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

**CIVIL REVISION NO. 3592 OF 2024**

In the matter of:
An application under Section 115(1) of the Code of Civil Procedure, 1908.

AND

In the matter of:

Rohela Leena Choudhury, daughter of Dr. Abdul Bari Laskar and Nur Jahan Laskar of Flat No. B-4, House No. 50, Road No. 1, Block-1, Police Station- Banani, District- Dhaka represented by her constituted attorney Shaifullah Sojib, Gyanda Nagar, Sabgari-6450, Gurudaspur, Natore.

.... Petitioner

-Versus-

Abdul Kadir Laskar, son of Dr. Abdul Bari Laskar and Nur Jahan Laskar of Flat No. C-5, House No. 50, Road No. 1, Block-1, Police Station- Banani, District- Dhaka and others.

....Opposite-parties

Mr. Ashfaqur Rahman, Advocate
... For the petitioner

No one appears
...For the opposite party no. 1

**Heard and Judgment on 09.12.2024.**

**Present:**

Mr. Justice Md. Mozibur Rahman Miah
And
Mr. Justice Md. Bashir Ullah

**Md. Mozibur Rahman Miah, J:**

At the instance of the plaintiff in Title Suit No. 571 of 2023, this rule was issued calling upon the opposite party nos. 1-4 to show cause as to why the order dated 05.05.2024 passed by the learned Joint District Judge, 1st Court, Dhaka in the said suit rejecting an application for attaching the property before judgment filed under order XXXVIII, rule 5 read with section 151 of the Code of Civil Procedure should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

At the time of issuance of the rule, this court also directed the opposite-parties to maintain status quo in respect of transfer of schedule-'C-5' flat so described in the schedules to the application for attachment for a period of 3(three) months which was lastly extended on 21.11.2024 for another 3(three) months.

The short facts leading to issuance of the instant rule are:

The present petitioner as plaintiff filed the aforesaid suit seeking following reliefs:

> *"**a.** Pass a decree in favour of the plaintiff and against the defendant no. 1 declaring that the plaintiff is entitled to realize the actual sale proceed of schedule B flat as well as damages from the defendant no. 1 as mentioned in schedule no. D below or any other amount as the court may deem fit and proper;*

***b.*** *Pass a decree in favour of the plaintiff and against the defendant no. 1 to pay BDT. 8,50,00,000/- (Taka eight crore fifty lac) as described in Schedule No. D to this plaint or the decreetal amount within a stipulated time as to this court thinks fit and, in default, to realize the said decreetal amount through the court;*

***c.*** *Award interest at the rate of 18% per annum till realization of the same;*

***d.*** *Decree for costs'*

***e.*** *Award such other or further relief or reliefs as your honour may find the plaintiff is entitled to."*

Soon after filing of the suit, the plaintiff also filed an application on 02.08.2023 for attaching the property as mentioned in the schedule to the application that is, flat no. C-5 measuring an area of 2855.89 square feet belonged to the defendant no. 1. Against that application for attachment, the present opposite-party no. 1 who was the defendant no. 1 entered appearance and filed written statement denying the statement made in the plaint as well as written objection against the application for attachment before judgment. Since an urgent order of attachment of the scheduled property was required as the defendant no. 1 was going to sell the property, the plaintiff then filed an application under section 151 of the Code of Civil Procedure for attaching the scheduled property and the learned Judge of the trial court then vide an order dated 22.10.2023 passed an an-interim order of attachment till disposal of the substantive application for attachment. Soon enough, that ad-interim order of

attachment was vacated by the learned Judge of the trial court vide order dated 05.02.2024. Eventually, the substantive application for attachment was taken up for hearing and vide order dated 05.05.2024, the application for attachment was rejected by the learned Judge holding that the plaintiff has failed to assert in her application that the defendant no. 1 was going to transfer the schedule property as well as the defendant no. 1 in his written objection filed against the application for attachment, asserted that he will not transfer the schedule property resulting in there had been no apprehension for the plaintiff that the defendant no. 1 will transfer the property during pendency of the suit.

It is at that stage, the plaintiff as petitioner came before this court and obtained instant rule and order of status quo as has been stated hereinabove.

Mr. Ashfaqur Rahman, the learned counsel appearing for the petitioner upon taking us to the application and by filing a supplementary-affidavit at the very outset submits that the defendant-opposite party no. 1 made an untrue statement in his written objection filed against the application for attachment that, he will not sell out the schedule property though fact remains, on 11.09.2023, the defendant-opposite party no. 1 filed an application before RAJUK seeking permission to sell the property since the scheduled property is a leasehold property that necessitates permission from RAJUK and just 3 days after filing such application for permission from RAJUK, the defendant-opposite party no. 1 entered appearance in the suit by filing a *Vokalatnama* so the apprehension of the plaintiff got material substance but the learned Judge of the trial court

misdirected himself by believing the submission of the defendant no. 1 and wrongly rejected the application which is totally untrue basing on Annexeure-‘1’ annexed with the supplementary-affidavit.

The learned counsel next contends that though the application for attachment before judgment was rejected but for having an order of status quo passed by this Hon’ble court at the time of issuance of the rule, the transfer of schedule flat could not be materialized but if during pendency of the suit, the defendant no. 1 sells the scheduled flat in that case, it is none but the plaintiff would suffer irreparable loss and injury and the learned counsel then submits that this Hon’ble court may dispose of the rule by retaining the order of status quo passed at the time of issuance of the rule till disposal of the suit.

None appeared to oppose the rule though the matter appeared in the list with the name of the learned counsel for the opposite party no. 1.

We have considered the submission so advanced by the learned counsel for the petitioner, perused the revisional application as well as the supplementary-affidavit and all the documents appended therewith.

On going through the impugned order, we find that the learned Judge of the trial court rejected the application for attachment before judgment merely holding that the plaintiff in her application for attachment could not assert that the defendant no. 1 was going to transfer the schedule flat in spite of the fact that the said flat cannot be transferred without the prior permission of RAJUK when the defendant no. 1 in his written objection filed against the application for attachment asserted that he will not transfer the property. But the fact remains otherwise, as on

going through the documents so have been annexed with the supplementary-affidavit filed by the plaintiff-petitioner dated 08.12.2024 which has been annexed as of Annexure-'I' thereof we find that, in order to sell the scheduled flat, the defendant no. 1 has already taken all necessary steps such as applied for taking permission from RAJUK, which clearly dictates that the apprehension of the plaintiff was true and got substance. Having said that, since there has been an order of status quo of this court, the impugned order passed by the learned Judge of the trial court could not take effect.

Moreover, against the application filed by the plaintiff-petitioner under section 151 of the Code of Civil Procedure for passing an interim order of attachment, the defendant-opposite party no. 1 filed a written objection where it has been asserted that "১. যেহেতু বিজ্ঞ আদালত ইতিমধ্যে পূর্বের আদেশটি Vacate করে দিয়েছে। বাদী ইহাতে ক্ষুব্দ হইলে আদেশের বিরুদ্ধে উচ্চ আদালতে যাইতে পারেন। অথচ উচ্চ আদালতে না গিয়া বেআইনীভাবে ১৫১ ধারার দরখাস্ত দেওয়ার আইনগত বিধান নাই। তাই বাদীর অত্র দরখাস্ত দেওয়ার আইনগত বিধান নাই। তাই বাদীর অত্র দরখাস্ত না-মঞ্জুর হইবে। ২. নালিশী ফ্ল্যাট রাজউকের আওতাধীন ফ্ল্যাট। রাজউকের অনুমতি ছাড়া ইহা বিক্রি করা যায় না। বিবাদী ইহা বিক্রয় করিবে না। বাদীনি জানা সত্বেও বারংবার নাটক করে।". But Annexure-'I' annexed with the supplementary-affidavit dated 08.12.2024 clearly falsies the said assertion of the defendant-opposite party no. 1.

At this, the learned counsel appearing for the petitioner very frankly submits that since there has been an order of status quo so the same order if exists, till disposal of the suit none of the parties are likely to be prejudiced. We find substance to the said submission of the learned

counsel for the petitioner. Accordingly, we are inclined to dispose of the rule with direction.

In the result, the rule is disposed of.

The order of status quo passed by this court at the time of issuance of the rule will continue till disposal of the suit.

However, the learned Judge of the trial court is hereby directed to dispose of the Title Suit No. 571 of 2023 as expeditiously as possible preferably within a period of 3(three) months from the date of receipt of the copy of this judgment.

Let a copy of this judgment be communicated to the learned Joint District Judge, 1st Court, Dhaka forthwith.

**Md. Bashir Ullah, J:**

I agree.