

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

**Present:**

**Mr. Justice Md. Mozibur Rahman Miah  
and**

**Mr. Justice Md. Bashir Ullah**

**Civil Revision No. 2445 of 2013**

In the matter of:

An application under Section 115(1) of the Code of  
Civil Procedure, 1908

And

In the matter of:

Md. Abdus Salam

--- Defendant-Petitioner.

-Versus-

Md. Shawkat Ali and others

--- Plaintiff-Opposite parties.

None appears

---For the petitioner.

Mr. Bivash Chandra Biswas, Advocate

--- For the opposite party No. 1

**Heard on 29.05.2024**

**Judgment on: 30.05.2024**

Md. Bashir Ullah, J

At the instance of the defendant in Money Suit No. 03 of 2007, this Rule was issued calling upon the opposite parties to show cause as to why the order dated 03.06.2013 passed by the learned Joint District Judge, 1<sup>st</sup> Court, Jashore in Money Suit No.03 of 2007 rejecting the application for releasing the petitioner's land from the attachment of the properties should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

At the time of issuance of the Rule, the proceeding of Money Suit No. 03 of 2007, pending in the learned Joint District Judge, 1<sup>st</sup> Court, Jashore was stayed for 03(three) months, which was lastly extended till disposal of the Rule on 23.04.2015.

Facts, relevant for the disposal of the Rule, are that, the defendant No. 1 is the younger brother of the plaintiff. He took loan from IFIC Bank and different persons and mortgaged *Ejmali* properties against the loan liabilities. Subsequently he became defaulter in repaying the loan and the said loan stood at Tk. 11,68,185/= . The plaintiff then adjusted the loan amount on 20.06.2007 to save the image of his family and his brother. Besides, the plaintiff repaid Tk. 8,00,000/= to defendant No. 4, Md. Shahidur Rahman from whom defendant No. 1 also took loan. The defendant No. 1 also took loan from defendant No. 3, namely, Mr. Bikash and the loan amount of Tk. 1,00,000/= was also repaid by the plaintiff. He also paid Tk. 3,25,000/= to adjust another loan taken from IFIC Bank, Khulna Branch by defendant No. 1. However the defendant No. 1 did not pay any heed to return his dues despite repeated requests and remainder of the plaintiff. Finally, the members of the plaintiff's family held a meeting and settled the matter. The defendant No. 1 gave a cheque on 17.09.2007 amounting to Tk. 24,00,000/= to the plaintiff to adjust his loan according to the settlement. The plaintiff accordingly placed the cheque on 18.09.2007 to the concerned bank to encash the amount but it was dishonoured. Then he claimed the cheque amount from defendant No. 1 but was refused.

Hence, the plaintiff-opposite party No. 1 instituted Money Suit No. 03 of 2007 before the learned Joint District Judge, 1<sup>st</sup> Court, Jashore on 27.09.2007, impleading the defendant-petitioner and others.

Defendant-petitioner contested the suit by filing a written statement on 02.01.2008 denying all the material allegations, contending *inter alia* that at the time of the death of his father, he was a minor boy and the plaintiff, being the eldest son of the family took charge of family business and getting such advantage he sold many joint properties and used the name of this defendant-petitioner in his company and also took loan for his own purpose using name of this defendant-petitioner. This defendant petitioner never gave any cheque to the plaintiff.

The plaintiff-opposite party thereafter on 07.10.2007 filed an application before the learned Joint District Judge, 1<sup>st</sup> Court, Jashore, praying for attachment before judgment of all the properties belonging to the defendant No. 1- petitioner mentioned in the schedules to the plaint.

The learned Joint District Judge. 1<sup>st</sup> Court, Jashore by order dated 07.10.2007 allowed the said application.

Challenging the order of attachment, the petitioner earlier filed Civil Revision No. 49 of 2008 and upon hearing this Court stayed the operation of the impugned order on 13.01.2008 but subsequently the defendant No. 1- petitioner was compelled to sell out a portion of land and consequently this Court was pleased to vacate the order of stay and discharged the Rule for non-prosecution.

Thereafter the petitioner filed an application on 20.02.2013 before the trial court, praying for the release of a portion of the attached

property of the petitioner worth Tk. 15,00,000/= out of the whole attached property amounting to Tk. 30,34,29,072/=. The said application was heard on 20.02.2013 by the learned Joint District Judge, 1<sup>st</sup> Court, Jashore who then directed the plaintiff to submit the prevailing valuation of the property from the local Registry office by 19.03.2013. The plaintiff did not take any step to submit the valuation of the scheduled property. However, on 03.06.2013, the learned Joint District Judge, 1<sup>st</sup> Court, Jashore rejected the petitioner's application.

Being aggrieved, the defendant as petitioner preferred the instant Civil Revision and obtained this Rule and order of stay.

It has also been stated that the plaintiff filed a C.R. Case against the defendant No. 1 under section 138 of the Negotiable Instruments Act against dishonor of cheque and in that case the petitioner was convicted and sentenced. But he could not prefer any appeal against that conviction and sentence for failure of collecting 50 percent of the cheque amount. It has been asserted that, the petitioner had no other property except the attached property and as such some property valued at taka 15,00,000/- may be released for ends of justice.

None appears on behalf of the petitioner to support the Rule.

In contrast, Mr. Bivash Chandra Biswas, learned Advocate appearing on behalf of the opposite party No.1 submits that the plaintiff instituted Money Suit No. 3 of 2007 before the learned Joint District Judge, 1<sup>st</sup> Court, Jashore for realization of the dues amounting to Tk. 24,00,000/=. Thereafter, he filed an application for attachment before judgment. The defendant-petitioner already sold out many properties

without paying money to the plaintiff-opposite party No. 1. Upon hearing the parties, the trial Court rejected the application for releasing the attached property filed by the defendant No. 1-petitioner. The trial Court rejected the application for releasing the attached property rightly and legally. The trial Court committed no error in passing the impugned order dated 03.06.2013 he adds further. The learned Advocate concludes that, there is no illegality, infirmity in the impugned order and prays for discharging the Rule.

We have heard the submissions of the learned Advocate for the opposite party No. 1, perused the Civil Revision, impugned order passed by the trial Court, and other materials on record.

The record shows that the plaintiff instituted the Money Suit No. 03 of 2007 before the Joint District Judge, 1<sup>st</sup> Court, Jashore for realisation of Tk. 24,00,000/= . Soon after filing the suit, the plaintiff filed an application for attachment of the properties of the defendant No.1-petitioner so that defendant No. 1 can not sell his property to others. The trial Court heard the plaintiff and allowed the application on 07.10.2007. It appears from the order dated 07.10.2007 that the trial Court allowed the application for attachment of the properties without issuing show cause notice to defendant No. 1, ignoring the provisions of Order 38, Rule 5(1) of the Code of Civil Procedure. So, the said order also can not be sustained. In this regard, we get support from the decision passed in *Lokman Hossain Vs. ATM Sadek Hossain*, reported in 37 DLR(1985)220.

However, the defendant No. 1 filed an application on 20.02.2013 before the trial Court for releasing a portion of attached land worth Tk. 15,00,000/= claiming that the value of the attached properties is Tk. 30,34,29,072/= whereas the plaintiff's claim is Tk. 24 lac only. Upon hearing, the trial Court directed the plaintiff to submit a valuation report of the attached properties based on the Mouza rate from the office of the Sub-Registrar by 19.03.2013. The order dated 20.02.2013 is as follows:-

“অদ্য বাদীর ১৫.০৭.২০১২ ইং তারিখের দরখাস্তসহ চূড়ান্ত শুনানীর জন্য। ইতোমধ্যে বাদীর ১৫/০৭/২০১২ ইং তারিখের দরখাস্ত বিষয়ে আদেশ হয়েছে। পক্ষদ্বয় হাজিরা দিয়েছে। চূড়ান্ত শুনানী হয়নি। ১নং বিবাদী পক্ষ একটি দরখাস্ত করে বর্ণিত মতে তপশীল জমির মধ্য হতে ১৫ (পনের) লক্ষ টাকা মূল্যমানের জমির ক্রোকাদেশ মুক্তির প্রার্থনা করেছে। কপি আপত্তিসহ অবগত আছে। শুনিলাম। পর্যালোচনায় দেখা যায় বাদী অত্র মোকদ্দমাটি একটি চেকের বিপরীতে মানী মোকদ্দমা হিসাবে দায়ের করিয়াছেন। আবার একই চেক দিয়া এন.আই. এ্যাকটের ১৩৮ ধারায় মাননীয় জেলা জজ মহোদয়ের আদালত হইতে রায় প্রাপ্ত হইয়াছেন। অত্র মানী মোকদ্দমা এবং এন.আই.এ্যাকটের মামলা একই সাথে চলিতে পারে। কিন্তু অত্র মোকদ্দমার দাবী ২৪ লক্ষ টাকা। উক্ত টাকা যাহাতে আদায় করা যায় সে কারনে রায়ের পূর্বেই কতক জমি ক্রোকাবদ্ধ রাখা হইয়াছে। অত্র মোকদ্দমা চলাকালে ক্রোকাবদ্ধ কতক জমি বিক্রয় হইয়াছে বলিয়া বাদী দাবী করিয়াছেন। এমতাবস্থায় অত্র মোকদ্দমার দাবী যাহাতে ব্যর্থ না হয় শুধুমাত্র তত টুকু সম্পত্তি ক্রোকাবদ্ধ রাখিয়া বাকী সম্পত্তি ক্রোকমুক্ত করা যাইতে পারে। এ কারনে বাদীকে আগামী ১৯/০৩/২০১৩ ইং তারিখে রেজিষ্ট্রী অফিসের বর্তমান মূল্য অনুসারে দাবীকৃত

টাকার সমপরিমান সম্পত্তির তালিকা এবং তাহার সমর্থনে রেজিষ্ট্রি অফিসের মৌজা ভিত্তিক মূল্য হার প্রতিবেদন দাখিল করিতে বলা হইল।”

The plaintiff could not submit the valuation of the attached property complying with the trial Court's order. On the contrary, on 03.06.2013, the trial Court rejected the application of the defendant-petitioner for releasing a portion of land from the attached property. The order is as follows:-

“অদ্য বিবাদীর সি, আর. ৪৯/০৮ মামলার রুল চূড়ান্ত নিষ্পত্তির বিষয়ে আদেশ দাখিল। ইতোমধ্যে ১৩/৫/১৩ তারিখের বিবাদীর প্রার্থনামতে অদ্য বাদীর প্রয়োজনীয় পদক্ষেপ। বিবাদী হাজিরা দিয়াছে। বাদীপক্ষ হলফনামা সহ একটি দরখাস্ত করে বর্ণিতমতে ১নং বিবাদীকে স্বশরীরে উপস্থিতির আদেশের প্রার্থনা করেছে এবং পৃথক অন্য একটি দরখাস্ত করে বর্ণিত মতে বাদীর দরখাস্ত মঞ্জুর করতঃ প্রয়োজনীয় আদেশের প্রার্থনা করেছে। কপি আপত্তি সহ বিলি হয়েছে।

দেখিলাম। বাদী এবং বিবাদীর দাখিলী সম্পত্তির বিবরণে মৌজাভিত্তিক সম্পত্তি এবং শ্রেণী না পাওয়া যাওয়ায় সম্পত্তির মূল্যায়ন নির্ধারণ করা সম্ভবপর নহে। এমতাবস্থায় attach সম্পত্তি ক্রোকমুক্ত করা সম্ভব নহে বিধায় বিবাদীর ক্রোকমুক্ত করিবার প্রার্থনা না-মঞ্জুর করা হইল। আগামী ১৯/৮/১৩ ইং তারিখ পর চূড়ান্ত শুনানী।”

It is clear that, the trial Court directed the plaintiff to submit the valuation report but unfortunately the Court rejected defendant's application for no fault of his own. Failure of the plaintiff to comply with the direction of the Court to perform certain act cannot be borne by the defendant and the impugned order has been passed very whimsically.

Moreover it is very worth mentioning that, the property mentioned in the schedule is joint property which is yet to be partitioned by metes and bounds.

Regard being had to the above facts and circumstances, we do not find any substance in the impugned order and the same is liable to be set aside.

Accordingly, the rule is made absolute, however without any order as to cost.

The impugned order dated 03.06.2013 passed by the learned Joint District Judge, 1<sup>st</sup> Court, Jashore in Money Suit No. 03 of 2007 is thus set aside.

The order of stay granted at the time of issuance of the rule stands recalled and vacated.

The learned Joint District Judge, 1<sup>st</sup> Court, Jashore is hereby directed to proceed with the suit and dispose of the same as expeditiously as possible, preferably within 06(six) months from the date of receipt of the copy of this order.

Let a copy of this judgment be communicated to the court concerned forthwith.

**Md. Mozibur Rahman Miah, J.**

I agree.