

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.1715 OF 2024

In the matter of:

An application under Section 25 of the Small Cause Courts Act, 1887.

And

Salman Bhuiyan

... Petitioner

-Versus-

Mohammad Anwar Ul Haque and others

... Opposite parties

Mr Rashedul Hoque, Advocate

... For the petitioner.

Mr. Mohammad Mahmud Hasan, Advocate

.... For the opposite party Nos.1-8.

Heard on 10.11.2024 and Judgment on 11.11.2024.

This Rule was issued calling upon the opposite parties to show cause as to why the impugned order No.11 dated 12.03.2024 passed by the learned Senior Assistant Judge, 1st Court, Dhaka in S.C.C. Suit No.03 of 2023 so far not recalling the ex-parte injunction order dated 22.02.2024 in pursuance of order dated 21.01.2024 prohibiting the petitioner from opening the shop by not allowing the application for recalling the ex-parte injunction order, now pending in the Court of learned Senior Assistant Judge, 1st Court, Dhaka should not be set aside and or pass such other or further order or orders as to this Court may seem fit and proper.

Facts in short are that the opposite party as plaintiff instituted above S.C.C. Suit for eviction of the defendant from the disputed shop

claiming that the defendant was a monthly tenant and habitual defaulter in the paying of the rent and above premises was required for the own use of the plaintiffs.

In above suit the defendant filed a petition under order 39 Rule 1 of the Code of Civil Procedure for an order of injunction for closure of above shop and on hearing of the learned Advocate for the petitioner the learned Small Causes Court Judge passed an order of ad-interim injunction shutting down above shop.

The defendant filed a petition on 05.02.2024 for vacating above order of ad-interim injunction. On consideration of submissions of the learned Advocate for respective parties and materials on record the learned Judge of the Small Causes Court stayed the operation of above order of ad-interim injunction for 45 days.

Challenging the legality and propriety of above order the defendant as the petitioner moved to this Court and obtained this Rule.

Mr. Rashedul Haque, learned Advocate for the petitioner submits that the defendant is a non evictable tenant of the plaintiff in above shop and he was depositing rent to the Rent Controller but behind the back of the defendant the plaintiff instituted this suit and obtained an order of ad-interim injunction closing his shop which caused irreparable loss to the defendant and he submitted a petition for recall of above order. But the learned Judge of the Small Causes Court instead

of recalling above order merely stayed operation of above order for 45 days which is not tenable in law.

On the other hand Mr. Mohammad Mahmud Hasan, learned Advocate for the opposite party Nos.1-8 submits that the petitioner has challenged the legality and propriety of order dated 12.03.2024 passed by the learned Senior Assistant Judge but above order was passed on the basis of consensus of both the parties. As such this Civil Revision is misconceived and not tenable in law.

I have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record.

It is admitted that the opposite party is the owner and the petitioner is a monthly tenant of the disputed shop.

In above suit for eviction of tenant the plaintiff filed a petition under 39 Rule 1 of the Code of Civil Procedure for an order of injunction for closing the impugned shop and an ad-interim order of injunction was passed on 21.1.2024.

The petitioner did not challenge the legality and propriety of the order of ad-interim injunction dated 21.01.2024. The plaintiff has challenged the legality and propriety of order of staying operation of above ad-interim injunction passed on 12.03.24. But it turns out from the impugned order that the learned Senior Assistant Judge passed above order on the basis of consensus of both the parties. Relevant part

of above order of the learned Senior Assistant Judge is reproduced below:

“ন্যায় বিচারের স্বার্থে উভয়পক্ষের সহিত আলাচনা সাপেক্ষে ও উভয় পক্ষের মতামতের ভিত্তিতে বিবাদী-দরখাস্তকারী পক্ষের অত্র দরখাস্ত পরিবর্তিত আকারে মঞ্জুর করা হইল। বিগত ২২-০২-২০২৪ ইং তারিখের ০৮ নং আদেশ রি-কল না করিয়া উক্ত আদেশের কার্যক্রম আপাততঃ আদেশের তারিখ হইতে ৪৫ দিনের জন্য স্থগিত করা হইল।”

It is well settled that an order passed on the basis of consent of the parties cannot be challenged excepting on the ground of fraud or error. But the learned Advocate for the petitioner did not allege that above order of ad-interim injunction was obtained by fraud or error.

Since the learned Senior Assistant Judge stayed the operation of the impugned order of injunction for 45 days the learned Judge should have disposed of the suit on merit within above period. This Court on 24.04.2024 at the time of issuance of this Rule directed the learned Senior Assistant Judge to dispose of the suit expeditiously within 6 months. But the learned Senior Assistant Judge could not dispose of the suit during above period of time.

The learned Advocates for both sides have jointly submitted the suit is ready for trial and they would not seek any adjournment and cooperate for expeditiously trial of the suit.

On consideration of above facts and circumstances of the case and submissions of the leaned Advocates for both sides I hold that the ends of justice will be met if the impugned order of stay passed by the

learned Judge of the trial Court is extended for 6 months and the learned Senior Assistant Judge is directed to dispose of the suit on merit during above period.

Learned Senior Assistant Judge 1st Court, Dhaka is directed to dispose of above suit on merit within 6(six) months from the date of receipt of this order and no party shall seek any adjournment as has been assured by their appointed learned Advocates and the operation of above ad-interim order of injunction shall remain stayed for 6(six) months.

This Rule is accordingly disposed of.

However, there is no order as to cost.

MD. MASUDUR RAHMAN
BENCH OFFICER