

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Civil Revisional Jurisdiction)

Present:

Mr. Justice S. M. Masud Hossain Dolon

Civil Revision No. 2705 of 2007.

Md. Abdus Sobhan and others.

... Plaintiffs-Respondents-Petitioners.

-VERSUS-

Abdul Hannan Babu and others.

... Defendants-Appellants-opposite parties.

Ms. Fatema Khatun, Advocate

..... for the petitioners.

None appears for the opposite parties.

Heard & Judgment on: 15.02.2024.

This Rule has been issued calling upon the opposite party Nos. 1 and 2 to show cause as to why the Order No. 1 dated 21.05.2007 passed by the learned District Judge, Chittagong in Miscellaneous Appeal No. 83 of 2007 should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

Fact relevant for the disposal of the Rule are that the petitioners as plaintiffs filed Other Suit being No. 145 of 2007 before the learned Senior Assistant Judge, Fifth Court, Chittagong against the defendants and prayed for permanent injunction in the suit property. While the case was pending before the learned Assistant Judge, Fifth Court, Chittagong the petitioners filed an application for temporary injunction.

The learned Assistant Judge, Fifth Court, Chittagong after scrutinizing oral and documentary evidences submitted by the plaintiffs-petitioners in support of their respective claims allowed the application for temporary injunction against which defendants filed Miscellaneous Appeal before the learned District Judge, Chittagong who after hearing the defendants-Appellants-opposite parties Nos. 1 and 2 allowed the appeal and stayed the temporary injunction order passed by the learned Assistant Judge, 5th Court, Chittagong against which the petitioners filed the instant Revisional application and obtained Rule.

Ms. Fatema Khatun, the learned Advocate on behalf of the petitioners submit that the order passed by the Appellate court is completely a non speaking order and the appellate court also misdirected himself in considering the submission placed by the opposite parties that the temporary injunction order was passed behind the back and knowledge of the Appellants. The Appellate Court failed to consider the findings of the Trial Court that the notice of the injunction was duly issued and served upon the Appellant-Opposite Party Nos.1 and 2 and none of them appeared and the appellate Court without considering such findings of the Trial Court passed the order of stay, which committed error of law resulting in an error in the decision occasioning failure of justice. She further submits that trial court upon hearing the petitioners found the prima facie title and possession of the petitioners in the suit land and the prayer of the petitioners were considered upon perusal of the records but

the appellate court without entering into the facts of the case stayed the temporary injunction order passed by the Trial Court and as such the Rule may kindly be absolute for the ends of justice.

None appears on behalf of the opposite parties when the matter is taken up for hearing.

In view of the above situation, I have heard the learned Advocate for petitioner and also considered all other relevant paper appended thereto. I have perused the judgment and order passed by the learned Trial Court and also impugned order passed by the learned appellate court. On perusal of the record it appears that the temporary injunction application was filed on 29.03.2007. Thereafter on 02.04.2007 the learned Assistant Judge issued show cause notice to the defendants Nos. 1 and 2 as to why temporary injunction should not grant in favour of the plaintiffs-petitioner and allowed 7(seven) days time to reply the show cause notice. The learned Assistant Judge, Sadar, Chittagong by his order dated 26.04.2007 before passed temporary injunction order had determined the show cause notice was issued upon the defendants notwithstanding the defendants-opposite parties Nos. 1 and 2 were not present at the time of hearing temporary injunction application. The learned trial court after hearing the plaintiffs-petitioners had allowed the application for temporary injunction which was stayed by the appellate court without issued any show cause notice to the plaintiffs-petitioners against which instant civil revision has been filed.

On careful examination of the kabla registered deed, title and possession over the suit land and other relevant documents filed by the plaintiffs–petitioners that the petitioners succeeded to prove their own case. As such, the trial court after considering both oral and documentary evidences adduced and produced by both parties to the original suit rightly allowed the application for temporary injunction. The learned Appellate Court wrongly found the injunction order was passed behind the back and knowledge of the Appellant-Opposite party Nos.1 and 2 and stayed the operation of judgment and order passed by the learned Trial Court without issued any show cause notice to the plaintiffs-respondents petitioners. Moreover the learned Appellate Court did not consider the provision of law for grant temporary injunction under order 39 Rule 1 and 2.

Considering the facts and circumstances of the case, I do not find any illegality in the impugned judgment and order passed by the learned Senior Assistant Judge, 5th Court, Chittagong and as such it is tenable in law.

In view of the discussion made above, I find merit in this Rule.

Accordingly, the Rule is made Absolute.

Send a copy of this judgment to the concerned court for information and necessary action.