

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Civil Revisional Jurisdiction)

Present:

Mr. Justice S.M. Masud Hossain Dolon

Civil Revision No. 4288 of 2012.

Abdul Mazid Khan

..... Defendant-Petitioner

-Versus-

Md. Nurul Huda

.... Plaintiff-opposite party

Mrs. Salina Akter Chowdhury, Advocate.

..... for the petitioner.

Mr. Md. Khalilur Rahman, Advocate.

..... For the opposite party.

Heard on: 12.05.2024 &

Judgment on: 16.05.2024.

This Rule has been issued calling upon the opposite party to show cause as to why the impugned judgment and decree dated 09.10.2012 passed by the learned Senior Assistant Judge, Sadar, Kushtia, in Small Causes Suit No. 13 of 2008 should not be set-aside and/or pass such other or further order or orders as to this court may seem fit and proper.

Short facts for disposal of this Rule, are that the opposite party as plaintiff filed Small Cause Suit No. 13 of 2008 before the learned Senior Assistant Judge, Sadar, Kushtia against the defendant-petitioner for eviction from the suit premises on the ground that the

defendant-petitioner has been illegally possessing and trespassing the premises and bonafide requirements for the use and occupation of the suit land.

The learned Senior Assistant Judge, Sadar, Kushtia after scrutinized relevant papers had appended with records submitted by the parties in support of their respective claims and decreed the suit. Against this order the petitioner had filed the instant Revisional application and obtained Rule dated 12.12.2012.

Mrs. Salina Akter Chowdhury, learned Advocate for the petitioner submits that the learned trial court having been misconceived and non-consideration of materials and facts in evidence, without applying judicious mind, passed the order and thus committed error of law resulting in an error in the decision, occasioning failure of justice. Mrs. Chowdury vehemently argued that Defendant-petitioner is not a simple tenant of the alleged shop rather he is a lease holder of the suit land. In support of her submission she showed the exhibit-3. She further submits that the defendant-petitioner is not a defaulter tenant and the petitioner has been carrying on his business since 1982 and the plaintiff-opposite party has no valid requirement of the suit premises. The plaintiff

under the shelter of fraudulency wants to evict the defendant-petitioner for his personal need. As a matter of the fact, the plaintiff-opposite party is trying to give rent of the suit premises to another tenant at a high rate of rent for which the defendant-petitioner has also agreed to give per month by executing a fresh contract and the learned court below failed to consider this important aspect and passed the impugned judgment which is liable to be se-aside. She further submits that the plaintiff-opposite party has no bonafide requirement of the suit land under section 18 the Rent Control Act, 1991.

On the otherhand, Mr. Md. Khalilur Rahman, the learned Advocate on behalf of the plaintiff-opposite party submits that the learned Senior Assistant Judge, Sadar, Kushtia considered the materials on records and rightly passed the impugned judgment and decree. He further submits that the plaintiff-opposite party has required this land since 2007 for the construction of Multi-storied building to develop the land. In this regard the plaintiff-opposite party has got the approval of plan and others required approvals by Kushtia Paurasava and other concerned authorities.

I have heard the learned Advocates for both the sides, perused the judgment and decree of the court below and all other relevant papers appended thereto. It appears that Defendant-petitioner got rent the shop from one Shahinur Begum mother of the plaintiff-opposite party and there is no tenancy agreement between them. Besides that the petitioner had claimed that he is a leaseholder of the suit land and to support his demand he produced an agreement dated 15.04.1982. The learned Senior Assistant Judge, Sadar, Kushtia found that the Defendant-petitioner had submitted a copy of the possession agreement which is as Exhibit-3 and in the possession agreement Exhibit-3 was not signed by Shahinur Begum mother of the plaintiff-opposite party. I have also perused the Exhibit-3, are the tenancy agreement dated 15.04.1982 submitted by the defendant petitioner and the said agreement dated 15.04.1982 was not signed by the mother of the plaintiff-opposite party. The Defendant-petitioner with full knowledge had submitted the possession agreement before the learned trial court that agreement was unsigned by the owner which can be treated as a criminal offence. It clearly proves in law that the defendant petitioner is a mere tenant

under the plaintiff-opposite party. In this regard the plaintiff opposite party may file a criminal case as per the nature of the offence.

The learned Advocate for the petitioner at this stage submitted that the defendant petitioner has been paying rent within a time by depositing the same in the rent control suit No. 66 of 2008. He was not a defaulter and the plaintiff-opposite party has no need of the suit land. In this reply the learned Advocate of the plaintiff-opposite party submitted that the plaintiff opposite party has been trying to construct a multistoried building to develop the suit land since 2007. In the circumstances learned Advocate for the plaintiff opposite party further submitted that in the legal notice sent by the plaintiff opposite party dated 05.03.2008 also in the prayer of the plaint of the instant suit it was claimed by the plaintiff opposite party for the purpose of evicting the defendant-petitioner from the suit land.

In the above mentioned circumstances, I can look into consideration Section 18 of the Rent Control Act, 1991 which runs as follows:-

১৮। (১) [Transfer of Property Act, 1882](#) (IV of 1882) অথবা [Contract Act, 1872](#) (IX of 1872) এ যাহা কিছুই থাকুক না কেন, কোন ভাড়াটিয়া এই আইনের অধীন অনুমোদনযোগ্য ভাড়া যতদিন পর্যন্ত পূর্ণমাত্রায় আদায় করিবেন এবং ভাড়ার শর্তাদি পূরণ করিবেন ততদিন পর্যন্ত বাড়ী-মালিকের অনুকূলে বাড়ীর দখল পুনরুদ্ধারের জন্য কোন আদেশ বা ডিক্রি প্রদান করা যাইবে না :
তবে শর্ত থাকে যে, যে ক্ষেত্রে-

(ক) -----

(খ) -----

(গ) -----

(ঘ) -----

(ঙ) বাড়ীর নির্মাণ বা পুনঃনির্মাণের জন্য অথবা নিজ দখলের জন্য অথবা যাহার উপকারার্থে বাড়ীটি রাখা হইয়াছে তাহার দখলের জন্য বাড়ীটি বাড়ী-মালিকের প্রকৃতই প্রয়োজন হয় অথবা বাড়ী-মালিক এমন কোন কারণ দর্শাইতে পারেন যাহা আদালতের নিকট সন্তোষজনক বলিয়া গণ্য হয়; সেক্ষেত্রে এই উপ-ধারার কিছুই প্রযোজ্য হইবে না।

I have carefully perused the section 18(ঙ) of the Rent Control Act, 1991 that the owner of the shop house actually needs for the construction or reconstruction of the shop or for his own occupation or for the occupation of the person for whose benefit the house is held or the owner of the house can show any reason to the satisfaction of the court. After meticulously scrutinized I found the plan for construction of the multi-storied building which was duly sanctioned by the Kushtia pourashorva and within said building others tenant had already evacuated the shops. In this circumstances the plaintiff opposite party are able to satisfy that the alleged shop is necessary to be vacated for construction of a multistoried building and the Defendant petitioner with ill motive filed the instant revisional application in 2012 and restrained the construction more than a decade.

In the present case the land lord has obtained plan approval from the municipality for the constructions of a multi-storied building to develop his land. Therefore, it is clearly established that the plaintiff is a tenant in the suit land. It is also proved that Defendant-petitioner is not a lease holder. He is a tenant under the plaintiff-opposite party.

In the facts and circumstances of the case, I find no merit in this case.

In the result, the Rule is discharged.

The order of stay granted earlier by this court is hereby vacated.

Send down the lower court records and a copy of this judgment to the court concerned at once for information and necessary steps.