

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

CIVIL RULE NO. 01 (CONTEMPT) (R) OF 2025
With Civil Order No. 40 of 2025
(Arising out of Civil Rule No. 353(F) of 2021)

In the matter of:

Muhammad Ismail and another

.... Petitioners

-Versus-

Habibuddin Minto and others

....Opposite-parties

S.K. Zulfiquar Bulbul Chowdhury, senior Advocate

... For the petitioners

Mr. Mohammed Ziaul Hoque with

Mrs. Anis ul Mawa, Advocate

....For the opposite party nos. 1-10

Heard on 20.05.2025, 25.05.2025

and Judgment on 25.05.2025

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

Md. Mozibur Rahman Miah, J:

This contempt rule being Civil Rule no. 01 (Contempt) (R) of 2025 has been referred by the learned Judge-in-Chamber of the Appellate Division vide his order dated 23.04.2025 in Civil Petition for Leave to Appeal No. 1108 of 2025 for disposal. Accordingly, we have heard the learned counsels for the parties to the rule and is being disposed of by this judgment.

The precise facts that stemmed from issuing of the rule are:

That the present petitioners named Mohammad Ismail and Mohamad Sahidul Islam as aggrieved parties originally preferred an appeal being First Appeal No. 146 of 2019 before this court against the judgment and decree bearing no. 15 dated 14.11.2018 passed by the learned Joint District Judge, 2nd court, Cox's Bazar in Other Class Suit No. 23 of 2017 decreeing the suit on compromise against the defendant no. 1 named, Md. Hasan and ex parte against other defendants where the respondent no. 1 and 2 to the appeal named, Advocate Mohammad Ishaq and Advocate A.Z.M Moyeen Uddin, president and secretary respectively of the Cox's Bazar Bar Association were made as plaintiffs. After preferring the appeal, the appellants also filed an application for stay of the operation of the impugned judgment and decree dated 14.11.2018 and this court stayed operation of the same vide order dated 12.03.2019. Subsequently, on an application filed by the respondent nos. 1-2 to the appeal, for vacating the order of stay, this court vide order dated 22.01.2020 amongst others held:

“Since the respondent-plaintiffs are in possession of the suit property as admitted by the appellants, they are at liberty to do any development work at their risk and peril and such development shall not affect the adjudication of the appeal in any manner. However, the interim order passed by this court relates to the operation of the impugned judgment and decree dated 14.11.2018 shall continue.”

Subsequent thereto, the appellants as petitioners filed an application for injunction stating inter alia, that having influenced with the order

passed by this court dated 22.01.2020, the plaintiffs-respondents suddenly started erection of a wall encroaching $\frac{3}{4}$ th area of the pathway situated on the extreme south of suit plot being BS plot no. 622 illegally by crossing the wall and pathway situated in between the said BS plot No. 622 and non- suited BS plot no. 623. Having found prima facie case on such apprehension, this court then vide order dated 05.09.2021 issued rule and directed the parties to maintain status quo in respect of possession and position of the suit land for a period of 3 months that gave rise to Civil Rule No. 353(F) of 2021. The said order of status quo was subsequently extended from time to time and it was lastly extended on 28.04.2025 for another 1(one) year. However, during subsistence of that order of status quo, since some of the Advocates and current and former executive members of Chokaria Advocates Association and those of the Cox's Bazar Bar Association allegedly violated the said order of status quo by inviting an inaugural ceremony for constructing a building on 27.09.2024 by putting up a banner to that effect, the appellants then on 06.01.2025 brought an application for drawing contempt proceedings against the contemnors praying for an appropriate punishment to the contemnors for violating the order of status quo dated 05.09.2021 and 06.05.2024 (order of extension). In view of the said application, this court, upon hearing the petitioners, initially vide order dated 12.01.2025 directed the parties to the first appeal not to erect wall on the extreme southern side of 15 feet wide pathway running from east to west and situated in between BS plot no. 622 and non suited BS plot No. 621 until further order of this court fixing the matter to appear in the list on 19.01.2025 for passing necessary order. That order then gave rise to Civil Order No. 40 of 2025 arising out of Civil Rule

No. 353(F) of 2021. Since that order was not adhered to, by the contemnors then on 26.01.2025 after hearing the learned counsel for the petitioners and that of Mr. A.M. Mahabub Uddin, the learned senior counsel for the contemnors, amongst other passed an interim order directing **the respondents** not to make any further construction and walls on the suit land in question until further order of this court fixing 09.02.2025 for necessary order. Then on 09.02.2025 this court issued rule and interim order in the following terms:

“Let a rule be issued calling upon the condemner-respondents to show cause as to why the proceeding of contempt of court should not be drawn up and as to why appropriate punishment should not be awarded for disobeying and violating of this court’s order of this court’s order of status quo dated 05.09.2021 which was lastly extended on 06.05.2024 and as to why they should not be directed to keep the suit land as status quo ante, if cause shown, being heard the parties or their learned Advocate, make the rule absolute and to award appropriate punishment against the contemnor respondent for ends of justice and/or pass such other or further order or orders as to this court may seem fit and proper.

The rule is made returnable within 04(four) weeks from date.

The petitioners are directed to put in 2(two) sets of requisites for service of notice of the Rule upon the opposite-parties, on in usual course and another through registered post with acknowledgement due (AD) failing which the rule shall stand discharged.”

The said order then gave rise to Civil Rule No. 1 (contempt) (R) of 2025. On 19.03.2025 fixed earlier, the matter was taken up for hearing when Mr. A.M. Mahabub Uddin, learned senior counsel and Mr. Aneek-R-Hoq, the learned counsel representing the contemnors asserted that the contemnors have not committed any act of contempt and considering the submission of the learned counsel for the petitioners and those of the contemnors, vis-à-vis taking into account of the facts and circumstances of the case, further appearance of the contemnors were exonerated but they were directed to submit written-affidavit-of-fact within 2(two) weeks of the vacation, that was forthcoming fixing 13.05.2025 for hearing and passing necessary order.

Mentionable, challenging the rule issuing order dated 09.02.2025, one, Habibuddin Minto, learned Advocate, and president of Chokaria Advocate Association and others filed an appeal before the Appellate Division being Civil Petition for Leave to Appeal No. 1108 of 2025 when the learned Judge-in-chamber vide order dated 23.04.2025 referred the matter before this bench to hear and dispose of the rule as has been stated herein above.

Mr. Sk. Zulfiquir Bulbul Chowdhury, the learned senior counsel appearing for the petitioners upon taking us to the contempt petition and all

the document appended therewith at the very outset submits that, the rule arising out of contempt petition is quite maintainable since there has been no provision in the Bangladesh Supreme Court (High Court Division) Rule, 1973 that against the violation of any interim order passed under order XXXIX rule 1 and 2 of the Code of Civil Procedure contempt petition can be filed and therefore, the petitioners have rightly invoked the jurisdiction of Article 108 of the Constitution by filing this contempt petition. To supplement the said submission, the learned counsel further submits that, this division bench is regulated by the Rules, 1973 not guided by Civil Rules and Orders (CRO) which has been framed for regulating the procedure to be followed by different civil courts of the subordinate judiciary, having no scope to file any violation Miscellaneous Case under order XXXIX rule 2(3) of the Code of Civil Procedure before this court.

The learned counsel further contends that, since the contemnors have not complied with the order passed by this Hon'ble court dated 19.03.2025 by filing any affidavit-of-fact within two weeks, so they have no *locustandi* to contest the rule.

The learned counsel by taking us through the decision reported in 55 DLR (HC) 43 as referred by the learned counsel for the contemnors also contends that, in that decision though it has been settled a contempt petition is not maintainable in a civil matter, but no reason has been assigned in any paragraph of that decision as to why it will not be maintainable and therefore, there has been no legal bar to file a contempt petition for the violation of an interim order passed by this court under order 39 rule 1 and 2 of the Code of Civil Procedure. In support of his such submission, the learned counsel then placed his reliance in the decision reported in AIR

1976 Patna 240 and read out its preamble and contends that, any order passed under order 39 rule 1 and 2 of the Code of Civil Procedure, if it is found to have violated, a contempt petition can be filed which has been settled in that decision and the same is equally applicable in the facts and circumstances of the instant case.

The learned counsel further contends that, since from the documents annexed with the contempt petition, it clearly proves that the contemnors have willfully violated the order of status quo passed by this Hon'ble court circulating an opening ceremony of constructing a building over the suit land, so it proves a flagrant violation of this Hon'ble court has been made, for which this Hon'ble court has very perfectly issued rule and passed direction and finally prays for making the rule absolute awarding necessary punishment to the contemnors.

On the flipside, Mr. Mohammed Ziaul Hoque along with Mrs. Anis Ul Mawa, the learned counsels appearing for the contemnors by filing an affidavit-of-facts dated 21.05.2025 very robustly opposes the contention taken by the learned counsel for the petitioners and at the very outset by placing the photocopy of the cause list of a division bench dated 09.02.2025 submits that the bench issued contempt rule reserved no authority to entertain any contempt petition as the Hon'ble Chief Justice of Bangladesh uses to assign respective jurisdiction to different benches of this Hon'ble court and for entertaining and adjudicating contempt matter, he assigns a specific bench and since no contempt jurisdiction has been assigned to that bench issued contempt rule, so issuing contempt rule and interim order passed on that very date and subsequent order passed, can ever be sustained. To supplement his such submission, the learned counsel

then contends that, on that particular day that is, on 09.02.2025, the first item though appeared as an “order” but the substantive matter basing on which the contempt rule was issued that is, First Appeal as well as the civil rule have not been appeared for hearing, so that very bench cannot issue any contempt rule let alone pass any direction apart from hearing Civil Rule or First Appeal. To substantiate the said submission, the learned counsel has then referred a decision reported in 2017 BLT (AD) 241. In reply to the submission placed by the learned counsel for the petitioners who submitted that, the contemnors since have not complied with the direction of this Hon’ble court dated 19.03.2025 by filing written affidavit-of-facts within 13.05.2025, the contemnors can not contest the rule, the learned counsel then contends that, since the contemnors by challenging the propriety of the rule issuing order of the contempt matter dated 09.02.2025, went to the Appellate Division by filing an appeal and the learned Judge-in-Chamber of the Appellate Division vide his order dated 23.04.2025 assigned this Hon’ble bench, to hear and dispose of the rule, arising out of contempt matter, so there has been no scope to submit such affidavit before that bench any further and for that obvious reason, the contemnors have thus filed that affidavit-of-fact today, at the time of hearing of the rule, committing no violation of any order of this Hon’ble court.

The learned counsel by referring two orders passed in Civil Order No. 40 of 2025 dated 12.01.2025 and 26.01.2025 also submits that since no rule was issued upon the contemnors on that two occasions, so there was no scope for the contemnors to take any defence for themselves before rule

was issued on 09.02.2025 and therefore no illegality has been committed on the part of the contemnors.

The learned counsel by supplying us a photocopy of the memorandum of appeal of First Appeal No. 146 of 2019 annexing the judgment and decree of Other Class Suit No. 23 of 2017 as well as by taking us through civil rule no. 353 (F) of 2021 that stemmed from an application for injunction, also contends that, since rule and order of status quo was issued on 05.09.2021 only upon the opposite part no. 1 to the civil rule named, Cox's Bazar District Bar Association, represented by Advocate Mohammad Ishaque, president of the said Bar so under no circumstances can all the persons, ten in numbers be impleaded as contemnors in the contempt rule which is totally untenable in law. However to substantiate the said submission, the learned counsel then placed his reliance in the decision reported in 55 DLR (HC) 43 which was subsequently upheld by our Appellate Division that reported in 18 ADC 455 where it has been settled by both the division that:

“Adequate remedy having been provided against disobedience of an injunction order issued under order XXXIX of the Code, as provided in the order XXXIX rule 2, a contempt petition is not maintainable on this score.”

Apart from that, the learned counsel has also referred an unreported decision passed in Civil Rule No. 1049 of 2012 where both the decisions mentioned above, have been relied upon and finally prays for discharging the rule.

Be that as it may, we have considered the submission so advanced by the learned senior counsel for the petitioners and that of the learned counsels for the contemnors at length. We have also gone through the contempt petition on which Rule No. 01 (contempt) of 2025 was issued. Together, we have also gone through the orders issued in Civil Rule No. 353 (F) of 2021 violation of which order contempt rule was issued. However, at the very onset, we asked the learned senior counsel for the petitioners to impress us in regard to a maintainability of the contempt rule as we feel, if we find that the contempt petition itself is not maintainable, then we will not dwell into any factual aspect or merit of the case. Record depicts, the appellants in the First Appeal were not any party to Other Class Suit No. 23 of 2017 against which the appeal has been preferred that suit was disposed of under section 89A of the Code of Civil Procedure. Then after admitting the appeal, the appellants also obtained an order of stay of the operation of the impugned judgment and decree dated 14.11.2018. Subsequently, on an application filed for vacating the order of stay by the plaintiff-respondent no. 1, this court even found possession of the plaintiffs respondents in the suit property. But as during subsistence of the order of stay, the petitioners were threatened of dispossession, on the back of finding respondents in possession directing them to continue their construction, the petitioners then filed an application for injunction on which an order of status quo was passed apart from issuing rule only against opposite party no. 1 on 05.09.2021. But curiously enough, though the order of status quo was passed only upon opposite party no. 1, to the civil rule, yet contempt petition was filed against the persons whom mostly are not any party either to the appeal on in the application for injunction on

which civil rule was issued still they have been made as contemnors. At this, Mr. Chowdnury by taking us through different chapters of the Bangladesh Supreme Court (High Court Division) Rules, 1973 submits that, in case of violation of any interim order passed by this court, under order 39 rule 1 of the Code of Civil Procedure, the aggrieved party has got no other option but to file a contempt petition under Article 108 of the Constitution. Conversely, Mr. Ziaul Hoque, the learned counsel for the contemnors very robustly opposes the said contention asserting that rule 2(3) of order 39 of the Code of Civil Procedure very explicitly stipulates how violation of any interim order can be adjudicated by the same court passed an interim order by registering it as violation Miscellaneous Case having no necessity to take resort to Article 108 of the Constitution by filing contempt petition. In view of the said submission and counter-submission we feel it expedient, to reproduce the provision provided in order **39 rule 2 (3) of the Code of Civil Procedure** which runs as follows:

2 (1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the

same contract or relating to the same property or right.

(2) The court may by order grant such injunction, on such terms, as to the duration of the injunction, keeping an account, giving security or otherwise, as the Court thinks fit.

(3) In case of disobedience, or of breach of any such terms the Court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached and also order such person to be detained in the civil prison for a term not exceeding six months, unless in the meantime the court directs his release.

On going through Sub rule (3) of rule 2 of order 39 of the Code of Civil Procedure, we clearly find that if any disobedience or breach of order passed by any court whatever the seat of the court might be, either a trial court or this Court, two distinct punishment have been set out **one**, to attach the property of a person/ persons who breaches interim order, or to award civil prison not exceeding 6 months to the offender. Now question remains, whether this court by invoking that provision can initiate a violation Miscellaneous Case or a contempt rule. It is true, in the four corner of the Bangladesh Supreme Court (High Court Division) Rules, 1973 there has been nothing to initiate a violation Miscellaneous Case. But it is the long running practice followed by this court when an interim order passed under order 39 rule 1 and 2 of the Code of Civil Procedure is

infracted, the court passed such order metes out punishment to the offender if violation proves and on such event, no contempt petition can be entertained on resorting to the provision of Article 108 of the Constitution. Because, in proceeding with such violation Miscellaneous Case, it requires to take evidence of the parties to prove the violation of the order of the court when under Article 108 of the constitution, it is not possible. Furthermore, it has been brought to our notice by the learned counsel for the contemnors that the persons who have not been made any party to the application for injunction on which civil Rule No. 353(F) of 2021 was issued where an order of status quo was passed, have been made contemnors which can never be made since the contempt petition has been filed for violating two specific orders of status quo in that civil rule No. 353 (F) of 2021. We find ample substance to the said submission and on that score, the decisions referred by the learned counsel for the contemnors reported in 18 ADC 455 as well as 55 DLR (HC) 43 is the guiding principle to that issue and set the point at rest having no scope for us to go beyond that.

We have also very carefully gone through the decision cited by the learned counsel for the petitioner reported in 1 AIR 1973 Patna 240 but we don't find any nexus of the same with the point assailed in the case in hand. Now, let us examine the authority of a civil division bench in issuing rule basing on contempt petition filed under Article 108 of the Constitution in spite of assigning no jurisdiction upon that particular bench. To fortify the said submission, the learned counsel for the contemnors has placed his reliance in the decision reported in 25 BLT (AD) 241 where it has been propounded, if any particular jurisdiction is not assigned to any bench, that

very bench has got no authority to exert such jurisdiction. By that, the learned counsel wanted to impress us, that in spite of having no jurisdiction of that particular bench, contempt rule was issued on 09.02.2025. We also find substance to the said submission as well because we are assigned jurisdiction by the Hon'ble Chief Justice of Bangladesh under article 107(3) of the Constitution and we cannot act beyond to what has not been assigned to us. Nonetheless, that very particular bench on earlier two occasions dated 12.01.2025 and 26.01.2025 issued direction upon contemnors that gave rise to civil order no. 40 of 2025 which can also never be done since that bench has assigned no jurisdiction even to pass any order on a contempt petitioner. On top of that, in the application for drawing contempt of court upon the contemnors, the petitioners have not mentioned under what provision of law they filed that application. But when we pose a question to that effect to the learned senior counsel the learned counsel then readily submits that though in the cause title of the application it had not been mentioned but that very contempt petition was filed under Article 108 of the Constitution. Insofar as regards to the submission made by the learned senior counsel with reference to the order dated 19.03.2025 when the contemnors were asked to file affidavit-of-facts and as they did not comply that order, so they also violated the order of this Hon'ble court. But from the materials on record, we find that after passing the order dated 09.02.2025 and 18.03.2025 by the earlier bench, the contemnors have no scope to file affidavit-of-facts. Because challenging the order dated 09.02.2025 the contemnors went to the Appellate Division and vide order dated 23.04.2025 the learned judge-in-chamber assigned this bench to dispose of the rule and accordingly at the time of hearing of

the rule, they filed the statement-of-fact and thus we find that the contemnors have complied with the order dated 19.03.2025 even though that bench has got no jurisdiction on that particular date to pass such kind of order.

Regard being had to the above discussion and observation we find that the rule itself is not maintainable at all.

Accordingly, the rule is discharged however without any order as to costs.

Md. Bashir Ullah, J:

I agree.

Kawsar /A.B.O