

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

Present:

MR. JUSTICE ABDUR RAHMAN

Civil Revision No. 3196 of 2024

Amena Khatun Popy and another

...Defendants-Appellants

Petitioners

-Versus-

Sheikh Nasim Uddin and others

...Plaintiff-Respondent

Opposite Parties

Mr Partha Sarathi Mondal, Advocate

..... For the petitioners

Mr Md. Alamgir Mostafizur Rahman, with

Mr Khandaker Ashraful Alam and Mr Manjurul

Hoque, Advocates

..... For the opposite parties

Date of Hearing: 28.06.2026, 29.06.2026 and
08.07.2026 A.D.

Date of Judgment: 13.07.2026 A.D, Monday, at
3:00 P.M. [২৯ আষাঢ় ১৪৩৩ বঙ্গাব্দ]

JUDGMENT

Abdur Rahman, J:

This Rule, at the instance of the defendant-petitioners, was issued under section 115(1) of the Code of Civil Procedure, 1908, calling upon the opposite party No.1 to show cause as to why the judgment and order No.13 dated 19.05.2024 passed by the learned Senior District Judge, Khulna, in Miscellaneous Appeal No.37 of 2023 should not be set aside and/or such other or further order or orders be passed as to this Court may seem fit and proper.

At the time of issuance of the Rule, operation of the impugned judgment and order was stayed for six months, which order has subsequently been extended till disposal of the Rule.

The facts relevant to the Rule's disposal may be briefly stated.

The plaintiff-opposite party No.1 instituted Title Suit No.50 of 2022 and initially filed an application for a temporary injunction under Order XXXIX, Rules 1 and 2, read with Section 151 of the Code of Civil Procedure. The

contesting defendants entered an appearance and filed written statements denying the material allegations made in the plaint. Subsequently, on 18.05.2023, the plaintiff filed another application under Section 151 of the Code, praying for a temporary injunction.

The present petitioners contested the said application by filing a written objection. Upon hearing the parties, the learned Joint District Judge, 1st Court, Khulna, by Order No.26 dated 01.06.2023, allowed the application and restrained defendant Nos.1-3 from withdrawing Tk.57,68,629.53 covered by Award No.30 in L.A. Case (General) No.03/2020-21 and simultaneously restrained defendant Nos.4-7 from releasing the said amount to defendant Nos.1-3 until disposal of the suit.

Being aggrieved thereby, defendant Nos. 2 and 3 preferred Miscellaneous Appeal No. 37 of 2023 before the learned District Judge, Khulna.

During the pendency of the appeal, the appellants filed an application praying for a stay of the operation of the order of temporary injunction. By Order No. 6 dated 28.08.2023,

the learned Senior District Judge stayed the operation of the order dated 01.06.2023 until the disposal of the appeal.

Thereafter, on 11.03.2024, the plaintiff filed an application under section 151 of the Code seeking recall of the stay order, alleging, *inter alia*, that the appellants had taken advantage of the stay order and withdrawn the compensation money, thereby frustrating the very subject matter of the suit.

Upon hearing the said application, the learned Senior District Judge, by the impugned Order No.13 dated 19.05.2024, directed the appellants to deposit the withdrawn compensation money by pay order and further directed them to show cause why criminal proceedings should not be initiated against them.

Being dissatisfied with the said order, the petitioners have invoked this Court's revisional jurisdiction.

Mr Partha Sarathi Mondal, the learned Counsel appearing for the petitioners, submits that the learned appellate Court fundamentally misconstrued the contents of the stay application and proceeded on an assumption which

has no factual foundation. According to him, the appellate Court erroneously recorded that the appellants had represented that the stay was sought only to prevent the plaintiff from withdrawing the compensation money, although no such statement appears anywhere in the application dated 31.07.2023.

He further submits that once the operation of the injunction order had been stayed by a competent Court, there remained no legal embargo preventing the petitioners from receiving compensation in accordance with the acquisition proceedings. Consequently, the subsequent finding that withdrawal of the compensation amounted to contemptuous conduct is wholly unsustainable.

Referring to Annexure-J to the supplementary affidavit, the learned Counsel further submits that the compensation was released after completion of the statutory acquisition proceedings and after disposal of the objections raised before the Acquisition Officer. The plaintiff participated in those proceedings but did not challenge the Acquisition Authority's decision before the forum prescribed by law.

It is lastly submitted that the impugned order proceeds entirely upon a misconception of facts and law and consequently suffers from misreading of the record, non-consideration of material facts and non-application of judicial mind.

Conversely, Mr Md. Alamgir Mostafizur Rahman, the learned Counsel appearing for opposite party No.1, submits that the suit is one for partition amongst co-sharers and that the temporary injunction was rightly granted to preserve the subject matter of the litigation.

He contends that the petitioners obtained the order of stay by misleading the appellate Court and thereafter withdrew the compensation money in abuse of the judicial process. Therefore, the learned appellate Court rightly exercised its inherent jurisdiction under section 151 of the Code of Civil Procedure and also its power under section 21 of the General Clauses Act, 1897, to recall or modify its earlier order and to restore the position existing before the abuse of the Court's process.

He further submits that Courts are competent, in appropriate cases, to issue mandatory interlocutory directions restoring the *status quo ante* and places reliance upon the decision reported in **35 DLR (AD) 42**.

I have considered the submissions of the learned Counsel, examined the revisional application and perused the materials available on record.

The principal question requiring determination is whether the learned appellate Court was justified in directing the appellants to redeposit the compensation money and simultaneously calling upon them to explain why criminal proceedings should not be initiated against them.

A careful examination of Order No. 6 dated 28.08.2023 (Annexure-H1) demonstrates that the learned appellate Court merely stayed the operation of the order of temporary injunction passed by the trial Court, pending disposal of the miscellaneous appeal.

Thereafter, by dint of the aforesaid order, the defendants-petitioners withdrew the compensation amount from the acquisition case, as evidenced by Annexure-J to the

petitioners' supplementary affidavit. Hereinafter, the plaintiff-respondent filed an application on 11.03.2024, for vacating the earlier stay order dated 28.08.2023 under Section 151 of the Code of Civil Procedure, 1908, and the learned Appellate Court was pleased to pass the impugned order dated 19.05.2024, observing in the following way:

“নথি পর্যালোচনায় প্রতিভাত হয় যে, তর্কিত আদেশ লঙ্ঘন করে রেস্পনডেন্ট-বাদী যেন কোন কার্যক্রম করতে না পারে অর্থাৎ ক্ষতিপূরণের অর্থ উত্তোলন করতে না পারে তন্মর্মে দেওয়ানী ৫০/২০২২নং মকদ্দমার ইং ০১/৬/২০২৩ তারিখের আদেশের কার্যকারিতা স্থগিতের প্রার্থনায় আপীলকারী-বিবাদীপক্ষ কর্তৃক স্বয়ং ইং ৩১/৭/২০২৩ তারিখে দরখাস্ত আনয়ন করেন- যা অত্র আদালত ইং ২৮/৮/২০২৩ তারিখের ৬নং আদেশে মঞ্জুর করেন। কিন্তু পরবর্তীতে দেখা যায় যে, বিবাদী- আপীলকারীগণ স্বয়ং তর্কিত আদেশকে লঙ্ঘন করে ক্ষতিপূরণের টাকা তুলে নিয়েছেন- যা চরমভাবে আদালতের প্রতি বৃদ্ধাঙ্গুলি প্রদর্শনের নামান্তর। আপীলকারীর উক্তরূপ আচরণ আদালত অবমাননার সামিল। বর্ণিত প্রেক্ষাপটে আগামী ইং ০৪/৮/২০২৪ তারিখ বিবাদী-আপীলকারীগণকে পে অর্ডার যোগে উত্তোলিত ক্ষতিপূরণের টাকা জমা প্রদান করতে নির্দেশ প্রদান করা হল এবং কেন আপীলকারীপক্ষের বিরুদ্ধে ফৌজদারী কার্যক্রম গৃহীত হবে না তন্মর্মে উক্ত ধার্য তারিখের মধ্যে কারণ দর্শানোর নির্দেশ দেওয়া গেল।”

From the aforesaid order, it is evident that while disposing of the application dated 11.03.2024, the learned appellate Court observed that the stay had been granted

upon the representation that the plaintiff should not be allowed to withdraw the compensation money.

Nevertheless, on meticulous examination of the stay application dated 31.07.2023 (Annexure-G), this Court finds that no such assertion is contained therein. The reasoning adopted in the impugned order is therefore founded on a factual premise that is wholly absent from the record.

However, judicial orders must invariably rest upon the pleadings, materials and submissions actually placed before the Court. A finding based on facts that do not appear in the record cannot be sustained in law.

The chronology of events further demonstrates that the appeal was filed on 22.06.2023, the stay application on 31.07.2023, and the stay order passed on 28.08.2023. The plaintiff sought recall of that order only on 11.03.2024, long after the petitioners had acted upon the subsisting stay order.

It is equally significant that the plaintiff admittedly participated in the acquisition proceedings by raising

objections before the competent authority. The materials available on record further indicate that the compensation was disbursed pursuant to the acquisition proceedings after completion of the statutory process.

It is no doubt true that every Court possesses inherent jurisdiction under section 151 of the Code of Civil Procedure and may also exercise powers recognized under section 21 of the General Clauses Act, 1897, to rescind, vary or recall its own order where circumstances so warrant. Such powers, however, are discretionary and must be exercised judiciously, with a correct appreciation of the facts and materials on record. An order passed on an erroneous factual assumption cannot be sustained merely because the Court possessed jurisdiction to pass an appropriate order.

To properly resolve the controversy raised in this Rule, it is indispensable to examine the statutory framework set out in sections 8(2), 11, and 47 of the স্থাবর সম্পত্তি অধিগ্রহণ ও হুকুমদখল আইন, ২০১৭. These provisions are not isolated in operation; rather, they constitute an integrated legislative scheme regulating the preparation of awards, adjudication of

competing claims to compensation and the forum competent to resolve such disputes. Section 11 creates a self-contained statutory mechanism authorising the Deputy Commissioner to inquire into and determine rival claims or objections concerning entitlement to compensation payable in respect of acquired property. Section 8(2) reinforces that mechanism by conferring finality upon the award prepared by the Deputy Commissioner, subject to the provisions and remedies expressly contemplated by the Act itself. Complementing these provisions, section 47 expressly circumscribes the jurisdiction of Civil Courts by prohibiting their interference in matters for which the Act has prescribed a complete, adequate and efficacious statutory remedy. The conjoint reading of these provisions unmistakably manifests the legislative intention that disputes relating to the entitlement, apportionment or disbursement of compensation should ordinarily be adjudicated by the statutory authorities constituted under the Act, thereby preserving the integrity of the special statutory mechanism and avoiding parallel adjudication before Civil Courts except where the statute itself permits such intervention.

However, without expressing any concluded opinion regarding the ultimate maintainability or merits of the pending partition suit, it prima facie appears that the dispute relating to the disbursement of compensation is governed by the special statutory framework under the স্থাবর সম্পত্তি অধিগ্রহণ ও হুকুমদখল আইন, ২০১৭. These aspects undoubtedly require careful consideration by the appellate Court while deciding the miscellaneous appeal on its own merits.

The reliance placed upon **35 DLR (AD) 42** is equally misplaced. In that case, the mandatory interlocutory injunction was granted to restore possession after the defendants had altered the physical condition of the disputed passage by constructing a wall during the pendency of the litigation. The controversy therein arose entirely from acts committed in violation of the rights asserted in the suit itself.

The factual foundation of the present case is altogether different. Here, the compensation was released pursuant to statutory acquisition proceedings, and the controversy concerns the legal consequences of withdrawing that compensation after the temporary injunction had already

been stayed by a competent appellate Court. The ratio of the cited decision is, therefore, clearly distinguishable and does not govern the facts of the present case.

Upon an overall consideration of the record, this Court is satisfied that the learned appellate Court misread the stay application and failed to consider material facts appearing in the record. The impugned order, therefore, suffers from a misreading of the evidence, non-consideration of material particulars, and non-application of judicial mind, resulting in an error in the decision, occasioning a failure of justice.

Accordingly, the Rule succeeds.

The Rule is made absolute without any order as to costs.

The Judgment and Order 13 dated 19.05.2024 passed by the learned Senior District Judge, Khulna, in Miscellaneous Appeal 37 of 2023, is hereby set aside.

In view of the foregoing discussion and the ultimate disposal of the Rule, the order of stay earlier granted by this Court stands recalled and vacated.

The learned Senior District Judge, Khulna, is directed to dispose of Miscellaneous Appeal 37 of 2023 expeditiously, strictly in accordance with law and in light of the observations made herein, without being influenced by any observation touching the merits of the pending title suit.

Let a copy of this judgment be transmitted to the Court concerned forthwith.

(Abdur Rahman, J.)