

Present:

MR. JUSTICE S.M. EMDADUL HOQUE

CIVIL REVISION NO.142 OF 2017 with

CIVIL REVISION NO.143 OF 2017.

IN THE MATTER OF:

An application under Section 115 (4) of the Code of Civil Procedure.

- AND -

IN THE MATTER OF:

1(a) Niati Bala Nath and another
..... Petitioner

-Versus-

Rashid Ahmed and others
..... Opposite parties.

Mr. Shasti Sarker with
Mr. Laxman Biswas, Advocates
..... For the petitioners.

Mr. Md. Salah Uddin, Advocate
.... For the opposite parties.

Heard and Judgment on: 30.01.2024.

The Civil Revision No.142 of 2017 and Civil Revision No.143 of 2017 filed by the petitioners 1(a) Niati Bala Nath and another under section 115 (4) of the Code of Civil Procedure challenging the impugned judgment and order dated 09.10.2016 passed by the learned Additional District Judge, 5th Court, Chattogram in Civil Revision No.16 of 2011 and Civil Revision No.17 of 2011 affirming the judgment and order dated 20.01.2011 passed by the Senior Assistant Judge, Rangunia, Chattogram in Miscellaneous Case No.47 of 2002

rejecting the application for analogous hearing of the case with the Miscellaneous Case No.6 of 2002 and accordingly the leave was granted and two separate Rule were issued.

Since the two Rule arising out of similar order passed by the Courts below rejecting the analogous hearing of the two miscellaneous case which were filed by two separate co-sharers for pre-emption against the same impugned deed of against being heard analogously and disposed of by this single judgment.

Facts necessary for disposal of the Rule, in short, is that one Narayan Chandra Nath transferred his land to the pre-emptee opposite party No.1 Dr. Dharendra Lal Nath through registered deed No.3687 dated 26.11.2001. Against the said deed of transfer one co-sharer Kunju Bala Nath as pre-emptor filed Miscellaneous case No.47 of 2002 and two other co-sharers Rashid Ahmed and Abul Hossain as pre-emptors also filed Miscellaneous Case No.06 of 2002 in the Court of Senior Assistant Judge Rangunia, Chattogram for pre-emption under Section 96 of the State Acquisition and Tenancy Act challenging the impugned deed No.3687 dated 26.11.2001.

The pre-emptee purchaser opposite party No.1 of the pre-emption case Dr. Dharendra Nath contested the case by filing written objection.

At the time of hearing of the two miscellaneous case the present petitioner the heirs of the seller Narayan Chandra Nath filed

applications for analogous hearing of the two pre-emption case. The Senior Assistant Judge, Rangunia, Chattogram after hearing the parties and considering the facts and circumstances of the case rejected the two applications taking view that since the two pre-emption cases arising out separate two cause of auction and the applicants being the heirs of seller opposite party has no scope to contest the case by filing written objection by its order dated 20.01.2011.

Against the said order the present petitioners filed two separate Civil Revision being No.16 of 2011 and Civil Revision No.17 of 2011 before the learned District Judge, Chattogram. Both the civil revision were heard by the Additional District Judge, 5th Court, Chattogram who after hearing the parties and considering the facts and circumstance of the case rejecting the two revisional application by its order dated 09.10.2016 and thereby affirming the judgment and order dated 20.01.2011 of the Senior Assistant Judge, Rangunia.

Being aggrieved by and dissatisfied with the impugned judgment the heirs of the seller Narayan Chandra Nath the present petitioners namely, Niati Bala Nath and Rani Debnath filed this two revisional application under section 115(4) of the Code of Civil Procedure and accordingly the leave were grated and also the Rules were issued in Civil Revision No.142 of 2017 and Civil Revision No.143 of 2017.

In Civil Revision No.143 of 2017 the opposite party No.6,7 and 10 as applicants filed an application for discharging the Rule on the ground that during the pendency of these two Rules the trial Court disposed of the Miscellaneous Case No.6 of 2002 by its judgment and order dated 25.08.2019 annexing the certified copy of the said judgment and order thus both the civil revision became infructuous.

The Civil Revision No.143 of 2017 is ready for hearing.

At the time of hearing of the application Mr. Shasti Sarker, the learned Advocate for the petitioner submits that the petitioner, filed two Civil Revision being No.142 of 2017 and 143 of 2017 challenging the impugned judgment and order dated 09.10.2016.

On perusal of the office note it appears that the Civil Revision No.142 of 2017 is not ready for hearing. But in the application filed by the opposite party in Civil Revision No.143 of 2017 stated that the original Miscellaneous Case No.6 of 2017 has already been disposed of by the trial Court by its judgment and order dated 25.08.2019. So, considering the aforesaid facts both two civil revision thus became infructuous. In such a case though the Civil Revision No.142 of 2017 is not ready for hearing but since the Rule has become infructuous so, necessary order for disposal of the Rule is required.

Mr. Shasti Sarker, submits that the trial Court in disposal of the applications opined that since the two pre-emption case arising out of two cause of auction and in such a case the same cannot be disposed

of analogously and further that there is no scope to allow the seller opposite party to contest the case by filing written objection and the Revisional Court also upheld the said order of the trial Court rejecting the two civil revision filed under Section 115(2) of the Code of Civil Procedure is not a proper judgment since both the pre-emptor challenged the same transfer deed being deed No.3687 dated 26.11.2011.

He submits that against the said order the petitioners filed these two separate revisional application and accordingly, the Rule was issued and at the time of issuance of the Rule this Court also stayed all further proceedings of Miscellaneous Case No.47 of 2002 and 6 of 2002 but unfortunately the order of stay could not be extended whereas the trial Court disposed of the Miscellaneous Case No.06 of 2002 without obtaining further order whether the Rule has been disposed of or not and as such the trial Court exceeded its power and which is contemptuous Act of the trial Court. He prayed for necessary order.

Mr. Md. Salah Uddin, the learned Advocate appearing on behalf of the opposite parties submits that since the trial Court disposed of the miscellaneous case No.06 of 2002 thus both the Rule has become infructuous since both the Rule issued against the rejection order of analogous hearing of two miscellaneous cases.

He further submits that though the revisional application has become infructuous after disposal of Miscellaneous Case No.6 of 2002 but the petitioner should not be prejudiced since they have right to prefer appeal against the impugned judgment and order. He prayed for necessary order.

Heard the learned Advocates of both the sides perused the application.

It appears that these two Rule were issued against the rejection order of analogous hearing of two Miscellaneous case being No.47 of 2002 and the Miscellaneous Case No.6 of 2002. But it appears that during the pendency of the Rule the trial Court finally disposed of the Miscellaneous Case No.6 of 2002 by its judgment and order dated 25.08.2019. In such facts of the case both the Rules have become infructuous.

But it appears that the trial Court without receiving any further order from this Court finally disposed of the miscellaneous case. The trial Court ought to have examined whether the Rule has been disposed of or not before disposal of the case. Thus it appears that he exceeded his power.

Considering the facts and circumstance of the case since the Miscellaneous Case No.6 of 2002 has been disposed of by the trial Court during the pendency of the Rule in such a case the petitioner has option to prefer appeal against the said judgment. Furthermore

since the Miscellaneous Case No.47 of 2002 against the impugned sale deed for pre-emption under Section 96 of the SAT Act the trial Court should dispose of the Miscellaneous Case No.47 of 2002 as early as possible preferably within 03 (three) months from the date of receipt of this order.

However, if the aggrieved parties challenging the said judgment and order then the parties are at liberty to file an application for analogous hearing of both the appeals if preferred against the judgment passed in Miscellaneous Case No.6 of 2002 and 47 of 2002 then the appellate Court may disposed of said two appeals analogously or simultaneously and in accordance with law.

Since the Rule challenging the order passed in Miscellaneous case No.06 of 2002 has already been dispose of by the trial Court thus both the Rule has become infructuous.

In the result, both the Rules are discharged as being infructuous.

However, the Senior Assistant Judge, Rangunia, Chattogram should be cautious in future in disposal of the case when found that any Rule is pending before the High Court Division and then without receiving any formal order of the said Rule should not be disposed of any of the suit or case.

The order of stay granted earlier by this court is hereby recalled and vacated.

The Register General is directed to send a copy of this judgment to “শ্রীজ্ঞান তঞ্চঙ্গ্যা” the then Senior Assistant Judge, Rangunia, Chattogram who disposed of the Miscellaneous Case No.6 of 2002.

Communicate the order at once.