

Bench:
Mr. Justice Bhishmadev Chakrabortty
And
Mr. Justice A.K.M. Zahirul Huq

First Miscellaneous Appeal No. 160 of 2011
with
Civil Rule No. 617(fm) of 2010

Md. Shah Alamappellant

-Versus-

Md. Mustafizur Rahmanrespondent

Mr. Md. Mozammel Hossain, Advocate
.....for the appellant

Mr. Rowshan Alam Khan, Advocate
.....for the respondent

Judgment on 27.05.2025

Bhishmadev Chakrabortty, J:

Since the Rule has arisen out of the first miscellaneous appeal and parties thereto are same, both have been heard together and are being disposed of by this judgment.

At the instance of the plaintiff this first miscellaneous appeal is directed against the judgment and order of the Joint District Judge, Court 2, Dhaka passed on 03.10.2010 in Title Suit No. 191 of 2010 rejecting an application under order 39 Rule 1 and 2 read with section 151 of the Code of Civil Procedure (the Code) for temporary injunction.

The plaintiff instituted the suit for declaration of title and recovery of khas possession in respect of the suit land described in the schedule to the plaint. In that said suit, the plaintiff filed an application under Order 39 Rule 1 and 2 read with Section 151 of the Code praying for a temporary injunction restraining the defendant from changing the nature and character of the suit property or transferring it to anybody else. The defendant contested the application by filing a written objection. Upon hearing both parties and framing issues, the Joint District Judge rejected the application for temporary injunction. Being aggrieved by the plaintiff preferred the above appeal.

At the time of admission of appeal, the appellant filed an application praying for temporary injunction making similar prayer to the application filed before the Joint District Judge with prayer for an *interim* order. On the said application this Court issued the aforesaid Rule and passed interim order directing both parties to maintain *status quo* in respect of possession of the suit land for a period of six (6) months. The aforesaid order was subsequently extended from time to time and lastly extended for one year which expired on 06.05.2013. Thereafter, the petitioner filed an application

for extension of the order of *status quo* which was kept with the record by this Division on 11.03.2025 and the matter was fixed for hearing on merit.

Mr. Md. Mozammel Hossain, learned Advocate for the appellant and the petitioner in the Rule taking us through the materials on record submits that in the suit the appellant filed an application for temporary injunction seeking restraint order upon the defendant from changing the nature and character of the suit land contending that he would suffer irreparable loss and injury, if the defendant is allowed to transfer the suit land or changing its nature. However, the Court below without considering the merit of the application rejected the prayer for temporary injunction in a summary manner beyond the issues framed which calls for the interference of this Court. He further submits that the trial of the suit is going on and PW 1 has already been examined. Therefore, he prays for a direction upon the trial Court to dispose of the suit expeditiously maintaining the order of *status quo* till disposed of the suit.

Mr. Rowshan Alam Khan, learned Advocate for the respondent and opposite party in the Rule submits that the

suit is for declaration of title and recovery of possession. The appellant is not in possession of the suit land and if he succeeds in the suit he will get possession in due process of law. In such circumstances, the trial Court rightly rejected the application for temporary injunction. He further submits that the appellant did not take steps to extend the order of *status quo* passed by this Court after its expiry on 06.05.2013. Therefore, the appeal would be dismissed and the Rule be discharged.

We have considered the submissions of both the parties and gone through the materials on record. It appears that the suit is for declaration of title and recovery of possession in respect of the suit land described in the schedule to the plaint. The plaintiff filed an application in the trial Court praying for a temporary injunction to restrain the defendant from changing the nature and character of the suit land which was rejected. But we do not find that the issues framed in disposing the application was at all addressed in the impugned order of refusing the prayer for injunction. The plaintiff approached this Court challenging the aforesaid order in appeal, which was duly admitted and Rule issued on the application for temporary injunction. At the time of

issuing the Rule this Court directed the parties to maintain *status quo* in respect of possession of the suit land for a limited period which remained in force up to 06.05.2013. It is found that the respondent appeared in the appeal on 22.01.2012 but did neither file any application in this division to vacate the order nor moved to the Appellate Division challenging it. It is further found that after expiry of the said aforesaid order the appellant-petitioner filed an application for its extension which was kept with the record and the Rule was fixed for hearing. The trial of the suit is going on. PW 1 has already been examined. Therefore, we are of the view that justice would be best served, if the trial Court is directed to dispose of the suit expeditiously maintaining the order of *status quo* passed by this Court.

The trial Court is, therefore, directed to dispose of the suit within six (6) months from the date of receipt of this judgment and order. In conducting the case, the Court shall not grant any adjournment to either party unless there are compelling and exceptional reasons. Until the suit is finally disposed of the order of *status quo* passed by this Court in respect of possession of the suit land shall operate.

Consequently, the appeal as well as the Rule are disposed of with aforesaid directions. No order as to costs.

Communicate this judgment and order to the concerned Court.

A.K.M. Zahirul Huq, J:

I agree.