

**In the Supreme Court of Bangladesh  
High Court Division  
(Civil Revisional Jurisdiction)**

Present:

Mr. Justice Md. Riaz Uddin Khan

**Civil Revision No. 2267 of 2015**

**IN THE MATTER OF :**

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

-And-

**In the Matter of:**

Kaikertek Nabab Habibullah High School

..... Petitioner

Versus

Farid Miah and others

.....Opposite parties

None appears

**Heard and Judgment on: 07.10.2020.**

**Md. Riaz Uddin Khan, J-**

Rule was issued by this Court calling upon the opposite party Nos. 1-4 to show cause as to why the judgment and order dated 06.08.2015 passed by the learned District Judge, Narayangonj in Miscellaneous Appeal No. 19 of 2015 affirming the order dated 02.07.2015 passed by the learned Assistant Judge, Sonargaon, Narayangonj in Title Suit No. 141 of 2015 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 this court stayed the operation of the judgments and orders passed by both the courts below till disposal of the rule.

Facts for disposal of this rule is that Opposite party Nos. 1-4 filed Title Suit No. 141 of 2015 before the Senior Assistant Judge, Sonargaon, Narayangonj contending inter alia that defendant No. 1 Kaikertek Nabab Habibullah High School is an educational institution which runs by a Managing Committee. The plaintiffs claiming themselves as guardians and voters for the election of the Managing Committee of the school alleged that the defendants prepared a final voter list which are incorrect as some voters have been shown in twice and some persons have been shown as voters though their sons and daughters were not the students of the school at the relevant time. The plaintiffs prayed for declaration that the said final voter list was illegal and void and further declaration that on the basis of that voter list there cannot be any election. The plaintiffs filed an application under Order 39 Rule 1 read with section 151 of the Code of Civil Procedure for temporary injunction. The defendant-petitioner filed written objection against that application for temporary injunction. After hearing both the parties the learned Assistant Judge by his order dated 02.07.2015

allowed the application for temporary injunction till 06.07.2015. Against that order dated 02.07.2015 the defendant No. 1 preferred Miscellaneous Appeal No. 19 of 2015 before the learned District Judge, Narayangonj and after hearing both the parties the learned District Judge by his impugned judgment and order dated 06.08.2015 disposed of the Miscellaneous Appeal on the finding that though there is some anomaly in the voter list but it is curable since the running managing committee has 13 days in their hand to prepare a correct voter list for the interest of free and fair election. The learned District Judge also observed that since the trial court passed injunction staying the holding of election for a limited period and in the meantime the existing managing committee has a chance to correct the voter list he declined to interfere with the order passed by the trial court and disallowed the Miscellaneous Appeal.

Being aggrieved by and dissatisfied with the judgments and orders passed by the trial court as well as appellate court below the defendant appellant filed this Civil Revision and obtained the rule and order of stay as stated above.

When the rule is taken up for hearing no one appears to support or oppose the rule.

In the Revisional application the defendant-appellant-petitioner contended that the trial court without considering the facts categorically stated by the defendant in its written objection most arbitrarily and illegally allowed the application for temporary injunction. Petitioner's next contention is that the trial court committed error of law resulting an error in his decision occasioning failure of justice in not holding that prima-facie the pleading of plaintiffs is false. It was further submitted that the learned District Judge without perusal of the record and without applying judicial mind and relevant law most arbitrarily as well as illegally dismissed the said appeal directing the defendants to correct the voter list without taking evidence regarding the correctness of the voter list. The petitioner finally submitted that the court of appeal below committed error of law as well as facts passed impugned judgment and order dismissing the appeal occasioning failure of justice with effect that in the written statement of the defendant appellant it was clear pleading that all the allegations as made in the plaint as well as in the application of temporary and ad-interim injunction is totally false and has no basis.

I have perused the order and judgment passed by the trial court as well as the appellate court, the revisional application along

with annexures annexed therewith. It appears from the record that the date of election of the managing committee of Kaikerteak Nabab Habibullah High School, Sonargaon, Narayangonj was scheduled to be held on 06.07.2015. The Plaintiffs-Opposite party Nos. 1-4 claiming themselves as the guardian voters of that school filed the Title Suit along with an application for temporary injunction. The application for temporary injunction was allowed against which a Miscellaneous Appeal was filed which was also disallowed and thereafter this revision has been filed before this Court. At the time of issuance of the rule this Court was pleased to stay operation of the judgment and order respectively passed by the Courts below. In such circumstances there was no injunction or bar to hold the election by the concerned authority fixing a new date. In the meantime, more than 5 years have been elapsed. In such circumstances the instant rule has become infructuous since there was no bar in holding election by the concerned authority.

It is to be noted that according to law the managing committee of a school is for 2 years only from the date of its 1<sup>st</sup> meeting. The election for constituting a managing committee was scheduled on 06.07.2015. Meanwhile, more than 5 years have been passed. It appears from the plaint that the plaintiffs claimed

themselves as the guardians of their daughters reading in class VI to VIII in the year 2015. So, the plaintiffs have no scope to remain guardian voters of the school by virtue of their daughters who are supposed to be no more students of that school. Be that as it may, according to law the Ad-hoq Committee or the new Managing Committee, as the case may be, supposed to prepare a correct voter list for the election and meanwhile election of the managing committee was supposed to be held more than two times. In such circumstances I am of the view that the cause of action for which the instant Title Suit No. 141 of 2015 was filed, has also become infructuous. Since the cause of action upon which the Title Suit No. 141 of 2015 was instituted has become infructuous, the trial court is directed to dispose of the Suit in light of the observations made above in accordance with law.

In the result the rule is disposed of with the observations made above, however, without any order as to cost.

Communicate the judgment and order to the trial Court at once.