

Bench:

Mr. Justice Md Ruhul Quddus

Civil Rule Number 3 (Vio) (R) of 2024

Proshika Manobik Unnayan Kendra
represented by its Chairman Rokeya Islam
... Petitioner

-Versus-

Dr. Qazi Faruque Ahmed

... Opposite Party

Mr. Md. Nurul Amin, Advocate with Mr. S.
M. Shakhawat Hossain and Mr. Liton
Chandra Das, Advocates

... for the petitioner

Mr. Imtiaz Mahmood, Advocate with Ms.
Sumaiya Ifrit Bente Ahmed and Mr. Safayet
Ahmed Advocates

... for opposite party number 1

Judgment on 10.02.2026

This Rule was issued on an application under Order XXXIX, rule 2 (3) of the Code of Civil Procedure for awarding punishment upon the opposite party on the allegation of his willful disobedience to the judgment and order dated 11.08.2009 passed by this Division in Civil Revision Number 2323 of 2009.

Facts for disposal of the Rule, as it appears from the record, are that the opposite party, Dr. Quazi Faruque Ahmed instituted Title Suit Number 302 of 2009 for declaration that any meetings convened by the defendants, and the decisions taken therein including the decision taken in the meeting held on 24.05.2009 removing him from the post of Chairman, Governing Body of Proshika Manobik Unnayan Kendra (for short, Proshika) and formation of a five-member committee and calling of a general meeting thereof on 09.06.2009 were illegal, void, collusive, etcetera, and also for perpetual injunction restraining the defendants from calling any further meeting without any notice signed by the plaintiff, or giving effect to the decision taken on 24.05.2009.

The plaintiff also filed an application for temporary injunction for restraining the defendants from disturbing him in peaceful holding of the office of Proshika as usual and drawing money from its bank account. The trial court rejected the application for temporary injunction by order dated 31.05.2009. Thereafter, the plaintiff approached the District Judge, Dhaka with Miscellaneous Appeal Number 158 of 2009, which was dismissed summarily by judgment and order dated 07.06.2009. Being aggrieved, the plaintiff approached the High Court

Division with Civil Revision Number 2323 of 2009 and obtained a Rule. The High Court Division heard the Rule and by judgment and order dated 11.08.2009 made the rule absolute in part with a direction upon both parties to maintain status quo in terms that the defendant-opposite parties would not create any hindrance, if the plaintiff-petitioner alone wanted to enter the office of Proshika and to take seat with the “present Chairman, Present Chief Executive and other members of the Governing Body of Proshika as a “former President” and “former Chairman” of the Governing Body of Proshika without any procession and rally to damage the peaceful atmosphere of Proshika.

Against an observation made in the aforesaid judgment of the High Court Division, the plaintiff moved in the Appellate Division with Civil Petition for Leave to Appeal Number 1697 of 2009, which was disposed of by judgment and order dated 08.08.2010 with observation that the observations of the High Court Division would not be binding upon the trial Judge and he would be at liberty to dispose of all issues involved in the suit independently.

Thereafter, the opposite party claiming himself as Chairman of Proshika executed and registered a **sale deed** transferring 50 decimals of land, and some powers of attorney for transferring some properties of Proshika as described in the schedules of those instruments (Annexures-E to E/5 to the application). In that event, Proshika being represented by its Chairman Rokeya Islam moved in this Court with the present application for drawing proceedings under Order XXXIX, rule 2 (3) of the Code and obtained the Rule.

Mr. Nurul Amin, learned advocate for the petitioner takes me through the relevant part of the judgment and order dated 11.08.2009 of the High Court Division passed in Civil Revision Number 2323 of 2009 and that of the Appellate Division passed on 08.08.2009 in Civil Petition for Leave to Appeal Number 1697 of 2009, and submits that the High Court Division, in its judgment, clearly described the contemnor-opposite party as a “former President and former Chairman” of Proshika and also described the petitioner as its “present Chairman”. It was also observed that the contemnor-opposite party was out of possession of the Head Office of Proshika. Under the circumstances, the execution and registration of the sale deed and the powers of attorney to sell out Proshika’s property

claiming himself as its Chairman is a clear violation of the order of status-quo passed by this Division. The contemnor-opposite party thus rendered himself liable to be punished under Order XXXIX, rule 2 (3) of the Code. Despite issuance of the Rule on prima-facie satisfaction of the learned Judges of the Rule issuing bench, the contemnor-opposite party has not regretted his wrongdoings and also has not tendered unconditional apology, and thereby has proved that his disobedience to the Court's order was willful and deliberate, and he has no respect for the Court. Even in swearing the affidavit, he claimed himself as the Chairman of Proshika and has been continuing such disobedience.

In support of his submission, Mr. Amin refers to the cases of *Nur Mohammad and others vs The Government of the People's Republic of Bangladesh and others*, 33 BLD 344; *Md. Mizanur Rahman Talukder and others vs Md. Sayfullah Tamim Talukder* 35 BLD 410, and the judgment and order of the High Court Division passed in Civil Rule (Violation) Number 13 of 2016 (arising out of the same judgment and order passed in Civil Revision Number 2323 of 2009) convicting the present opposite party (Annexure-D to the application).

Mr. Imtiaz Mahmood, learned advocate for the opposite party, at the very outset, raises objection to the *locus standi* of the petitioner on the point that Proshika itself was not a party to the suit, or in the civil revision, out of which the instant civil rule has arisen. A person or entity, who is not a party to the litigation, cannot be liable for punishment because of violating an order passed therein. On the same implication, the present petitioner, who is not a party to the suit, miscellaneous appeal or civil revision, or any other proceedings arising therefrom, cannot have any *locus standi* to bring an application under Order XXXIX, rule 2(3) of the Code.

Mr. Mahmood further submits that the opposite party, Dr. Quazi Faruque Ahmed being plaintiff instituted the suit challenging, amongst others, the decision allegedly removing him from the Office of Chairman, Proshika. The Governing Body Members, who held the meeting in his absence, were impleaded by their names. In the plaint, and in all other documents, the plaintiff all along claimed himself as the lawful Chairman of Proshika. As his application for temporary injunction was rejected by the Courts below, he approached this Court with a revisional application and obtained a rule in Civil Revision Number 2323 of 2009. Subsequently, the High Court

Division heard the Rule and made it absolute in part by judgment and order dated 11.08.2009 on setting aside the rejection orders of the Courts below, and directed both parties to maintain status quo till disposal of the suit. Under the circumstances, it is logically presumed that the order of status quo was virtually directed against the defendants-opposite parties to the civil revision, and by no stretch of imagination, it could be presumed that the High Court Division, without arriving at a definite finding of fact based on the materials on record, imposed a complete bar upon the plaintiff-petitioner, who himself brought the revision and sought for temporary injunction against the defendants for restraining them from doing some acts and deeds relating to the office of Proshika. There was also no such order that the plaintiff would be restrained from being re-elected as the Chairman of Proshika and from transferring lands, which were not the subject matters of the suit, or revision, except that he would not enter into the office of Proshika with a procession, and rally and shall not damage the peaceful atmosphere of Proshika.

Mr. Mahmood then refers to paragraph 8 of his counter-affidavit and submits that in the meantime, the opposite party has been re-elected as Chairman of Proshika, and in view of the

changed circumstances, the question of disobedience to the Court's order cannot arise only because of executing and registering the sale deed and the powers of attorney.

Mr. Mahmood lastly submits that the language of Order XXXIX, rule 2 (3) of the Code presupposes an order of injunction in a clear term, which is to be disobeyed by the contemnor party. But in the case in hand, no such order is there, nor is there any order of status quo in a clear term. The allegations as made in the application of the Civil Rule do not fall within the ambit of disobedience as described in Order XXXIX, rule 2 (3) of the Code. For all the reasons, the rule is liable to be discharged.

I have considered the submissions of the learned advocates of both sides and gone through the record as well the decisions cited. It appears that the opposite party being plaintiff instituted the suit for declarations that any meetings convened by the defendants and the decisions taken by them on 24.05.2009 including the decision of removing him from the post of Chairman, Governing Body of Proshika, and forming a five-member Managing Committee were illegal, void, collusive and for perpetual injunction restraining them from calling any

meeting of the General Body, or Governing Body of Proshika without any notice under his signature and also from giving effect to the decisions taken by them in the disputed meeting held on 24.05.2009 including the decision of removing him from the post of the Chairman of Proshika. The plaintiff also filed an application for temporary injunction restraining the defendants from disturbing him in peaceful holding of the office of Proshika as usual and also from drawing money from its Bank Account. In the plaint and application for temporary injunction, the plaintiff claimed himself as the founder of Proshika and Chairman of its Governing Body. Six individual Members of the Governing Body of Proshika including defendant number 1 M A Wadud, were impleaded as defendants in their individual names, but the petitioner in this Civil Rule, or its present Chairman Rokeya Islam, as claimed by her, was not a party to the suit. No issues were yet framed and no trial was commenced. Even no prima-facie finding about the status of the plaintiff was there. In the present application, nothing has been mentioned about whether the defendants filed any written statement and what documents they filed by way of *firisty* in order to resist the plaintiff's claim. In such a position, the phrase terming the plaintiff as "former Chairman" in the

text of the High Court's judgment appears to be a remark only for the purpose of entering into the office of Proshika in a peaceful manner so that the atmosphere of the office is not hampered. That is why the Appellate Division observed that *“whatever observations made by the learned Single Judge of the High Court Division in the operating portion of the judgment will not be binding upon the learned Assistant Judge, and that the learned Assistant Judge will be at liberty to dispose of all issues involving in the suit independently on the basis of the evidence to be available with the record.”*

It further appears that Proshika is a Non-Governmental Organization registered with the Bureau of NGO. It is also a Society registered under the Society Registration Act and as such it is a juristic person having its own standing. But Proshika itself is not impleaded in the suit as a defendant, or in the miscellaneous appeal as a respondent, or in the civil revision as an opposite party. In the present civil rule, the application is brought by Proshika represented by its “Chairman Rokeya Islam”. But the said Rokeya Islam is not a defendant in the suit, nor is she an opposite party in Civil Revision Number 2323 of 2009. The Civil Revision was contested by opposite parties number 1-4 including the defendant-opposite party number 1,

M A Wadud, who was made the Chairman by a resolution of the meeting under challenge. After the death of M A Wadud, Rokeya Islam allegedly became the Chairman of Proshika by resolution of its Governing Body on 09.06.2020 during pendency of the suit, but it does not appear that she filed any application for addition of party either as an individual member of Proshika, or as its Chairman, or she prayed for any temporary injunction against the plaintiff to protect the property of Proshika, or that she took leave from the Court for becoming its Chairman. Whereas, there was an order of status quo upon both parties, though without any specific terms, regarding the manner of entering into the Head Office of Proshika. The present petitioner thus appears to be more interested to get the opposite party punished rather than protecting the property of Proshika.

If an order of injunction/status quo is ambiguous in nature and open for more than one interpretation, a party accused of disobeying such order should not be punished under Order XXXIX, rule 2(3) of the Code of Civil Procedure. The case of *the State of Bihar vs Rani Sonabati Kumari* reported in AIR 1961 (SC) 221 lends an implied support to this view.

Moreover, an order of injunction can be issued only against a party to the suit/proceeding and not against a third party. Based on the same legal inference, the present application at the instance of a juristic person, who is not a party to the suit/proceedings and who did not take any step for its addition as a party and also did not seek injunction in a specific term, does not appear to be maintainable. As a general rule, a non-impleaded person cannot maintain an application for temporary injunction and for the same reason, such a person also cannot file any application under Order XXXIX, rule 2 (3) of the Code.

In the case of *Nur Mohammad and others* as cited by the learned advocate for the petitioner, a suit for declaration of title was decreed against the Government. Challenging the said decree, the Government (contesting defendant numbers 1-2) preferred an appeal. Two lessees under the Government were added as respondents in the appeal by order of the Appellate Court. The plaintiffs challenged the said order of addition of party in a Civil Revision before the High Court Division. The High Court Division set aside the said order of addition of party. In doing so, the High Court Division observed that the Government's action of leasing out the land during pendency of

an status quo was illegal. In the cited case, the order of status quo “*was passed by the trial Court on 29.11.2004 in respect of leasing out of the properties by the Government*” (see paragraph 7) and the lease was given “*in flagrant violation of the status quo order*” and the properties were the subject matters of the suit.

In another case of *Md. Mizanur Rahman Talukder and others* as cited by the learned advocate for the petitioner, there was an order of status quo in a clear terms i.e “*in respect of the position and possession of the suit land*” (see paragraph 4). During the status quo order was in force, the petitioner in the said Civil Revision transferred the suit land by a registered sale deed and clearly violated the Court’s order.

In Civil Rule (Violation) Number 13 of 2016, defendant number 1 M A Wadud himself was the petitioner and there was proven allegation of forceful entrance into the Head Office of Proshika on 20.05.2012 on the part of the opposite party along with some hoodlums, which was a clear violation of the judgment and order dated 11.08.2009 passed in Civil Revision Number 2323 of 2009.

In all the above cited cases, the petitioner and contemnor were parties to the original suit and appeal/revision; the terms of status quo were clear, and violations of the same by the opposite parties were flagrant.

But in the present case, the property transferred by the sale deed, or the properties intended to be transferred by powers of attorney are not the subject matters, even not mentioned in the pleadings of either party, and there is no order of status quo in respect of the said properties, except the manner of entering into the Head Office of Proshika as a “former Chairman” and not to obstruct him on the part of “present Chairman”. The petitioner is also not a party to the original suit, miscellaneous appeal and civil revision.

Under the clearly distinguishable features as stated above and the ambiguous nature of status quo, I find it difficult to accept the contention of the learned advocate for the petitioner that she is competent to bring the application under Order XXXIX, rule 2 (3) of the Code, or that the opposite party is liable to be punished thereunder for wilful disobedience to the order of status quo only because of using the word “Chairman” of Proshika in executing and registering the sale deed, or the

powers of attorney, especially when he claims himself to be the re-elected Chairman of Proshika.

For the reasons stated above, I am of the view that the instant application at the instance of a third party is not maintainable and the opposite party is not liable to be punished under Order XXXIX, rule 2(3) of the Code.

Accordingly, the rule is discharged. This order, however, shall not limit the petitioner's right to be added as a party to the suit and file an application with a prayer of temporary injunction in specific terms.