

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

Present:

Mr. Justice Md. Badruzzaman.

And

Mr. Justice Sashanka Shekhar Sarkar

Civil Revision No. 2484 of 2005.

Md. Mominul Hoque Shah

...Petitioner.

-Versus-

Md. Fazlul Haque Shah Chowdhury

....Opposite party.

None appears

... For the petitioner

None appears

... For the opposite party

Heard and judgment on: 26.05.2024.

Md. Badruzzaman, J:

This Rule was issued calling upon the opposite party to show cause as to why order dated 12.05.2005 passed by learned District Judge, Naogaon in Miscellaneous Appeal No. 35 of 2005 allowing the appeal in modified form and setting aside an order dated 03.05.2005 passed by learned Senior Assistant Judge, 9th Court, Naogaon in Other Class Suit No. 18 of 2005 should not be set aside.

At the time of issuance of Rule the operation of the impugned order dated 12.05.2005 was stayed for a period of 03(three) months which was subsequently extended till disposal of the Rule.

Facts, relevant for the purpose of disposal of this Rule are that the opposite party as plaintiff instituted partition suit being Partition Suit No. 18 of 2005 in the Court of Senior Assistant Judge, Naogaon for a decree of partition of the suit property. During pendency of the suit

the plaintiff filed an application on 03.05.2005 for temporary injunction restraining the defendant from constructing building obstructing the hair and sun light into the plaintiff's house.

The trial Court upon hearing rejected the application by order dated 30.05.2005. Being aggrieved by said order the plaintiff preferred Miscellaneous Appeal No. 35 of 2005 before the learned District Judge, Naogaon and the learned District Judge upon hearing allowed the appeal in modified form and setting aside the order of the trial Court and directing the parties to maintain *status-quo* till disposal of the suit by impugned order dated 12.05.2005.

Being aggrieved by said order of *status-quo* the defendant has preferred this revisional application and obtained the instant Rule. It appears that the order of *status-quo* was granted on 03.05.2005 and the same was stayed by this Court on 25.06.2005. There is no material on record which suggest that the plaintiff has challenged the order of stay by this Court before the Appellate Division and there is no information on record whether the original suit being Partition Suit No. 18 of 2005 has, in the meantime disposed of.

Moreover, though the notice was served upon the plaintiff but none appeared by filing Voklatnama to oppose the Rule.

Accordingly, it is to be presumed that the plaintiff opposite party has no any interest in the subject matter of the Rule.

In the result, the Rule is made absolute. The order of *status-quo* dated 12.05.2005 is hereby set aside.

The order of stay granted earlier is hereby recalled and vacated.

The trial Court is directed to proceed with the suit, if any in accordance with law.

Communicate a copy of this judgment to the Court below at once.

(Justice Md. Badruzzaman)

I agree.

(Mr. Justice Sashanka Shekhar Sarkar)