

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

**Present**

**Mr. Justice Md. Iqbal Kabir**

**And**

**Mr. Justice Md. Akhtaruzzaman**

**WRIT PETITION NO. 2104 OF 2024.**

**IN THE MATTER OF:**

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

-AND -

**IN THE MATTER OF:**

The Oriental Bank Limited (At present ICB Islamic Bank Limited).

.....Petitioner.

-VS-

The Government of the People's Republic of Bangladesh and others.

.....Respondents

Mr. Khokon Pervez, Advocate

.....For the petitioner

Mr. Al Faishal Shiddique, Advocate

..... For the respondent No. 3.

**Heard on 15.05.2024 and  
Judgment on 30.07.2024.**

**Md. Akhtaruzzaman, J.**

In this Rule Nisi, the petitioner called in question the legality of Order No.18 dated 21.11.2023 (Annexure-E) passed by the learned Judge, Artha Rin Adalat, Khulna in Artha Decree Execution Case No. 59 of 2022 arising out of Artha Rin Suit No. 104 of 2006 rejecting the application of the decree-holder Bank raising objection to the intended auction sale being low price and also rejecting the prayer for allowing the decree-holder Bank/ petitioner to take steps under section 33(5) of the Artha Rin Adalat Ain, 2003 (as amended up to date) and thereby accepting the offer of the highest

bidder violating the provision of Section 33(2C) and 33(5) of the Artha Rin Adalat Ain, 2003.

The facts of the case as narrated in the writ petition, in brief, are that the petitioner being plaintiff instituted Artha Rin Suit No.104 of 2006 before the Artharin Adalat, Khulna for recovery of Tk. 3,35,95,429.70 (Three Crore Thirty Five Lacs Ninety Five Thousand Four Hundred Twenty Nine and Paise Seventy) only till 18.10.2006 against the Respondent Nos.03-09 as defendants. Respondent No. 4 as defendant contested the suit by filing a written statement denying all the material facts. The suit was fixed for hearing. Both the parties adduced evidence and upon considering the evidence and materials on record, the suit was decreed on 10.02.2022. Decree was drawn up on 17.02.2022. Thereafter, the decree holder instituted Artha Decree Execution Case No.59 of 2022. In the Execution Case auction under Section 33(1) of the said Ain, 2003 was held on 22.05.2023 and one Md. Abul Hossain became the highest bidder offering Tk.11,00,00,000.00 (Eleven Crore) as price money for the scheduled mortgaged properties but the Artha Rin Adalat, Khulna did not pass any order on that day regarding acceptance of the said highest bid, rather fixed 22.08.2023 for hearing and further passing an order directing the Sub-Registrar, Sadar, Khulna for submitting Mouja rate of the scheduled properties and also passed an order to keep the pay-order amounting to Tk. 11,00,00,000 (Eleven Crore) and to give back the other two pay-orders of the other two low-bidders. Subsequently, on 22.08.2023 the decree-holder Bank filed an application praying for cancellation of the bid for auction sale dated 22.05.2023 and allowing the decree-holder Bank to take further steps. In the meantime, the

Sub-Registrar submitted the Mouja rate of the concerned locality, The learned Judge of the Executing Court upon considering the Mouza rate opined that the present market value of the disputed properties is much higher than the highest bidding price and therefore cancelled the order of auction dated 22.05.2023 and fixed 14.09.2023 for taking next steps by the decree-holder Bank. On the date fixed for hearing, the decree-holder Bank took steps under Section 33(4) of the Ain, 2003 for second auction of the scheduled mortgaged properties. The petition was allowed and the decree-holder Bank on 01.11.2023 submitted copies of the newspapers containing auction notices and the Court fixed 21.11.2023 for auction. Thereafter, on the date fixed for auction, the sealed tender box was opened and the Court found that one Md. Faysal Hossain (Respondent No.03) became the highest bidder offering Tk. 11,05,00,000.00 (Eleven Crore Five Lac) as price money for the mortgaged properties. At this stage the decree-holder Bank filed an application making objection that until 20.11.2023 total outstanding dues amount is Tk.11,07,09,960.70 ( Eleven Crore Seven Lac Nine Hundred Sixty and Seventy Paisa). The extent of scheduled mortgage property is 43 decimal land with two storied building on it and surrounding wall, the market value of which is much higher in comparing to the price offered by the highest bidder and if the intended bid is accepted by the Court, then after deducting 10% money at source as VAT the total claim of the decree-holder Bank will not be satisfied and the purpose of auction would not be served. It is also contended by the writ petitioner that after taking hearing from the respective parties the Executing Court vide its Order No.18 dated 21.11.2023 most arbitrarily and illegally accepted the offer of the highest

bidder ignoring the objection raised by the decree-holder Bank and thus rejected the prayer of the petitioner Bank to take steps under Section 33(5) of the Ain, 2003 and fixed 28.11.2023 directing the Respondent No.3 to submit Tk. 11,05,010.00 (Eleven Lac Five Thousand Ten) only as sale fees. Upon receiving the sale fees the Court directed the decree-holder Bank to deposit 10% of the auction price as VAT and fixed 29.02.2024 for receiving the balance amount of the auction money. The petitioner Bank further contends that until 20.11.2023 total outstanding claim of the petitioner Bank is Tk. 11,07,09,960.70 (Eleven Crore Seven Lac Nine Hundred Sixty and Seventy Paisa) and the market value of the mortgaged property is much higher than the price offered in auction but ignoring the facts the Executing Court most illegally accepted the said offer which is liable to be declared to have been passed without lawful authority and is of no legal effect. The decree-holder Bank also submitted a supplementary affidavit contending that since the respondent No.3 had failed to deposit the whole amount of auction price within the stipulated time, therefore, as per provision of law there is no option left before the Adalat below but to forfeit the security money of the respondent No.3 and issue certificate to the decree-holder Bank under section 33(5) of the Ain, 2003.

Mr. Khokon Pervez, the learned Advocate appearing for the petitioner submits that till 20.11.2023 total outstanding claim of the decree-holder Bank is Tk. 11,07,09,960.70 (Eleven Crore Seven Lac Nine Hundred Sixty and Seventy Paisa) and the market value of the mortgaged properties is much higher than the price offered in the tender bid which is abnormally shocking and insufficient in comparing with the claim of the decree-holder

Bank. He also submits that the impugned order is bad in law and the Executing Court without applying his judicial mind had illegally passed the impugned order only to deprive the decree-holder Bank from getting the outstanding money due to the judgment-debtor. In support of his submission, the learned Advocate put reliance on the decisions reported in 20 BLD 329 and 68 DLR 340.

In reply, Mr. Al Faishal Shiddique, the learned Advocate appearing for respondent No.3 submits that the plaintiff decree holder Bank filed Artharin Suit No.104 of 2006 for recovery of Tk. 3,35,95,429.70 (Three Crore Thirty Five Lacs Ninety Five Thousand Four Hundred Twenty Nine and Paisa Seventy). The suit was decreed on 10.02.2022. Thereafter, the decree holder instituted Artha Decree Execution Case No.59 of 2022 claiming Tk. 9,66,40,742.70 and subsequently, as per direction of the Court auction of the mortgaged property was held on 22.05.2023 and one Md. Abul Hossain became the highest bidder offering Tk.11,00,00,000.00 (Eleven Crore) as the price of the mortgaged properties. The learned Advocate further submits that subsequently the decree holder bank filed an application for cancellation of the auction process mentioning that highest bidding price is abnormally low and insufficient. Thereafter, the Court directed that Sub-register of the concern locality for submitting mouja rate of the schedule property and after receiving the said rate the Court allowed the application of the decree holder and thus cancelled the auction process. The learned Advocate also submits that subsequently another auction was held and the price of mortgaged properties was offered Tk. 11,07,00,000/-(Eleven Crore and Seven Lac). The learned Advocate finally submits that the price

offered by the second bidder is not less in comparing to the mouja rate submitted by the concerned Sub-Registrar but the petitioner with a malafide intention preferred the writ petition only to harass the judgment debtor.

Heard the learned Advocates appearing for both the parties and perused the petition as well as the materials on record including the impugned order as well. It is on record that the petitioner filed Artharin Suit No.104 of 2006 before the Artharin Adalat, Khulna for recovery of Tk. 3,35,95,429.70 (Three Crore Thirty Five Lacs Ninety Five Thousand Four Hundred Twenty Nine and Paisa Seventy) against the respondent Nos. 3-9. The suit was decreed against the defendant judgment-debtors. Thereafter, the decree holder bank filed Artha Decree Execution Case No. 59 of 2022 for realization of Tk. 9,66,40,742.70/- (Nine Crore Sixty Six Lac Forty Thousand Seven Hundred Forty Two and Paisa Seventy). It is on record that on the prayer of the decree holder the Court held auction of the mortgaged property and one Md. Abul Hossain became the highest bidder offering Tk.11,00,00,000.00 (Eleven Crore) as the price of the property. Thereafter, on the basis of objection made by the decree holder Bank the said auction process was cancelled and subsequently second auction was held. In this auction, one Md. Foyisal Hossain offered Tk. 11,07,00,000/- (Eleven Crore Seven Lac) which was the highest among the three bidders. At this stage, the decree-holder Bank again made an objection claiming that the amount offered by the auction bidder is shockingly low than the actual value of the property and, as such, the same auction process would be cancelled. At this juncture, the Executing Court directed the concerned Sub-Registrar to submit mouza rate of the scheduled property and upon receiving the mouza

rate as well as considering the position of record, the Court disallowed the petition of the decree holder vide the impugned order against which the bank being petitioner filed the instant writ petition. We have meticulously scrutinized the materials on record and of the view that the Bank being decree holder filed Artha Decree Execution Case No. 59 of 2022 for realization of Tk. 9,66,40,742.70/-. But the auction bidder offered Tk. 11,07,00,000/- which is higher than the money claimed in the Exaction Case by the decree-holder Bank. We have considered the case laws submitted by the respective parties along with the relevant laws. Considering the position of record we do not find that the price offered by the highest bidder amounting Tk. 11,07,00,000/- is less in comparing to the claim of the decree holder bank in the said Execution case. Moreover, the price offered by the highest bidder does not appear shockingly low.

Therefore, considering the facts and circumstances of the case we are of view that there is no substance in the submission put forward by the learned Advocate of the petitioner. As such, the Rule is liable to be discharged.

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

The impugned Order No. 18 dated 21.11.2023 passed by the learned Judge, Artha Rin Adalat, Khulna in Artha Decree Execution Case No. 59 of 2022 is affirmed.

Communicate the judgment to respondent No.1 at once.

**Md. Iqbal Kabir, J.**

I agree.