

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

**Present:**

**Mr. Justice Md. Bashir Ullah**

**CIVIL REVISION NO. 3662 OF 2004**

**IN THE MATTER OF:**

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

And

**IN THE MATTER OF:**

Md. Giasuddin

... Plaintiff-petitioner.

-Vs-

Upazilla Nirbahi Officer, Bhola and others

... Defendant -Opposite Parties.

Mr. Mohammad Shamsul Alam, Advocate

... for the petitioner.

Mr. Arobinda Kumar Roy (Ananda), D.A.G with  
Mr. Mohammad Abbas Uddin and

Mrs. Shamsun Nahar (Laizu), A.A.G

...for the opposite parties.

**Heard on: 28.04.2024**

**Judgment on: 29.04.2024.**

**Md. Bashir Ullah, J**

At the instance of the plaintiff in Title Suit No. 33 of 2004, this Rule was issued calling upon the opposite party Nos. 1-3 to show cause as to why the judgment and order dated 15.08.2004 passed by the learned Additional District Judge, Bhola in Miscellaneous Appeal No. 8 of 2004 dismissing the appeal thereby affirming the order dated 14.03.2004 passed by the learned Senior Assistant Judge, Bhola Sadar, Bhola in Title Suit No. 33 of 2004 rejecting the application for temporary injunction under Order

39, Rule 1 read with section 151 of the Code of Civil Procedure should not be set aside and/or such other or further order or orders as to this Court may seem fit and proper.

Facts, relevant for the disposal of the Rule, in short, are:

The petitioner as plaintiff instituted Title Suit No. 33 of 2004 in the Court of Senior Assistant Judge, Bhola Sadar, Bhola for permanent injunction restraining the principal defendants from leasing out the suit ferry ghat as described in schedule 'ka' to the plaint for the year 1411 B.S. till settlement of the dispute between two ferry ghats as described in schedules 'ka' and 'kha' to the plaint. Soon after filing of the suit, the petitioner filed an application for a temporary injunction under Order 39, Rule 1 read with section 151 of the Code of Civil Procedure seeking injunction restraining the defendant No. 1 from leasing out the suit ferry ghat as described in schedule 'ka' to the plaint for the year 1411 B.S. and that of dropping or receiving tender schedule pursuant to tender notification dated 16.02.2004 till settlement of the dispute as to the location of the two ferry ghats as described in schedule 'ka' and 'kha' to the plaint. It is stated that, the suit ferry ghat, namely Rajapur, Ramdaspur, Banger Char ferry ghat as described in schedule 'ka' to the plaint has been under the management of defendant No. 1, who invited tender for leasing out the same for the year 1410 B.S. and the plaintiff participated in the tender and became highest bidder. The authority decided to lease out the suit ferry ghat in his favour and accordingly he deposited the tender amount including income tax and VAT amounting to Tk. 3,81,157/- and executed

an agreement. The plaintiff was then given a letter of authority for the collection of toll and handed over the possession of the suit ferry ghat. At the initial stage, he faced obstruction from defendant No. 5 who disclosed that he also took the lease of the suit ferry ghat, namely Kalupur, Goneshpur to Hajipur from defendant No. 4, Zilla Parishad, Bhola. On various occasions the plaintiff made representations to defendant No.1 drawing attention about the loss and injury he sustained for collection of toll by defendant No. 5 and claimed compensation but all went in vain. Hence, he filed an application for a temporary injunction.

The defendant-opposite party Nos. 1-3 entered appearance in the suit and filed written objection against the said application for temporary injunction denying all the material averments so made therein and their further case, in brief, is that the plaintiff in order to extend the period of the lease made an allegation against collection of toll by the lessee of Zilla Parishad, Bhola. A tender was invited to lease out the suit ferry ghat for the year 1411 B.S. and the tender box had already been opened. The plaintiff filed the suit to frustrate the tender procedure. There were three ferry ghats; one of which was operated by Upazilla Nirbahi Officer, Bhola, Bangladesh Inland Water Transport Authority (BIWTA) operated another and rest was operated and managed by Zilla Parishad, Bhola, while the suit ferry ghat has no connection with the terminal ghat managed by BIWTA and Zilla Parishad operated Kalupur, Goneshpur to Hazipur ghat. Hence, the application for temporary injunction is liable to be rejected.

That learned Senior Assistant Judge, Bhola Sadar, Bhola upon hearing the parties rejected the said application for temporary injunction on 14.03.2004.

Challenging the order dated 14.03.2004, the plaintiff as appellant preferred Miscellaneous Appeal No. 8 of 2004 before the learned District Judge, Bhola. The learned Additional District Judge, Bhola heard the said appeal on transfer and dismissed the same on 15.08.2004 affirming the order dated 14.03.2004 passed by the learned Senior Assistant Judge, Bhola Sadar, Bhola.

Being aggrieved by and dissatisfied with the judgment and order dated 15.08.2004 passed by the learned Additional District Judge, Bhola in Miscellaneous Appeal No. 8 of 2004, the petitioner preferred the instant Civil Revision under Section 115(1) of the Code of Civil Procedure before this Court and obtained Rule.

Mr. Mohammad Shamsul Alam, the learned Advocate appearing on behalf of the petitioner submits that both the courts below committed error of law resulting in an error in the decision occasioning a failure of justice in not granting temporary injunction. He further submits that, the courts below failed to consider that the plaintiff- petitioner had a prima facie arguable case and the balance of convenience and inconvenience was in favour of the plaintiff-petitioner and against the defendant-opposite parties and there was reason for causing irreparable loss and injury to the plaintiff-petitioner.

He also submits that both the courts below committed error of law resulting in an error in such order occasioning failure of justice in not taking into consideration that both the suit ferry ghats as described in schedule 'Ka' as well as the ferry ghat as described in schedule 'Kha' to the plaint is same ghat with different names and the petitioners suffered irreparable loss and injury for unauthorized collection of toll by defendant-opposite party No.5 from the suit ferry ghat.

Per contra, Mr. Mohammad Abbas Uddin, learned Assistant Attorney General appearing on behalf of the opposite party Nos. 1-3 submits that the petitioner took the lease of the ferry ghat for 1410 B.S. and the lease agreement has already expired and the petitioner filed the Title Suit and that of the application for a temporary injunction only to extend the lease and to collect toll from the ferry ghat illegally.

He further submits that there is no prima facie case in favour of the petitioner and the balance of convenience and inconvenience is in favour of the opposite party. He finally prays for discharging the Rule.

I have heard the learned advocates for both the parties and perused the judgment and order and other materials on record.

The record divulges that, there were three ferry ghats under District Bhola, Upazila Charfashion. Three ferry ghats were managed and operated by three different authorities. Rajapur-Ramdaspur-Banger Char ghat was operated by Upazilla Nirbahi Officer (UNO), Bhola, Illisha Terminal was operated by Bangladesh Inland Water Transport (BIWTA), and Kalupur, Ganeshpur (Ragapur, Hazipur) ferry ghat was operated by Zilla Parishad,

Bhola. The defendant No. 1, Upazilla Nirbahi Officer (UNO) invited tender for leasing the Razapur-Ramdaspur-Banger Char ghat for 1410 B.S. The plaintiff-petitioner participated in the tender and became the highest bidder. The office of the UNO gave the lease of the above-mentioned ferry ghat to the plaintiff for 1410 B.S. According to the rules and regulations, the plaintiff deposited the tender amount including VAT and tax. The authority handed over the possession to the plaintiff-petitioner and he started collecting toll from the ferry ghat. Before the period of lease came into end, the plaintiff submitted an application on 08.01.2004 to the UNO claiming that the defendant No. 4 was obstructing in collecting toll. Upon receipt of the complaint, the defendant No. 1, directed the Assistant Commissioner (land), Bhola to investigate the matter on 27.01.2004. The Assistant Commissioner (land), Bhola upon proper investigation submitted a report on 06.03.2004 stating that, the plaintiff's claim was not valid. The ferry ghat operated by Zilla Parishad namely Kalupur, Ganeshpur (Razapur, Hazipur) was 2(two) kilometers away from the plaintiff's suit ferry ghat namely, Razapur, Ramdaspur, Banger Char. So, the claim of the plaintiff was not acceptable.

The learned Senior Assistant Judge, Bhola Sadar Court, Bhola rejected the application for temporary injunction on the finding that, plaintiff could not produce any document showing any illegal collection of toll by defendant No. 5 and if any injury is caused by the defendant Nos. 4-5 can be resolved by the defendant No. 1 and finding further that, plaintiff

has also remedy in money suit but cannot resist the process of granting lease by defendant No. 1, UNO, Bhola.

The learned Additional District Judge, Bhola also affirmed the order of the trial Court with the independent finding that government is facing loss of revenue due to unauthorized occupation of the ferry ghat by the plaintiff.

Record shows that, the plaintiff-appellant-petitioner took lease for one year for 1410 B.S. He collected toll and enjoyed the possession of the suit ferry ghat. The tenure of the lease agreement expired long ago. He had no right to hold on possession of the suit ferry ghat beyond 1410 B.S. It seems that the plaintiff instituted the suit and that of an application for temporary injunction only to frustrate the tender procedure for the year of 1411 B.S. and to occupy the ferry ghat illegally and collect the toll from the suit ferry ghat unlawfully. The plaintiff's application for temporary injunction, subsequent filing of the appeal and the instant civil revision are nothing but a cunning device to prolong litigation and hold on the possession of the suit ferry ghat.

It is worthwhile to mention here that, granting or refusing injunction is an equitable relief which should be exercised in aid of equity and fair justice. It is also well settled principle that, one who comes for equitable relief must come with clean hand. In this case, the plaintiff instituted the suit and filed application for temporary injunction for making obstruction in tender procedure of the suit ferry ghat for the year of 1411 B.S. which means he came with dirty hand and as such he is not entitled to any

equitable relief. In this regard this Court gets support in the case of *Khaleda Rahman and another Vs Integrated Services Ltd and others*, reported in 53 DLR 161.

It appears from the record that, the tenure of lease given to the plaintiff expired long ago but he is holding the possession of the ferry ghat in question very illegally and unlawfully. The Government has been deprived of revenue due to illegal activities of the plaintiff. So, the balance of convenience and inconvenience is totally in favour of the defendant-Government. So, the Courts below have not committed any error of law resulting in an error in the decision that ever occasioned failure of justice while rejecting the application for temporary injunction.

In view of the above facts and circumstances, this Court finds no earthly reason to interfere with the judgment of the appellate court as well as the trial court below and finds no merit in the Rule.

Hence, the Rule is liable to be discharged.

As a result, the Rule is discharged.

There is no order as to costs.

Send down the Lower Court Records with a copy of the judgment to the courts below forthwith.