

Present:

Mr. Justice Sheikh Abdul Awal

and

Mr. Justice Md. Mansur Alam

In the Matter of:

First Miscellaneous Appeal No. 156 of 2014

Intertek Testing Services International
Limited and another.

.....Defendant-appellants.

-Versus-

Md. Monowar Hossain and others

.....Ramzan Ali Sikder, Advocate

..... For the appellant.

None appears

..... For the respondents.

Heard on 12.03.2025, 18.03.2025 and

Judgment on 18.03.2025

Sheikh Abdul Awal, J:

This First Miscellaneous Appeal is directed against the order dated 01.10.2013 passed by the learned Joint District Judge, 4th Court, Dhaka in Money Suit No. 20 of 2012 allowing the plaintiff's application under Order XXXVIII, Rule 5 read with section 151 of the Code of Civil Procedure attaching defendants' property before judgment.

The short facts necessary for the purpose disposal of this appeal is that respondent No.1 as plaintiff filed Money Suit No. 20 of 2012 on 12.05.2012 in the Court of the learned Joint District Judge, 4th Court, Dhaka seeking a decree for realization of Tk. 32,23,,483/- from the defendants on the ground that the plaintiff has allegedly suffered loss in relation to import goods

due to the delay of the defendant Nos. 1&2 to issue a clean report of finding(CRF).

In this backdrop, while the suit was in progress the plaintiff on 22.05.2012 filed an application under Order XXXVIII, Rule 5 read with section 151 of the Code of Civil Procedure for attachment defendants' property before judgment. A list of the defendants' property has been described in the application.

Defendant Nos. 1-2 resisted the said application by filing written objection stating that the allegations as made in the application are false, untrue and baseless, the plaintiff without giving any specification of the allegation filed a misconceived application under Order XXXVIII, Rule 5 read with section 151 of the Code of Civil Procedure for attachment defendants' property before judgment, the same is liable to be set-aside.

The learned Joint District Judge, 4th Court, Dhaka after hearing both the parties by order dated 01.10.2013 allowed the application holding that from the record the conduct/business moods of the defendant Nos. 1&2 are not sound and fare one and allegations and complain are pending for disposal against the defendant Nos. 1&2 as per plaint.

Being aggrieved by the aforesaid impugned order passed by the learned Joint District Judge, 4th Court, Dhaka the present defendant-appellants have preferred this First Miscellaneous Appeal before this Court.

Mr. Ramzan Ali Sikder, the learned Advocate for the appellant in the course of his arguments takes through the impugned order and other materials on record including the

application under Order XXXVIII, Rule 5 read with section 151 of the Code of Civil Procedure and written objection filed by the defendants and then submits that the allegations as stated in the application under Order XXXVIII, Rule 5 read with section 151 of the Code of Civil Procedure are untrue, baseless and it is on record the learned Joint District Judge without giving any meaningful facts issued show cause notice upon the defendants as required under Order XXXVIII Rule 5 of the Code of Civil Procedure either directing them to furnish security or to show cause as to why they shall not be directed to furnish security and therefore the order of attachment before Judgment dated 01.10.2013 is without any sanction of law and thus void and as such the same is liable to be set-aside. He further submits that the learned trial Court failed to appreciate that the plaintiff failed to provide any piece of evidence that the defendants are about to dispose of whole or part of their property from the local limits of the jurisdiction of the Court with intent to cause obstruction or delay in the execution of any decree that may be passed against them and as such the same is liable to be set-aside. Finally, the learned Advocate relying on a decision reported in BCR 2004 HCD submits that the attachment before judgement may be ordered in exceptional circumstances only when the applicant places facts justifying it in terms of the rules although in this case it is apparent that the trial court below without stating any meaningful facts passed show cause order and thus the plaintiff-applicant is not entitled to get any favourable order as per Rule 5/6 of the Code.

Having heard the learned Advocate for the appellant and having gone through the materials on record including the

impugned order. Now, the only question calls for consideration in this case is whether the learned Joint District Judge was justified in allowing the application under Order XXXVIII, Rule 5 read with section 151 of the Code of Civil Procedure for attachment the property of defendant Nos. 1&2 before judgment. In deciding the matter at the very outset, I like to quote hereunder the show cause given by the learned trial Court, which reads as follows:

“দেখিলাম। বিজ্ঞ কৌশলির বক্তব্য শ্রবন করিলাম। দরখাস্তে বর্ণিত মতে কেন কোবদ্ধ করিবার আদদেশ দেওয়া হইবে না সেই মর্মে ৭(সাত) দিনের ভিতর কারণ দর্শাইতে বিবাদীপক্ষকে নির্দেশ দেওয়া গেল। সত্বর তলবানা দাখিল করা হউক। আমার জবানীতে মুদ্রিত ও সংশোধিত।”

From a combined reading of the application under Order XXXVIII, Rule 5 read with section 151 of the Code of Civil Procedure together with show-cause order of the trial Court dated 26.06.2013, we find no meaningful facts and circular to justify for passing an order of attachment before judgment as per provision of law.

In the case of Md. Iqbal Hossain Vs. Mohammad Ali reported in BCR 2004 HCD 88 it has been held as follows:

“An order of attachment before judgment under Order 38 Rule 5 CPC is a matter of relief and not of mere procedure. An order of attachment under this rule cannot be passed as a matter of course, simply on the ground that the plaintiff has a good case at the trial. It may be ordered in exceptional cases only when conditions prescribed by law are satisfied. The applicant must place facts before the Court indicating that the defendant is about to dispose of his property

or is about to remove it from the local limits of the jurisdiction of the Court with intent to obstruct or delay the execution of the decree that may be passed against him. Prior to issuing an order of attachment before judgment the Court must first order security be furnished within the given time or require the defendant to show cause why security should not be given when the defendant is prepared to furnish security to the satisfaction of the Court no order of attachment can be passed. The Court must insist upon strict proof of allegations of mischievous manoeuvre by the defendant.”

From the above quoted decision, we find a clear view of law that the applicant must place facts before the Court indicating that the defendant is about to dispose of his property or is about to remove it from the local limits of the jurisdiction of the Court with intent to obstruct or delay the execution of the decree that may be passed against him.

In this case, we find nothing on record to suggest that the defendants are trying to remove their property or to dispose their property with intend to obstruct or delay the execution of the decree that may be passed against them. Therefore, the impugned order dated 01.10.2013 attaching the property of the defendants does not deserve to be sustained.

In the result, the appeal is allowed without any order as to cost. The impugned order dated 01.10.2013 passed by the learned Joint District Judge, 4th Court, Dhaka is se-aside. Since the matter is an old of 2014, the trial Court below is directed to hear and dispose of the suit expeditiously.

Since the appeal is allowed, the connected Rule being Civil Rule No. 769 (FM) of 2013 is disposed of.

Let a copy of this judgment be communicated to the Court concerned at once.

Md. Mansur Alam, J:

I agree.