In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)
Present:
Mr. Justice Md. Lutfor Rahman

Civil Revision No. 2816 of 2024

In the matter of:

Naushad Imtiaz
....Plaintiff-Petitioner.
-Versus-
Sultana Nilufar Banu and others
.....Defendants-Opposite Parties.

Ms. Tasmia Prodhan, Advocate
.....for the Plaintiff-Petitioner.

Ms.Farah Nusrat, Advocate
.....for the Defendants-Opposite Parties.

Heard on 23.10.2025, 05.11.2025, and Judgment on: 11.11.2025.

Md. Lutfor Rahman, J.:

This Rule was issued calling upon the Opposite Parties Nos.1 and 2 to show cause as to why the Judgment and Order No.2 dated 27.05.2024 passed by the learned Senior District Judge, Dhaka in Civil Revision No. 85 of 2024 dismissing the revisional application summarily as not maintainable and thereby affirming the Order No. 18 dated 11.03.2024 passed by the learned Joint District Judge, 1st Court, Dhaka in Money Suit No. 79 of 2021 rejecting an application under Order 38 Rule 5 read with section 151 of the Code of Civil Procedure for attaching the scheduled property before judgment should not be set aside and/or

pass such other or further orders as to this Court may deem fit and proper.

Short facts necessary for the disposal of this Rule are that the Petitioner (as plaintiff) instituted Money Suit No. 79 of 2021 before the Court of Joint District Judge, 1st Court, Dhaka for recovery of Taka 1,70,00,000/ (Taka one crore seventy lac) only.

The case of the plaintiff, in brief, is that the defendants nos. 1 and 2 (the instant opposite parties 1 and 2) are his mother and the only sister of the plaintiff respectively. Both the defendants jointly owned the scheduled property which was purchased by father of the plaintiff in the joint name of the defendant nos. 1 and 2. Since all the brothers and sisters of the defendant no.1 are permanent resident of USA and since the defendant no. 2 was also planning to settle in USA after her marriage, both the defendants orally expressed their desire to transfer the scheduled property in favour of the plaintiff. In the year 2009 the suit property was in need of some civil and interior work and accordingly at the promise/assurance of the defendant nos.1 and 2, the plaintiff carried out the civil and interior work at his own cost, the total of which amounts to Taka 70,00,000/- (seventy lac) only. In the meantime, the plaintiff and the defendant nos. 1 and 2 sold a house which they inherited from father of the plaintiff and defendant no. 2 and the husband of the defendant no.1. Their portion of the house was sold at Taka 3,06,00,000/ amongst which

the portion of the plaintiff as the only son of his father is Taka 1,75,00,000/ only. After receiving the sale proceeds, the defendant no.1 transferred only Taka 75,00,000/ to the plaintiff and kept the rest of the amount as the consideration money of transferring the suit property, the flat. Since then the plaintiff had been requesting the defendant nos. 1 and 2 to execute and register the transfer deed in favour of the plaintiff but both of them were delaying the matter. In the meantime, the plaintiff received a legal notice from the defendant no. 2 asking him to vacate the flat. Defendant No.2 also claimed through the said notice that the defendant no.1 transferred her portion of the flat to the defendant no. 2 and accordingly the defendant no. 2 became the sole owner of the said flat. To settle the matter, the plaintiff requested the defendants to return the money he spent on the flat and the sale proceeds kept by the defendant no.1, but they refused to do so and told the plaintiff that the defendant no. 2 is going to sell the flat to some third party, and hence the instant Money Suit was filed for recovery of Taka 1,70,00,000/-.

After filing the money suit, the plaintiff, as applicant filed an application for attachment before judgment under Order 38 Rule 5 to be read with section 151 of the Code of Civil Procedure stating mostly the facts of the plaint and additionally mentioning the fact that if the defendants actually sells the suit property it would not be possible to recover the money as both the defendants

permanently live in USA and hence praying for attachment of the property in question till the judgment and decree in the instant Money Suit is passed.

The opposite party Nos.1 and 2, as defendants, contested the suit by filing a written statement and also filed a written objection to the application for attachment before judgment denying almost all the allegations and stating inter alia, that the suit itself and also the application both are not maintainable in the eye of law and that the claims of the plaintiff are false, made up and baseless, that the application is barred by law and that the plaintiff has no right to file the application for attachment before judgment, that the suit is barred by law of limitation and it lacks any cause of action, that balance of convenience and inconvenience is not in favour of the plaintiff and that the plaintiff has failed to prove his case, hence the application is liable to be rejected. The defendants further contended that the claim of the plaintiff to the effect that defendant no.1 wanted to transfer her 50% ownership of the flat to the plaintiff is not correct and the power of attorney dated 09.05.2013 does not mention anything about such intention to transfer, and that the defendant no. 2 as the owner bore all the expenses of civil and interior work of the concerned flat and hence the application is liable to be rejected.

After hearing the application and the written objection, the Joint District Judge, 1st Court, Dhaka by Order No. 18 dated

11.03.2024 passed in Money Suit No 79 of 2021, rejected the application under Order 38 Rule 5 to be read with section 151 of the Code of Civil Procedure for attaching the scheduled property before judgment stating inter alia that the plaintiff has no cause of action and that the application was filed only to harass the defendants.

Being aggrieved by and dissatisfied with the aforesaid Order no.18 dated 11.03.2024, the plaintiff as petitioner filed Civil Revision No. 85 of 2024 in the Court of District Judge, Dhaka. The learned Senior District Judge after hearing the parties in Civil Revision No. 85 of 2024, passed the impugned Judgment and Order No.2 dated 27.05.2024 rejecting the said revisional application summarily as being not maintainable and upheld the decision of the Joint District Judge, 1st Court, Dhaka.

Being aggrieved by and dissatisfied with the Judgment and Order No.2 dated 27.05.2024 passed by the District Judge Court, Dhaka in Civil Revision No. 85 of 2024, the Plaintiff-Petitioner preferred this Civil Revisional Application.

Ms.Tasmia Prodhan, the learned advocate for the petitioner, who was not present during the hearing, had the following grounds mentioned in the instant Civil Revisional application, stating *inter alia* that the defendant no.2 has repeatedly threatened the plaintiff that she is coming to Bangladesh to sell the flat and the same has been clearly mentioned in the plaint and the learned

courts below erred in law in not considering the same; that the defendants permanently reside in USA and after initiation of the instant suit, they have become desperate to sell the concerned flat which will frustrate any judgment or award that may be passed in favour of the plaintiff; that admittedly the plaintiff is in possession and enjoyment of the flat in question, that defendants are permanent residents of USA and as such the balance of convenience and inconvenience is in favour of the Plaintiff.

Ms. Farah Nusrat, the learned Advocate appearing for the opposite parties submits that the sole purpose of an attachment before judgment under Order 38 Rule 5 of the Code of Civil Procedure is to prevent the defendant from disposing of their own property with the intent to obstruct or delay the execution of any decree that may be passed against them in the suit. This means that the property in question must belong to the defendant against whom the plaintiff has a claim, and that it can not be a property of a third-party. However, in the instant Civil Revision, the plaintiff-petitioner is seeking an attachment of the scheduled property which is solely owned by the defendant-opposite party no.2, for a vexatious claim of the plaintiff-petitioner against the defendant-opposite party no.1 who has no interest whatsoever with regard to the scheduled property. Thus, an attachment before judgment of the scheduled property belonging solely to the defendant-opposite party no.2, for the plaintiff-petitioner’s claim against the

defendant-opposite party no.1, is totally unwarranted and legally unfounded.

She submits that as per the principle laid down in the decision of the Apex Court in **50 DLR(AD) 21**, the power of attachment before judgment being a power interfering with a party's right to enjoy its own property, the court should be circumspect in allowing the prayer for such attachment. Thus, the plaintiff-petitioner's mere sweeping statement and vague allegations against the defendants-opposite parties, without any concrete evidence or particular in support, clearly failed to establish a *prima-facie* case against the defendants-opposite parties for getting an order for attachment before judgment.

She further submits that a mere bald averment that the defendants-opposite parties are conspiring to alienate the property is not sufficient and that the essential requirement for an order of attachment before judgment is the ***malafide*** or ***dishonest intention*** in disposing of the property ***in order to obstruct or delay the execution of any decree*** that may be passed against the defendants-opposite parties, which the plaintiff-petitioner miserably failed to prove in all respects. Vague or general allegations without any material are insufficient to invoke the power of the Court in this regard, as laid down in the decision of the Apex Court in **31 DLR (AD)(1979)**.

She submits that the plaintiff-petitioner completely failed to satisfy any of the conditions of attachment. That the scheduled property does not belong to the defendant-opposite party no.1 against whom the claim is made; there is no evidence to the effect that the defendant-opposite party no.2 who owns the scheduled property is about to dispose of the scheduled property; there is also no evidence to the effect that the reason of disposal (if any) by the defendant-opposite party no.2 is to obstruct or delay the execution of a decree that may be passed against her. Thus, any order of attachment on the scheduled property before judgment will just be an instrument of oppression on the defendant-opposite party no.2, thereby unfairly interfering with the defendant-opposite party no.2's constitutional right to enjoy her own property.

She further submits that balance of convenience and inconvenience lies in favour of the defendant-opposite party no.2 and not in favour of the plaintiff-petitioner, because the scheduled property is undisputedly owned by the defendant-opposite party no.2, and therefore without fully satisfying the conditions of an attachment before judgment, such an order will unfairly restrain the defendant-opposite party no.2 to legally exercise her rights over the scheduled property, regardless of whether she stays in Bangladesh or in USA. While the plaintiff-petitioner, without having made any *prima facie* case against the defendants-opposite

parties and with all the vague and unsubstantiated allegations against the defendants-opposite parties, cannot be said to have the balance of convenience in his favor simply because he filed a suit against the defendants-opposite parties and was only permitted to stay in the scheduled property by the defendant-opposite party no.2.

She further submits that the plaintiff-petitioner, only to manipulate the legal proceeding, filed the vexatious litigation and the application for attachment before judgment just within 06 (six) days of the defendant-opposite party no.2 filing the declaratory suit against the plaintiff-petitioner to recover possession of the scheduled property. Only with an ulterior motive and as a pressure tactic to harass and extort money from the Defendant-Opposite Party No.1 (Plaintiff-Petitioner's elderly mother) and restrain the defendant-opposite party No.2 (Plaintiff-Petitioner's younger sister) from exercising her genuine legal rights and ownership over the scheduled property, the Plaintiff-Petitioner misused the legal procedure with frivolous and vexatious claims and as a lever to coerce the defendants-opposite Parties to come to terms, which is tainted with an ulterior motive and thus clearly an abuse of process of law.

As observed earlier, the learned advocate for the petitioner, Ms. Tasmia Prodhan, was not present on any of the dates scheduled for hearing of the instant Civil Revision. The learned

advocate for the opposite parties, Ms. Farah Nusrat, gave her best effort to ensure the presence of the petitioner's advocate for conducting the hearing in presence of the learned advocate for the petitioner, but it appears that the learned advocate for the Petitioner intentionally avoided the hearing during the entire proceeding and even refused to receive a copy of the counter affidavit which was submitted by the learned advocate for the opposite parties before this Court. In this regard, the learned advocate for the opposite parties submitted that this Court has the right to dispose of the rule on merits upon perusing the records and hearing the learned advocate for the opposite parties, instead of discharging the rule for default due to the absence of the learned advocate for the petitioner, and cited a decision of the Apex Court in **1984 BLD (AD) 234**.

I have heard the learned advocate for the opposite parties at length, and perused the Civil Revisional Application, the impugned judgment and all the materials on record.

In order to obtain an order of attachment before judgment, the plaintiff shall have to satisfy the court the conditions in terms of the requirement laid down in rule 5. The plaintiff shall have to satisfy the courts-

(a) that the defendant is about to dispose of the whole or any party of his property; or

(b) that the defendant is about to remove the whole or any part of his property form the local limits of the jurisdiction of the court; and

(c) that the defendant is intending to do so to cause obstruction or delay in the execution of any decree that may be passed against him.

Mere vague and general allegations that the defendants are about to dispose of the property or remove it beyond the jurisdictions of the court will not do, the allegations must be supported by particulars.

The essential requirement for an order of attachment before judgment is the malafide or dishonest intention of the defendants in disposing of property or removing it from the jurisdiction of the court and a mere bald averment that the defendants are contemplating to alienate the property is not sufficient. The court must be satisfied not only that the defendants are about to dispose of their property or remove it from its jurisdiction but also that this disposal or removal is with the object of obstructing or delaying the execution of the decree that may be passed against them. This satisfaction is to be judicial satisfaction based on some materials which are to be found in the affidavit filed by the party or otherwise. That the plaintiff has failed to make out a prima facie case to the effect that the defendants are doing or are about to do the acts specified in rule.5 and accordingly the application for

having an order of attachment before judgment was rightly rejected by the courts below with concurrent findings.

It appears that the impugned judgment and order passed by the District Judge Court, Dhaka is correct, based on its findings that the plaintiff-petitioner has no title, interest or ownership on the scheduled property and that no information or evidence has been adduced by the plaintiff-petitioner before the Court to the effect that the scheduled property will be sold or that any steps have been taken by the defendants-opposite parties for selling the scheduled property. The plaintiff-petitioner's mere sweeping statement and vague and general allegations without any concrete evidence or particular in support against the defendants-opposite parties, failed to establish a *prima-facie* case against the defendants-opposite parties. A mere bald averment that the defendants-opposite parties are conspiring to alienate the property is not sufficient. The essential requirement for an order of attachment before judgment is the ***malafide*** or ***dishonest intention*** in disposing of the property ***in order to obstruct or delay the execution of any decree*** that may be passed against the defendants-opposite parties, which is missing in all respects. Moreover, an attachment of property before judgment under Order 38 Rule 5 of the Code of Civil Procedure is only applicable when the concerned property belongs to the party against whom the claim is made. In the instant matter, the petitioner’s monetary

claim is solely against the defendant opposite party no.1, while the property in question for attachment belongs solely to the opposite party no.2. The scheduled property does not belong to the defendant-opposite party no.1 against whom the claim is made; no evidence has been adduced to the effect that the defendant-opposite party no.2 who owns the scheduled property is about to dispose of the same; no evidence has been adduced to the effect that the reason of disposal (if any) by the defendant-opposite party no.2 is to obstruct or delay the execution of a decree that may be passed against her. It appears that the plaintiff-petitioner has failed to satisfy each and every condition for attachment before judgment under Order 38 Rule 5 of the Code of Civil Procedure and such application has been made by the plaintiff-petitioner to use it as an instrument of oppression against the defendants-opposite parties only with the motive to cause them unnecessary harassment.

Considering the facts and circumstances of the case, I find no substance in this Rule.

Accordingly, the Rule is discharged without any order as to costs.

The Judgment and Order No.2 dated 27.05.2024 passed by the learned Senior District Judge, Dhaka in Civil Revision No. 85 of 2024 rejecting the revisional application summarily and thereby affirming Order No.18 dated 11.03.2024 passed by the learned

Joint District Judge, 1st Court, Dhaka in Money Suit No. 79 of 2021 is hereby affirmed.

The order of the injunction granted earlier in the instant Civil Revision is hereby vacated.

Send down the Lower Court records with a copy of the Judgment to the courts below at once.

(**Md. Lutfor Rahman.J)**

Md. Atikur Rahman, A.B.O