



READER'S queries



Your Advocate



This week your advocate is M. Moazzam Husain of the Supreme Court of Bangladesh. His professional interests include civil law, criminal law and constitutional law. Send your queries to the Law Desk, The Daily Star. A panel of lawyers will address your problems.

Q: During her lifetime my mother opened a joint account with me; I was then a 19 years old college student. No body knew this except the then manager of that bank. After my mother's death as per rules I became the sole owner of the account. As my mother died the bank manager, who took over the charge of manager of that bank later, disclosed the matter of our secret join account to my brothers and father. Since my brothers and father are politically influential persons and valued client of that bank. Knowing the information my brothers and father objected and applied for share of the money laying in the account. When I presented a cheque to draw money from that account, that bank refused to pay me any money on the plea that since I have other siblings and they have claimed for their share; so I solely can't be owner of that account. It is mentionable that while my mother opened the account it was fully joint account, anyone of us could draw money from the account and my mother did not nominate any body, since she me to be the sole heir of that account after her death. After 7 years legal fight, though the verdict came in my favour, I had to face a lot of hassle. Moreover, the relationship between my siblings turned into animosity. My questions are: (a) as we all know the bank should keep the secrecy about bank account and the money and should not disclosed it to anybody, in this case haven't the bank employee/manager acted beyond norms and ethics? (b) What legal action may be taken against that bank manager? Though he was informed to the GM, branch control of that bank, but the manager remained in the same position and no action was taken against him. (c) Even the employees of that bank, those are local people, threatened me that they will not allow me to draw the money. What can I do? Please advice.

Mr. Abdul Jalil,
10/9, I-D, Mirpur.

Your Advocate: Yes, disclosure of secrecy about the account by a banker, as is indicated by you, is absolutely unethical. It is not only unethical but also illegal calling for action against the banker. A banker is duty bound to maintain secrecy of the account of his customer and the obligation is so embedded in the practices and usages customary amongst bankers that such obligation continues even after the account is closed. The customer may sue the banker for damages suffered by him as a result of such disclosure.

Disclosure of secrecy about any account is not actionable in all cases. Bankers may divulge any information relating to the account when 1) law requires such disclosures to be made and when 2) practices and usages amongst the bankers permit such disclosure. For example, police officer investigating a case is authorized to inspect the banker's books; the income tax authority is competent to call for necessary information from the banker for the purpose of assessment of the bank's customers. Banker is bound to transmit necessary information about any account as and when required by court in connection with a proceeding. Examples of disclosures as of practices and usages are: the bankers can disclose any information relating to the customers account upon the latter's consent. Disclosures may be made when necessity to protect the interest of the bank arises; where it is found that the customer is involved in activities prejudicial to the interest of the state; where banker's books reveal that the customer is contravening the provision of any law etc. The answer to the second limb of your query is you can make a G.D Entry with the respective police station stating about the threat administered to you by the bank employees. Police is competent to inquire and resolve any possibility of breach of peace in or around the bank premises.

LAW letter



Separation of judiciary and duty of lawyers

33 years of our independence has passed, but separation of judiciary is still dream. The time is being extended by court, and only GOD knows when 'independent judiciary' will come true. Independent judiciary is paramount authority in case of assuring justice to common people. Because the whole system of judiciary is being abused by our dirty politics, money and power and thus in this way our poor common people are being deprived of justice. Peoples' faith is fading gradually. The duty of lawyers in this case should be very pragmatic. It is their obligation to save judiciary and to retain the faith of common people. It is the common peoples' money which judiciary is taking and unless the judiciary be independent, it cannot be able to act in favour of common people. It is the right time for lawyers to act for the separation of judiciary. The lawyers should come forward to prevent any act which is against the independence of judiciary.

They should not consider from which party (whether their favourite political party or not) the threat to independent judiciary comes, they should only consider their position as a lawyer, as a responsible person, as a conscious and determined soldier of saving the independence of judiciary. In this case lawyers must be uncompromising and stick to their object. They should act as agents of common people, not the agents of any political party. They should go for a countrywide strong protest for the sake of justice. They should have the spirit of freedom fighter to save judiciary from degrading. If all the lawyers can be determined to achieve this noble goal, victory will come through the separation of judiciary and love and profound justice from the common people for giving them a ray of hope of justice.

Shahrin shahjahan naomi,
LL.B (Hons) 1st year, Dhaka University.

Don't undermine the judiciary

The other day I read the news in a daily on withdrawal of criminal cases by the government. According to the report the present government has acquitted more than 60,000 persons accused of different criminal offences. The reason behind exonerating them from criminal charges, as told by the government, was that these cases were filed during the Awami League government and as such politically motivated. Of course, according to the law of the land, the government possesses the right to withdraw a case. But can the government exercise this power arbitrarily? According to the report persons accused of serious criminal offences like murder, rape, arson, arms possession and use, bombing has also been released. The judiciary is there to adjudge the cases. If the cases were politically motivated, the court is in better position to decide those. Acquitting criminals by executive decision will make the judiciary handicapped.

Kazi Hannan,
Mirpur-2, Dhaka.

Star LAW report

No party can take advantage of pending matters

High Court Division (Admiralty Jurisdiction),
Admiralty Suit No. 12 of 2002,
Md. Mobashed Hossain,
Vs
Saidur Rahman (Pvt) Ltd,
Before Mr. Justice A.B.M. Khairul Haque.
Date of Judgment: May 15, 2002.

Judgment

ABM, Khairul Haque, J: This is an application for an order of mandatory injunction, praying for recovery of possession of the vessel M.V. Hemayetuddin, M No 6304, from the possession of the defendant company. The defendant company allegedly took over the said vessel in violation of the order of ad-interim injunction passed by this Court on 2nd April 2002.

The facts leading to the filing of this petition are that the plaintiff petitioner earlier filed the instant suit for declaration, injunction and compensation with a prayer for temporary injunction to restrain the defendant from taking over the possession of the aforesaid vessel, namely, M.V. Hemayetuddin. And this court by its order dated 2nd April, 2002, issued a notice upon the defendant to show cause as to why an order of temporary injunction should not be passed restraining it from taking over possession of the vessel till disposal of the suit and pending hearing of the said petition the defendant was so restrained by an order of ad-interim injunction.

Subsequently, the plaintiff petitioner filed an application on 10.4.2002 for an order of mandatory injunction praying for recovery of possession of the said vessel, from the defendant no. 1 who took over possession of the said vessel by allegedly violating the order of ad-interim injunction passed by this Court on 2nd April, 2002.

Mr. A.F.M.A. Rahman the learned Advocate appearing on behalf of the plaintiff petitioners submits that although the notice of the order of ad-interim injunction passed by this court restraining the defendant no. 1 from taking over possession of the vessel M.V. Hemayetuddin was duly served upon the defendant company on 4th April, 2002, by a special messenger. But while after completion of its discharge of cargo on 2nd April 2002, on the direction of the plaintiff the vessel left Barisal on 5th April 2002 and subsequently reached Gazaria on 7th April 2002. That on the instructions of the plaintiff-petitioners a cargo of sand was being loaded in the vessel which stayed beside the launch ghat at Gazaria and till midnight 16,900 cft. sand was loaded, that cargo of sand, was purchased by one Harun-or Rashid at a price of Tk 1,18,300/- to be delivered at Barguna on the following day. And in order to meet the necessary expenses, the plaintiff-petitioners paid the master of the vessel, the opposite-party no.2, an amount of Tk 49,600/- towards purchase of fuel and other necessities. But the opposite party nos. 2 and 3 without any information to the plaintiff-petitioners, left Gazaria launch ghat at the very early morning on 8th April 2002. That the plaintiff-petitioner no. 2 could not find the vessel, as such, rushed to Dhaka and inquired about the whereabouts of the vessel at the private terminal of the defendant opposite party no.1 at Kaliganj within the police station Keraniganj. That on inquiry the plaintiff opposite-party no.2 could learn from the opposite party no.2 that on the orders of the defendant opposite party no. 1, they left Gazaria to his domain without informing the plaintiff-petitioners.

The learned Advocate further submits that thereafter the plaintiff-petitioner no. 1 went to meet the Managing Director of the defendant opposite party no.1 at this office at Motijheel but he misbehaved with him with filthy language as he filed the instant suit. The learned Advocate submits that in spite of the receipt of the order of this Court, restraining the defendant from taking over possession of the vessel, the defendant in defiance of the order of this Court directed the master to take the vessel to the private terminal of the defendant, and since in spite of the order of injunction passed by this Court, the defendant illegally took possession of the vessel as such, in the interest of justice, the said vessel should be put back to the possession of the plaintiffs under the inherent jurisdiction of this Court.

Deliberation

At this stage, in disposing the petition praying for an order of mandatory injunction for recovery of the vessel, I do not intend to express any opinion as to whether contract of hire of the vessel in question was terminated or not and even whether a suit in personam is maintainable or not.

Mr Khan Saifur Rahman admits that the defendant company received the said order of this Court on 4th April, 2002. This was also admitted in the written objection. It is not denied that the concerned vessel was under the possession of the plaintiff-petitioners but contended on behalf of the defendant that the plaintiff-petitioners themselves voluntarily released the vessel.

After obtaining an ad-interim order of injunction and loading the vessel with sand, how far the contention that the plaintiff petitioner themselves released the vessel is correct, will be considered at the proper time, but it is not necessary to do so in disposing of this petition. As such, when specifically asked as to why the order of mandatory injunction should not be granted to restore the status quo at the time of institution of the suit, the learned Advocate was without any answer save and except that an order in the nature of mandatory injunction is not maintainable in the facts and circumstances of this suit.

In this case, it was alleged that in violation of the charter agreement the defendant directed return of all three vessels and two of the vessels accordingly had already returned. In such a situation this Court by an order of ad-interim injunction restrained the defendant from taking over possession of the concerned vessel, namely, M.V. Hemayetuddin. But as it appears, the said vessel also left the domain of the plaintiff in spite of such an order on the morning of 8th April 2002. The responsibility for violation of the order of this Court will be considered in the separate proceedings filed by the plaintiff-petitioners, under Order XXXIX rule 2(3) of the Code. In this matter, only the question as to whether the vessel will be directed to returned to the plaintiff-petitioners or not, will be considered.

It is now well settled that one of the purposes, among others, of issuing an order of ad-interim injunction is to maintain status quo ante at the time of institution of the suit until the prayer for temporary injunction is disposed of.

In the instant case, at the time of admitting the suit for hearing on 2nd April, 2002, on the prayer of the plaintiffs, by an order of ad-interim injunction, the defendant was restrained from taking over the possession of the third vessel, namely, M.V. Hemayetuddin. Because it was felt that a fair and substantial question as to the rights and obligations of the parties has to be decided. And it was felt desirable that until hearing of their prayer for temporary injunction is disposed of the status quo should be maintained so as not to allow the defendant to take away the third vessel also. But when the possession of the said vessel was taken from the plaintiffs in defiance of the order of the Court, the proper administration of justice

requires that in exercise of its inherent power the defendant ought to be directed to return the vessel to the plaintiffs till hearing of their petition dated 2.4.2002 for temporary injunction. Because a Court of law is not that powerless to watch and be remain a mere spectator to such defiance.

The necessity for exercising such inherent jurisdiction by the Court has been correctly explained by Ahmed, J. in the case of The State of Bihar V. Usha Devi AIR 1956 Patna 455, in the following manner:

"If a court comes to the conclusion that an order passed under 0. 39, R.1 or 2.2 have been disobeyed and by a contravention of that order the other party in the suit has done something for its own advantage to the prejudice of the other party, it is open to the Court under inherent jurisdiction to bring back the party to a position where it originally stood as if the order passed by the court has not been contravened. The exercise of this inherent power vested in the court is based on the principle that no party can be allowed to take advantage of his own wrong in spite of the order to the contrary passed by the Court."

This question of issuing an order of injunction has been considered by the Supreme Court in the case of Abdul Jalil Munshi V. Abu Bakar Siddique 35 DLRAD (1983) 42. In that case, on the prayer of the plaintiff the learned Munshi passed an order of ad-interim injunction restraining the defendant from blocking the alleged passage but on appeal, the order was stayed but before the appeal could be heard, the defendant raised a wall blocking the disputed passage. In revision, the learned Judge of the High Court Division granted a mandatory injunction directing the appellant to remove the said structure within seven days. The Supreme Court in appeal, upon considering the principle underlying and the condition justifying, the making of an order of mandatory injunction in an interlocutory proceeding upheld the judgment of the High Court Division. DC Bhattacharya, J. on behalf of the Supreme Court at paragraph 12 pronounced the principle as follows:

In issuing an order of restraint in the nature of a mandatory injunction, whether it should be passed under Order XXXIX Rule 1 or 2 on in exercise of the inherent jurisdiction of the Court under Section 151 of the Code, the Supreme Court held that either of the provisions may be applicable, depending on the facts and circumstances of each case.

The learned Judge explained so in paragraph 14: "Injunction is a kind of equitable relief and shall have to be adjusted in aid of the equity and justice of a particular case with reference to its own facts and circumstances. There may be cases where it is possible to frame a restraint order having the effect of a mandatory injunction under Rule 1 or Rule 2 of Order 39 of the Civil Procedure Code. But in the facts of the instant case, the more appropriate jurisdiction under which the necessary injunction may have been issued appears to be the Courts inherent jurisdiction to do justice

PRELIMINARY INJUNCTION!

Shutdown on hold



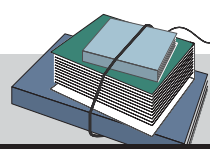
under section 151 of Code."

Decision

It is admitted that the notice restraining the defendant from taking over possession of the vessel, namely, M.V. Hemayetuddin M No. 6304 was served upon the defendant company on 4th April, 2002. The purpose of the said order of ad-interim injunction was to maintain status quo at the time of institution of the suit in the background of allegations that the defendant in violation of the agreement directed return of all the vessels from the possession of the plaintiffs. And as a matter of fact two had already been so returned to the defendant. The defendant, as it appears, admitted that in spite of receipt of the said order of this Court, the vessel left the plaintiff-petitioner, obviously in violation of the order passed by this Court on 2nd April, 2002. The liabilities, if any, of the concerned persons in respect of such disobedience of the order of injunction, will be considered in another pending proceedings, filed under Order XXXIX Rule 2(3) of the Code. But in this case, the vessel should be brought back to the place, by an order in the nature of mandatory injunction, from where in violation of the interim order, it left the plaintiff-petitioners, so as to disentitle and disengage the defendant from reaping any benefit out of its own wrong committed in defying the order of the Court. Besides, the majesty of law and the dignity of the Court requires such a mandatory order to put the vessel in the possession of the plaintiff-petitioners where it was at the time of institution of the suit and the same is hereby granted.

Under the circumstances, let a mandatory injunction be issued upon the defendant company, directing it to return the vessel M.V. Hemayetuddin at the launch ghat at Gazaria, where it was in the morning of 8th April, 2002, within seven days from date.

Mr. A.F.M. A. Rahman is advocate for the petitioner and Mr. Khan Saifur Rahman, Senior advocate, for the respondent No.1.



LAW lexicon

Juss spatiandi et manendi

Latin: referring to a legal right of way, and to enjoyment, granted to the public but only for the purposes of recreation or education, such as upon parks or public squares. Very similar to an easement of which some courts have said a juss spatiandi is a special type.

Justice

Fairness. A state of affairs in which conduct or action is both fair and right, given the circumstances. In law, it more specifically refers to the paramount obligation to ensure that all persons are treated fairly. Litigants "seek justice" by asking for compensation for wrongs committed against them; to right the inequity such that, with the compensation, a wrong has been righted and the balance of "good" or "virtue" over "wrong" or "evil" has been corrected.

Laches

A legal doctrine whereby those who take too long to assert a legal right, lose their entitlement to compensation. When you claim that a person's legal suit against you is not valid because of this, you would call it "estoppel by laches".

Landlord

A land or building owner who has leased the land, the building or a part of the land or building, to another person.

Larceny

An old English criminal and common law offence covering the unlawful or fraudulent removal of another's property without the owner's consent. The offence of theft now covers most cases of larceny. But larceny is wider than theft as it includes the taking of property of another person by whatever means (by theft, overtly, by fraud, by trickery, etc.) if an intent exists to convert that property to one's own use against the wishes of the owner.

Leading question

A question which suggests an answer; usually answerable by "yes" or "no". For example: "Did you see David at 3 p.m.?" These are forbidden to ensure that the witness is not coached by their lawyer through his or her testimony. The proper form would be: "At what time did you see David?" Leading questions are only acceptable in cross-examination or where a witness is declared hostile.

LAW week



Formation of Gram Sarkar delays

Formation work of Gram Sarkar will begin on August 2 instead of July 1. The formation of Gram Sarkar was earlier scheduled to be completed within 45 days from July 1. Some 40,392 Gram Sarkar (village government) units will be formed across the country. One Gram Sarkar will be constituted in each of 40,392 wards under 4,488 Union Parishads (UPs). As per the Gram Sarkar Act, the body will have a five-year tenure. Each ward of a Union Parishad will be a unit of Gram Sarkar. Gram Sarkar will be an auxiliary of Union Parishad and elected UP members will be chiefs of Gram Sarkar. One female elected UP member will be advisor to three Gram Sarkar units. The 13-member body will have Gram Sarkar Prodhon (chief), three women representatives (one must be a member of the trained Village Defence Party), two farmers, one male VDP member, one worker representative, two farm worker representatives, one freedom fighter, one teacher and one businessman. Gram Sarkar will assist the Union Parishad by implementing various development and social projects. Besides, it will ensure primary health care, gathering birth, death, marriage and divorce-related information and assist the Union Parishad in tree plantation, preservation of environment and cleanliness, formation of cooperatives and augmenting pisciculture, poultry farming and so on. It will also assist the Union Parishad to maintain law and order and supervise VGF and VGD activities. The Union Parishad will provide a part of its income to Gram Sarkar to carry out its activities. -*Ittefaq*, 27 June.

Court orders for withdrawal of explosion case

The District and Sessions Judge's Court of Rajshahi has ordered withdrawal of the sensational bomb explosion case at Jamaat-e-Islami leader Dr Mozammel Haque's house following a home ministry notification. Judge Abu Bakar Siddique passed the order after government lawyer Advocate Mortuza Reza sought withdrawal of the case in a petition. It also asked the deputy commissioner of Rajshahi and public prosecutor (PP) of the Sessions Judge's Court to arrange withdrawal of the case. The PP in his petition informed the court about the government decision and said it would not be viable for the State to run the case. On April 17 in 2001, a powerful bomb exploded at local Jamaat leader Dr Mozammel Haque's house in Darusha village of Paba upazila killing two injuring three others. The then Officer-in-Charge of the Paba Police Station Abul Kalam Biswas filed a case accusing 17 persons. Later, the Detective Branch and the Criminal Investigation Department (CID) of Rajshahi Police submitted charge sheet for the case on December 21, 2002. In the charge sheet, the CID accused nine persons under the Explosive Act 1908. -*Daily Star*, 25 June.

Advocacy for consumer protection law

Speakers at a discussion demanded enactment of laws to protect the rights of consumers. They also suggested forming an independent body to control prices as the price hike does not synchronise with additional taxes or duties proposed in the budget. The Consumers Association of Bangladesh (CAB) organised the discussion on 'This year's budget and the rights of customer-consumer'. The speakers said that prices of essentials go up every year before the budget is passed in parliament. -*Daily Star*, 25 June.

10.45 lakh cases awaits disposal

A total of 10,45,895 cases are pending in the courts of the country till April 2003. Among these 3,79,893 are civil and the rest 6,43,697 are criminal cases. In the same period 22,305 writ cases are also pending in the High Court. The pending cases in the High Court Division of the Supreme Court was 1,56,681 including 60,516 civil suits and 73,860 criminal cases. This was revealed by Law and Parliamentary Affairs Minister Barrister Moudud Ahmed in the Jatiya Sangsad while he was replying to a question in this regard. The minister informed the parliament that the High Court Division disposed of 27,338 cases in 2002. The resolved cases included 64,00 civil, 13,192 criminal and 7,292 writ petitions. -*Ittefaq*.

New anti-crime drive starts soon

The government is planning to launch a countrywide anti-crime drive by police, BDR and Ansar to contain the return of criminality. This was said by Prime Minister Khaleda Zia. Explaining the move, the Prime Minister said many criminals had been arrested and many of them fled during the first army-led operation against crime launched in August 2002. That drive had restored peace and security. But as criminals have again raised their ugly face, government will renew a drive against them. -*Prothom Alo*, 29 June.

3 to die for killing Sony

The Speedy Trial Tribunal-1, Dhaka Division has sentenced three persons to death and five to life imprisonment for killing Sahequn Nahar Sony, a student of the Bangladesh University of Engineering and Technology (BUET). The convicts with death penalty are Mokammel Hayat Khan Muki, Mushfiq Uddin Tagor and Nurul Islam Sagar. Seven others of the 15 accused -- Sheikh Solaiman alias Babul, Sirajul Islam alias Wasim, Zakir Hossain Patwari alias Munna, Rafiq alias Rafiq Chacha, Sujan, Aiyub and Mohiuddin -- have been cleared of charges. Sony, 22, a second year student of level-2, term-2 of chemical engineering, was killed in crossfire between two factions of the Jatiyataabadi Chhatra Dal, the student front of the ruling BNP. BUET Security Officer Gornul Kuddus Khan filed a murder case with the Lalbagh Police Station. Detectives submitted a chargesheet against 15 people on January 4. The speedy trial tribunal framed charges against the main accused Muki and others on January 26. The court, beginning the trial on January 30, cross-examined 23 prosecution witnesses. -*Prothom Alo*, 30 June.

New justice in Appellate Division

Justice Hamidul Haque has been appointed as judge in the Appellate Division of the Supreme Court. President Professor Iajuddin Ahmed made the appointment. Justice Hamidul Haque was the most senior judge among the High Court's judges. The appointment has been effected after his taking oath of office. -*Prothom Alo*, 29 June.

Verdict on Bushra murder case

The Women and Children Repression Prevention Tribunal-3, Dhaka has sentenced three persons to death and one to life imprisonment in its verdict on the killing of Rushdiana Islam Bushra, a college student.

The convicts with death sentence are M Abdul Karim, former relief and social welfare secretary of the Awami League city unit, Sheikh Shawkat Ahmed Ruhul and Sheikh Kabir Ahmed. The court has also fined the death penalty convicts Tk 1 lakh each. The court handed down life imprisonment to Runu Kader, wife of death-penalty convict Kader, who will have to serve two years more in failure to pay Tk 1 lakh in fines. Two others of the six accused were cleared of the charges. The judge completed the hearing on June 17 in the absence of two of the accused, with 17 of the 34 witnesses examined. The verdict was delivered after 49 workdays of the trial that began on August 4 last year. Bushra, daughter of a retired assistant superintendent of police late Serajul Islam, was killed over a land grab move by the convicts.

Bushra's mother Laila Islam filed the case with the Khilgaon Police Station without accusing anybody, a day after the killing, and filed a supplementary first information report accusing the six people in September 2000. -*Law Desk*.

5 additional judges of HC confirmed

Five additional judges of the High Court Division of the Supreme Court has been confirmed as permanent judges. President Iajuddin Ahmed confirmed them under Article 95 (1) of the constitution. The newly appointed judges are Sheikh Rezwana Ali, Mohammad Anwarul Huq, Nazrul Islam Chowdhury, Syed Mohammad Dastagir Hossain and Mirza Hossain Haider. Sheikh Rezwana Ali and Anwarul Huq come from the judicial service while others from the legal profession. Meanwhile four additional judges has not been confirmed. Those Khandoker Musa Khaled, AHM Shamsuddin Chowdhury, M Nizamul Huq and Bazlur Rahman. -*Law Desk*.

Corresponding Law Desk

Please send your mails, queries, and opinions to:

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