

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

**CIVIL REVISION NO. 2397 OF 2023**

In the matter of:

An application under Section 115(1) of the Code of Civil Procedure, 1908.

AND

In the matter of:

Md. Wali Hasan Farid, son of Md. Mosharof Hossain of Arappur Ukil Para, PO- Jhenaidaha-7300, Thana/Upazilla- Jhenaidah Sadar, District- Jhenaidah.

.... Petitioner

-Versus-

Md. Mosharof Hossain Badsha, son of late Mohsin Ali and others.

....Opposite-parties

Mr. Ashique Rubaiat, Advocate

... For the petitioner

Mr. Saqeb Mahbub, Advocate

...For the opposite-party nos. 1 and 2

**Heard and Judgment on 21.04.2024.**

**Present:**

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

**Md. Mozibur Rahman Miah, J:**

At the instance of the defendant no. 1 in Money Suit No. 01 of 2018, this rule was issued calling upon the opposite-parties to show cause as to why the order dated 21.03.2023 passed by the learned Joint District Judge, 1<sup>st</sup> Court, Pabna in the said suit rejecting an application filed for rejection of plaint by the defendant no. 1-petitioner under order VII, rule 11 of the Code of Civil Procedure, 1908 should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

At the time of issuance of the rule, all further proceeding of the said suit was stayed for a period of 3(three) months which was lastly extended on 19.03.2024 for another 3(three) months.

The salient facts leading to issuance of the instant rule are:

The present opposite-party nos. 1 and 2 as plaintiffs filed the aforesaid suit claiming an amount of taka 7,60,00,000/- seeking following reliefs:

“নালিশী (ক) তফশীলী সম্পত্তির প্র কৃত মূল্য ৭,৬০,০০,০০০/- (সাত কোটি ষাট লক্ষ) টাকা বিবাদীগণের নিকট হইতে ক্ষতিপূরণসহ বাদীগণ আদায় পাইবার জন্য বিবাদীগণের বিরুদ্ধে বাদীদের অনুকূলে বিবাদীর বিরুদ্ধে ডিক্রী দিতে; উক্ত টাকা মধ্যে আংশিক নিলামে বিক্রিত টাকা বিবাদী কর্তৃক ব্যাংকে জমা থাকিলে তাহা ঋণ সমন্বয় করিয়া অবশিষ্ট টাকা বাদীদের নাদিলে (খ) তফশীলী দলিল অকার্যকর মর্মে বিবাদীর নামিয় ও বেনামিয় সম্পত্তিসহ ক্রোক করিয়া তাহা বিক্রয় করিয়া আদায়ের আদেশ দিতে; আইন ও ইকুইটি মূলে বিবাদীগণের বিরুদ্ধে বাদীগণ আরও যে যে প্র তিকার/ডিক্রী পাইতে অধিকারী তাহাও বাদীগণদের পাইবার ডিক্রী দিতে মর্জি হয়।”

In the suit, the present petitioner who was defendant no. 1 entered appearance and filed written statement to contest the same. When the suit was at the stage of peremptory hearing, the defendant no. 1-petitioner filed an application under order VII, rule 11 of the Code of Civil Procedure for rejection of the plaint on the assertion that under the proviso of sub-section (8) of section 12 of the Artha Rin Adalat Ain, 2003, the suit is barred since that proviso clearly provides that if any irregularity in selling the mortgaged property through auction is occurred in that case, the borrower can claim compensation against the financial institution or bank from which the borrower took loan. However, the application for rejection of the plaint was taken up for hearing by the learned Judge of the trial court and vide impugned order rejected the same holding that, the grievance of the defendant-petitioner can only be adjudicated upon on taking evidence of the parties to the suit. It is at that stage, the defendant no. 1 as petitioner came before this court and obtained the instant rule and order of stay.

Mr. Ashique Rubaiat, the learned counsel appearing for the petitioner upon taking us to the impugned order at the very outset submits that, since there has been clear bar in the proviso of sub-section (8) of section 12 of the Artha Rin Adalat Ain so the suit cannot lie under clause (gha) of order VII, rule 11 of the Code of Civil Procedure. On that sole ground, the learned counsel finally prays for making the rule absolute by rejecting the plaint.

On the contrary, Mr. Saqeb Mahbub, the learned counsel appearing for the plaintiffs-opposite-party nos. 1 and 2 by filing a supplementary-

affidavit vehemently opposes the contention so taken by the learned counsel for the petitioner and submits that, the learned Judge has rightly passed the impugned order which is liable to be sustained.

In his second leg of submission, the learned counsel further contends that, under no circumstances, can a plaint be rejected since the plaint itself does not show that the suit is barred by any law nor for lack of cause of action since there has been a clear description of cause of action in paragraph no. 6 thereof so the plaint cannot be rejected either under clause (kha) or (gha) of order VII, rule 11 of the Code of Civil Procedure.

The learned counsel also submits that, the legal recourse that could have taken by the petitioner to file an application for striking out his name from the plaint nor in the form of rejection of plaint. With those submissions, the learned counsel finally prays for discharging the rule.

We have considered the submission so advanced by the learned counsel for the defendant-petitioner and that of the plaintiffs-opposite-parties at length. We have also gone through the application filed for rejection of plaint, the plaint vis-à-vis the impugned judgment and order. Aside from that, we have also examined the provision so have been laid down in section 12(8) of the Artha Rin Adalat Ain, 2003. On going through the provision especially the *proviso* provided therein we find that, if any irregularity is committed in the process of selling the mortgaged property through auction, before filing of an Artha Rin Suit, under section 12(3) of the Artha Rin Adalat Ain, the remedy lies to the borrower to file a compensation suit against the financial institution from which loan was availed but it does not imply that on the basis of that provision, the suit as

a whole will stand dismissed if claim of the plaintiff exists against other defendant or defendants.

Furthermore, in the said *proviso* there has been no consequential effect as to what will happen if a suit for compensation is filed keeping aside the financial institution impleading only the officers of the financial institution. However, the learned counsel by taking us to the supplementary-affidavit also contends that, soon after passing of the impugned order, the Bank as well as the Managing Director of the bank has been made party by way of amendment of plaint vide order dated 07.05.2023 even though the said application was filed far back on 29.11.2020 and 27.02.2023 respectively though the rule was issued by this court on 28.05.2023 by fulfilling the legal necessity so provided in the said *proviso*.

Be that as it may, since none of the legal ingredients so have been set out in order VII, rule 11 of the Code of Civil Procedure ever present in the application filed by the defendant-petitioner under order VII, rule 11 of the Code of Civil Procedure basing on which a plaint can only be rejected so we are of the view that the said application is totally misconceived one.

Given the above facts and circumstances, we don't find any shred of substance in the submission so placed by the learned counsel for the petitioner resulting in, the impugned order is liable to be sustained.

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

The order of stay granted at the time of issuance of the rule stands recalled and vacated.

Let a copy of this judgment be communicated to the learned Joint District Judge, 1<sup>st</sup> Court, Pabna forthwith.

**Md. Bashir Ullah, J:**

I agree.