

Present:-

Mr. Justice Mahmudul Hoque

Civil Revision No. 5412 of 2024

Md. Alomgir being dead his legal heirs;

(a) Ms. Shova Alom and others

..... Petitioners

-Versus-

Banani Property Development Limited,
represented by its Managing Director and
others

..... Opposite-Parties

Mr. Khairul Alam Choudhury, Senior
Advocate with

Mr. Syed Mehedi Hasan,

Mr. Md. Nur-E-Alam Chowdhury,

Mr. Jobayer Mohammad Aourangzed and

Mr. S.R. Md. Liton, Advocates

... For the Petitioners

Mr. Mustafizur Rahman Khan, Senior
Advocate with

Mr. M.M. Shafiullah, Advocate

... For the Opposite Party Nos. 1-3

Judgment on 01.12.2025

In this revision Rule was issued calling upon the opposite party Nos. 1-3 to show cause as to why the impugned judgment and order dated 08.07.2024 passed by the learned Additional District Judge, 5th Court, Dhaka in Miscellaneous Appeal No. 20 of 2023 disallowing the appeal and thereby affirming the order dated 30.11.2022 passed by the learned Senior Assistant Judge, 2nd Court, Dhaka in Title Suit No. 244 of 2017 rejecting the application under Order 39 Rule 1 and 2 of the Code of Civil Procedure for temporary injunction in respect of transfer of shares and

assets of the defendant No. 1 company should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

Facts relevant for disposal of this Revision, in short is that, the predecessor of the Petitioners namely Md. Alomgir as plaintiff, filed Title Suit No. 244 of 2017 in the court of learned Senior Assistant Judge, 2nd Court, Dhaka against the opposite Party Nos.1-3 and others, as defendants, praying a decree of declaration declaring that the plaintiff is still shareholder-director of Banani Properties Limited and transfer of shares of the plaintiff in favour of the principal defendant Nos. 2 & 3 by creating forged and fraudulent share transfer instrument dated 28.01.2007 and affidavit dated 31.01.2007 by false personation, collusion and unholy alliance with the office of the pro-forma defendant is illegal, void and not binding upon the plaintiff with two other declarations, claiming that the plaintiff is shareholder-director of Banani Properties Development Limited, a company registered under Companies Act, 1994, having No. C-31445(566)/96. The plaintiff's father late Haji Md. Shahabuddin was the founder of the company and worked as Managing Director of the company. The plaintiff is a founder member and sponsor shareholder-

director of the company. He has been ousted from the company by the principal defendants in collusion and unholy alliance with each others by creating forged and fraudulent share transfer instruments, when the plaintiff was sick and under medical treatment for mental disorder caused by drug addiction. The plaintiff had no knowledge about the illegal transfer of his shares and as such, the plaintiff has become constrained to file the present suit against the illegal transfer of shares of the plaintiff.

The defendant-opposite party Nos. 1-3 have been contesting the suit by filing written statement denying all the material allegations made in the plaint stating *inter alia*, that the father of the Plaintiff Md. Shahabuddin became the Chairman and Managing Director of the aforesaid Company and running the Company smoothly. But Md. Shahabuddin died in the year 2005 leaving behind the plaintiff and 6-9 pro-forma defendants as his 5 sons and pro-forma defendant No. 5 as his daughter and pro-forma defendant No. 4 as his wife. After the death of Md. Shahabuddin, pro-forma defendant No. 4, Mrs. Sajeda Begum became the Chairman of the company and pro forma defendant No.5 became the Managing Director of the Company. Thereafter the defendant No. 1 i.e. Banani Property development Ltd. could not run smoothly &

properly. As a result the then director and shareholder of the defendant No. 1 took a decision to sell out the company and they made proposal to the defendants to purchase the same. The defendant Nos. 2 and 3 are husband and wife being requested, they approached the then shareholders of the company i.e. plaintiff and defendant Nos. 4-9. After long discussion, the Plaintiff and the pro-forma defendant Nos. 4-9 agreed to sell their shares at a consideration of Tk. 4,25,00,000/- (Taka Four Crore Twenty Five Lac). Among the shareholders, the Plaintiff on 28.01.2006, executed instrument of transfer of shares in favour of defendant No. 2 transferring 100 shares of Tk. 100/- each which was witnessed by Md. Helal Uddin, Advocate of Bangladesh Supreme Court and Ahsan Habib, Advocate and Tax consultant. Thereafter, a notice was served upon the Directors and share- holders of the Defendant No.1 Company stating that a meeting of the company would be held on 10.02.2006 at the registered office of the Defendant No.1 for transfer of shares in favour of the instant Defendant No. 2 and the notice was duly received by all concerns. Thereafter, on 10.02.2006 a meeting was held wherein the transfer of share by the plaintiff in favour of the defendant No. 2 was approved. That on 05.11.2006, the plaintiff and pro-forma defendant Nos. 4-9 filed an

objection before the RJSC requesting them not to transfer their shares in favour of anyone alleging that no decision was taken by the Board Meeting of the Company to transfer the shares. Thereafter, they on 09.11.2006, filed an application before the RJSC by affixing their respective photos. Moreover, on 12.11.2006, the plaintiff and pro-forma defendant Nos. 4-9 issued a legal notice by their learned lawyer, namely Barrister Shafique Ahmed, Senior Advocate, to defendant Nos. 2-3 requesting them to refrain from representing defendant No. 1 alleging that not share transfer happened lawfully. As a result the defendants approached the plaintiff and defendant Nos. 4-9 and discussed the whole things with them. After a long discussion finally they agreed to renounced their claim if these defendants agree to give them Tk. 1,00,00,000/ (one crore) more. As a result, these defendants compelled to give them Tk. 1,00,00,000/ (One Crore) and they withdrawn their objection. The Plaintiff further on 14.01.2007, executed instrument of transfer of shares in favour of defendant No. 2 transferring 29 shares of Tk.100/- each which was witnessed by Md. Helal Uddin, Advocate of Bangladesh Supreme Court and Ahsan Habib, Advocate and Tax consultant and transfer of shares were approved in the meeting of board of directors held

on different dates following due process of law. Finally, the office of the Registrar of the Joint Stock Companies and Firms accepted the transfer of shares with effect from 10.04.2006 wherein the RJSC signed the Form No. VI on 12-02-2007 and thereafter these defendants changed the address of the Company.

During pendency of the suit, the plaintiff filed an application under Order 39, Rule 1 and 2 of the Code of Civil Procedure, 1908 praying for temporary injunction against the defendant Nos.1-3 in the following term:

“Wherefore, it is most humbly prayed that the learned court would be kind enough to pass an order of temporary injunction restraining the defendant No.1-3 from making any arrangement of shares of the company including the scheduled shares of the plaintiff of Banani Properties Development Limited ((Registration No.C-31445(566)/96) and assets of the said company to anybody else till disposal of the suit.”

The defendant opposed the application by filing written objection.

The trial Court heard the application for injunction and written objection and after hearing by the judgment and order dated 10.03.2024 rejected the application for injunction. Thereafter, the plaintiff moved to the District Judge, Dhaka by filing Miscellaneous Appeal No. 20 of 2023. Initially, the appeal was admitted for hearing and the same was transferred to the Court of Additional District Judge, 5th Court, Dhaka for hearing who after hearing by the impugned judgment and order dismissed the appeal. At this

juncture, the petitioners being heirs of Md. Alomgir moved this court by filing this revisional application under Section 115(1) of the Code of Civil Procedure, 1908 and obtained the present Rule and order of status quo.

The Opposite Party Nos.1-3 challenged the said interim order 08.07.2024 by preferring Civil Petition for Leave to Appeal No. 4067 of 2024 before the Appellate Division of the Supreme Court of Bangladesh. On 08.12.2024 the Hon'ble Judge in Chamber stayed the order of status quo. Subsequently, upon hearing, the Civil Petition for Leave to Appeal, on 27.01.2025, the Appellate Division disposed of the matter maintaining order of stay till disposal of the rule and directed the High Court Division to dispose of the Rule within 03 (three) weeks from the date of receipt of the copy of the order positively. Subsequently, the order was modified by giving direction to dispose of the matter by any competent Bench of the High Court Division, accordingly, fixed the matter before this Court at the instance of the respondent Nos. 1, 2 and 3.

Mr. Khairul Alam Choudhury, Senior Advocate with Mr. Syed Mehedi Hasan, Mr. Md. Nur-E-Alam Chowdhury, Mr. Jobayer Mohammad Aourangzed and Mr. S.R. Md. Liton, learned Advocates appearing for the petitioners submit that disputed signature purportedly

shown to have been signed by the plaintiff in 117-Forms dated 28.01.2006 and 14.01.2007 does not appear to be same signatures of the person who signed the said document i.e., in his Passports, Memorandum and Articles of Association as well as NID card which have been issued by the Government of Bangladesh which amply and apparently proved prima facie on preponderances of probabilities that transfer of share in the Banani Property Development Limited created by forging signature of the plaintiff.

He submits that to validate and justify forgery of the defendant and to prove that Form-117 was duly executed by the plaintiff they managed to create and manufacture an affidavit dated 31.01.2007 making a declaration that the plaintiff has changed his signature for no reason stated in the said affidavit. It is also argued that not only the plaintiff's signature has been changed fraudulently, but out of 8 share-holders, 5 share-holders namely one Mrs. Sajeda Begum, Md. Musawil (Babar), Md. Humayun Rajib, Md. Jahangir and Md. Alamgir are shown to have been changed their signatures on their own volition on the same day without assigning any reason for such change on the same day i.e. on 31.01.2007 and all the affidavits contain same statement in verbatim. What has prompted all the

5 shareholders to change their signatures on the same day has not been explained by them, in the affidavit sworn. Therefore, under Section 114 of the Evidence Act, the court may presume which is likely to happen in common course of natural event and human conduct, that lead to prima facie presumption that all those documents are product of fraud.

He submits that shares are goods as per Section 2(7) of the Sale of Goods Act 1930, a purchaser of shares in view of Section 27 of the Sale of Goods Act 1930 read with Section 3 of Transfer of Property Act “interpretation of a person is said to have notice” can be protected provided the purchasers acted on good faith and has not at the time of purchase noticed that the seller is not owner of the share. In the instant case, the purchaser had notice that the sellers are not true owner, as such, for negligence of the purchaser, purchase of share cannot be protected under the law. Against the facts of not matching signatures, the defendants-purchasers are put on motion to make reasonable enquiry to ascertain genuineness of sellers and to take reasonable pre-cautions for ensuring genuineness of sellers.

In the event of variation of signature of a person for the reason of illness or other reason, a normal practice has been prevailing and adopted

by the authority to take thumb impression of that person (LTI), but there is no provision in law to change signature of a person who is capable of signing his name by affidavit. In the instant case it is clear that all the shareholders who changed their signatures by affidavit are not incapable of signing their names as contained in all the documents relating to the business.

He submits that, in plaint, vokalatnama, application for injunction, there is variation of signature of the plaintiff, but those are not at all under challenge either by the defendants or by the plaintiff himself. It does not mean that for some variation in the signature of the plaintiff in different documents and papers, justified the signature of the plaintiff in Form-117 showing transfer of share in favour of the defendant. Out of the signatures as mentioned above, there are some signatures in Bangla and English, therefore, it is normal to differ the signature of the plaintiff. Referring Form-117, affidavit dated 31.01.2007 and Memorandum and Articles of Association, he submits that signature of plaintiff as well as other 4 shareholders signatures in Form-117 do not match at all on bare eyes with their admitted signature as appearing in the Memorandum and Articles of Association lying with the Registrar of Joint Stock Company ("RJSC").

All those facts and circumstances amply established that the plaintiff filed the suit claiming that the defendant forging his signature in different documents claiming transfer of the share by the plaintiff fraudulently, therefore, on the face of plaint and allegation brought against the defendants, constitutes a good prima facie case in his favour. In this connection he has referred to the case of *Uttara Bank vs. Macneill and Kilburn* reported in *33 DLR (AD) 298* which decided three conditions for granting temporary injunction. He also referred *Abu Bakar Siddique vs. Additional Deputy Commissioner Kurigram and others* reported in *48 DLR (AD) 154*, *Md. Shajahan Khan vs. Additional Deputy Commissioner (Revenue) Munshiganj and others* reported in *11 BLT (AD) 60*, *Government of Bangladesh, represented by the Deputy Commissioner, Jessore and others vs. Ershad Ali Moral and others* reported in *11 ADC 293* and *Kazi Ali Ahmed vs. Mohammad Nurunnabi and others* reported in *VII ADC 137* which provides that the revisional court while considering the case as to whether there is a prima facie case and other conditions are satisfied for temporary injunction is competent to interfere with the order of courts below if they failed to consider those fact.

He also submits that in schedule-X to the supplementary affidavit dated 04.11.2025 filed by the petitioners there are overwriting in number of share with word NIIL and the shares of Sajeda Begum, Md. Jahangir and Md. Alomgir shown to have been transferred on 10.02.2006, 15.03.2006, 10.02.2006 whereas the purported Form-117 was shown to have been executed on 28.01.2006, 02.03.2006 and 28.01.2006 respectively. Form-117 executed by other 3 shareholders namely, Md. Musawil (Babar), Md. Humayun Rajib and Mrs. Nasima Akhter on 28.03.2006, but in the said schedule-X dated 31.03.2006, no such transfer of share of the said 3 share-holders are stated or reflected and there are serious of anomalies in execution of Form-117. Referring a legal notice dated 12.11.2006 given by Mr. Shafique Ahmed, Senior Advocate on behalf of share-holders dated 12.11.2006 he submits that they denied their transfer of share to the opposite party Nos. 2 and 3 and requested RJSC not to accept any transfer form which also proves that the plaintiff and other shareholders did not accept document showing transfer of share to the opposite party Nos. 2 and 3. This legal notice also established a prima facie case that there was a fraudulent transfer of shares which warrants an order of temporary injunction to protect the interest of the plaintiff.

It is argued that RJSC accepted the affidavit under Section 344 of the Companies Act, which do not provide such provision to file any affidavit under that chapter of Companies Act. Section 344 of the Companies Act only applied to Part-V related to winding up proceeding before the Company Court of the Hon'ble High Court Division. The disputed affidavit dated 31.01.2007 do not have any nexus to any provision under the said Part-V of the Companies Act, hence it has no value at all in the eye of law and RJSC does not have any authority to accept those affidavits under Section 344. He referred the case of *Ms. Ok-Kyung Oh, Dhaka vs. Tea Hung Packaging (BD) Ltd. and others* reported in *37 BLD (AD) 16*. He argued that when share transfer instrument is signed by both the transferor and transferee the instrument is duly stamped as well as the share is handed over to the transferee. Without handing over of the share certificate, the transfer of title in the shares remain incomplete held in the case of *Jabed Ali Sarker vs. Dr. Sultana Ahmed and another* reported in *26 DLR 303*.

The opposite party Nos. 1-3 annexed 8 share certificates with their supplementary affidavit dated 13.11.2025 at pages 6-21, first certificate is shown to have been issued in favour of Haji Md. Shahabuddin. From

another document, it appears that Haji Md. Shahabuddin died before 28.12.2005, but the certificate shown to have issued on 10.02.2006 when he already dead and a certificate cannot be issued in the name of dead person. The shares have been issued to be transferred in the name of various transferees without any date of transfer. Moreover, shares of a dead person as per law devolve upon the heirs, as per Succession Certificate issued by the District Judge. In the instant case there is no Succession Certificate, 1st share certificate shown to have been issued in the name of Haji Md. Shahabuddin, there is an over-writing in the total number of shares, certificate issued in the name of Abdul Hamid contain no date of issuance of the same and not duly stamped and transfer made by Abdul Hamid is also contain no date in one Form-117 and the number of shares also distinct and different. Share certificates issued in the name of Md. Alomgir shows that the date of transfer is 10.02.2006 on the very day of issuance of certificate in his name which proves that the certificate was not under the custody of plaintiff and was never handed over to the transferee. Issuance of certificate to the plaintiff on 10.02.2006 and disputed 117-Form shown to have been executed on 28.01.2006 earlier than issuance of certificate, therefore, on the very face of it, it can be

easily understood that the documents have been created fraudulently forging signature of the plaintiff.

Similarly share certificates issued in favour of other shareholders and transfers shown to have been made by them are distinct share numbers and date of execution of the same. All the share certificates have been shown to have been issued on 10.02.2006 having no legal and evidentiary value in the eye of law. Not only that; he submits that all the share certificates issued by the company must contain a common seal under Section 31 of the Companies Act read with Article 54 of Company, to have prima facie evidence as to title of share, but the certificates filed by the opposite parties contain no common seal of the company which also established that the certificates in connivance with others created subsequent to creation of fraudulent transfer by the defendants. There is no Board resolution approving any common seal, neither is there any Board resolution authorizing who is empowered to effect common seal nor is there any Board resolution authorizing any Director by whom, the common seal shall be affixed and which Director shall counter sign the instrument issued by the company.

He submits that the assertion of opposite parties showing the alleged withdrawal and waiver of allegation of forged and fraudulent transfer of share on part of sellers by creating compromise in the form of Memorandum of understanding is unjustified. This Memorandum of understanding is also a product of fraud. The signature as shown in the MOU matches with the signature of fraudulent signature in Form-117 dated 28.01.2006, 14.01.2007 and fraudulent affidavit dated 31.01.2007 and this signature does not match with the admitted signature of the plaintiff in his passport, Memorandum and Articles of Association, National I.D. which are lying with the government authorities. Alleged MOU prepared on non-judicial stamp purchased on 21.05.2006, but the document is undated and lacking when said MOU was in fact entered into between the parties and duly executed by them. Transfer of share shown to have been made in the month of January and March 2006 and in the said instrument existence of the transfer of share i.e. 117-Form should have been present, but there is no reference in the said MOU, prima facie it appears that the said MOU is nothing but a further fraudulent document.

It is argued that shareholders Naima Akter signed a notarized affidavit declaring that she has transferred her entire 115 share to Mr. S.

Shafique Ahmed and resigned as Managing Director with effect from 10.04.2006 (page 61 of the supplementary affidavit dated 04.11.2025 filed by the petitioner) whereas, Nasima Akter showing her as Managing Director signed purported 117-Form in the month of September 2006 and in the year 2007 which seriously contradicts her status in the company who already transferred her entire share in the month of April. Form-117 alleged to have been executed by the plaintiff on 14.01.2007, counter signed by Mr. Shafique Ahmed as Managing Director and 117-Form shown to have been executed by two other shareholders on 14.01.2007 counter signed on the same day by said Nasima Akter as Managing Director, whereas, there is no provision of having two Managing Directors of a company on a same date. It is also argued that Board resolution shown to have been obtained on 24.01.2007 with overwriting showing only Mr. S. Shafique Ahmed and Ms. Sabrina Shafique Ahmed are the Directors of the said opposite party No. 1 company. Said Nasima Akter has counter signed as Managing Director in 117-Form purportedly endorsing said Board resolution approving transfer on 14.01.2007.

He finally submits that the notices issued by the company on different dates starting from 07.06.1997 upto 01.05.2004 appears to have

the same numbering mistake regarding distribution to Directors and have the same appearance regarding the contents and all the Board resolution and signature therein have been tainted with fraud and the font and gap in between the line starting word and the ending word of each line are same and apparently seems to be prepared on the same date, by same person and same computer, as such, all those illegal and fraudulent activities of the defendants in connivance with other shareholders made the transfer of plaintiff's shares practicing fraud, as such, the plaintiff has a good prima facie case, the balance of convenience and inconvenience in his favour and unless an order of injunction is granted the plaintiff will suffer irreparable loss in the event of transferring, selling all the landed property belongs to the company depriving the plaintiff as one of the shareholder. The trial court while rejecting the application for injunction failed to utter a single word in respect of prima facie case of the plaintiff, similarly the appellate court while disallowing the appeal failed to give independent observations and reference of facts and law, but agreed with the observation made by the trial court in to to and disallowed the appeal, as such, the courts below have committed illegality and error of law in the decision occasioning failure of justice.

Mr. Mustafizur Rahman Khan, learned senior Advocate with Mr. M.M. Shafiullah, learned Advocate appearing for the opposite party Nos. 1-3 submits that only ground and allegations as stated in the plaint by the plaintiff and for seeking injunction based on signature of the plaintiff in the relevant share transfer instrument dated 14.01.2007 as appearing at page 80 of petitioner's supplementary affidavit dated 04.11.2025. The plaintiff claimed that the signature put in share transfer instrument does not match his admitted signature on the subscription page of Memorandum and Articles of Association of the company as appearing at page 147 of the same supplementary affidavit. In this regard, he submits that no reliance atleast for the purpose of prima facie satisfaction in the context of a temporary injunction application can be placed upon any perceive mismatch in the signature as aforementioned for the reason that the admitted signature of the petitioner as appearing in the subscription page of the Memorandum and Articles of Association does not match with his admitted signature or other documents, such as, plaint, injunction application, supplementary affidavit, vokalatnama, passport, Form-117 etc. Admittedly, signature of the plaintiff is different in different documents from one another and none

match the signature of the Memorandum and Articles of Association how can a court pick and chose only the disputed share transfer and purport that his signature is not genuine? It is submitted that there is long delay in filing the suit in as much as the disputed transfer took place in 2007 and the suit was filed in the year 2017. The delay has not been explained adequately in the plaint. If the transfer did not take place how does he explained not ascertaining his right as shareholder or Director during this long 10 years. It is argued that, the plaintiff has 16% share in the company, the rest 84% transferred by his mother, sibling but none of them come forward to support his case and disputed the said transfer indeed one of them namely defendant No. 5 in the suit, his sister has filed a statement in the miscellaneous appeal before the District Judge confirming transfer.

He argued that allegation of fraud and forgery need to be mentioned in the pleadings specifically so that the party against whom such allegation are made can make his defense, but in the instant case the plaintiff does not make allegation of fraud specifically in his plaint, the petitioner cannot be allowed to improve his case at this stage in civil revision.

It is submitted that any inadequacy as to the formalities as to transfer are irrelevant; as long as the signature of the transferor in the share transfer instrument, the transfer is complete. So, any irregularities in any share certificate or any other instrument will not invalidate the share transfer if the transferor execute the share transfer instrument and this view was taken by the High Court Division of Himachal Pradesh in the case of *Surjit Malhan and others Vs John Tinson and Corporation and others reported in ILR 1985 14 HP 135*.

It is submitted that the defendants-Opposite Parties possess all the documents relating to the Company and its shares, i.e. Board resolution Book (which includes the signature of the transferor), share certificates, etc. lean in favour of the transfer having actually taken place in 2007. It is submitted that it was necessary to give an affidavit by the shareholders to state that their signatures have changed since the Memorandum of Association to bring conformity with the signatures of the Board Resolutions.

It is submitted that the transfer was recorded in RJSC by relying on affidavits pursuant to Section 344 of the Companies Act, 1994, and not under Section 44; the fact that there is no express requirement of affidavit

is irrelevant, as everyone is aware of the common practice of furnishing Affidavits in support of transfer. Moreover, the shareholders executed another affidavit to withdraw the complaint/objection dated 06.11.2006 and 09.11.2006 they made to RJSC regarding the share transfers.

It is submitted that the Plaintiff did not claim that the share transfer was done in connivance with other shareholders who are his siblings and mother and it appears from Annexure 7, page 39 of the 1st supplementary submitted by the opposite parties that all his siblings and his mother executed the M.O.U. together and it is further evident that the shareholders received money on different dates from the opposite party Nos.2-3.

It is submitted that Md. Alomgir in his lifetime on 10.12.2015 executed Form 117 in favour of Md. Shamim Islam, Managing Director of Jamuna Builders Limited (attorney of the Petitioners) which appears on page 52 of the supplementary filed by the Petitioner and the signature given therein is totally different from the signature of Md. Alomgir contain in the Memorandum and Article of Association. There is not a single piece of instrument or other documents could be found wherein

Md. Alomgir's signature match with the signature he gave in the Memorandum and Article of Association.

It is submitted that the founder of Banani Property Ltd established a housing project named Banarupa Residential Project which he established upon taking permission and approval from all the concerned authorities and in his lifetime he sold all the plots by issuing allotment letters (evident from page 29 of the Counter Affidavit) but failed to execute transfer deeds in respect of the same and the Opposite Party Nos. 2-3 after taking charge of the company did not allot a single plot in favour of any person. This Management executed sale deeds in favour of 790 purchasers but facing difficulties in executing transfer deeds and registering 1200 plots in favour of around 2500 bona fide purchasers. So, the balance of convenience and inconveniences are heavily in favour of the opposite parties.

It is stated that the Respondents made a complaint to RAJUK regarding the transfer of shares and upon inquiry RAJUK, authority informed that the share transfer was duly done. Jamuna Builders Limited knowing that Md. Alomgir has transferred his 129 shares or knowing the fact that there is dispute over transferring 129 shares, Jamuna Builders

Limited with an ulterior motive has managed Md. Alamgir to file the suit and the application for temporary injunction in the said suit, as such, the Rule issued in the Civil Revision is liable to be discharged.

He submits that the suit in its present form is not maintainable unless the plaintiff brought a suit for rectification of the share before the company court. It is now settled that running of a company business cannot be restrained by an order of injunction, as such, if the company is prevented the full business of the company will be stopped, hence, the balance of convenience and inconveniences are in favour of the defendants.

Heard the learned Advocates of both the sides, have gone through the revisional application under Section 115(1) of the Code of Civil Procedure, plaint in suit, application for injunction, written objection thereto, all the papers and documents annexed to the supplementary affidavits filed by the petitioner and the opposite parties and impugned judgment and order of both the courts below.

It is fact that predecessor of present petitioners named Md. Alomgir as plaintiff filed Title Suit No. 244 of 2017 in the Court of Assistant Judge, 2nd Court, Dhaka for declaration mainly in respect of his

shareholding and the transfer alleged to have been made by the defendants in collusion with other shareholders to be fraudulent, forged and fabricated along with other prayers incidental thereto. In the suit, the plaintiff filed an application under Order 39 Rules 1 and 2 read with Section 115 of the Code of Civil Procedure praying for temporary injunction in the following terms:

“It is most humbly prayed that the learned court would be kind enough to pass an order of temporary injunction restraining the defendant Nos. 1-3 from making any arrangement of shares of the company including the scheduled shares of the plaintiff of Banani Properties Development Limited (Registration No. C-31445 (566)/96) and assets of the said company to anybody else till disposal of the suit.”

The opposite parties, as defendant, contested the application by filing written objection. The trial court after hearing by its judgment and order dated 30.11.2022 rejected the same holding that, holding of share in the company and transfer of the same by the plaintiff is a disputed matter. Whether, the plaintiff is victim of fraud, all those documents have been fraudulently created and the plaintiff has been removed from the company is matter to be decided on evidence at the time of trial, as such, at this stage since a serious question of law is involved, the plaintiff has no arguable case, rather in the event of granting injunction, the defendant will be highly prejudiced. The appellate court while rejecting the appeal

though rightly held that the plaintiff is owner of 129 shares of the company along with other shareholders, but failed to find that during his illness and unsound mind the defendant Nos. 2 and 3 have purchased his share without giving him any notice and the defendant Nos. 4 and 5 created forged and fraudulent instrument showing execution of Form-117 transferring the share and without touching the principles for granting injunction as enunciated by the apex court, the appellate court dismissed the appeal quoting the observation in verbatim made by the trial court.

Both the learned Advocates for the parties placed their respective cases at length taking sufficient time to be considered by the court. It is fact that the plaintiff's case only based on fraudulent transfer by forging his signature in connivance with other shareholders. It is also fact that, the matters between the parties requires evidence which cannot be looked into or decided at this stage but in granting or entertaining an application for injunction, the court is to consider; whether the plaintiff has a prima facie case for seeking an order of injunction, balance of convenience and inconveniences of the parties and irreparable loss if the injunction is not granted.

It is not denied by the defendant-opposite party that signature of the plaintiff in Memorandum and Article of Association of the company, passport, National I.D., signature in the plaint, application for injunction, vokalatnama does not match with the signature contain in affidavit dated 31.01.2007, 117 Form dated 10.02.2006, Board resolution of different dates, but the defendants claim that since the admitted signature of the plaintiff admitted by him are differs from each other, signature contained in affidavit, 117-Form and other document cannot be said that the signature was not of the plaintiff. For, difference of signature it cannot be decided at this stage that the instrument of transfer of share is made forging his signature or in collusion with other shareholders.

To substantiate submissions of the learned Advocate for the opposite party, I have gone through all the signatures of the plaintiff contain in different documents starting from Memorandum and Articles of Association, passport and National I.D. of the plaintiff, plaint, application for injunction, vokalatnama, 117-Form and affidavit.

Only point has come into consideration where the plaintiff is admittedly was a sick person by addiction and leading his abnormal life for long time, because of taking drag or for any other reason signature of a

person obviously may be varied from each other. From perusal of plaint as annexed by the opposite party with supplementary affidavit dated 12.11.2025 at page 9, signature of the plaintiff match with the signature contain in Memorandum and Articles of Association, but the signature on other pages running from page 10-19 does not match with the signature contain on the first page. The signature contain in application for injunction has been put in bangla writing only Alam. For understanding I have gone through the signature contain in Form-117 at page 132 of the supplementary affidavit dated 05.11.2025 and the affidavit sworn before the Notary Public by the plaintiff and both the signatures also differs from each other. The opposite party in their written objection or submissions could not explain why the plaintiff put his signature different from signature contain in Memorandum and Articles of Association, passport and National I.D. Form-117 shown to have been executed by the plaintiff on 14.01.2007, affidavit sworn by the plaintiff on 31.01.2007 stating as follows:

“আমি আরো ঘোষণা করছি যে, আমাদের কোম্পানী নিবন্ধন কালে আমি যে স্বাক্ষর করেছিলাম বর্তমানে আমি সেই স্বাক্ষর পরিবর্তন করিলাম এবং সেই সাথে বর্তমানে হলফনামার স্বাক্ষরটি পূর্বের সকল কাগজপত্রের স্বাক্ষরের দায়-দায়িত্ব বহন করিবে ও হলফ নামার এই স্বাক্ষরটি আমার বর্তমান স্বাক্ষর বলে পরিগণিত হইবে।”

In the said affidavit, the earlier signature which has been changed by the plaintiff is absent, all other documents in respect of transfer of shares by the plaintiff in favour of opposite parties contain so many irregularities like absence of common seal on the share certificate, issuance of the share certificate by the person is questionable, transfer of share on the same day, changing of signature of five shareholders having no reason at all and denial of such transfer by the plaintiff showing all those anomalies in the signature and sequential acts of transfer as stated in the plaint and application for injunction constitutes a prima facie case in favour of the plaintiff that in transferring share there are series of irregularities and anomalies.

I find substance in argument of Mr. Chowdhury that in any effect, the shareholders through their lawyer, namely, Barrister Shafique Ahmed clearly and unequivocally asserted that there is fraud and forgery committed in showing the transfer of shares. This assertion and admission of fraud and forgery perpetrated by the opposite party Nos. 1, 2 and 3 as alleged by the shareholders cannot be waived, because a forged and fraudulent act cannot be ratified. In this respect, Paragraph No. 2-059 of

Bowstead and Reynolds on Agency, 22nd Edition, Sweet & Maxwell, &

Thomson Reuters, South Asian Edition provides as follows:

*“2-059 **Forgeries** It has been held that a forgery cannot be ratified, and the reason given that a forgery is a nullity. The leading case seeks to make a distinction between voidable acts, which can be ratified, and void acts, such as forgery, which cannot. As a general criterion, however, this is unsatisfactory. It is certainly true that in the case of some voidable acts, e.g. the contract of a mentally incapable person, the terminology of ratification has been used. But acts done without authority, e.g. the unauthorized issue of a writ, are not appropriately called voidable. If anything, they could be called void, but they can often be regarded as simply suffering from a defect that can be cured. As regards forgery, it is submitted that the true reason why there can normally be no ratification is that the forger who counterfeits a signature or seal makes no profession of being an agent, so that agency doctrine do not apply to him. An unauthorised signature or affixing of a seal for another may also, however, constitute a forgery; and in such a case it seems that there can be ratification.”*

Further, it appears to me that the opposite party Nos. 2 and 3 asserts that the said 117-Forms shown to be executed in the months of January, March & September 2006 (**Pages 69, 70, 71, 72, 73, 74, 77, 78 and 79 of the Supplementary Affidavit dated 04.11.2025 of the petitioners**), were shown to be approved in the Board Meetings dated 10.02.2006, 10.04.2006, 15.03.2006 and 30.09.2006. But from the purported Board Resolutions (**Pages 22 to 76 of the Supplementary Affidavit dated**

13.11.2025 of the opposite party Nos. 1, 2 and 3), it appears that there is no existence of Board Resolutions or Board Meetings on 10.02.2006, 10.04.2006, 15.03.2006 and 30.09.2006. Therefore, the alleged approval of the said execution of the said transfer of shares by the Board of Directors appears to be not correct, when Article 18 and 20 of the company requires such approval.

Whether, the balance of convenience and inconveniences are in favour of the plaintiff or the defendants. Admittedly this company is a real estate business company who acquired huge quantum of land in the city. During life time of father of the plaintiff he entered into agreement for sale with hundreds of purchaser. The learned Advocate for the opposite parties submits that in the event of granting an order of injunction only real estate business of the company will be at stake as all the intended purchasers who are awaiting for having sale deed from the company will become indifferents toward the company and they will take recourse to legal action before the court of law and there will be inviting unnecessary litigation for the company putting the company in serious financial difficulties and in the event of refusing injunction the plaintiff will not be prejudiced or will not suffer any loss as in the event of succeeding the suit

he will get his share and will get the money received by the company from the intended purchaser as per his share and the plaintiff can be compensated by money. On the other hand, learned Advocate for the petitioner submits that the business of the company absolutely relating to acquisition of landed property and selling of the same to various purchasers after development with approval of RAJUK under the Real Estate Development and Management Act, 2010. And selling plots without approval of RAJUK as to layout plan of project is an offence under Section 20 read with Section 2(12) of the Real Estate Development and Management Act, 2010. Nowadays price of landed property increasing day by day, if the opposite parties transfers the property at a low price in connivance with purchasers and other interested quarter showing less value, the loss of the plaintiff will be higher which cannot be quantified in money value.

He argued that if the defendants are allowed to dispose of the landed property depriving the plaintiff the very purpose of the suit shall be frustrated and the plaintiff will not have any other alternative to recover the money from the defendant-opposite party as they will dispose of entire property of the company.

He submits that to encourage a fraud and forgery, the court will not consider the argument of the opposite party. He candidly submits that it is well settled that business of a limited company cannot be prevented by injunction, but the plaintiff not prayed for any injunction restraining the opposite party or the company not to do business, but it is limited within the periphery of transfer of landed property only. The company can run business and day to day transaction by acquiring property as its asset, but the injunction sought for is not to dispose of the property, therefore, the balance of convenience and inconvenience are heavily in favour the plaintiff and the loss likely to be suffered by the plaintiff is not at all quantifiable at this stage. Question of fact and loss whatever raised by both the parties is a complicated matter as argued by the learned Advocate for the opposite party and those can be decided upon hearing of the suit. Since the matter deserves priority, I think that both the parties should maintain status quo in respect of position of the company and disposal of its assets till disposal of the suit by the trial court. At the time of issuance of the rule, this Court granted an order of status quo which was subsequently stayed by the Appellate Division and directed the parties to get the Rule heard and disposed of within 03 (three) weeks on merits.

From submission of both the parties, perusal of bunch of papers annexed to the revisional application, supplementary affidavit, counter affidavit and supplementary affidavit to the counter affidavit, it appears that there is a serious dispute about transfer of the share and changing of signature by affidavit before the Notary Public sworn by the plaintiff and other shareholders without any reason which has created doubt about transfer of the share.

From all the annexures, it appears that the transfer is not smooth one and coupled with so many questions. Unless the dispute is decided by the trial court on evidence and the defendant by this time disposed of the property of the company there is every change of frustrating the relief sought for by the plaintiff and there will be multiplicity of judicial proceedings.

In view of the above, I find merit in the Rule as well as in the submissions of the learned Advocate for the petitioners.

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

Judgment and order of both the courts below are hereby set aside. Application for injunction is allowed.

Both the parties are hereby directed to maintain status quo in respect of transfer of share as well as transfer of landed property owned by the company save and except selling apartments or plots of any project(s) of the opposite party No. 1 company, layout of which is or are approved by RAJUK under the Real Estate Development and Management Act, 2010 till disposal of the suit and the company can do its day to day business as usual. Subject to compliance of the Real Estate Development And Management Act, 2010 as ordered hereinabove.

The trial court is hereby directed to dispose of the suit within 04 (four) months giving top most priority without allowing unreasonable adjournment to both the parties without fail, however, without any reference to any observation made herein above.

Communicate a copy of this judgment to the court concerned at once.