

5 SCOB [2015] HCD 79

HIGH COURT DIVISION

(Civil Appellate Jurisdiction)

Mr. Md. Kamruzzaman, Advocate.
...For the Defendant-respondent No. 2.

FIRST APPEAL No. 277 of 2011.

Heard on: 14.05.2015, 21.06.2015.

**M/S Jafri Soap and Chemical Industries
and others.**

Judgment: on 24.06.2015.

.....Plaintiff-appellants.

Vs.

Agrani Bank and others.

....Defendant-respondents.

Mr. Sk. Shamsul Alam, Advocate

.....For the Plaintiff-appellants.

Present:

Mr. Justice Muhammad Abdul Hafiz

And

Mr. Justice S.M. Mozibur Rahman

Artha Rin Adlat Ain, 2003

Section 20:

Without the provisions of Artha Rin Adalat Ain, 2003 any question regarding any proceedings initiated or any order, judgment or decree passed by the Judge of the Artha Rin Adalat cannot be raised in any court or to any authority and no court or authority will take cognizance or accept any application praying for any remedy filed in any court or authority ignoring the said provisions of section 20 of the Artha Rin Adalat Ain, 2003.

... (Para 13)

Artha Rin Adlat Ain, 2003

Section 19, 20, 41 and 42:

Without taking any such step under section 19 of the Artha Rin Adalat Ain, 2003 subsequently filing of a separate suit on the ground of fraud practices upon the court is not maintainable in view of section 20 of the Artha Rin Adalat Ain, 2003. Further more there is a provision of filing appeal and revision against any order or judgment and decree passed by the learned Judge of the Artha Rin Adalat in view of section 41 and 42 of the Artha Rin Adalat Ain, 2003. Plaintiff appellant apparently ignoring the provision of section 19 and 41 instituted a separate suit against the impugned judgment and decree which is absolutely barred by section 20 of the Artha Rin Adalat Ain, 2003.

...(Para 15)

Judgment

S.M. Mozibur Rahman, J:

1. This appeal is directed against the judgment and decree dated 16.06.2011 passed by learned Joint District Judge, 1st Court, Narayanganj dismissing the Title Suit No. 90 of 2005.

2. Short fact, necessary for disposal of the Rule, is that the plaintiff No. 2 as the proprietor of the plaintiff-appellant Messrs Jafri Soap and Chemical Industries, took a loan facility of Tk. 80,000/- by opening a C.C pledge account No. 150 and deposited two purchase deeds being Nos. 801 and 8743 respectively as Security for obtaining loan from defendant Agrani Bank Head Office Dhaka. But no Mortgage deed was executed between the plaintiffs and the defendant Bank in the year of 1977. While plaintiff No. 2 was carrying on the said business in the name and style of the plaintiff No. 1 by taking loan and paying up the same from time to time in course of banking transaction with defendant Bank till 1980 all on a sudden in the year of 1980 the defendant Bank stopped to grant loan facility of Tk. 1,31,310/- causing damage of Tk. 1,31,310/- to the plaintiff No. 1 without assigning any reason whatsoever. Plaintiff No. 2 on several occasion requested the defendant Bank to release the purchase deeds shown in schedule-‘B’ of the plaint in favour of the plaintiff No. 1 as the loan facility had already been stopped by the defendant Bank but in vain. Rather, the defendant Bank as plaintiff instituted a suit, being Artha Rin Mortgage Suit No. 38 of 1991 for realization of Tk. 57,83,725/51 in the court of Artha Rin and the then Sub-ordinate Judge, now Joint District Judge, Narayongonj, against one Messrs Jafri Jute Balling and others as defendants which was decreed ex-parte in preliminary form on 27.01.1992.

3. Thereafter in the year of 1993 the defendant Bank as decree-holder filed a case, being Mortgage Execution Case No. 25 of 1993 for realization of decretal amount of Tk. 57,83,725/51 by auction sale of the land shown in schedule-‘A’ of the plaint along with other lands in the Court of Artha Rin Adalat, Narayongonj, against the aforesaid Messrs Jafri Jute Balling and others as judgment-debtors on 07.03.1993. At one stage the auction sale of the suit property mentioned in schedule-‘A’ of the plaint was held at a consideration money of Tk. 35,28,000/00 which is too much lower than its actual value of Tk. 95,00,000/- in favour of one M A Awal (defendant no. 3 of the original suit) on 19/11/2007. The plaintiff No. 1 was neither made party to Artha Rin Mortgage Suit No. 38 of 1991 nor the schedule-A land to the plaint was mortgaged nor the sale deeds were given as security of mortgage by the plaintiffs to the defendant Bank. So, the decree dated 27.01.1992 of Artha Rin Mortgage Suit No. 38 of 1991 is not binding upon the plaintiffs as the land mentioned in schedule ‘A’ as well as the sale deeds shown in schedule ‘B’ of the plaint are not the actual subject Matter of Artha Rin Suit No. 38 of 1991 and Mortgage Execution Case No. 25 of 1993 pending in the Court of Artha Rin Adalat, Narayongonj. The defendant Bank has taken all measures to execute the auction sale of the land noted in schedule-‘A’ of the plaint although it is not so mortgaged in respect of loan sanctioned in favour of Messrs Jafri Jute Balling. So, the plaintiffs have been compelled to file the original suit praying for a declaration that the decree of Artha Rin Suit No. 38 of 91 is not binding upon them along with a separate declaration that auction sale of the suit land at the consideration money of taka 35,28000/- instead of taka 95,00000/- in favour of defendant no.3 held on 19.11.2007 in strength of which sale deed was executed in the name of defendant nos. 3 is illegal, collusive, void and without jurisdiction.

4. The defendants contested the suit by filing a written statement and contended inter alia that the suit was not maintainable in the form it was instituted. The suit was clearly barred by section 20 of the Artha Rin, Adalat Ain, 2003. Generally denying the material allegations made in the content of the plaint the defendant stated as real fact that the suit was instituted with malafide intention with a view to delay the prayers of the mortgage Execution Case No. 25 of 1993. The plaintiffs have no legal authority to institute a suit under the provision of Artha Rin Adalat Ain. The trial court had rightly dismissed the suit though it ought to have rejected the plaint as it was barred by law of Artha Rin Adalat Rin, 2003. They further

contended that admitting the facts of obtaining loan in the name of Messrs Jafri Jute Balling, plaintiff appellants No. 2 filed a petition dated 10.04.1994 in Mortgage Suit No. 38/91 and Mortgage Execution Case No. 25 of 93 with a prayer to set aside the auction sale.

5. In view of the above pleadings the learned Trial Court framing the issues as usual and examining 2 P.Ws. and 2 D.Ws. for both sides respectively passed the impugned judgment and decree dismissing the suit after scanning the oral and documentary evidences adduced and produced by both the parties to the suit.

6. Being aggrieved by and dissatisfied with the impugned judgment and decree dated 16.06.2011 passed by the learned Joint District Judge, 1st Court, Narayanganj, dismissing the Title Suit No. 90 of 2005 the appellant preferred this appeal amongst others on the main grounds that the learned trial court did not consider the law, facts, evidences and other relevant papers submitted by the plaintiffs and therefore arrived at a wrong decision. Had the learned court below perused properly all the relevant papers admitted in to evidence by the plaintiff it could not have dismissed the original suit.

7. In view of the above situations the only point needs to be decided in this civil appeal is whether the impugned judgment and decree dismissing the original suit is tenable in law or not.

8. We have heard the learned lawyers for both sides. Mr. Sk. Shamsul Alam, the learned Advocate appearing on behalf of the plaintiff-appellants supporting the grounds of the Memorandum of Appeal stated that the learned Joint District Judge, 1st Court seriously failed to consider the facts and circumstance of the case and evidence both oral and documentary adduced and produced by both the parties to the suit and as such the impugned judgment and decree are liable to be set-aside. He further submits that the court below erred in law in not considering that the P.W. 2 in his examination in-chief deposed in court “80 মত্ৰ্জ্ৰ্ ev`x e`vstKi KvtQ 1,31,310/- UvKv tjb Pvb| KŠyweev`x e`sk tmb Loan t`q bvB| Loan bv t`qvZ Avgvt`i qmZ nq| e`emv eU ntq hvq| Avgvi `ij j 2Uv tdir tPtqQj vg e`vsk t`q bvB” and as such the impugned judgment and decree are liable to be set-aside. He further submits that the learned trial court erred in law and fact in failing to consider that the said PW 2 further in his examination-in-Chief deposed in Court “Amg” “A” Schedule Gi fig Zafri Jute balling G Mortgage c`vb Kwi bvB| Auction Sale Uv A%ea| Auction Sale G 35,28,000/- “A” Schedule এর সম্পত্তি বিক্রী nq| GB ংক্রয়টা সঠিক হয় নাই। কম মূল্য বিক্রয় ntqQ| cKZ gj- 95,00,000/- UvKv and as such the impugned judgment and decree are liable to be set-aside. He further submits that the court below erred in law and fact in failing to consider that the DW-2 in his examination-in-Chief deposed in Court “1bs ev`x Rvdx tmc Avgvt`i t`tK Loan nbqQj | FtYi mecixZ bwi kx m=umE Mortgage ttLQj|” and as such the impugned judgment and decree passed by the learned Court below is liable to be set aside.

9. In support of his arguments, he cited the following decisions given in the case of Tafizul Huq Serker Vs. Bangladesh and others reported in 18BLD(AD)1998, Page-269, in the case of M. Tariquillah Sikder Vs. Sonali Bank, reported in 12 MLR(HC) 2007, Page 73, in the case of Shamsuddin Ahmed Vs. A.L. Bhuiyan, reported in 1 BCR 1981 AD, Page 257.

10. On the other hand Mr. Md. Kamruzzaman, the learned Advocate appearing on behalf of the defendant-respondent submits that the original suit is totally barred by section 20 of the Artha Rin Adalat Ain, 2003. There is no scope to file a civil suit against any judgment or

order passed by the learned Judge of the Artha Rin Adalat except other arise expressly provided in the said Act of 2003.

11. In the light of the above arguments agitated by the learned counsel for both sides, we have carefully examined the impugned Judgment and order along with oral and documentary evidences produced by both sides.

12. It is admitted that Messrs Jafri Soap and Chemical Industries took loan of Tk. 80,000/- by opening a C.C pledge account No. 150 against which “A” schedule land of the plaintiff was mortgaged to the defendant bank. But the plaintiff appellants grievance is that respondent bank instituted the mortgage Money Suit No. 38 of 91 and obtained exparte decree against Messrs Jafri Jute Balling. Thereafter, as decree holder Execution Case No. 25 of 93 was initiated by the plaintiff appellant impleading Messrs Jafri Jute Balling as Judgment debtor instead of Messrs Jafri Soap and Chemical Industries. But it has not been clearly mentioned by the appellant plaintiff as to whether the two organization belongs to the same person or Messrs Jafri Jute Balling is the sister organization of the Messrs Jafri Soap and Chemical Industries. Admittedly land shown in A schedule was shown as mortgaged property against the loan money sanctioned in favour of Messrs Jafri Soap and Chemical Industries. In that view of the matter learned Judge of the Artha Rin Adalat opined accurately that the respondent bank authority correctly instituted the Mortgage Suit No. 38 of 1991 against the plaintiff appellant considering Messrs Jafri Jute Balling as sister organization of Messrs Jafri Soap and Chemical Industries. Learned Trial court further observed that in view of section 20 of the Artha Rin Adalat Ain, 2003 plaintiff appellant cannot institute or raised any question regarding any process or order, judgment and decree passed by the Artha Rin Adalat in any court or to any authority as per section 20 of the Artha Rin Adalat Ain, 2003 which runs as follows:-

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Abli'kshn Adalat'et' ch'ud'antat'।

এই আইনের বিধান ব্যতিরেকে কোন আদালত বা কর্তৃপক্ষের নিকট অর্থ ঋণ আদালতে বিচারাধীন
কোন মর্গজিগারি বা উহার কোন আদেশ, রায় বা ডিক্রীর বিষয়ে কোন প্রশ্ন উত্থাপন করা যাইবে না।
এই আইনের বিধানকে উপেক্ষা করিয়া কোন আদালত বা কর্তৃপক্ষের নিকট আবেদন করিয়া কোন
ফির্দালি চাহি হি ফির্দা করা হইলে ঐরূপ আবেদন কোন আদালত বা কর্তৃপক্ষ গ্রাহ্য করিবে না।

13. In view of above provision of section 20 of the Artha Rin Adalat Ain, 2003 it is seen that without the provisions of Artha Rin Adalat Ain, 2003 any question regarding any proceedings initiated or any order, judgment or decree passed by the Judge of the Artha Rin Adalat cannot be raised in any court or to any authority and no court or authority will take cognizance or accept any application praying for any remedy filed in any court or authority ignoring the said provisions of section 20 of the Artha Rin Adalat Ain, 2003. So we think that learned trial court rightly passed the impugned judgment and decree considering the provision laid down in section 20 of the Artha Rin Adalat Ain, 2003.

14. It should be mentioned here that the learned Advocate for the appellant behemently submitted that changing the name of Messrs Jafri Shop and Chemical Industries the defendant appellant filed the original suit in the name of Messrs Jafri Jute Balling and obtained the exparte decree by practicing fraud upon the court. This submission of the learned Advocate for the plaintiff appellant could be raised in Artha Rin mortgage Suit No. 38 of 1991 by filing a petition for setting aside the exparte decree and thereafter the appellant

plaintiffs could have restored the suit in its original file and number in view of the specified section 19 of the Artha Rin Adalat Ain, 2003, which runs as follows:-

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HLaigj CXœ² pçfLh hndje

- (1) মামলার শুনানীর জন্য ধার্য কোন তারিখে বিবাদী আদালতে অনুপস্থিত থাকিলে, কিংবা মামলা শুনানীর জন্য গৃহীত হইবার পর ডাকিয়া বিবাদীকে উপস্থিত পাওয়া না গেলে, আদালত মামলা একতরফা সূত্রে নিষ্পত্তি করিবে।
- (2) কোন মামলা একতরফা সূত্রে ডিক্রী হইলে, বিবাদী উক্ত একতরফা ডিক্রীর তারিখে অথবা উক্ত একতরফা ডিক্রী সম্পর্কে অবগত হইবার ৩০(ত্রিশ) দিবসের মধ্যে, উপ-dij (3) HI hndje সাপেক্ষে, উক্ত একতরফা ডিক্রী রদের জন্য দরখাস্ত করিতে পারিবেন।
- (3) Ef-ধারা (২) এর বিধান অনুযায়ী দরখাস্ত দাখিলের ক্ষেত্রে বিবাদীকে উক্ত দরখাস্ত দাখিলের তারিখের পরবর্তী ১৫(পনের) দিবসের মধ্যে ডিক্রীকৃত অর্থের ১০% এর সমপরিমাণ টাকা বাদীর দাবীর সেই পরিমাণের জন্য স্বীকৃতি স্বরূপ নগদ সংশ্লিষ্ট আর্থিক প্রতিষ্ঠান, অথবা জামানত স্বরূপ hçjwL Xçjw, f-অর্ডার বা অন্য কোন প্রকার নগদায়নযোগ্য বিনিময়ে দলিম (Negotiable Instrument) আকারে জামানত হিসাবে আদালতে জমাদান করিতে হইবে।
- (4) Ef-ধারা (৩) এর বিধানমতে ডিক্রীকৃত অর্থের ১০% সমপরিমাণ টাকা জমাদানের সংগে সংগে দরখাস্তটি মঞ্জুর হইবে, একতরফা ডিক্রী রদ হইবে এবং মূল মামলা উহার পূর্বের নম্বর ও নথিতে পুনরুজ্জীবিত হইবে এবং আদালত ঐ মর্মে একটি আদেশ লিপিবদ্ধ করিবে এবং অতঃপর মামলাটি যে পর্যায়ে একতরফা নিষ্পত্তি হইয়াছিল, ঐ পর্যায়ের অব্যবহিত পূর্ববর্তী পর্যায় হইতে পরিচালিত হইবে।
- (5) -----
- (6) -----

15. But without taking any such step under section 19 of the Artha Rin Adalat Ain, 2003 subsequently filing of a separate suit on the ground of fraud practices upon the court is not maintainable in view of section 20 of the Artha Rin Adalat Ain, 2003. Further more there is a provision of filing appeal and revision against any order or judgment and decree passed by the learned Judge of the Artha Rin Adalat in view of section 41 and 42 of the Artha Rin Adalat Ain, 2003. Plaintiff appellant apparently ignoring the provision of section 19 and 41 instituted a separate suit against the impugned judgment and decree which is absolutely barred by section 20 of the Artha Rin Adalat Ain, 2003.

16. In view of the discussion made above we are of the view that there is no flaw we need to assail in the impugned judgment and decree passed by the learned Joint District Judge, Narayanganj.

17. In the result, the appeal is dismissed without any order as to cost.

18. The impugned judgment and decree dated 16.06.2011 passed by learned Joint District Judge, 1st Court, Narayanganj dismissing the Title Suit No. 90 of 2005 be affirmed.

19. Send down the L. C. Record along with a copy of this Judgment to the court concerned at once for information and necessary steps.