahmat Ullah in city survey (Jarip). After that, they appointed Abdul Barek, son of Abdul Aziz, as their attorney by a General Power of Attorney No.1185/2011 on 01.02.2011. The Power of Attorney holder then sold the suit land measuring 32.96 decimals to the plaintiff by deed No. 2184/2012 on 07.03.2012. After purchasing the land, the plaintiff mutated his name in the khatian and

paid land development tax. When the plaintiff was enjoying the possession of the land, then defendant Nos.1 and 2 entered into the suit land with other miscreants and tried to disposses him from the suit land on 15.09.2012. They (defendants) claimed ownership of the suit land by showing the Power of Attorney. Then, the plaintiff went to Badda Police Station and filed a General Diary on 15.09.2012. Thereafter, the plaintiff also filed a petition case no. 261 of 2012 under section 145 of the Code of Criminal Procedure. The petition case was disposed of on 22.09.2016 due to non-service of notice. On 26.09.2016, the defendant Nos. 1 and 2 with few miscreants brought some construction materials to the suit land and started constructing a wall and tried to dispossess the plaintiff. Then he went to the police station when the police took steps to stop the construction. The defendants are local influential people who can dispossess the plaintiff at any time and hence, the present opposite party No.1 as plaintiff instituted Title Suit No.660 of 2016 for perpetual injunction, declaration of title over 'Ka' schedule of land, a further declaration to the effect that Power of Attorney in respect of 'Kha' schedule was fraudulently obtained and it is invalid with a further declaration that, R.S. record prepared in the name of the defendant No.7 (Government of Bangladesh) is wrong and not binding upon the plaintiff impleading the present petitioners as defendant Nos.1 and 2.

In order to contest the suit, the defendant Nos.1-2 entered appearance and filed a written statement denying the material statement made in the plaint and prayed for dismissal of the suit.

On 18.05.2017, during pendency of the suit, the plaintiff-opposite party No.1 as petitioner filed an application praying for the personal appearance of Hari Madhab Mandal, the executant of Power of Attorney with his NID before the learned Joint District Judge, First Court, Dhaka. Upon hearing the same, the Court allowed the application and directed Hari Madhob Mondal to appear in person before the Court by order No.18 dated 14.08.2018. However, defendant No.1 failed to comply with the Court's order rather he filed an application on 23.08.2023 under section 151 of the Code of Civil Procedure for exonerating him from the liability of personal appearance before the Court with the NID. On the same date, the plaintiff filed another application praying for further direction for personal appearance of Hari Madhob Mondal with the NID.

Upon hearing the parties, the learned Joint District Judge, First Court, Dhaka rejected the application of the defendant-petitioner and allowed the application of the plaintiff opposite party No.1 and directed the executant of the power of attorney namely, Hari Madhob Mondal to appear in person before the Court with NID on 23.08.2023.

Being aggrieved, defendant numbers 1-2 as petitioners preferred the instant Civil Revision and obtained this Rule and order of stay against the said order dated 23.08.2023 passed by the learned Joint District Judge, First Court, Dhaka in Title Suit No. 660 of 2016.

Mr. Uzzal Bhowmick, learned Advocate, appearing on behalf of the petitioners contends that, the Joint District Judge, First Court, Dhaka most illegally and erroneously directed Hari Madhab Mondal, the

executant of Power of Attorney of defendant No.1, to appear before the court with his NID though he is not a party to the suit, resulting an error in the decision, occasioning failure of justice and as such the Order passed by the Court below is liable to be set aside.

He further contends that, while passing the impugned order the Court below failed to appreciate the fact that the petitioner in his application dated 23.08.2023 prayed for exonerating the liability of personal appearance of his executant of power of attorney categorically stated that, the opposite party No. 1 being defendant no. 5 filed a similar application for personal appearance of Hari Madhaob Mondal in Title Suit No. 365 of 2009, filed by the instant petitioner which was subsequently renumbered as 502 of 2022. Accordingly, in that suit, said Hari Madhob Mondal appeared on 30.07.2023 with his NID and passport and furthermore, he had been cross-examined by the present opposite party No. 1 who also filed another application for CID investigation to verify the identity of said Hari Madhob Mondal which was rejected by the Court concerned on 09.08.2023 and as such the impugned order is liable to be set aside.

He submits that whether Hari Madhob Mandol is fictitious, or not will be decided at the trial but before trial, allowing the application for personal appearance of Hari Madhob Mandol is not just and legal.

On the contrary, Mr. Mohammad Nazrul Islam, with Ms. Salina Akhter, learned Advocates for the opposite party No. 1 submit that, the plaintiff-opposite party No.1 is the owner of the suit property and has been enjoying possession and all of a sudden the defendant No.1-

petitioner No.1 entered the suit land and threatened the plaintiff opposite party No.1 to dispossess him from the suit land, showing a fabricated power of attorney No. 6396 of 2009 dated 25.05.2009 executed by a false person.

Learned counsel further contends that defendant No.1 took adjournment on 22.05.2018, 14.08.2018, 11.11.2018, 07.04.2019, 18.06.2019, 02.09.2019, 02.01.2020, 05.10.2020, 11.12.2020, 25.03.2021, 18.11.2021, 04.04.2022, 29.05.2022, 27.09.2022, 21.03.2023, 02.04.2023 and 15.05.2023 that is, 17 consecutive times from the Court without complying the order passed by the Court and failed to produce the so-called person namely, Hari Madhob Mandol.

He further contends that Hari Madhob Mondal does not exist and the person is fictitious and the power of attorney No.6396 of 2009 dated 25.05.2009 is fabricated one and hence, defendant No.1 is not interested in producing the fictitious person before the Court.

The learned counsel finally submits that, the learned judge of the trial Court has rightly passed the impugned order which does not call for any interference by this Honourable Court.

Heard the submissions of the learned Advocates, perused the Civil Revision, the impugned order passed by the trial Court, and other materials on record.

The record shows that, the plaintiff-opposite party No.1 filed an application on 18.05.2017 before the learned Joint District Judge, First Court, Dhaka to pass an order upon defendant No. 1 to produce Hari Madhob Mondal, who claimed to have executed the Power of Attorney

No. 6396 dated 25.05.2009 and upon hearing, the learned Joint District Judge directed defendant No.1 to produce Hari Madhob Mondal before the Court on 14.08.2018 (vide annexure B-1 of the Civil Revision) with NID. But fact remains, the defendant No.1 failed to comply with the direction passed by the learned Joint District Judge which compelled the plaintiff to file another application on 23.08.2023 before the trial Court to pass an order to comply with order No. 18 dated 14.08.2018 by the defendant No.1. It appears from the record that, the defendant No.1 took adjournment for as many as 17 occasions. However, upon hearing the parties, the learned Joint District Judge, First Court, Dhaka passed the impugned order which appears to be correct.

We, therefore, hold that, if the executant of the alleged power of attorney, namely Hari Madhob Mandol, is alive and not fictitious, his appearance before the Court will not harm or prejudice the defendant No.1. So, we find no illegality in the impugned order and the learned Joint District Judge, First Court, Dhaka has not committed any error of law resulting in an error in the decision occasioning failure of justice.

Hence, we find no substance and merit in the rule and as such the rule is liable to be discharged.

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

The order of stay granted earlier by this Court at the time of issuance of the Rule is hereby recalled and vacated.

The learned Joint District Judge, First Court, Dhaka is hereby directed to dispose of Title Suit No. 660 of 2016 as expeditiously as possible, preferably within 06(six) months from the date of receipt of the copy of this judgment and order.

Communicate a copy of the judgment to the concerned Court forthwith.

Md. Mozibur Rahman Miah,J

I agree.