

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

Present:

Mr. Justice Md. Khairul Alam

Civil Revision No. 3163 of 2024

Md. Yasin Ali and others

.....-Petitioners.

-Versus-

Md. Tofazzal Miah and others.

..... Opposite parties.

Ms. Fatema Begum, Advocate

..... For the petitioners.

Mr. Md. Shahjahan Ali, Advocate

..... For the opposite parties.

Heard on: 26.06.2025 and 09.07.2025

Judgment on: 16.07.2025.

This Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and order dated 21.05.2024 passed by the learned Joint District Judge, 3rd Court, Rangpur in Miscellaneous Appeal No. 48 of 2023 dismissing the appeal and thereby affirming the order dated 06.04.2023 passed by the learned Senior Assistant Judge, Pirganj, Rangpur in Other Suit No. 421 of 2022 rejecting the application filed by the plaintiffs-petitioners under Order XXXIX rule 1 of the Code of Civil Procedure for temporary injunction should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

Relevant facts for disposal of the Rule are that the present petitioners as plaintiffs filed Other Suit No. 421 of 2022 in the Court of Senior Assistant Judge, Pirganj, Rangpur seeking for permanent injunction over the suit property contending, inter alia, that the plaintiffs purchased 82 decimals of land by separate kabala deed and had been

possessing the same by mutating the land in their names. On 05.11.2022, the defendants threatened to dispossess the plaintiffs from the suit land. In the said suit, the plaintiffs filed an application under Order XXXIX rule 1 of the Code of Civil Procedure praying for a temporary injunction reiterating the statements made in the plaint and accordingly, an order of status quo was passed on 12.03.2023. Subsequently, the defendants contested the application by filing a written objection denying the material allegations made in the application. On 06.04.2023, date was fixed for the hearing of the application, but on that day the learned Advocate for the plaintiffs failed to appear before the Court when the matter was taken up for hearing. Accordingly, the learned Senior Assistant Judge, Pirganj, Rangpur by the order dated 06.04.2023 rejected the application and thereby vacated his earlier order of status quo. Challenging the said order, plaintiffs filed Miscellaneous Appeal No. 48 of 2023 in the Court of District Judge, Rangpur which was ultimately heard by the learned Joint District Judge, 3rd Court, Rangpur who by the judgment and order dated 21.05.2024 dismissed the appeal and thereby affirmed the order passed by the Trial Court.

Being aggrieved thereby the petitioners filed this civil revisional application and obtained the Rule.

Ms. Fatema Begum, the learned Advocate appearing for the petitioners submits that none can be punished without any fault of his own, but both the Courts below without considering this settled principle of the law rejected the application of the petitioners for non-appearance of the learned Advocate for the laintff and prays for a direction upon the trial Court to dispose of the application for temporary injunction on merit.

On the other hand, Mr. Shahjahan Ali, the learned Advocate appearing for the opposite parties, placing a counter affidavit, submits that another suit for declaration of title regarding the suit property is pending between the parties and an order of status quo in the said suit still exists, therefore, this application is misconceived.

Heard the learned Advocate for the contending parties and perused the revisional application and other materials on record.

It appears that the present petitioners as plaintiffs filed a suit for permanent injunction. In the said suit, the petitioners filed an application for a permanent injunction and obtained an order of status quo. Subsequently, the defendants contested the application by filing a written objection. On 06.04.2023, date was fixed for the hearing of the application, but on that day the learned Advocate for the petitioners failed to appear before the Court when the matter was taken up for hearing. Accordingly, the application was rejected. The learned Senior Assistant Judge, Pirganj, Rangpur in rejecting the application held to the effect:-

“বাদীপক্ষের বিজ্ঞ কৌশলী ও বাদীপক্ষ অনুপস্থিত থাকায় ও শুনানী না করায় মূল অস্থায়ী নিষেধাজ্ঞার দরখাস্ত নামঞ্জুর করা হলো। V.O.P)। একই সাথে বিগত ১২/০৩/২০২৩ ইং তারিখের প্রদত্ত আদেশ প্রত্যাহার (Vacat) করা হলো।”

On appeal, the said order was affirmed by the learned Joint District Judge, 3rd Court, Rangpur holding to the effect:-

“মূল মোকদ্দমার নথি পর্যালোচনায় দেখা যায় যে, বাদীপক্ষের আনীত অস্থায়ী নিষেধাজ্ঞার দরখাস্তের বিরুদ্ধে বিবাদীপক্ষ গত ২৭.০৩.২০২৩ইং তারিখে লিখিত আপত্তি দাখিল করলে উভয়পক্ষের সম্মতিক্রমে তা শুনানীর জন্য পরবর্তী তারিখ ০৬.০৪.২০২৩ইং ধার্য করা হয়। উক্ত ধার্য তারিখে বাদীপক্ষ অনুপস্থিত থাকায় উক্ত অস্থায়ী নিষেধাজ্ঞার দরখাস্ত

নামঞ্জুর করা হয়। উক্ত তারিখে বাদীপক্ষের অনুপস্থিত থাকায় কোন যৌক্তিক কারণ আপীলের মেমোতে উল্লেখ নাই। এ বিষয়ে কোন প্রমাণ্য দাখিল নাই। সুতরাং নালিশী আদেশ যৌক্তিক ও ন্যায়সঙ্গত মর্মে এই আপীল আদালতের নিকট প্রতীয়মান হয়। সার্বিক বিবেচনায় এই মিস আপীল মোকদ্দমাটি মঞ্জুর করার কোন কারণ পাওয়া যায়না। বরং তা নামঞ্জুরযোগ্য বিবেচনায় বিবেচ্য বিষয়টি আপীলকারী প্রার্থীপক্ষের প্রতিকূলে নিষ্পত্তি করা হল।”

From the above, it is clear that the application for temporary injunction of the petitioners was not disposed of on merit because of the fault of their learned Advocate. It is well settled that if an advocate is engaged in any court and the engaged advocate fails to appear in a suit or an appeal, it is the fault of the advocate and not the fault of the party concerned and a party cannot suffer for the fault of his advocate. Therefore, in the instant case, the ends of justice will, however, be met if the impugned order is set aside and the trial Court is directed to dispose of the application on merit.

In the result, the Rule is made absolute without any order as to costs.

The impugned judgment and order dated 21.05.2024 passed by the learned Joint District Judge, 3rd Court, Rangpur in Miscellaneous Appeal No. 148 of 2023 affirming the order dated 06.04.2023 passed by the learned Senior Assistant Judge, Pirganj, Rangpur in Other Suit No. 421 of 2022 rejecting the application filed by the plaintiffs-petitioners under Order XXXIX rule 1 of the Code of Civil Procedure is hereby set aside.

The trial Court is directed to dispose of the application filed by the petitioner under Order XXXIX, rule 1 of the Code of Civil Procedure on merit, allowing the defendants to place their objection.

The order of *status quo* granted earlier by this court is hereby recalled and vacated.

Send a copy of this judgment and order to the concerned court at once.

Kashem/BO