

**Present:  
Mr. Justice Md. Salim**

**CIVIL REVISION NO.1132 OF 2023**

Shaishir Ahmed Shahnawaz

..... Defendant-Petitioner.

-VERSUS-

Tureen Afroz

..... Plaintiff-Opposite Party.

Mr. Joynal Abedin, senior advocate with

Mr. B.M. Elias Kochi with

Mr. Md. Monzur Rabbi, Advocates

..... For the petitioner.

Mr. Mohammad Saiful Karim, Advocate

..... For the opposite party.

**Heard on 30.01.2025 and 19.02.2025.**

**Judgment on 19.02.2025.**

By this Rule, the opposite party was called upon to show cause as to why the impugned Judgment and order dated 19.01.2023 passed by the learned District Judge, Dhaka, in Civil Revision No.242 of 2022 summarily rejecting the revisional application and thereby upholding the order dated 11.10.2022 passed by the learned Joint District Judge, 5<sup>th</sup> Court, Dhaka in Title Suit No.189 of 2022, now pending before the learned Joint District Judge, 5<sup>th</sup> Court, Dhaka rejecting the application for recalling the order dated

08.05.2018 directing both parties to maintain status quo, should not be set aside and or pass such other or further order or orders as to this court may seem fit and proper.

The facts, in brief, necessary for the disposal of Rule are that the present petitioner, Shishir Ahmed Shahnawaz, as plaintiff, instituted Title Suit No.13 of 2018 before the Joint District Judge, 1<sup>st</sup> Court, Dhaka, for a declaration of title and recovery of Khas possession of the suit property described in the schedule of the plaint. Subsequently, the suit was renumbered as Title Suit No.161 of 2018. On the very date of filing the suit, the plaintiff filed an application under Order 39, Rule 1 and 2 of the Code of Civil Procedure for temporary injunction. The opposite party, as the plaintiff, contested the suit by filing a written statement denying all the allegations of the plaint.

On the other hand, the opposite party Tureen Afroz, as plaintiff, preferred Title Suit No.253 of 2017 before the Assistant Judge, 2<sup>nd</sup> Court, Dhaka, for permanent injunction over the same suit property described in the schedule of the plaint. Subsequently, the suit was renumbered as Title Suit No.189 of 2022. On the very date of filing the suit, the plaintiff also filed an application under Order 39, Rule 1 and

2 of the Code of Civil Procedure for temporary injunction. In that case, the petitioner, as the defendant, contested the suit by filing a written statement and written objection against the application for temporary injunction.

Both the suits are pending before the Joint District Judge, 5<sup>th</sup> Court, Dhaka, for an analogous hearing. Subsequently, the learned Joint District Judge, 5<sup>th</sup> Court, Dhaka, after hearing the applications of both the parties analogously by the Judgment and order dated 08.05.2018, passed an order of status quo in respect of the suit property and also directed not to transfer or sell the property.

Thereafter, the defendant-petitioner, Mr. Shishir Ahmed Shahnewaz, on 07.06.2022, filed an application under section 51 of the code of civil procedure for recalling the order of status quo dated 08.05.2018 and for a mandatory injunction in favor of him. Eventually, the learned Joint District Judge, 5<sup>th</sup> Court, Dhaka, by the Judgment and order dated 11.10.2022, rejected the said application.

Being aggrieved by the above Judgment and order, the defendant-petitioner, as appellant, preferred Civil Revision No.242 of 2022 before the District Judge, Dhaka. Eventually, by the Judgment and order dated 19.01.2023, the learned

District Judge, Dhaka, summarily rejected the revisional application upholding the order dated 11.10.2022 passed by the trial Court.

Being aggrieved by the above Judgment and order, the defendant-petitioner preferred the present Civil Revision No.1132 of 2023 before this court under Section 115(4) of the Code of Civil Procedure and obtained the instant Rule.

Mr. Joynal Abedin, the learned senior advocate appearing on behalf of the petitioner, submits that initially, the suit plot was allotted by the RAJUK in the name of Alhaz Hafez Yer Mohammad Tarafder, on 18.11.1960 which was executed vide registered deed dated 5769 dated 18.07.1969. After the death of Mr. Alhaz Hafez Yer Mohammad Tarafder, his 8(eight) sons as his legal heirs on 31.12.1990 mutated their names. These 8(eight) sons took permission on 19.11.1992 from RAJUK to transfer the property to Ms. Shamsun Nahar, who is the mother of the petitioner and opposite party purchased of the suit plot vide registered sale deed No.12734 dated 20.12.1992, and being the owner of the property mutated in her name by the RAJUK on 30.08.1993. On 10.09.1997, Ms. Shamsun Nahar transferred the suit plot to the present petitioner, Shahnewaz Ahmed Shishir, as a gift.

Accordingly, the suit plot was mutated in the petitioner's name by RAJUK on 15.12.1997, and utilities, i.e., electricity, water, sewerage, and gas, connected to the plot in his name, and he regularly paid the above bills. After getting permission and approval from the RAJUK on 18.01.2001, the petitioner gave the property mortgage to the Bangladesh House Building Finance Corporation (BHBFC) and took a loan of Taka.25,00,000/- and constructed a five-storied building and resided there. He then submits that if any plot owner under RAJUK desires to transfer or appoint any attorney or take a loan from any Bank or institution, he should fulfill the following requirements of the internal law of RAJUK, which are as quoted below--

ক্রম	সেবার নাম	সেমা প্রদান পদ্ধতি	প্রয়োজনীয় কাগজপত্র এবং প্রাপ্তিস্থান
১।	প্লট হস্তান্তর/ দানপত্র/ হেবা দলিল/বন্টন দলিল রেজিস্ট্রি অনুমতি	(ক) আবেদনপত্র প্রাপ্তির পর আবেদনের বিষয়টি নিশ্চিতকরণের নিমিত্ত দাতা ও গ্রহীতাকে অত্র অফিসে উপস্থিত হয়ে হাজিরা প্রদানের পত্র প্রেরণ করা হয়।  (খ) পরবর্তীতে দাতা ও গ্রহীতা হাজিরা দিয়ে আবেদনের বিষয়টি নিশ্চিত করলে তা নথিতে উপস্থাপন করা হয় এবং সদস্য (এস্টেট ও ভূমি) মহোদয়ের (প্রযোজ্য ক্ষেত্রে চেয়ারম্যান মহোদয়ের) অনুমোদন শেষে দাতাকে প্রয়োজনীয়	১. দাতা/গ্রহীতার সত্যায়িত ছবি ২. আবেদনপত্রে দাতা কর্তৃক গ্রহীতার স্বাক্ষর সত্যায়ন ৩. ইমারতের নকশার কপি (যদি থাকে) ৪. লিজ দলিল/নামজারী পত্রের সত্যায়িত কপি ৫. সংশ্লিষ্ট প্লট/ফ্ল্যাট বন্ধক থাকলে সংশ্লিষ্ট ব্যাংক হতে ঋণ পরিশোধের ছাড়পত্র/অনাপত্তি বা রেহেন দলিল/দায়মোচন দলিল। ৬. অকুপেন্সী সার্টিফিকেট (২০০৮ বিধি মোতাবেক)। ৭. নামজারী জমা ভাগের প্রস্তাবপত্র, খাজনা

	ফি জমাদানের পত্র প্রদান করা হয়। (গ) ফি জমা দানের পত্রানুযায়ী ফি জমা হলে দাতা ও গ্রহীতাকে আবেদনের বিষয়ে চূড়ান্ত পত্র প্রদান করা হয়	রশিদ (হালসন) ও টি সিআর।
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ক্রম	সেবার নাম	সেমা প্রদান পদ্ধতি	প্রয়োজনীয় কাগজপত্র এবং প্রাপ্তিস্থান
৫।	আম-মোক্তারনামা অনুমোদন/আ মমোক্তারনামা অনুমতি/বাতি ল (প্লট/ফ্ল্যাট)	ক) আবেদনপত্র প্রাপ্তির পর আবেদনের বিষয়টি নিশ্চিতকরণের নিমিত্ত দাতা ও গ্রহীতাকে অত্র অফিসে উপস্থিত হয়ে হাজিরা প্রদানের পত্র প্রেরণ করা হয়।  খ) পরবর্তীতে দাতা ও গ্রহীতা হাজিরা দিয়ে আবেদনের বিষয়টি নিশ্চিত করলে তা নথিতে উপস্থাপন করা হয় এবং সদস্য (এস্টেট ও ভূমি) মহোদয়ের প্রযোজ্য ক্ষেত্রে চেয়ারম্যান মহোদয়ের অনুমোদন শেষে দাতাকে প্রয়োজনীয় ফি জমাদানের পত্র প্রদান করা হয়।  গ) ফি জমা দানের পত্রানুযায়ী ফি জমা হলে দাতা ও গ্রহীতাকে আবেদনের বিষয়ে চূড়ান্ত পত্র প্রদান করা হয়।	(ক) দাতা/গ্রহীতার ১(এক) কপি সত্যায়িত ছবি (খ) আবেদনপত্রে দাতা কর্তৃক গ্রহীতার স্বাক্ষর সত্যায়ন (গ) ইমারতের নকশার কপি (যদি থাকে), (ঘ) লিজ দলিল/নামজারীপত্রের সত্যায়িত কপি (ঙ) সংশ্লিষ্ট প্লট/ফ্ল্যাট বন্ধক থাকলে সংশ্লিষ্ট ব্যাংক হতে ঋণ পরিশোধের ছাড়পত্র/অনাপত্তি বা রেহেন দলিল/দায়মোচন দলিল, (চ) আম-মোক্তারনামা দলিলের মূল কপি/নকল কপি, (ছ) আম-মোক্তার গ্রহীতা কোম্পানী হলে কোম্পানীর মেমোরেন্ডাম এন্ড আর্টিকেলস অফ এ্যাসোসিয়েশন, সার্টিফিকেট ইন কর্পোরেশন এবং বোর্ড সভার সিদ্ধান্ত। (জ) এনআইটি ফটোকপি।

But the opposite party, without complying with the above mandatory provision of RAJUK's law, claimed that her father, Asaduzzaman Choudhury, as an attorney of Mst Samsun Nahar, transferred the suit property by way of gift. He then submits that the said power of attorney was not executed as per the provision of RAJUK. Therefore, both the courts below failed to consider that there is no prima facie title of the defendant. She is a permissive possessor of the suit property, as the petitioner's sister permitted her to live on the 3rd floor of the suit building. In failing to consider doing so, the courts below committed an error of law, resulting in an error in the decision occasioning failure of justice.

Mr. Mohammad Saiful Karim, the learned advocate appearing on behalf of the opposite party, supports the impugned Judgment and order as well as the order of the trial court below, stating that both the courts below correctly and justifiedly passed an order of status quo. Moreover, this court is not empowered to interfere with the Judgment of the 1<sup>st</sup> revisional court below as the petitioner has filed this Civil Revision under Section 115(4) of the Code of Civil Procedure.

I have carefully considered the submission advanced by both parties and perused the impugned judgments. It is the

settled proposition of law that in the case of the temporary injunction, the court is to see whether a fair and arguable case exists in favor of issuing an injunction, and the court needs not to enter into the merit of the case. In the instant case, it appears that the plaintiff-opposite party filed the instant case for permanent injunction instead, both the courts below failed to consider that there are complicated questions of the title of the defendant petitioner involved and the prima facie title of the plaintiff-opposite party is not ascertainable. However, at the trial, these findings do not create any embargo upon the trial court to decide the suit.

Considering the above facts, circumstances of the case, and discussions made herein above, I am of the firm view that both the courts did not correctly appreciate and construe the documents and materials on record in accordance with the law in passing the prayer of recalling the order of status quo/ vacating the order of status-quo dated 08.05.2018 committed an error of law, resulting in an error in the decision occasioning failure of justice. Therefore, there is no bar to consider the Civil Revisional Application filed by the petitioner under Section 115(4) of the Code of Civil Procedure.



As a result, the Rule is made absolutely without any order as to cost.

The impugned Judgment and order dated 19.01.2023 passed by the learned District Judge, Dhaka, in Civil Revision No.242 of 2022 summarily rejecting the revisional application and thereby upholding the order dated 11.10.2022 passed by the learned Joint District Judge, 5<sup>th</sup> Court, Dhaka in Title Suit No.189 of 2022, now pending before the learned Joint District Judge, 5<sup>th</sup> Court, Dhaka is hereby set aside. The application for recalling the order of the status quo filed by the defendant petitioner is allowed, and the order of status quo was granted by the court below on 08.05. 2018 is hereby vacated.

Communicate the judgment and send down the lower court records at once.

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**(MD. SALIM, J).**