

Bench:

Mr. Justice Bhishmadev Chakrabortty

Civil Revision No. 960 of 2022

Government of Bangladesh ..... petitioner

-Versus-

Wing Commander (Retired) Sultan Md. Nurani

PPM ..... opposite party

Ms. Rahima Khatun, Deputy Attorney General  
with Mr. Ruhul Amin, Ms. Shahla Sharafat  
Nazad and Ms. Farida Parvin, Assistant  
Attorney Generals ..... for the petitioner

Mr. Khair Ezaz Masood, Senior Advocate with  
Mr. Md. Omar Faruk, Advocates

..... for the opposite party

Judgment on 05.06.2024

Bhishmadev Chakrabortty, J:

This rule at the instance of the defendant-petitioner was issued calling upon the plaintiff-opposite party to show as to why the judgment and order dated 28.01.2021 passed by the District Judge, Gazipur in Miscellaneous Appeal No. 25 of 2020 rejecting the application for condonation of delay of 372 days in filing the appeal should not be set aside and and/or such other or further order or orders passed to this Court may seem fit and proper.

At the time of issuing the rule all further proceedings of Title Suit No. 54 of 2019 now pending in the Court of Senior Assistant Judge, Court No. 1, Gazipur was stayed till disposal of the rule.

Facts relevant for disposal of the rule, in brief, are that opposite party herein as plaintiff instituted Title Suit No. 54 of 2019 in the

Court of Assistant Judge, Court No. 1, Gazipur praying for permanent injunction in respect of the suit land measuring 1.00 acres as described in the schedule to the plaint. In that suit the plaintiff filed an application under Order 39 Rule 1 and 2 of the Code of Civil Procedure praying for temporary injunction restraining the defendant from entering into the suit premises and demolish the dwelling houses and school situated therein stating reasons. The defendant resisted the said application by filing written objection denying statements made in the application. However, the Assistant Judge by the order passed on 25.09.2019 granted temporary injunction as prayed for finding plaintiff's *prima facie* title in the suit land and balance of convenience and inconvenience in his favour. Against which the defendant preferred Miscellaneous Appeal No. 25 of 2020 before the District Judge, Gazipur with an application under section 5 of the Limitation Act for condonation of delay of 372 days. However, the District Judge on admission hearing rejected the application for condonation of delay and consequently dismissed the appeal being barred by limitation. Against the aforesaid judgment and order the defendant approached this Court with this revision upon which the rule was issued and an *interim* order staying all further proceeding of Title Suit No. 54 of 2019 was passed.

Ms. Rahima Khatun, learned Deputy Attorney General for the petitioner taking me through the materials on record submits that the

order of temporary injunction passed by the Assistant Judge is a non speaking order. The Assistant Judge did not assign any reason in granting temporary injunction. The Court of appeal below failed to take into account the facts stated in the application for condonation of delay and dismissed the appeal on point of limitation. Since the judgment passed by the trial Court is not in accordance with law and the appeal was dismissed being barred by limitation it is to be interfered with by this Court in this revision.

Mr. Khair Ezaz Masood, learned Senior Advocate for the opposite party on the other hand opposes the rule and submits that although there were some mistakes in the plaint but subsequently it was amended and corrected. The plaintiff has *prima facie* title in the suit land on the strength of the judgment passed by the appellate division in respect of the selfsame land. The reason of filing the suit has been described in the suit as well as the application for temporary injunction. Although the judgment passed by the Assistant Judge is very brief but actually he was satisfied with the *prima facie* title of the plaintiff and balance of convenience and inconvenience in his favour. Therefore, the judgment and order passed by the Assistant Judge may not be interfered with by this Court in any manner. Learned District Judge correctly dismissed the appeal being barred by limitation because in the application for condonation the delay was not

explained satisfactorily. The rule, therefore, having no merit would be discharged.

I have considered the submissions of both the sides and gone through the materials on record.

It appears that in this rule the judgment and order of the appellate Court passed in Miscellaneous Appeal No. 25 of 2020 dismissing the appeal being barred by limitation has been challenged. Since the miscellaneous appeal was ultimately dismissed and through it the order of temporary injunction passed by the Assistant Judge in the suit was affirmed the petitioner had to challenge it in this revision which was not done. Therefore, the rule issued in the revision is found fruitless in respect of the order passed by the Assistant Judge granting temporary injunction.

I have gone through the order passed by the Assistant Judge of granting temporary injunction. It appears that the Assistant Judge in a *slipshod* manner allowed the application for temporary injunction finding *prima facie* case and balance of convenience and inconvenience in plaintiff's favour but nothing has been discussed in support of the findings. On perusal of the original plaint, it is found that the statements made therein is not clear and satisfactory. But subsequently it has been amended and some statements have been incorporated and the defect has been cured. Since the plaintiff has been enjoying the order of temporary injunction against the defendant

for last 5 years, I find that justice would be adequately met, if the concerned Court is directed to dispose of the suit expeditiously within a short span of time keeping the order passed by the Assistant Judge in a modified form directing the parties to maintain *status quo* in respect of the possession and position in the suit land till disposal of the suit. But, I find no illegality in the impugned appellate judgment and order through which the application for condonation of delay was rejected and consequently the appeal was dismissed being barred by limitation.

Therefore, the order of temporary injunction passed by the Assistant Judge is modified. The parties shall maintain *status quo* in respect of possession and position of the suit land till disposal of the suit. The Assistant Judge, Court No. 1, Gazipur shall conclude trial of Title Suit No. 54 of 2019 pending before him within 06 (six) months from the date of receipt of this judgment and order. In the meantime, the ad interim order passed by the Assistant as modified above shall continue. In disposing the suit, the Assistant Judge shall not allow either party any adjournment without extreme exigency.

With the above findings and directions, the rule is accordingly disposed of. No order as to costs. The order of stay stands vacated.

Communicate this judgment and send down the lower Court records.