

**In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)**

Present:

Mr. Justice Md. Riaz Uddin Khan

Civil Revision No. 5914 of 2024

IN THE MATTER OF :

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

-And-

In the Matter of:

Moushumi Biswas and others

... plaintiff-Petitioners

Versus

Roshkanto Biswas and others

... Defendant-Opposite parties

Mr. Biswojit Roy, Advocate

... For the petitioners

Mr. Mintu Kumar Mondal, Advocate with

Mr. Mithun Roy Chowdhury, Advocates

... For the Opposite Party No. 1-4 and 8-12

Judgment on: 06.05.2026

Md. Riaz Uddin Khan, J:

At the instance of the plaintiffs this Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and order dated 12.11.2024 passed by the Additional District Judge, 2nd Court, Magura in Miscellaneous Appeal No.06 of 2023 disallowing the appeal and thereby affirming the order dated 16.01.2023 passed by the Assistant Judge, Mohammadpur, Magura in Other Class Suit No.366 of 2022 rejecting an application for temporary injunction should not be set aside and/or such other or further order or orders should not be passed as to this Court may deem fit and appropriate.

At the time of issuance of the Rule the judgment and order 12.11.2024 was stayed till disposal of the Rule.

Brief facts for disposal of this Rule is that the present petitioners as plaintiffs filed Other Class Suit No.366 of 2022 before the court of Assistant Judge, Mohammadpur, Magura against the present opposite parties for declaration contending *inter alia* that in the year 2022 plaintiff Nos.2-4 and defendant Nos.3-4 were the members of the managing committee of Dhuljora Churargati Protap Chandra Secondary School; that disregarding the resistance of plaintiff Nos.2-4, the defendant No.1 was elected president of the said Managing Committee by applying undue influence despite having no qualification for being the president of managing committee of the aforesaid school illegally; the managing committee of the school decided to appoint one person as Lab operator, one person as Office Assistant, one person as cleaner and one person as Aya i.e. four persons in different posts and to this effect on 05.06.2022 an appointment notice was published in several newspapers including "Daily Shomokal"; for getting appointment in the aforesaid four posts total 36 candidates applied and out of them the applications of 26 candidates were accepted after proper scrutiny and in the month of August 2022, an appointment Board was formed comprising of defendant Nos.1-2/6-8; the defendant No.1 in connivance with other defendants received Tk-49 lac as bribe and appointed the defendant Nos.9-12 in the above posts and this illegal appointment is known to the local people including the plaintiffs; six persons including the plaintiff Nos.2-4

and other members of managing committee submitted an application to the Deputy Commissioner, Magura and prayed for stay of the appointment process; in this regard news was published in various newspapers including "Shomoier Katha"; the appointment test which was supposed to be held on 27.08.2002 was postponed by the defendant Nos.1-2; subsequently the date of examination was fixed on 16.09.2022 which was conveyed to the candidates including the plaintiffs just one day before the examination; that the defendant Nos.1-2 taking bribes from the defendant Nos.9-12 declared that they have secured positions in the appointment exam but despite having all quality the plaintiff No.1 was declared 4th in position; the defendant Nos.1-2 gave appointment to the defendant Nos.9-12 illegally and hence the plaintiffs instituted the suit praying for a declaration that selection of defendant No.1 as president in the year 2022 in Dhuljora Churargati Protap Chandra Secondary School is illegal, unlawful and is of no legal effect and for further declaration that the appointment of defendant Nos.9-12 on 16.09.2022 by the defendant Nos.1-2 and 6-8 respectively in the post of "Computer lab Operator" "Office Assistant" "Cleaner" and "Aya" is unlawful, collusive and ineffective.

On the same date i.e. on 22.09.2022, the plaintiffs also filed an application for temporary injunction under Order-XXXIX, Rule-1 of the Code of Civil Procedure restraining the defendant No.1 from discharging any function as president, restraining the defendant Nos.9-12 from joining in the respective posts and from drawing salary. Upon hearing of the said

application for temporary injunction, the trial court was pleased to issue show cause notice upon the opposite parties giving them 5 (five) days time as to why they should not be restrained by an order of injunction. The defendant Nos. 1-2, 4, 9-10 contested the said application for temporary injunction by filing written objection contending *inter alia* that the defendant No.1 was lawfully elected as president of the Managing Committee after following the proper procedure and the defendant No.1 did not receive Tk-49 lac from the defendant Nos.9-12 as bribe and also did not give them appointment unlawfully and that the defendant Nos.9-12 were given appointments lawfully and hence the defendant Nos.1-2, 4 and 9-12 prayed for rejection of the application for temporary injunction.

On 16.01.2023 the said application for temporary injunction was taken up for hearing and the Trial Court rejected the same. Against the said order dated 16.01.2023, passed by the Assistant Judge, Mohmmadpur, Magura the plaintiffs as appellants preferred Misc. Appeal No.6 of 2023 before the court of District Judge, Magura which was transferred to the Additional District Judge, 2nd Court, Magura for disposal and the Appellate Court below disallowed the appeal on contest vide impugned judgment and order dated 12.11.2024.

Being aggrieved by and dissatisfied with the judgment and order dated 12.11.2024 passed by the Additional District Judge the plaintiffs filed the instant civil revision before this Court and obtained the Rule and order of stay as stated at the very outset.

Mr. Biswojit Roy, the learned advocate appearing for the plaintiff-petitioners submits that the plaintiffs in support of their allegations submitted newspapers report but the learned trial Judge without considering the news published in various news papers and without considering the other papers submitted by the plaintiffs in favor of their assertion most illegally rejected the application for temporary injunction and that the Appellate Court below without reversing the untenable judgment and order of the Trial Court most illegally disallowed the appeal and passed the impugned judgment and order which are liable to be set aside.

The learned advocate next submits that the plaintiffs instituted the suit praying for declaration that the election of defendant No.1 as president of Managing committee was illegal and that the appointment of defendant Nos.9-12 given by defendant Nos. 1-2, 6-8 was illegal as well and in the above facts if the defendant No.1 is not restrained by an order of injunction in respect of discharging function as president and the defendant nos.9-12 are not restrained by an order of injunction in respect of joining the service and drawing salary, the purpose of the suit will be frustrated.

The learned advocate then submits that in disposing of the application for temporary injunction the learned judge of the trial court rightly framed the issue "বাদীপক্ষের *prima facie* good arguable case আছে কিনা?" The plaintiffs categorically stated that the defendant no.1 had no qualification for being president of the managing committee of the school as per regulation 12

of Secondary and Higher Secondary Education Board Regulations but the learned judge did not consider regulation 12 of the above Regulations to arrive at correct decision as to whether the defendant No.1 was qualified for being elected as president of the managing committee of the school and thus committed error and that Appellate Court below without considering this aspect of the case most illegally disallowed the appeal and thus both the courts below committed error of law.

Mr. Roy finally submits that the plaintiffs have *prima facie* good arguable case and balance of convenience and inconvenience is in favour of the petitioners and against the opposite parties and in the above position if the opposite party No.1 is not restrained by an order of injunction in respect of discharging function as president of the school and if the opposite party Nos.9-12 are not restrained by an order of injunction in respect of joining in the post and drawing monthly salary and other allowances, the petitioners will be seriously prejudiced sustaining irreparable loss and injury and purpose of the suit will be frustrated.

On the other hand Mr. Mintu Kumar Mondal, the learned advocate appearing for the opposite parties submits that the election of the defendant no.1 as the president of the school was approved by the Jassore Education Board on 27.03.2022 for a period of 2 (two) years and the term has already been expired long ago hence the 1st prayer of the plaintiff-petitioners with regard to declaration of his election as president has become *infractuous*.

The learned advocate then submits that the defendant nos.9-12 have joined in their respective posts immediately after their appointment and discharging their duties for more than 3 (three) years who are poor employees and in that view of the matter the balance of convenience and inconvenience is heavily in favour of the defendant-opposite parties.

Mr. Mondal lastly submits that both the courts below concurrently found the balance of convenience and inconvenience in favour of the defendant-opposite parties and this Court sitting in revisional jurisdiction should not interfere with the concurrent findings of courts below.

I have heard the learned advocates for both the parties, perused the application along with the annexures. I have also examined both the judgments and orders passed by the courts below.

The present plaintiff-petitioner filed the instant title suit for two declarations: one for the declaration that the election of the defendant No.1 as the president of the managing committee of the school is illegal and collusive having no eligibility to be president and another for declaration that the appointment of defendant Nos.9-12 on 16.09.2022 by the defendant Nos.1-2 and 6-8 respectively in the post of "Computer lab Operator" "Office Assistant" "Cleaner" and "Aya" is unlawful, collusive and ineffective.

The disputed Managing Committee of the school including its president was approved by the Board on 27.03.2022 for a period of 2 (two) years which has long been expired and in that view of the matter the first prayer of the plaint has become *infructuous* and as such

now there is no scope to pass an order of injunction upon the defendant no.1 restraining him from doing any activities of the school as president.

It appears from record that the defendant Nos.9-12 were appointed on 16.09.2022 and they have joined immediately in their service. The plaintiffs made allegations of corruption in their appointment but submitted paper cutting containing news of speculation of corruption. The defendants denied such allegation and asserted that they got highest numbers and following procedure were rightly appointed. At this stage of the suit whether the defendant Nos.9,10,11,12 were appointed illegally through corruption or not is a matter of evidence to be adjudicated by the trial court after taking evidence. At this stage if any injunction is allowed the defendants will be highly prejudiced and on the other hand the plaintiffs will lose nothing and as such the balance of convenience and inconvenience is heavily in favour of the defendant-opposite parties which has rightly been observed by the trial court as well as the appellate court below.

The facts and circumstances as discussed above and the position of law at this stage I am not inclined to interfere with the judgments and orders passed by the courts below on concurrent findings. Hence the Rule issued in this revision being devoid of merit destined to fail.

In the result the Rule is **discharged**.

The order of stay granted earlier by this Court stands vacated.

The trial court is directed to conclude the trial expeditiously without allowing the parties any adjournment unless in dire necessity.

Communicate this judgment and order at once.