

**IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION**  
(Special Original Jurisdiction)

*Writ Petition no. 8093 of 2013.*

*In the matter of:*

An application under Article 102(2) of the Constitution of the People's Republic of Bangladesh.;

*And*

*In the matter of:*

Jewel Rana (Labu), son of late Abdur Rahman and others

...Petitioners.

*Versus*

Artha Rin Adalat No.1, Dhaka and others

....Respondents

Mr. Md. Badiuzzaman, Advocate,  
....For the Petitioners.

Mr. Hironmay Halder, with  
Mr. Md. Ziauddin, Advocates  
... For respondent no.2

*Heard on The 12<sup>th</sup> and 19<sup>th</sup> May, 2014*  
*Judgment on The 26<sup>th</sup> May, 2014.*

*Mohammad Ullah, J:*

On an application under Article 102 of the Constitution of the People's Republic of Bangladesh, Rule was issued calling upon the respondents to show cause as to why the Order No. 32 dated 15.7.2013 passed by the Artha

Rin Adalat No.4, Dhaka (respondent 1) in Artha Rin Suit No. 57 of 2011 rejecting the petitioners' application filed under Order I Rule 10(2) of the Code of Civil Procedure read with section 57 of the Artha Rin Adalat Ain, 2003 should not be declared to have been passed without lawful authority and is of no legal effect.

Short facts, for the disposal of the Rule, are that the respondent no. 2, Uttara Bank Limited, filed Artha Rin Suit No. 57 of 2011 before the Artha Rin Adalat, 4<sup>th</sup> Court, Dhaka against the respondent nos. 3 and 4, who are the borrower and guarantor respectively, for realization of outstanding dues of Tk. 29,19,140.00 as on 12.06.2011. The respondent nos. 3 and 4 contested the aforesaid Artha Rin Suit by filing a written statement denying the material averments made in the plaint. At one stage of the proceedings, particularly on 16.5.2013 when the case was fixed for peremptory hearing, the writ petitioners filed an application under Order I, Rule 10(2) of the Code of Civil Procedure read with section 57 of

the Artha Rin Adalat Ain, 2003 for adding them as defendants in the suit on the ground that they purchased the suit shops and proportionate share of the Ga-schedule land of the suit from the respondent no. 3 by different registered sale deeds in between 6.4.2008 to 3.11.2011, but the respondent no. 3 with an ulterior motive took loan from the respondent no. 2 bank and mortgaged the Ga-schedule land to the bank. The writ petitioners knowing about the Artha Rin Suit No. 57 of 2011 became astonished about the conduct of the respondent no. 3. It is also stated in the application that the respondent nos. 3 and 4, being the son and father respectively, took taka near about 3.00 crore from the petitioners by selling the shops and land involved in the Artha Rin Suit. The respondent no. 2 bank filed written objection against the said application for addition of parties contending, *inter alia*, that the petitioners are not necessary parties since prior to the alleged purchase of scheduled land by the petitioners, it was mortgaged to the respondent no. 2

bank by the alleged vendor of the petitioners. The Artha Rin Adalat, upon hearing the parties and on consideration of law and facts, rejected the said application for addition of party holding, *inter alia*, that the applicants are not necessary party in view of sub-section (5) of section 6 of the Artha Rin Adalat Ain, 2003.

Against the aforesaid order of the Artha Rin Adalat dated 15.7.2013, the petitioners have come before this Court and obtained this Rule. At the time of issuing of the Rule, this Court stayed further proceeding of the aforesaid Artha Rin Suit for a period of 3 (three) months and lastly on 28.4.2014 it was extended for a further period of 3(three) months from date.

This Rule is contested by respondent no. 2-Bank through Mr. Hironmoy Halder, learned Advocate, who filed affidavit-in-opposition controverting the statements made in the writ petition.

Mr. Md. Badiuzzaman, learned Advocate appearing on behalf of the petitioner, drawing our attention to the provision of sub-section (1) of section 6 of the Artha Rin Adalat Ain, 2003, at the out set, submits that the provision of the Code of Civil Procedure will be applicable for the purpose of disposal of the Artha Rin Suit to the extent of not being inconsistent with the provision of the Artha Rin Adalat Ain, 2003 and for the determination of addition of party in the Artha Rin Suit, the Code of Civil Procedure will squarely be applicable. Mr. Badiuzzaman, further submits that the petitioners are willing to pay the entire claimed amount of the plaintiff-bank and the petitioners are the necessary parties to adjudicate all the issues effectively and completely involved in the suit, and as such, the findings and decisions as arrived at by the Artha Rin Adalat are erroneous and so cannot be sustained in law. I support of his submissions Mr. Zaman placed reliance on the case of Eastern Bank Limited vs-Saudi Bangladesh Industries and Agricultural Investment Company Ltd. reported in 1 ADC (2004) 566.

Mr. Hironmay Halder, the learned Advocate appearing with Mr. Md. Ziauddin on behalf of the respondent-bank, on the other hand, submits that the petitioners are neither

necessary nor proper parties in the Artha Rin Suit and the Court has no jurisdiction to add them as parties under Order I Rule 10(2) of the Code of Civil Procedure as there is express provision provided in sub-section (5) of section 6 of the Artha Rin Adalat Ain, 2003 that the principal debtor, the third party mortgagor and the third party guarantor are the necessary parties only for the purpose of deciding the Artha Rin Suit filed by the financial institutions. Mr. Halder, learned Advocate, submits further that according to section 53D of the Transfer of Property Act, 1882 no immovable property can be re-mortgaged or sold out without the written consent of the mortgagee and any sale or re-mortgage made otherwise shall be void. On that count, the Rule should be discharged, he submits.

We have heard the learned Advocates from both the parties, perused the materials on record including the writ petition, annexures thereto, and the affidavit-in-opposition filed by the respondent no. 2 Uttara Bank Limited.

The only question involved in this Rule is whether the petitioners are the necessary or proper party in the Artha Rin Suit or in other words whether the petitioners can be allowed to pay or fulfill the claim of the creditor-respondent no. 2

Bank upon making themselves party to the suit. Rule was also issued to examine whether the petitioners, being bonafide purchasers of the mortgaged property as described in the schedule Ga of the plaint in the Artha Rin Suit, have subsisting interest therein and whether Sub-section (5) of section 6 of the Ain, 2003 takes away the petitioners' right to protect their interest in the property in question and whether the provision of Order I Rule 10 of the Code of Civil Procedure will be applicable in the Artha Rin Suit for the purpose of addition of party/parties.

For the purpose of determining the fate of this Rule, it will be profitable to examine the relevant provision of Chapter IV of the Artha Rin Adalat Ain, 2003 which reads as follows:

“ ৪র্থ পরি-চ্ছদ- মামলা দা-য়র আদাল-তর রীতি ও কার্যপদ্ধতি

৬।(১) এই আই-নর অধীন অর্থ ঋণ আদার-ত দা-য়রকৃত কোন মামলার বিচার বা নিষ্পত্তি সম্পর্কিত কার্যক্রমে, এই আই-নর বিধানাবলীর সহিত অসংগতিপূর্ণ না হওয়া সা-প-ক্ষ, The Code of Civil Procedure, 1908-এর সংশ্লিষ্ট বিধানাবলী প্র-যাজ্য হই-ব।

(২) .....

(৩) .....

(৪) .....

(৫) আর্থিক প্রতিষ্ঠান মূল ঋণগৃহীতার (Principal debtor) বিরূ-দ্ধ মামলা দা-য়র করার সময়, তৃতীয় পক্ষ বন্ধকদাতা

(Third party mortgagor) বা তৃতীয় পক্ষ গ্যারান্টর (Third party guarantor) ঋণের সহিত সংশ্লিষ্ট থাকি-ল, উহাদিগ-ক বিবাদী পক্ষ করি-ব; এবং আদালত কর্তৃক প্রদত্ত রায়, আ-দশ বা ডিক্রী সকল বিবাদীর বিরুদ্ধ যৌথভা-ব ও পৃথক পৃথকভা-ব (Jointly and severally) কার্যকর হই-ব এবং ডিক্রী জারীর মামলা সকল বিবাদী-দায়ি-কর বিরুদ্ধ একইসা-থ পরিচালিত হই-ব:

ত-ব শর্ত থা-ক যে, ডিক্রী জারীর মাধ্য-ম দাবী আদায় হওয়ার -ক্ষ-ত্র আদালত প্রথ-ম মূল ঋণগ্রহীতা-বিবাদীর এবং অত:পর যথাক্র-ম তৃতীয় পক্ষ বন্ধকদাতা (Third party mortgagor) ও তৃতীয় পক্ষ গ্যারান্টর (Third party guarantor) এর সম্পত্তি যতদূর সম্ভব আকৃষ্ট করি-ব:

আ-রা শর্ত থা-ক -য, বাদীর অনুকূ-ল প্রদত্ত ডিক্রীর দাবী তৃতীয় পক্ষ বন্ধকদাতা (Third party mortgagor) অথবা তৃতীয় পক্ষ গ্যারান্টর (Third party guarantor) পরি-শোধ করিয়া থাকি-ল উক্ত ডিক্রী যথাক্র-ম তাহা-দর অনুকূ-ল স্থানান্তরিত হই-ব এবং তাহারা মূল ঋণগ্রহীতার (Principal debtor) বিরুদ্ধ উহা প্র-য়াগ বা জারী করি-ত পারি-বন।

On a perusal of the aforesaid provision of law and the facts of the instant case, it appears that the petitioners one neither a principal debtor nor a third party mortgagor or even a third party guarantor as stated in sub-section (5) of section 6 of the Artha Rin Adalt Ain, 2003. The petitioners are in no way connected with the loan or credit facilities availed by the respondent no. 3. This being so, we do not see their presence is necessary for proper and effectual adjudication of the Artha Rin Suit filed by the respondent no. 2-Bank against the respondent nos. 3 and 4, who are the borrower and the guarantor of the loan. Sub-section (5) of section 6 of the



Artha Rin Adalat Ain, 2003 expressly provides who will be the necessary party in the Artha Rin Suit for the purpose of realization of the defaulted loan money, and as such, the aforesaid provision of Artha Rin Adalat Ain takes away the petitioners necessity in the Artha Rin Suit. Besides, in the averments of the writ petition it is found that the 'Ga' schedule property was mortgaged to the respondent-Bank prior to the alleged sell of the same to the petitioners by the respondent no. 3 borrower. When the Act is silent on any particular point then it is permissible to look at other law. But Sub-section(5) of section 6 of the Ain, 2003 particularly expressed against whom Artha Rin Suit can be filed for realization of the defaulted loan money , so, the provision of Code of Civil Procedure does not have implication for the purpose of addition of parties in the instant Artha Rin Suit.

The decision as referred to by the petitioners has no manner of application with the facts and law involved in the instant Rule.

Considering the facts and circumstances of the case and the observations made hereinabove we are of the view of the impugned order dated 15.7.2013 passed by the Artha Rin Adalat in rejecting the application filed by the petitioners

under Order I Rule 10(2) of the Code of Civil Procedure read with section 57 of the Artha Rin Adalat Ain, 2003 suffers from no illegality warranting interference by this Court under Article 102 of the Constitution.

Accordingly, the Rule is discharged, however without any order as to costs. The order of stay granted earlier by this Court stands vacated and recalled.

However, the petitioners, being the third party, may take any other appropriate remedy about their grievances in an appropriate forum in view of the provision of section 32 of the Artha Rin Adalat Ain, 2003 at their own peril.

The trial Court concerned is directed to proceed with the trial of the Artha Rin Suit in accordance with law and with utmost expedition.

Communicate this judgment to the Court concerned at once.

**Sheikh Hassan Arif, J:**

I agree.

**Siddique/B.O.**