

Present:

Mr. Justice Sheikh Abdul Awal
and
Mr. Justice Md. Mansur Alam

Civil Revision No. 720 of 2022

In the Matter of:

Mrs. Afsana Barik Malik.

.....Defendant No.2-petitioner.

-Versus-

Zakaria Hossain Chowdhury and others

...Plaintiff-opposite parties.

Mr. Khaled Hamid Chowdhury, Advocate
.... For the Defendant No.2-petitioner

Mr. A.K. Rashedul Huq, Advocate.
.....For the opposite party No.1

Mr. Mahfujur Rahman Roman, Advocate
..... For the opposite party No.5

Ms. Nasima Akhter, Advocate
..... For the opposite party Nos. 3-4&6

**Heard on 29.10.2024, 26.11.2024, 12.01.2025,
19.01.2025 and judgment on 20.01.2025**

Sheikh Abdul Awal, J:

This Rule was issued calling upon the opposite parties to show cause as to why the impugned order dated 09.01.2022 passed by the learned Joint District Judge, 4th Court, Dhaka in Title Suit No. 570 of 2018 rejecting the petitioner's application under Order VII, Rule 11 of the Code of Civil Procedure for rejection of the plaint should not be

set-aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

The brief fact relevant for disposal of this Rule is that the opposite party No.1, Zakaria Hossain Chowdhury as plaintiff filed Title Suit No. 570 of 2018 in the Court of the learned Joint District Judge, 4th Court, Dhaka praying the following reliefs:

- a) Pass a decree that the Plaintiff has title to the 1,00,000 shares (originally 10,000 shares of BDT 100 each that were converted to 1,00,000 shares of BDT 10 each as per Bangladesh Securities and Exchange Commission's order No. SEC/CMRRCD/2009-193/109 dated 15.09.2011) registered in the name of the defendant No.2 and 1,00,000 shares (originally shares of BDT 100 each that were converted to 1,00,000 shares of BDT 10 each as per Bangladesh Securities and Exchange Commission's Order No. SEC/CMRRCD/2009-193/109 dated 15.09.2011) registered in the name of Mrs. Rokhsana Islam (the predecessor of Defendant Nos. 2, 3, 4, 5 and 6) in the share registered of Defendant No.1 Bank and any right shares, bonus shares and dividend arising there from calculated from the date of the agreement for Amicable Partition dated 25.06.1999 till date;
- b) Pass a decree directing the Defendant No.1 Bank of rectify its share register and insert the name of the Plaintiff in the place of Defendant No.2 and Mrs. Ruksana Islam (predecessor of Defendant Nos. 2, 3, 4, 5 and 6) in connection with the 1,00,000 shares (originally 10,000 shares of BDT 100 each that were converted to 1,00,000 shares of BDT 10 each as per Bangladesh securities and Exchange Commission's Order No. SEC/CMRRCD/2009-193/109 dated 15.09.2011 registered in the name of the Defendant

no.2 and 1,00,000 shares (originally 10,000 shares of BDT 100 each that were converted to 1,00,000 shares of BDT 10 each as per Bangladesh Securities and Exchange Commission's Order No. SEC/CMRRCD/2009-193/109 dated 15.09.2011) registered in the name of Mrs. Rokhana Islam (The predecessor of Defendant Nos. 2, 3, 4, 5 and 6) and any right shares, bonus shares and divided arising therefore calculated from the date of the Agreement for Amicable Partition dated 24.06.1999 till date;

c) Award cost against the Defendant and in favour of the Plaintiff; and

d) Award such other or further relief or reliefs as the plaintiff may be entitled to in law and equity.

Defendants entered appearance in the suit and filed written statements denying all the material allegations made in the plaint contending, inter-alia, that the suit is not maintainable in its present form and manner, the suit is barred by limitation, the plaintiff filed the suit on false averments, the contents of the plaint do not disclose any cause of action of the suit and as such, the suit is liable to be dismissed.

In this backdrop, while the suit was in progress the defendants filed an application under Order VII, Rule 11 read with section 151 of the Code of Civil Procedure for rejection of the plaint stating, inter-alia, that the contents of the plaint do not disclose any cause of action of the suit, the suit is barred by limitation, the plaintiff earlier over the self-same subject matter filed Title Suit No. 420 of 2004 for declaration of title and thereafter having realized the difficulties the plaintiff filed an application for withdrawal of the suit with a permission to sue afresh which was allowed on 02.10.2005 and thereafter, the plaintiff long lapses of 14 years over the self-same

subject matter filed the present suit praying similar type of reliefs which is clearly barred by the principle of res-judicature, the ultimate result of the suit is as clear as daylight such a suit should be buried at its inception so that no further time is consumed in a fruitless litigation. The subject matter of the instant suit is clearly and completely company matter and a case being Company Matter No. 112 of 2005 had filed by the present plaintiff which was also disallowed by judgment and order dated 31.05.2018 passed by a Company Bench of this Court and as such, at any rate the plaint of the suit is liable to be rejected to secure the ends of justice.

The learned Joint District Judge, 4th Court, Dhaka after hearing the application by his order No. 31 dated 09.01.2022 rejected the application holding that the subject matter of the suit based on bundle of facts which can be decided only at the trial on taking evidence .

Aggrieved thereby the present defendant No.2-petitioner, Mrs. Afsana Barik Malik preferred this revision application and obtained the present Rule.

Mr. Khaled Hamid Chowdhury, the learned Advocate appearing for the defendant No.2-petitioner in the course of argument takes us through the plaint of the suit and other materials on record including the application under Order VII, Rule 11 read with section 151 of the Code of Civil Procedure and then submits that the contents of the plaint do not disclose any cause of action for the suit which totally disclosed a company case and it is on record that a company bench of this Court earlier after a detailed hearing of both the sides by its judgment and order dated 31.05.2018 disallowed the Company Matter being No. 112 of 2005 and thereafter, the litigant plaintiff with ill motive filed the instant civil suit to get illegal benefit from family dispute. He further submits that the suit is plainly barred by limitation as it is on record that the plaintiff at first instance withdrawn the suit

on 02.10.2005 with permission to sue afresh and thereafter long lapse of 14 years the plaintiff filed the present suit on the self-same subject matter. The learned Advocate further referring the judgment of a Company Bench of this Court submits that earlier over the self-same matter a Company Bench of this Court decided the matter by judgment and order dated 31.05.2018 passed in Company Matter No. 112 of 2005 and against that judgment the plaintiff filed Civil Petition for Leave to Appeal No. 1012 of 2019 before the Hon'ble Appellate Division of Bangladesh Supreme Court and the said Civil Petition having been dismissed for non-prosecution and the present plaintiff after being unsuccessful in that company matter up to the Hon'ble Appellate Division filed the instant suit on false averments although the Court below without considering all these material aspects of the case most illegally rejected the application under Order VII, Rule 11 read with section 151 of the Code of Civil Procedure by the impugned order, which occasioned a failure of justice. Finally, the learned Advocate submits that the Plaintiff filed Company Matter before Company Bench of High Court being Company Matter 112 of 2005 under the Companies Act, 1994 for rectification of the share register. The said company matter was rejected by Judgment and Order dated 31.05.2018 with the following observation-

"But so far the allegation as has been brought in the instant application that the respondent No. 1 company has unlawfully denied to register the transfer of the shares so far it concerns to the respondent Nos. 3 and 5, the same has got no merit on the ground that the allegedly submitted from 117 to the respondent No. 6 Bank were inadequate and submission of original share certificates along with non-executed form 117, cannot constitute a valid transfer of shares. But so far the question as to the entitlement of the petitioner to the said shares owned by the respondent Nos. 2 and 4 is concerned, it appears that the respondent No 2 and 4 have already made compromise

with the petitioner and accordingly their shares have already been treated as transferred to the petitioner by way of the compromise effected from the date of compromise.”

In view of the above findings of the company bench it is clear that the instant suit is a vexatious suit and ultimate result of the suit is as clear as day light, such a suit should be buried at its inception so that no further time is consumed in such a fruitless litigation. The learned Advocate to strengthen his submissions has relied on the decisions reported in 45 DLR(AD) 31, 11 BLD 315, 10 BLT 39, 11 BLD 312, 43 DLR 242, 53 DLR(AD) 12 and 55 DLR 211.

Mr. A.K. Rashedul Huq, the learned Advocate appearing for the opposite party No. 1, on the other hand, supports the impugned order, which was according to him just, correct and proper. The learned Advocate in the course of argument referring plaintiff of the suit submits that the contents of the plaint do disclose cause of action for the suit, the plea as taken in the application under Order VII, Rule 11 read with section 151 of the Code of Civil Procedure is motivated, ill advised and misconceived. The learned Advocate further submits, it is on record that earlier the plaintiff filed Civil Suit No. 420 of 2004 and the said suit was withdrawn by the plaintiff with a permission to sue a fresh and soon thereafter the plaintiff filed a company case before the appropriate company bench of this Court being Company Matter No. 112 of 2005 and the said company case was disallowed with a direction to raise the subject matter before appropriate civil Court and accordingly, the innocent plaintiff filed the present suit for proper relief as per direction of the company bench and as such, there is no legal scope to say that the case is barred by resjudicata or the suit is misconceived one as the subject matter of the suit is company bench matter etc. The learned Advocate further submits that in the attending facts and circumstances, the case is not barred by limitation whatsoever, besides the question of limitation is a mixed question of

facts and law which can only be decided at the trial on taking evidence that may be adduced by the parties.

Finally, Mr. A.K. Rashedul Huq submits that the present suit is based on a family settlement which was reduced into writing and duly registered on 24.06.1999 under the title of Family Settlement Agreement; there is a good number of documentary evidences which can be substantiated by the oral evidences during trial in favour of the plaintiff-opposite party No.1. The plaintiff also has money receipts and family settlement agreement to prove his case and thus it can safely be said that the suit is not a fruitless litigation.

Having heard the learned Advocates for both the sides and having gone through the materials on record including the impugned order and the application filed under Order VII, Rule 11 read with section 151 of the Code of Civil Procedure, the only question that falls for our consideration in this civil Revision whether the learned Joint District Judge, 4th Court, Dhaka committed any error in rejecting the application under Order VII, Rule 11 read with section 151 of the Code of Civil Procedure by the impugned order on the ground that the questions raised could only be decided on proper issues at the time of hearing of the suit.

Firstly, the learned Advocate for the defendant petitioner argues that the suit is barred by limitation, in the facts and circumstances of the case the plaintiff is not entitled to get benefit of section 14 of the Limitation Act as the suit is clearly time barred being the long gap of more than 14 years.

It is true that section 14 of the Limitation Act contain the provision to extension of the period of limitation. In this case we have already indicated that the plaintiff earlier filed Title Suit No. 420 of 2004 before the Assistant Judge, Dhaka and thereafter they filed an

application to withdraw the suit with liberty to sue afresh and the said application was allowed and soon thereafter, the plaintiff filed Company matter before the Company Bench of this Court being Company Matter No. 112 of 2005 and after hearing of both the sides the company bench disallowed the Company Matter No. 112 of 2005 by its judgment dated 31.05.2018 with a direction that "the disputed question of title to the properties involved in the said issue and as such the question of part performance by the parties under the Family Settlement Agreement dated 24.6.1999 is required to be considered upon evidence in a properly constituted suit for specific performance of contract." And, soon thereafter finding no other way the present plaintiff-opposite party filed the instant Title Suit No. 570 of 2018 impleading the defendant petitioner and others praying the reliefs as quoted above.

Therefore, in the facts and circumstances of the case in a suit of this nature, we are constrained to hold that the suit is not barred by limitation. Moreover, the proposition of law by now well settled that the question of limitation in a suit is a mixed question of law and fact which can be decided only at the trial on taking evidence. Therefore, the argument as advanced by the learned Advocate that the suit is barred by limitation falls to the ground.

Secondly, the learned Advocate for the petitioner argues with force that the suit is a fruitless litigation and the contents of the plaint do not disclose any cause of action for the suit.

To meet this branch of argument, we have carefully studied the contents of the plaint to the best of our ability and it appears to us that the contents of the plaint do disclose the cause of action for the suit. Moreover, in this case the learned Advocate for the plaintiff-opposite party No.1 argues that the plaintiff filed the suit based on a family settlement which was reduced into writing and duly registered

on 24.06.1999 under the title of Family Settlement Agreement. There are good number of documentary evidences which can be substantiated by the oral evidences during trial in favour of the plaintiff-opposite party No.1, the plaintiff also has money receipts and family settlement agreement to prove his case. Therefore, in the above facts and circumstances of the case, we are unable to see eye to eye to such submission of the learned Advocate for the defendant petitioner that the suit is a fruitless litigation and the contents of the plaint do not disclose any cause of action for the suit.

Another contention raised by the learned Advocate Mr. Khaled Hamid Chowdhury for the defendant No. 1, petitioner that the subject matter of the case is absolutely company matter and over the self same issue company matter has already been disposed of finally and thus, the instant suit is hopelessly barred by the principle of resjudicata .

It is true that the subject matter of the case is more or less company bench matter and accordingly, the plaintiff as applicant earlier filed a company matter being No. 112 of 2005 before a appropriate company bench of this Court which was disallowed by judgment and order dated 31.05.2018 with observation that- “But so far the question of entitlement of the petitioner to the transfer of shares held in the name of the respondent Nos. 3 and 5 are concerned, it appears that the disputed question of title to the property is involved in the said issue and as such the question of part performance by the parties under the Family Settlement Agreement dated 24.06.1999 is required to be considered upon evidence in a properly constituted suit for specific performance of contract”

In view of the above, particularly in the facts and circumstances of the case, we are unable to agree with the submissions of the learned Advocate for the defendant No. 1, petitioner that the subject matter of the suit is company bench matter and the instant suit is misconceived

and the suit is hopelessly barred by the principle of resjudicata. Besides, questions of limitation and resjudicata raised in the application for rejecting the plaint are mixed questions of law and fact which need thorough investigation on adequate evidence for arriving at a correct decision on framing specific issues by the trial Court. We, therefore, find no merit in the contention. The decisions cited are distinguishable on facts.

By now we have covered the points raised by the learned Advocate Mr. Khaled Hamid Chowdhury for the defendant No. 1, petitioner.

In view of our discussions made in the foregoing paragraphs it is by now clear that the instant Rule must fail.

In the result, the Rule is discharged. In the facts and circumstances of the case there will be no order as to costs.

Since the matter is an old one of 2004, the trial Court below is directed to dispose of the suit expeditiously as early as possible preferably within 6 months from the date of receipt of this judgment.

Let a copy of this judgment be communicated to the Court concerned at once.

Md. Mansur Alam, J:

I agree.