

Present:

Mr. Justice Md. Ruhul Quddus

Civil Revision No.691 of 1999

Bangladesh Brahma Samaj and others

...Petitioners

-Versus-

Mrs. Saleha Ahmed and others

...Opposite Parties

Mr. Md. Tabarak Hussain, Advocate

...for the petitioners

No one appears for the opposite parties

Judgment on 13.11.2011

This Rule, at the instance of the added defendants, was issued to examine the legality of order dated 4.10.1998 passed by the Senior Assistant Judge, fourth Court, Narayangonj in S.C.C. Suit No.3 of 1996 rejecting an application for staying proceeding of the suit.

Facts relevant for disposal of the Rule are that opposite party Nos. 1-3 instituted S.C.C. Suit No.3 of 1996 before the Small Causes Court, Narayangonj for eviction of monthly ejectable tenants namely, opposite party Nos.4-7(defendant Nos.1-4 in the suit). Their case, in short, is that the said defendants were inducted in the suit property as monthly ejectable tenants by their vendors Narayan Chandra Paul and Madhusudan Paul. The plaintiffs had purchased the suit property from the said Narayan Chandra Paul and Madhusudan Paul by a registered

sale deed dated 13.4.1998. After so purchase, the plaintiffs asked the said defendants to pay monthly rent for the tenanted premises to them, which they (defendant Nos.1-4) did not comply with. They also stopped payment of rent to the previous land lords and rendered themselves as defaulter-tenants. The present petitioners filed an application for addition of parties in the S.C.C Suit, which was allowed and they were made defendant Nos.5-6 therein. Subsequently they filed another application for staying proceeding of the S.C.C. Suit on the ground that petitioner No.2 instituted Title Suit No.9 of 1996 in the first Court of Sub-ordinate Judge, Narayangonj, wherein the aforesaid Narayan Chandra Paul, Madhusudan Paul and opposite party Nos.1-4 were made defendants. The learned Judge of the Small Causes Court heard the said application and rejected the same by his order dated 4.10.1998 on the ground that the issues in the S.C.C. Suit were quite different from that of the Title Suit. Against the said order of rejection, the petitioners moved in this Court and obtained the Rule with an ad-interim order of stay.

Mr. Md. Tabarak Hussain, learned Advocate appearing for the petitioners with leave of the Court submits that the parties of both the suits are same, and the issues involved therein are also interrelated. Title Suit No.9 of 1996 will determine the main controversies between the parties and therefore, the title suit should be decided first to avoid future complication and adjudication of two parallel litigations in

respect of same subject matter. In response to a query made by the Court, learned Advocate for the petitioners replies that the S.C.C Suit was instituted earlier than the Title Suit, but he cannot say anything about the present position of the Title Suit.

I have considered the submission of the learned Advocate, and gone through the revisional application as well as the impugned order. The issues in two suits are not likely to be same, and admittedly the S.C.C Suit was instituted previously.

Stay of a parallel suit on same subject matter between same parties is governed by section 10 of the Code of Civil Procedure, which runs as follows:

“ No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in Bangladesh having jurisdiction to grant the relief claimed, or in any Court beyond the limits of Bangladesh established or continued by the Government and having like jurisdiction, or before the Supreme Court. ”

From a close reading of the above quoted law, it appears that a subsequent suit may be stayed if the issues in two parallel suits and parties thereto are same. In the present case the S.C.C Suit, stay of proceedings in which is sought for, was instituted previously.

Therefore, it does not fall within the scope of section 10 of the Code. It does not appear that the learned Judge of the Small Causes Court has committed any error of law resulting in an error in decision occasioning failure of justice.

In view of the above, I do not find any substance in the Rule. Accordingly, the Rule is discharged. The stay granted at the time of issuance of the Rule is vacated.

Communicate a copy of the judgment.