

District: Chattogram

**In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)**

Present:-

Mr. Justice Md. Zakir Hossain

Civil Revision No. 6158 of 2023

With

Civil Revision No.412 of 2024

Ashraf Ul Alam (Masud)

... Petitioner

(In both Civil Revisions)

-Versus-

Chairman (Additional Secretary),
Bangladesh Jute Corporation, Dhaka

... Opposite Party

(In both Civil Revisions)

Mr. Md. Abdun Nur, Senior Advocate with
Mr. Md. Al-Mamun, Advocate

.....for the petitioner

(In Civil Revision No. 6158 of 2023)

Mr. Muhammad Rejaul Husain (Morshed) with
Mr. S.M. Ohidullah, Advocates

.....for the petitioner

(In Civil Revision No. 412 of 2024)

Mr. Qumrul Islam, Senior Advocate with
Mr. S.M. Ariful Islam, Advocate
Mr. Mohammad Afroz Hossain, Advocate and
Ms. Sabina Rahman, Advocate

.....for the Opposite party

(In both Civil Revisions)

Heard on: 03.06.2024 & 02.07.2024

Judgment on: 14.07.2024

Md. Zakir Hossain, J:

Since the common questions of law and facts involved in the aforesaid two Civil Revisions are almost same and identical, therefore, those are taken up together for hearing and are now being disposed of by this single judgment.

At the instance of the petitioner, the Rule was issued to examine the legality and propriety of the judgment and order dated 25.10.2023 passed by the learned Senior District Judge, Chattogram in Miscellaneous Appeal No. 85 of 2023 dismissed the appeal and affirming the judgment and order dated 15.01.2023 passed by the learned Senior Assistant Judge, Second Court, Sadar, Chattogram in Other Suit No. 924 of 2022 rejecting the petition for temporary injunction and the Rule was also issued to examine the chastity of the judgment and order dated 07.02.2024 passed by the learned Senior District Judge, Chattogram in Miscellaneous Appeal No. 40 of 2024 staying the operation of the judgment and order passed by the learned Senior Assistant Judge, Second Court, Sadar, Chattogram in Other Suit No. 03 of 2024.

Facts leading to the issuance of the Rule are *inter alia* that the petitioner being plaintiff filed Other Suit No. 964 of 2022 before the Court of the learned Senior Assistant Judge, Second Court, Sadar, Chattogram impleading the Chairman, Bangladesh Jute Corporation as defendant with the following prayers:

“ক) তপশীলোক্ত সম্পত্তি হইতে বিবাদী যেন বাদীকে উচ্ছেদ করিতে না পারে কিংবা বে-আইনীভাবে বেদখল করিতে না পারে কিংবা বে-আইনীভাবে তপশীলোক্ত সম্পত্তিতে অনুপ্রবেশ করিতে না পারে কিংবা কোন নির্মাণ কাজ করিতে না পারে তৎমর্মে বাদীর অনুকূলে বিবাদীর বিরুদ্ধে স্থায়ী নিষেধাজ্ঞার ডিক্রী হয়।

খ) তপশীলোক্ত সম্পত্তিতে বাদী চুক্তিপত্র মূলে ২০১৬ ইংরেজী সাল হইতে পুনঃ পুনঃ চুক্তিপত্র নবায়নের মাধ্যমে ভাড়াটিয়া উপলক্ষে ভোগ দখলে থাকাকালীন এবং ২০২৩ ইংরেজি সাল পর্যন্ত নিয়মিত ভাড়া পরিশোধিত থাকাবস্থায় তপশীলোক্ত সম্পত্তিতে বাদীর ব্যবসা প্রতিষ্ঠান পরিচালনা করাকালীন শত কোটি টাকা বিভিন্ন ক্রেতাগণের নিকট

পাওনা থাকায় তপশীলোক্ত সম্পত্তি বাদীর সহিত চুক্তিপত্র পুনঃ নবায়ন করার জন্য বিবাদীকে নির্দেশ প্রদান করার ঘোষণামূলক ডিক্রী হয়।

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

ঘ) আদালতের ন্যায় বিচারে মোকদ্দমার যাবতীয় খরচ বিবাদীগণের বিরুদ্ধে ডিক্রী হয়।”

The petitioner also filed an application for temporary injunction restraining the defendant from evicting the plaintiff from the suit premises illegally. The defendant resisted the said application denying the material allegations set out therein. The plaintiff also filed an application for ad-interim injunction on 08.01.2023. Upon hearing, the learned Senior Assistant Judge was pleased to reject the said petition. Against the said order, the petitioner preferred Miscellaneous Appeal No. 85 of 2023 before the Court of the learned Senior District Judge, Chattogram for temporary injunction wherein the petitioner also filed an application for ad-interim which was also dismissed by the learned Senior District Judge on 25.10.2023. Challenging the legality and propriety of the judgment and order of the Appellate Court, the petitioner moved this Court and obtained the Rule in the earlier suit and status quo therewith.

The selfsame petitioner also instituted Other Class Suit No. 03 of 2024 on 03.01.2024 before the aforesaid Court against the aforementioned defendant with the following reliefs:

“ক) বাদী তপশীলোক্ত সম্পত্তিতে নিয়মিত ভাড়া পরিশোধ করিয়া দখলে থাকাবস্থায় তপশীলোক্ত সম্পত্তি লীজ দেওয়ার জন্য বিবাদী কর্তৃক বিগত ০৪/১০/২০২৩ ইংরেজী তারিখে জনৈক মোঃ সাইফুল ইসলাম এর বরাবরে বেআইনীভাবে প্রেরিত নোটিশ ও বাদীকে বিবাদী

কর্তৃক প্রেরিত বিগত ২৮/১২/২০২৩ ইংরেজী তারিখের উচ্ছেদের নোটিশ বেআইনী, ফেরবী, মনগড়া, যোগসাজশিকমূলক হয় মর্মে ঘোষণামূলক ডিক্রী হয়।

খ) বাদী আইনতঃ ও ন্যায়তঃ আর যে যে প্রতিকার পাওয়ার হকদার তাহা দেওয়ার ডিক্রী হয়।

গ) আদালতের ন্যায় বিচারে মোকদ্দমার যাবতীয় খরচ বিবাদীগণের বিরুদ্ধে ডিক্রী হয়।”

The petitioner also filed a petition for temporary injunction and during the pendency of the petition for temporary injunction; the petitioner filed an application invoking Section 151 for *ad-interim* injunction. Upon hearing, the learned Senior Assistant Judge was pleased to pass an order of ad-interim injunction till disposal of the petition for temporary injunction. The defendant-opposite party challenged the said order by filing Miscellaneous Appeal No. 40 of 2024 before the Court of the learned Senior District Judge. On basis of application filed at the instance of the defendant-appellant, the learned Senior District Judge was pleased to stay the operation of the impugned judgment and order of the learned Senior Assistant Judge. Impugning the judgment and order of the learned Senior District Judge, the petitioner moved this Court and also obtained the aforesaid Rule in the subsequent suit and *status quo* in respect of the selfsame suit premises.

Mr. Md. Abdun Nur, the learned Senior Advocate along with Mr. Md. Al-Mamun, Mr. Muhammad Rejaul Husain (Morshed) and Mr. S.M. Ohidullah for the petitioner submits that in the former suit the learned Senior Assistant Judge most illegally rejected the petition for ad-interim injunction and the learned Senior District Judge without

considering the facts and circumstances of the case and legal position involved in this case most illegally concurred with the decision of the learned Senior Assistant Judge.

He further submits that in the subsequent suit, the learned Senior Assistant Judge rightly allowed the petition for *ad-interim* injunction but unfortunately, the learned Senior District Judge without assigning cogent reason most illegally stayed the order of *ad-interim* injunction and therefore, the same is liable to be interfered with by this Court; otherwise, it will entail serious prejudice to the petitioner. He further submits that the petitioner after incurring huge amount improved the suit premises and he is to yet recover more than Tk. 100 crores from his customers. If he is evicted from the suit premises, it will cause irreparable loss and injury to the petitioner. He further submits that both the suits are maintainable and since the petitioner has acquired the right of holding over in the suit premises in view of Section 116 of the Transfer of Property Act, in short, the TP Act, he cannot be evicted other than due process of law; accordingly, the said lease in respect of the suit property renewed automatically on the payment of rent. He further submits that by practicing fraud, the defendant leased out the suit premises causing serious prejudice to the petitioner. He finally submits that the plaintiff has got *prima facie* arguable case in his favour and the balance of convenience and inconvenience is in the favour of the plaintiff-petitioner and if the temporary injunction is not granted, it will cause irreparable loss and injury to the petitioner, therefore, the said Rules are liable to be made absolute.

Mr. Qumrul Islam, the learned Advocate with Mr. S.M. Ariful Islam, Mr. Mohammad Afroz Hossain and Ms. Sabina Rahman for the opposite party submits that the learned Senior Assistant Judge after considering the facts and circumstances of the case was pleased to dismiss the petition for ad-interim injunction in the earlier suit and the Senior District Judge assigning cogent reason was pleased to reject the petition for temporary injunction; unfortunately, the petitioner being plaintiff filed almost selfsame suit suppressing the facts of the earlier suit and obtained the order of ad-interim injunction which was rightly struck down by the learned Senior District Judge, therefore, there is no apparent reason to interfere with same. He further submits that the payment of lease money after expiry of the lease period has not been accepted by the opposite party; therefore, the question of holding over does not arise at all. He further submits that admittedly the lease period of the petitioner has been expired, therefore, the relationship between landlord and the tenant has been ceased and hence, the plaintiff-petitioner has got no *locus standi* to institute the aforesaid suit. He further submits that the defendant-opposite party after observing due process leased out the suit premises fixing one crore thirty eight lac per months, therefore, the balance of convenience and inconvenience is in favour of the defendant. He further submits that by filing suit after suit, the plaintiff wanted to continue his possession in the suit land and therefore, both the Rules are liable to be turned down to secure the ends of justice.

Heard the submissions advanced by the learned Advocates for the petitioner and the opposite party at length and perused the materials on record with due care and attention and seriousness as they deserves. The convoluted question of law embroiled in this case has meticulously been waded through.

Admittedly, the plaintiff-petitioner is a tenant and the defendant; Bangladesh Jute Corporation is the landlord. Tenancy agreement was executed on 01.11.2018. It transpires from the record that the suit premises were leased out for three years that is for the period from 01.12.2019 to 30.11.2022. The lease period has been expired on 30.11.2022. In this respect, the Condition No. 01 of the Tenancy Agreement may be read thus.

“ভাড়া চুক্তি ০১/১২/২০১৯ হতে ৩০/১১/২০২২ পর্যন্ত ৩ (তিন) বছরের জন্য সম্পাদিত হবে। মেয়াদ অবসানের পর ১ম পক্ষ ভাড়া চুক্তি নবায়ন করতে বাধ্য থাকবে না। তবে উভয় পক্ষ সম্মত হলে পুনরায় স্থিরকৃত শর্তে ভাড়া চুক্তি নবায়ন করা যাবে। ভাড়া চুক্তিপত্র স্বয়ংক্রিয়ভাবে নবায়নযোগ্য নয়।”

The condition No. 32 set forth in the Tenancy Agreement may be read as follows:

“৩ (তিন) বছরের মেয়াদ অবসানের পর লীজি কর্তৃক বিনিয়োগের মাধ্যমে যে সকল অবকাঠামো তৈরি করা হয়েছে, সে সকল অবকাঠামো বিজেসির মালিকানাধীন সম্পত্তি হয়ে যাবে।”

I have meaningfully gone through the conditions set forth in the leased agreement. It appears from the agreement that monthly rent was fixed as Tk. 19,88,514/- including 15% VAT. The only condition of the petitioner is that before the expiry of lease period, the petitioner paid the rent of one year (from 01.12.2022 to 31.11.2023) through

pay-orders dated 17.10.2022, which was received by the defendant-opposite party on 15.11.2022. It is also considered by the petitioner that having accepted the pay-order, the opposite party without renewing the lease agreement most illegally leased out the property by practicing fraud, therefore, the petitioner is entitled to get the protection of Section 116 of the Transfer of Property Act and in support of contention, the petitioner has relied on the decision of the case reported in 22 DLR (1970) 56.

If after expiry of the lease agreement, the tenant continued in possession in the absence of renewal of the original lease or further agreement and the landlord accepted the rent, the tenant will acquire the right of holding over in view of Section 116 of the Transfer of Property Act and wherein the tenant cannot be evicted without giving notice under Section 106 of the Transfer of Property Act. Admittedly, the pay-order issued by the plaintiff-petitioner has not been encashed by the Bangladesh Jute Corporation and eventually, returned the same, therefore, it is difficult to hold the view that the petitioner acquired the protection of Section 116 of the Transfer of Property Act. On the determination of the lease, the lessee is bound to surrender the possession to the lessor and on default, he may be rejected without notice and his position will be a tenant at sufferance is not better than a trespasser and he can be evicted at any time without issuance of notice under Section 106 of the TP Act. The act of holding over after the expiry of term does not create a tenancy of any kind. If a tenant remains in possession after determination of lease is a tenant by

sufferance. Distinction should be drawn by a tenant continuing in possession after the determination of the term with the consent of the landlord and a tenant doing so without the consent of the landlord.

The former is a tenant at will and the later is tenant to holding over or tenant at will. If the tenant acquires right of holding over, he cannot be ejected without serving notice under section 106 of the TP Act. On the contrary, the tenant as sufferance may be evicted without issuance of notice under aforesaid section. The possession of the petitioner *i.e.* the tenant is illegal possession. The position of the petitioner in this case is tantamount to a trespasser or illegal occupant of the suit premises.

My final conclusion is that-

- i. the petition has got no locus standi to file the original suits as the result of those suits are as clear as daylight;*
- ii. the petitioner's position is like a drowning man catches at straw;*
- iii. since the petitioner is a trespasser in the eye of law, he cannot get the protection of law; but filing suit after suit he wanted to perpetuate the illegal position;*
- iv. admittedly lease period has been expired on 30.11.2022, if for the sake of argument, it is accepted that the lease amount for the period of 01.12.2022 to 31.11.2023 was accepted by the landlord still the petitioner is a tenant at sufferance as admittedly the petitioner did not deposit any rent for 1st January, 2024 to till date;*
- v. admittedly, in the earlier lease monthly rent was fixed as Tk.19,88,514.00 including 15% VAT in the later lease the amount stood 1 corer 38 lacs taka. The plaintiff-*

petitioner never expressed his intention to pay the said amount; therefore, it can be held that the petitioner did not come with clean hands to get equitable remedy. .

vi. *The plaintiff- petitioner has to deposit all outstanding rent to the defendant opposite party with utmost expedition.*

vii. *The plaintiff-petitioner may be evicted following the procedure of eviction of illegal occupants or illegal possessor of the land or premises.*

Having regard to the facts and circumstances of the case, I am of the view that both the Rules are devoid of any substance and accordingly, they shall fall flat.

With the above observation, both the Rules are discharged, however, without passing any order as to costs. The earlier orders of *status quo* granted by this Court, thus, stand recalled and vacated.

Let a copy of the judgment be transmitted to the Court below at once.

(Md. Zakir Hossain, J)