

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(SPECIAL ORIGINAL JURISDICTION)

WRIT PETITION NO. 2067 OF 2004

IN THE MATTER OF:

An application under Article 102 of the Constitution of the  
People's Republic of Bangladesh.

-AND-

IN THE MATTER OF:

Jubak Housing and Real Estate Development Limited  
...Petitioner

-Versus-

Judge, Artha Rin Adalat No. 1, Dhaka, Dhaka Judge's  
Court Building, Police Station Kotwali, Dhaka and others  
... Respondents

Mr. A. M. Aminuddin with  
Mr. Munshi Moniruzzaman,  
Mr. Minhazul Haque Chowdhury and  
Ms. Fariha Zaman, Advocates  
.....For the petitioner.

Mr. Syed Hasan Zobair, Advocate  
....For the respondent no. 2.

Mr. Khair Ezaz Maswood with  
Mr. Mohammad Bakir Uddin Bhuiyan, Advocates  
.....For the respondent nos. 3-8.

Mr. Rokanuddin Mahmud with  
Mr. M. Mushfiqur Rahman, Advocates  
...For the respondent no. 14.

Heard on 01.06.2017, 16.07.2017,  
18.07.2017, 03.08.2017, 09.08.2017,  
16.08.2017, 17.08.2017, 14.11.2017,

22.11.2017, 30.11.2017, 03.12.2017 and  
07.12.2017.  
Judgment on 13.12.2017.

Present:

Mr. Justice Moyeenul Islam Chowdhury

-And-

Mr. Justice J. B. M. Hassan

**MOYEENUL ISLAM CHOWDHURY, J:**

On an application under Article 102 of the Constitution of the People's Republic of Bangladesh filed by the petitioner, a Rule Nisi was issued calling upon the respondent nos. 1 and 2 to show cause as to why the order dated 11.04.2004 passed by the Judge, Artha Rin Adalat No. 1, Dhaka in Artha Execution Case No. 59 of 2003 refusing to accept the bid of the petitioner should not be declared to be without lawful authority and of no legal effect and/or such other or further order or orders passed as to this Court may seem fit and proper.

It may be mentioned that at a subsequent stage, as per the directive of the Appellate Division articulated in the judgment dated 20.05.2014 passed in Civil Appeal No. 135 of 2006, this Court issued a Rule Nisi in similar terms against the judgment-debtor-respondent nos. 3-8 of the Writ Petition on receipt of the record of the case on remand from the Appellate Division.

The case of the petitioner, as set out in the Writ Petition, in short, is as follows:

The petitioner is a private limited company. Anyway, the respondent no. 2 Agrani Bank Limited as plaintiff instituted Title Suit No. 217 of 1992 in the Artha Rin Adalat No. 1, Dhaka impleading the respondent nos. 3-10 as

defendants for realization of Tk. 7,55,686.61/-. Eventually the suit was decreed on contest by the Artha Rin Adalat No. 1, Dhaka on 07.09.2001. Thereafter the decree-holder respondent-Agrani Bank Limited filed Artha Execution Case No. 59 of 2003 in the Artha Rin Adalat No. 1, Dhaka. During the process of execution of the decree, the respondent no. 1, in compliance with Section 33(1) of the Artha Rin Adalat Ain, 2003 (hereinafter referred to as the Ain of 2003), invited tender for auction sale of the mortgaged properties as described in the schedules to the Execution Case Petition. The said tender notice was published in “The Daily Manabzamin” on 20.02.2004. On 03.03.2004, only a single bid was submitted and that being so, the Artha Rin Adalat No. 1 by its order dated 03.03.2004 refused to accept the bid and directed the decree-holder bank to take steps according to Section 33(4) of the Ain of 2003. On 28.03.2004, the Artha Rin Adalat, according to the provisions of Section 33(4) of the Ain of 2003, again published an auction notice in two national dailies, namely, “The Daily Inqilab” and “The Daily Jugantor” for auction sale of the scheduled properties. In response to the said auction sale notice, the present petitioner submitted its bid offering in all a sum of Tk. 6,10,00,000/- for the scheduled properties and by this offer, it became the highest bidder. On 11.04.2004, the respondent-bank filed an application before the Artha Rin Adalat to accept the bid of the petitioner as the decree-holder bank was satisfied therewith. But nevertheless the Artha Rin Adalat by its order dated 11.04.2004 refused to accept the bid of the petitioner-company holding, inter alia, that the offer was very low than the market price and fixed 28.04.2004 for taking necessary steps under Section 33(5) of the Ain of 2003. Anyway, the ‘Ka’ scheduled property

is situated on Plot No. 354(old), 16 (new), Road No. 28(old), 15(new), Dhanmondi Residential Area, Dhaka (hereinafter mentioned as Dhanmondi property). The other scheduled properties are situated at Kachpur and Bahakoir under Sonargaon Upazilla in the District of Narayanganj. However, the impugned order dated 11.04.2004 refusing to accept the bid of the petitioner is unsustainable in law inasmuch as the decree-holder bank consented to the acceptance of the bid by the Executing Court. Furthermore, the bid of the petitioner-company can not be said to be shockingly low, regard being had to the market price of the properties of similar nature. The impugned order dated 11.04.2004 is, therefore, illegal, arbitrary and unreasonable.

In the Supplementary Affidavit dated 18.08.2004 filed on behalf of the petitioner, it has been stated that at the time of preparation of the Writ Petition, the petitioner could not annex the certified copies of the plaint of the Title Suit No. 217 of 1992 and the judgment and decree dated 30.04.2001 passed therein and those documents are necessary for disposal of the instant Writ Petition and accordingly those documents have been annexed to the Supplementary Affidavit and marked as Annexure- 'G' series.

The respondent no. 2 Agrani Bank Limited has filed an Affidavit-in-Opposition in this Writ Petition. The case of the respondent no. 2, as set out therein, in brief, runs as follows:

The petitioner-company has preferred the Writ Petition challenging the impugned order dated 11.04.2004 passed by the respondent no. 1 refusing to accept its bid which offered Tk. 6,10,00,000/- in order to purchase the mortgaged properties against the claim of Tk. 22,35,95,053/- being the decretal

amount with pendente lite interest which were put to auction sale in the Execution Case. The decree-holder bank thought it advisable to accept the bid of the petitioner-company by the Executing Court towards liquidation of the loan in the exigency of the prevailing circumstances. So far as the bank's interest is concerned, the bank could be benefited in realizing the bid money and thereafter in realizing the balance amount through the process of law by attaching other moveable and immovable properties of the judgment-debtors and also by putting the judgment-debtors in civil prison as provided by Section 34 of the Ain of 2003. The offered price of the highest bidder was brought to the notice of the bank management for their decision regarding recovery of the bad debt. The bank management agreed to the sale of the mortgaged properties for the bid amount of Tk. 6,10,00,000/- for the time being. However, the non-acceptance of the offered price of the highest bidder (petitioner-company) is a matter of discretion of the learned Judge of the Executing Court.

The respondent nos. 3-6 and 8 have filed an Affidavit-in-Opposition in this Writ Petition. Their case, in short, is as follows:

The Agrani Bank Limited, Principal Branch, Dhaka as plaintiff filed Title Suit No. 217 of 1992 on 24.10.1992 claiming recovery of Tk. 7,55,22,686.61/- as on 30.09.1992 by enforcing the sale of the mortgaged properties. The said suit was decreed by the Artha Rin Adalat No. 1, Dhaka by its judgment and decree dated 30.04.2001 with a direction to pay the decretal amount of Tk. 7,55,22,686.61/- along with interest at the rate of 20%. On 17.04.2003, the decree-holder bank filed Artha Execution Case No. 59 of 2003 claiming recovery of Tk. 22,35,95,053/-; but no notice of the Artha Execution

Case No. 59 of 2003 was served upon the defendant-judgment-debtor-respondents as evidenced by Annexure-‘7’ series. The auction of the mortgaged properties was held and subsequently the sale was confirmed behind the back of the answering respondents. Besides, no Rule Nisi was prayed for upon the judgment-debtor-respondents in this Writ Petition; rather the Rule Nisi was prayed for only upon the respondent nos. 1 and 2 and accordingly the same was issued upon them only and the Rule was not contested by either of them. As there was no opposition of the Rule by the respondent no. 2-bank, the Rule Nisi was made absolute by the High Court Division by its judgment and order dated 23.08.2004 directing the respondent no. 1 to accept the bid of the petitioner-company, that is to say, Jubak Housing and Real Estate Development Limited. Accordingly the respondent no. 1, Judge of the Artha Rin Adalat No. 1, Dhaka, accepted the bid of the petitioner-company at Tk. 6,10,00,000/- by its order dated 03.10.2004 and issued a sale certificate by its order dated 20.11.2004 which was registered on 25.11.2004. Thereafter the auction-purchaser petitioner-company suddenly ousted and dispossessed the respondent nos. 3-8 on 28.05.2005. Subsequently these respondents enquired into the matter and came to know about the proceedings of the Artha Execution Case No. 59 of 2003 and the orchestrated auction sale of the mortgaged properties of the judgment-debtors to the petitioner-company. However, during the pendency of the Civil Appeal No. 135 of 2006 in the Appellate Division, the petitioner transferred the Dhanmondi property of the judgment-debtors to one Md. Aminul Haque and Md. Aminul Haque transferred the same to the added respondent no. 14 Ope Properties Limited by a registered deed dated

20.01.2011. The added respondent no. 14 undertook a project of construction of a high-rise building on the Dhanmondi property to frustrate the purpose of the Civil Appeal No. 135 of 2006. Eventually on 20.05.2014, the Appellate Division allowed the Civil Appeal No. 135 of 2006 filed by the judgment-debtor-respondents and set aside the judgment and order dated 23.08.2004 passed by the High Court Division in this Writ Petition (Writ Petition No. 2067 of 2004) and remanded the Writ Petition to this Court for hearing and disposal of the Rule Nisi afresh on merit in accordance with law after issuing a Rule Nisi upon the appellants of the Civil Appeal No. 135 of 2006. Afterwards the High Court Division, in compliance with the directive of the Appellate Division given in the Civil Appeal No. 135 of 2006, issued a Rule Nisi upon the respondent nos. 3-8 and the High Court Division also directed the parties concerned to maintain status quo in respect of the possession of the property in question. The Artha Execution Case No. 59 of 2003 is still pending for adjudication and the rest of the claimed amount of the decree-holder bank has remained unsatisfied. But even then, the most valuable properties including the Dhanmondi property of the judgment-debtors valuing more than Tk. 200,00,00,000/- (two hundred crore) were sold out at a throw-away price. The impugned order dated 11.04.2004 passed in the Artha Execution Case No. 59 of 2003 refusing to accept the bid of the petitioner is lawful and as such no exception can be taken thereto.

The respondent no. 7 has filed a separate Affidavit-in-Opposition in this Writ Petition adopting the Affidavit-in-Opposition dated 21.08.2006 filed by the respondent nos. 3-6 and 8.

The respondent no. 14 has filed an Affidavit-of-Facts in this Writ Petition. It has been stated in the Affidavit-of-Facts that the petitioner filed the Writ Petition challenging the order dated 11.04.2004 passed by the learned Judge of the Artha Rin Adalat No. 1, Dhaka in the Artha Execution Case No. 59 of 2003 refusing to accept the bid of the petitioner. However, the background facts are that the respondent no. 2 Agrani Bank Limited as plaintiff filed Title Suit No. 217 of 1992 in the Artha Rin Adalat No. 1, Dhaka against the respondent no. 3 and others for realization of Tk. 7,55,22,686.61/-. The said suit was decreed on contest against the defendant-judgment-debtors for a sum of Tk. 7,55,22,686.61/- with interest at the rate of 20% from 01.10.1992 till realization of the decretal amount within 90(ninety) days. As the defendant-judgment-debtor-respondents failed to pay the decretal amount as ordered, the decree-holder bank put the decree into execution by way of filing the Artha Execution Case No. 59 of 2003 for realization of the decretal dues along with interest and costs. In the Execution Case, an auction notice was published in the newspaper for selling out the mortgaged properties and the petitioner Jubak Housing and Real Estate Development Limited offered the highest bid to the tune of Tk. 6,10,00,000/-. But the Executing Court by the impugned order dated 11.04.2004 refused to accept the bid as it was considered to be very low. Challenging the said order dated 11.04.2004, the petitioner filed the instant Writ Petition and a Division Bench of the High Court Division by its judgment and order dated 23.08.2004 made the Rule Nisi absolute. As against the judgment and order dated 23.08.2004 passed by the High Court Division in this Writ Petition (Writ Petition No. 2067 of 2004), the writ-respondent no. 3 filed



Civil Appeal No. 135 of 2006 in the Appellate Division. Ultimately after hearing the Civil Appeal No. 135 of 2006, the Appellate Division by its judgment and order dated 20.05.2014 allowed the appeal by setting aside the judgment and order dated 23.08.2004 passed in this Writ Petition and the Writ Petition was sent back to the High Court Division on remand for fresh adjudication. But before the rendition of the judgment of the Appellate Division in the Civil Appeal No. 135 of 2006, the Executing Court complied with the judgment and order dated 23.08.2004 passed by the High Court Division in this Writ Petition and accordingly the Executing Court by its order dated 20.11.2004 issued a sale certificate in favour of the auction-purchaser company and subsequently the sale was confirmed and made absolute. On 28.03.2005, the Executing Court made over the possession of the Dhanmondi property in favour of the auction-purchaser (writ-petitioner). At a subsequent stage, the auction-purchaser writ-petitioner sold the Dhanmondi property to one Md. Aminul Haque by a registered deed dated 21.12.2010. Md. Aminul Haque in his turn sold the self-same property (Dhanmondi property) to the respondent no. 14, that is to say, Ope Properties Limited by a registered deed dated 20.01.2011. The respondent no. 14, on obtaining requisite permission from various concerned authorities, constructed a 13-storied high-rise building thereon; but it was not made a party in this Writ Petition. Anyway, at its instance, it has been made a respondent in this Writ Petition.

The respondent no. 14 has also submitted a Supplementary Affidavit-of-Facts dated 08.08.2016 in this Writ Petition. According to the Supplementary

Affidavit-of-Facts dated 08.08.2016, the respondent no. 14 is a bona fide purchaser of the Dhanmondi property for value without notice.

In the Supplementary Affidavit-of-Facts dated 14.11.2016 filed by the respondent no. 14, it has been averred that the judgment-debtor-respondents were all along aware of the passing of the decree, filing of the Artha Execution Case No. 59 of 2003 and the process of auction and sale of the mortgaged properties; but they did not take any steps thereabout and remained silent during and after the auction process. Consequently, the possession of the mortgaged properties was made over to the auction-purchaser through the process of the Court.

At the outset, Mr. A. M. Aminuddin, learned Advocate appearing on behalf of the petitioner, submits that admittedly the petitioner's bid to the tune of Tk. 6,10,00,000/- was the highest bid and the decree-holder bank filed an application before the Executing Court for acceptance of the bid of the petitioner; but the Executing Court by the impugned order dated 11.04.2004 unreasonably and arbitrarily refused to accept the bid of the petitioner as a result of which the auction-purchaser Jubak Housing and Real Estate Development Limited had to file the instant Writ Petition by invoking Article 102 of the Constitution.

Mr. A. M. Aminuddin also submits that the Writ Petition No. 2067 of 2004 (present Writ Petition) was heard on merit and the Rule Nisi was made absolute by the High Court Division by its judgment and order dated 23.08.2004 and in compliance with the judgment and order dated 23.08.2004, the Executing Court accepted the highest bid of the petitioner-company and

thereafter the sale was confirmed and made absolute and the possession of the mortgaged properties was made over to the petitioner-company in due course and given this scenario, the auction purchase of the mortgaged properties of the judgment-debtors by the petitioner-company is a 'fait accompli'.

Mr. A. M. Aminuddin next submits that after delivery of possession of the mortgaged properties through the process of the Court, the petitioner-company transferred the Dhanmondi property in favour of one Md. Aminul Haque who in his turn transferred the same to the respondent no. 14 Ope Properties Limited and the respondent no. 14 has been in possession of the property since purchase and in this perspective, the petitioner-company has virtually lost all interest in this case.

Per contra, Mr. Khair Ezaz Maswood, learned Advocate appearing for the judgment-debtor-respondent nos. 3-8, submits that the impugned order dated 11.04.2004 as evidenced by Annexure-'E' to the Writ Petition was passed by the learned Judge of the Artha Rin Adalat No. 1, Dhaka in the Artha Execution Case No. 59 of 2003 refusing to accept the bid of the petitioner due to its shockingly low value which can not be interfered with in view of the proviso to Sub-Section (2) of Section 33 of the Ain of 2003.

Mr. Khair Ezaz Maswood also submits that no notices of the Artha Execution Case No. 59 of 2003 were served upon the defendant-judgment-debtor-respondents and on that account, they were quite in the dark about the proceedings of the Artha Execution Case No. 59 of 2003 pending before the Artha Rin Adalat No. 1, Dhaka.

Mr. Khair Ezaz Maswood further submits that with ulterior motive and by way of a backstage manoeuvre, the writ-petitioner prayed for issuance of a Rule Nisi only upon the respondent nos. 1 and 2 leaving out the defendant-judgment-debtor-respondents in consequence of which the judgment-debtor-respondents were completely in the dark about the issuance of the Rule Nisi in this Writ Petition and the subsequent judgment and order dated 23.08.2004 passed by the High Court Division making the Rule absolute.

Mr. Khair Ezaz Maswood also submits that when the judgment-debtor-respondents came to know about the judgment and order dated 23.08.2004 passed by the High Court Division in this Writ Petition, they preferred Civil Petition For Leave To Appeal No. 777 of 2005 in the Appellate Division and after hearing, leave was granted giving rise to the Civil Appeal No. 135 of 2006.

Mr. Khair Ezaz Maswood next submits that although the bid of the petitioner-company was accepted by the Executing Court in compliance with the judgment and order of the High Court Division dated 23.08.2004 passed in this Writ Petition, yet the fact remains that after the reversal of the judgment and order of the High Court Division dated 23.08.2004 by the Appellate Division in the Civil Appeal No. 135 of 2006, the entire matter starting from the passing of the impugned order dated 11.04.2004 stands re-opened for fresh adjudication on merit by this Court and this Court will now re-adjudicate upon the Rule on merit in accordance of the directive given by the Appellate Division in the Civil Appeal No. 135 of 2006.

Mr. Khair Ezaz Maswood further submits that the deliberate non-issuance of the Rule Nisi upon the defendant-judgment-debtor-respondents at the initial stage in this Writ Petition, at the instance of the petitioner-company, is a classic case of fraud and the petitioner-company, or for that matter, any subsequent purchaser can not enjoy the fruit of the fraud as it is a settled proposition of law that fraud vitiates everything.

Mr. Khair Ezaz Maswood next submits that where it is proved that in an auction sale, the offered price is abnormally and shockingly low, in that event, the Artha Rin Adalat is not bound to accept the highest offer particularly when there is an alternative provision in the Ain of 2003 for disposing of the judgment-debtors' mortgaged properties towards the satisfaction of the decretal dues. To buttress up this submission, he has drawn our attention to the decision in the case of Agrani Bank Limited...Vs...The Secretary, Ministry of Law, Justice and Parliamentary Affairs, Government of the People's Republic of Bangladesh and others reported in 19 MLR (HCD) 330, to which one of us was a party (Mr. J. B. M. Hassan, J).

Mr. Khair Ezaz Maswood also submits that the judgment-debtor-respondents, after issuance of the Rule Nisi upon them at the directive of the Appellate Division given in the Civil Appeal No. 135 of 2006, entered appearance in this Writ Petition and filed Affidavits-in-Opposition; but during the pendency of the Writ Petition, two of the judgment-debtors, namely, the respondent nos. 5 and 8 were convicted in G. R. Case No. 509 of 2008 arising out of Dhanmondi Police Station Case No. 46 dated 19.07.2008 under Section 420 of the Penal Code and sentenced thereunder to suffer rigorous

imprisonment for 5(five) years and to pay a fine of Tk. 10,000/- each, in default, to suffer rigorous imprisonment for a further period of 3(three) months each by the Metropolitan Magistrate, Dhaka and although the convicts could not submit to the sentence passed against them by the criminal Court, even then those two convicts, namely, the respondent nos. 5 and 8 can oppose and contest the Rule Nisi in accordance with the provisions of Order III, Rule 4 (1) and (2) of the Code of Civil Procedure, 1908.

Mr. Khair Ezaz Maswood lastly submits that the impugned order dated 11.04.2004 passed by the Executing Court, in the facts and circumstances of the case, is not without any lawful authority; rather the same was passed with lawful authority, regard being had to the proviso to Sub-Section (2) of Section 33 of the Ain of 2003 and that being so, the impugned order can not be assailed by the writ-petitioner.

Mr. Syed Hasan Zobair, learned Advocate appearing on behalf of the respondent no. 2-bank, submits that although the bank filed an application for accepting the highest bid of the petitioner, yet the bank thinks that the impugned order dated 11.04.2004 was passed by the Executing Court at its discretion in view of the proviso to Sub-Section (2) of Section 33 of the Ain of 2003.

Mr. Rokanuddin Mahmud, learned Advocate appearing on behalf of the respondent no. 14 (Ope Properties Limited), submits that as against the impugned order dated 11.04.2004 passed in the Artha Execution Case No. 59 of 2003, the writ-petitioner filed the instant Writ Petition and at the instance of the writ-petitioner, the Rule Nisi was issued upon the respondent nos. 1 and 2

only; but subsequently as per the directive of the Appellate Division given in its decision dated 20.05.2014 rendered in the Civil Appeal No. 135 of 2006, the High Court Division issued a Rule Nisi upon the judgment-debtor-respondents; but in the meantime, in compliance with the decision of the High Court Division dated 23.08.2004 passed in this Writ Petition, the bid of the petitioner-company was accepted by the Executing Court and a sale certificate was issued and registered and the sale was confirmed and made absolute and the petitioner-company got delivery of possession of the mortgaged properties through the process of the Court.

Mr. Rokanuddin Mahmud also submits that the auction purchase of the mortgaged properties by the petitioner-company in compliance with the decision dated 23.08.2004 rendered by the High Court Division in this Writ Petition is a 'fait accompli' and the petitioner-company, at a subsequent stage, transferred the Dhanmondi property in favour of one Md. Aminul Haque who in his turn transferred the same to the respondent no. 14 and the respondent no. 14 has been in possession thereof by way of purchase.

Mr. Rokanuddin Mahmud further submits that the Rule has already become infructuous in view of the subsequent developments after purchase of the mortgaged properties by the petitioner-company and its sale of the Dhanmondi property first to Md. Aminul Haque and then to the respondent no. 14 Ope Properties Limited and this being the state of affairs, the Rule is liable to be discharged as being infructuous.

Mr. Rokanuddin Mahmud also submits that the respondent nos. 5 and 8 entered into an agreement with the Iranian Cultural Centre about the sale of the

Dhanmondi property, but eventually they failed to execute any sale deed in favour of the Iranian Cultural Centre, Dhaka and as a sequel to this incident, the Embassy of the Islamic Republic of Iran lodged an ejahar (First Information Report) with Dhanmondi Police Station giving rise to Dhanmondi Police Station Case No. 46 dated 19.07.2008 under Sections 420/406/109 of the Penal Code against the respondent nos. 5 and 8 and ultimately they were charge-sheeted by the police and initially they obtained bail from the Court; but subsequently they jumped bail, remained in abscondence and were convicted under Section 420 of the Penal Code and sentenced thereunder to suffer rigorous imprisonment for 5(five) years and to pay a fine of Tk. 10,000/- each, in default, to suffer rigorous imprisonment for a further period of 3(three) months each by the learned Metropolitan Magistrate, Dhaka on 21.05.2017 and as the respondent nos. 5 and 8 are still fugitives from justice, they can not oppose and contest the Rule Nisi. In this connection, Mr. Rokanuddin Mahmud has relied upon the decision in the case of Anti-Corruption Commission...Vs...Dr. HBM Iqbal Alamgir and others reported in 15 BLC (AD) 44.

We have heard the submissions of the learned Advocates Mr. A. M. Aminuddin and Mr. Rokanuddin Mahmud and the counter-submissions of the learned Advocates Mr. Khair Ezaz Maswood and Mr. Syed Hasan Zobair and perused the Writ Petition, Supplementary Affidavit, Affidavits-in-Opposition, Affidavit-of-Facts, Supplementary Affidavit-of-Facts and relevant Annexures annexed thereto.



It goes without saying that this is a Writ of Certiorari under Article 102 of the Constitution. In this regard, we feel tempted to say that the High Court Division exercising power while dealing with the Writ of Certiorari does not work as a Court of Appeal and as such it is not required to make determination of facts on its own. It can interfere with the findings of a Court of facts under its extra-ordinary jurisdiction under Article 102 only if it can be shown that the Court has acted without jurisdiction or made any finding upon no evidence or without considering any material evidence/facts causing prejudice to the petitioner or it has acted mala fide or in violation of the principle of natural justice. This view is underpinned by the decision in the case of the Government of Bangladesh...Vs...Md. Jalil and others reported in 15 BLD (AD) 175.

In the decision in the case of the Government of Bangladesh and another...Vs...Md. Afsar Ali and others reported in 58 DLR (AD) 107, it has been held by the Appellate Division that the High Court Division can interfere with the findings of fact arrived at by the inferior Tribunal only when it can be shown that the findings are based on no evidence or non-consideration of material evidence.

From the aforementioned two decisions of the Appellate Division, it is manifestly clear that in a Writ of Certiorari, the scope of interference of the High Court Division under Article 102 of the Constitution is very limited. So keeping this in view, we will adjudicate upon the Rule on merit.

To begin with, a duty is cast upon us to examine as to whether the two absconding convicts, namely, the respondent nos. 5 and 8 have any locus standi to oppose and contest the Rule Nisi in this Writ Petition.

It may be recalled that at one stage of G. R. Case No. 509 of 2008, the respondent nos. 5 and 8 jumped bail and were on the run and ultimately the trial of the case had to be concluded and the order of conviction and sentence was recorded against them in absentia. It is the admitted position that those two respondents (respondent nos. 5 and 8) are convicts in a criminal proceeding under Section 420 of the Penal Code, 1860. Now a pertinent question arises: does this conviction stand as a bar to their opposition to the Rule Nisi? Indisputably the respondent nos. 5 and 8 were granted bail by the Court in connection with G. R. Case No. 509 of 2008, but at one stage of that criminal case, they could not remain present before the trial Court and in consequence, their bail was cancelled and they were declared absconders during the pendency of the Rule Nisi before us.

Anyway, in the decision in the case of Anti-Corruption Commission...Vs...Dr. HBM Iqbl Alamgir and others, 15 BLC (AD) 44, the Appellate Division spelt out in paragraphs 6 and 7 as under:

“6. Admittedly the writ-petitioner was a fugitive from justice on the date he moved the Writ Petition. He was away from the country and craved permission of the Court to affirm affidavit on his behalf by one HBM Shoave Rahman. The permission was given and the learned Judges issued Rule Nisi as above. It is now settled that a fugitive from justice is not entitled to obtain

a judicial order defying the process of the Court. Besides, the learned Advocates who move applications for the fugitives shall also have to face the consequence of committing Contempt of Court. This principle is being followed for over 60 years in this Sub-continent. References in this connection are Chand Shah...Vs...Crown, 8 DLR (FC) 24, Gul Hassan...Vs...State, reported in 21 DLR (SC) 109, Anti-Corruption Commissioner...Vs...Mahmud Hassan, 61 DLR (AD) 17.

7. Admittedly, the writ-petitioner was convicted in absentia by the judgment and order dated 13<sup>th</sup> March, 2008 by the Special Judge, First Court, Dhaka. Naturally, the learned Special judge issued warrant for the execution of the sentence under Section 389 of the Code of Criminal Procedure at the time of delivery of judgment, and the writ-petitioner moved the petition on 17<sup>th</sup> September, 2008 when there was warrant for the execution of the sentence. We fail to understand in the backdrop of the case, how

the learned Judges of the Division Bench could even entertain the Writ Petition on behalf of a fugitive from justice, ignoring the long-settled principles being followed by the Courts. If this process is allowed, the fugitives from justice, either convicted or not, will be emboldened and despite processes have been issued, they will defy the processes of the Courts and in such cases, the administration of criminal justice will crumple. We can not conceive of a more flagrant violation of this principle that a convict who seeks the interference of the sovereign to obtain revision of a judicial order must submit to the Court instead of engaging himself in setting that judicial order at naught. It is well-settled that when a person seeks remedy from a Court of law, either in writ jurisdiction or criminal appellate, revisional or miscellaneous jurisdiction under Section 516 A of the Code of Criminal Procedure, he ought to submit to the due process of justice. Let it be made clear to him, if it is not already known, that

the Court would not act in aid of an accused person who is a fugitive from law and justice.”

Undeniably the respondent nos. 5 and 8, prior to their abscondence and conviction, executed power in favour of their learned Advocate in this Writ Petition. But during the pendency of the Rule, they stood convicted on 21.05.2017 in G. R. Case No. 509 of 2008 of the Court of Metropolitan Magistrate, Dhaka.

However, in this regard, Mr. Khair Ezaz Maswood has emphatically relied upon Order III, Rule 4 (1) and (2) of the Code of Civil Procedure. Order III, Rule 4 (1) and (2) are reproduced below:

“R. 4 Appointment of pleader. (1) No pleader shall act for any person in any Court, unless he has been appointed for the purpose by such person by a document in writing signed by such person or by his recognized agent or by some other person duly authorized by or under a power-of-attorney to make such appointment.

(2) Every such appointment shall be filed in Court and shall be deemed to be in force until determined with the leave of the Court by a writing signed by the client or the pleader, as the case may be, and filed in

Court, or until the client or the pleader dies,  
or until all proceedings in the suit are ended  
so far as regards the client.”

According to the contention of Mr. Khair Ezaz Maswood, his appointment as Advocate by the respondent nos. 5 and 8 shall be deemed to be in force until it is determined in the manner laid down in the aforementioned provisions of Order III, Rule 4 of the Code of Civil Procedure and as his appointment as Advocate has not been determined as yet, he can oppose and contest the Rule on behalf of the respondent nos. 5 and 8, even though they are absconding convicts.

Order III, Rule 4(1) and (2) of the Code of Civil Procedure embody the general provisions for appointment of an Advocate and the determination of his appointment. There can not be any iota of doubt thereabout. But none the less, the decision reported in 15 BLC (AD) 44 can not be shrugged off at all. Needless to say, the two convicts, namely, respondent nos. 5 and 8 are, amongst others, judgment-debtor-respondents in this Writ Petition. Admittedly those two respondents (respondent nos. 5 and 8) are yet to submit to the sentence passed against them by the criminal Court in G. R. Case No. 509 of 2008 on 21.05.2017. As things stand now, the respondent nos. 5 and 8 can not oppose or contest the Rule Nisi through their learned Advocate Mr. Khair Ezaz Maswood unless and until they submit to the sentence passed against them in G. R. Case No. 509 of 2008. As absconding convicts, we can not allow them to oppose and contest the Rule Nisi through their learned Advocate. If we do so, that will amount to setting the rule of law at naught. In the cited decision

reported in 15 BLC (AD) 44, the convict came up with the Writ Petition seeking some relief; but in the instant case, by reason of their being respondent nos. 5 and 8, they are not seeking any relief, yet the fact remains that they can not derive any benefit or enjoy the fruit of any judgment or judicial order passed in this case so long as they remain fugitives from law. So the natural consequence is that Mr. Khair Ezaz Maswood can not represent the absconding convicts (respondent nos. 5 and 8) in this case. Precisely speaking, the 'ratio' of the decision reported in 15 BLC (AD) 44 will conversely apply to the facts and circumstances of the present case, in so far as the respondent nos. 5 and 8 are concerned. Be that as it may, this finding will not preclude Mr. Khair Ezaz Maswood from representing the other judgment-debtor-respondents and accordingly he can very well represent them in this case.

It is undisputed that initially at the instance of the writ-petitioner, a Rule Nisi was issued upon the respondent nos. 1 and 2 only leaving out the judgment-debtor-respondents. The petitioner-company, by way of a smart trick, made the prayer for issuance of the Rule Nisi on those two respondents only (respondent nos. 1 and 2). It may be noted that the respondent no. 1 is the Judge of the Artha Rin Adalat No. 1, Dhaka and the respondent no. 2 is the decree-holder bank. We have already seen that the respondent no. 2 (decree-holder bank) was a consenting party to the bid of the petitioner-company. In this perspective, the bank filed an application before the Executing Court for acceptance of the bid of the petitioner-company. From the conduct of the decree-holder bank, it seems that the bank was in collusion with the auction-purchaser, though the bid amount was less than one-third of the decretal dues.

There is no gainsaying the fact that the application of the decree-holder bank for acceptance of the bid of the petitioner was rejected by the self-same impugned order dated 11.04.2004; but curiously enough, the decree-holder bank did not challenge the rejection of its application before the High Court Division under Article 102 of the Constitution. It is only the auction-purchaser (petitioner-company) who has challenged the impugned order dated 11.04.2004 by filing the instant Writ Petition. The non-issuance of any Rule Nisi on the judgment-debtor-respondents at the instance of the petitioner-company, we feel constrained to hold, is a glaring manifestation of fraud. Ultimately the Appellate Division came to the rescue of the judgment-debtor-respondents and as per its directive given in the Civil Appeal No. 135 of 2006, the High Court Division issued a Rule Nisi upon them. However, this sort of fraud resorted to by the petitioner-company is deprecated. What is more, to our way of thinking, the non-issuance of the Rule Nisi initially upon the judgment-debtor-respondents, at the instance of the petitioner-company, was mala fide as well.

Admittedly the Rule Nisi initially issued upon the respondent nos. 1 and 2 was made absolute by the High Court Division by its judgment and order dated 23.08.2004. But afterwards the Appellate Division, by its judgment and order dated 20.05.2014 passed in the Civil Appeal No. 135 of 2006, reversed the judgment and order dated 23.08.2004 passed by the High Court Division in this Writ Petition and remanded the Writ Petition to this Court for fresh hearing on merit in accordance with law.

It is the contention of Mr. Rokanuddin Mahmud that the Rule has necessarily become infructuous in view of the subsequent developments and



transfers of the Dhanmondi property in favour of the third-parties after compliance with the judgment and order dated 23.08.2004 passed by the High Court Division in this Writ Petition. But we are unable to accept this contention for the simple reason that the entire issue of auction purchase of the mortgaged properties stands re-opened for fresh adjudication by the High Court Division in consequence of the directive given by the Appellate Division in the Civil Appeal No. 135 of 2006. It is true that the Executing Court had to accept the bid of the petitioner-company, confirm the sale and eventually make over the possession of the mortgaged properties in favour of the petitioner-company by way of compliance with the judgment and order of the High Court Division dated 23.08.2004 passed in this Writ Petition. But as soon as the judgment and order of the High Court Division dated 23.08.2004 was reversed by the Appellate Division by its judgment and order dated 20.05.2014 passed in the Civil Appeal No. 135 of 2006, this Court is now at liberty to adjudicate upon the matter afresh on merit in accordance with law.

For better appreciation of the impugned order dated 11.04.2004 passed by the Executing Court as evidenced by Annexure-‘E’ to the Writ Petition, it may be quoted below verbatim:

“১২---- ১১/৪/০৪--- অদ্য নিলামের জন্য দিন ধার্য্য আছে।  
ডিক্রীদার পক্ষ পেপার কার্টিং দাখিল করিয়াছে। তপছিল ক, খ  
ও গ এর জন্য মোট-৯টি পে অর্ডার সহ নিলাম দরপত্র জমা  
পড়িয়াছে। নিলাম দরপত্রের দৃষ্টে দেখা যায় তপছিল ক, খ ও  
গ এর ক্রমিক নং-১ সর্বোচ্চ মূল্য- ৬,১০,০০,০০০/- (ছয়  
কোটি দশ লক্ষ) টাকার নিলাম দরপত্র জমা দিয়াছেন।

ডিক্রীদার ব্যাংক পক্ষ এক দরখাস্ত দিয়া বর্নিত কারনে নিলাম দরপত্র গ্রহনের জন্য প্রার্থনা করিয়াছে। প্রার্থনা নামঞ্জুর করা হইল (ভি, ও, পি)। দেখিলাম জারী দরখাস্তের ক, খ ও গ তপছিলের জমির নিলাম দরপত্র সমূহ পর্যালোচনা করা হইল। জারীর দরখাস্ত পর্যালোচনায় দেখা যায় ডিক্রীদার ব্যাংক ১/১০/৯২ ইং হইতে ৩১/১২/৯২ পর্যন্ত ২২,৩৫,৯৫,০৫৩/- টাকা দায়িকের নিকট পাওনা দাবী করিয়াছেন। দাখিলী তিনটি সর্বোচ্চ দর হিসাবে উক্ত ৩টি তপছিলে মোট দর ৬,১০,০০,০০০/- টাকা হইয়াছে। এমতাবস্থায়, দেখা যায় নিলাম দরপত্রের দর বাজার মূল্যের চাইতে অনেক কম হওয়ায় দরপত্র সমূহ গ্রহন করা গেল না (ভি, ও, পি)। আগামী ২৮/৪/০৪ ইং তারিখ ৩৩(৫) ধারায় তদবির।

স্বাঃ/- মোঃ মোজাম্মেল হক  
জজ  
অর্থস্বাগ নং-১, ঢাকা।”

It is the definite finding of the Executing Court that the total decretal amount along with interest was Tk. 22,35,95,053/- at the relevant period and the highest bid money of the petitioner was only Tk. 6,10,00,000/- and considering this scenario, the Executing Court held that the quoted price of the mortgaged properties of the judgment-debtors, that is to say, Tk. 6,10,00,000/- was far below the amount of Tk. 22,35,95,053/- and from this standpoint, the Executing Court rejected the bid of the petitioner-company in view of the proviso to Sub-Section (2) of Section 33 of the Ain of 2003.

In this connection, we feel tempted to quote the proviso to Sub-Section (2) of Section 33 of the Ain of 2003 which runs as follows:

“তবে শর্ত থাকে যে, এই উপ-ধারার অধীন দরপত্রে সম্পত্তির  
প্রস্তাবকৃত মূল্য অস্বাভাবিকভাবে অপরিাপ্ত বা কম প্রতীয়মান  
হইলে, আদালত, দরপ্রস্তাব বাতিল করিতে পারিবেন।”

From a bare reading of the impugned order dated 11.04.2004, it is ex-facie clear that the Executing Court exercised its discretion properly keeping the proviso to Sub-Section (2) of Section 33 of the Ain of 2003 in view. The finding of the Executing Court that the bid money of the petitioner to the tune of Tk. 6,10,00,000/- was very low can not be found fault with in judicial review for justifiable reasons. In other words, we do not find that the impugned order dated 11.04.2004 was made by the Executing Court without any lawful authority. What we are driving at boils down to this: the impugned order dated 11.04.2004 is a valid and legal order passed under the proviso to Sub-Section (2) of Section 33 of the Ain of 2003. Consequently the impugned order dated 11.04.2004 can not be dubbed as an unreasonable, arbitrary and whimsical order. Furthermore, the impugned order dated 11.04.2004 does not fall within the ambit of the ‘ratios’ of the decisions reported in 15 BLD (AD) 175 and 58 DLR (AD) 107 (supra).

With regard to the submission of Mr. Rokanuddin Mahmud that the respondent no. 14 Ope Properties Limited purchased the Dhanmondi property of the judgment-debtors from one Md. Aminul Haque who purchased the same from the petitioner-company after it got delivery of possession thereof through the process of the Court, we opine that the subsequent transfers of the Dhanmondi property (case property) in favour of Md. Aminul Haque and the respondent no. 14 during the pendency of the Civil Appeal No. 135 of 2006

will be subject to the decision of the Court, regard being had to the provisions of Section 52 of the Transfer of Property Act, 1882. By the way, it may be reiterated that by the decision dated 20.05.2014 made by the Appellate Division in the Civil Appeal No. 135 of 2006, the earlier decision of the High Court Division dated 23.08.2004 made in this Writ Petition was reversed necessarily nullifying the subsequent developments centring round the mortgaged properties including the Dhanmondi property of the judgment-debtor-respondents.

We are in full agreement with the principle of the decision enunciated in the case of *Agrani Bank Limited...Vs...The Secretary, Ministry of Law, Justice and Parliamentary Affairs, Government of the People's Republic of Bangladesh and others* reported in 19 MLR (HCD) 330 relied upon by Mr. Khair Ezaz Maswood that where it is proved that in an auction sale, the offered price is abnormally and shockingly low, in that event, the Artha Rin Adalat is not bound to accept the highest offer particularly when there is an alternative provision for disposing of the judgment-debtors' mortgaged properties towards satisfaction of the decretal dues in the Ain of 2003.

From the foregoing discussions and in the facts and circumstances of the case, we are led to hold that the impugned order dated 11.04.2004 passed by the Artha Rin Adalat No. 1, Dhaka in the Artha Execution Case No. 59 of 2003 is a valid, reasonable and lawful order. As such, it does not call for any interference from this Court. The Rule, therefore, fails.

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

However, the Artha Rin Adalat No. 1, Dhaka is hereby directed to proceed with the hearing of the Artha Execution Case No. 59 of 2003 and dispose of the same in accordance with law.

Let a copy of this judgment be immediately transmitted to the Artha Rin Adalat No. 1, Dhaka for information and necessary action.

**J. B. M. HASSAN, J:**

I agree.