

**5 SCOB [2015] HCD 6****HIGH COURT DIVISION  
(SPECIAL ORIGINAL JURISDICTION)**

Mr. Md. Sohel Rana, Advocate  
..... For the petitioner.

Writ Petition No. 9299 of 2014

Mr. Hassan M.S. Azim, Advocate  
..... For the Respondent No. 2

**Md. Shariful Alam**  
..... Petitioner

Date of Hearing : 16.06.2015  
Date of Judgment : 18.06.2015

Versus

**Joint District Judge, 1<sup>st</sup> Court and  
Artha Rin Adalat, Jessore and another.**  
..... Respondents

**Present:**

**Mr. Justice Zubayer Rahman Chowdhury  
And  
Mr. Justice Mahmudul Hoque**

**Artha Rin Adalat Ain 2003:  
Section 6**

**The language used in the section makes it clear that the plaint has to be filed along with an affidavit, both as to the statements made in the plaint as well as to the documents annexed with the plaint. Therefore, non-compliance with the mandatory requirement of law has rendered the plaint invalid in the eye of law and consequently, the impugned order passed by the learned Judge of the Adalat cannot be sustained in law.**

... (Para 8)

**Judgment****Zubayer Rahman Chowdhury, J :**

1. The instant Rule was issued calling in question the legality and propriety of Order No. 10 dated 01.09.2014, as evidence by Annexure- D, passed by the learned Joint District Judge, 1<sup>st</sup> Court and Artha Rin Adalat, Jessore in Artha Rin Suit No. 42 of 2013 rejecting the petitioners application under order VII, Rule II of the Code of Civil Procedure read with section 57 of Artha Rin Adalat Ain, 2003.

2. Short facts necessary for disposal of the Rule are that respondent no. 2 Bank, as plaintiff, filed Artha Rin Suit No. 42 of 2003 impleading the petitioner as defendant no. 2 for realization of Tk. 10,05,08,707.20 (Taka Ten Crores Five Lacs Eight Thousand Seven Hundred Seven and Paise Twenty only).

3. During the pendency of the suit, the petitioner filed an application under order VII, Rule II of the Code of Civil Procedure read with section 57 of Artha Rin Adalat Ain, 2003 (briefly, the Ain) for rejection of the plaint filed by the Bank on the ground that the plaint was filed without complying with the mandatory provisions of sub-section 2 of section 6 of the

Ain. The learned Judge of the Adalat, upon hearing the parties, rejected the said application by the impugned Order No. 10 dated 01.09.2014. Being aggrieved thereby, the petitioner filed the instant application.

4. Mr. Md. Sohel Rana, the learned Advocate appearing in support of the Rule has referred to section 6, sub-section 2 of the Ain and submits that the Bank is required to file the plaint along with an affidavit, both as to the facts and the documents annexed with the plaint. However, in the instant case, that has not been done. Consequently, according to Mr. Rana, non-compliance with the mandatory requirements of law has rendered the plaint, as framed and filed by the Bank, invalid in the eye of law. Therefore, the learned Judge of the Adalat erred in rejecting the petitioner's application for rejection of the plaint.

5. The Rule is being opposed by Mr. Hassan M.S. Azim, the learned Advocate appearing for respondent no. 2 Bank by filing an affidavit-in-opposition.

6. Mr. Hassan M.S. Azim, the learned Advocate appearing with Mr. Ashfiqur Rahman Arafat, Advocate on behalf of respondent no.2 Bank submits that the omission on the part of the Bank to file the plaint along with an affidavit is merely an irregularity and not a illegality. The learned Advocate further submits that since the suit is still pending before the Adalat, the Bank has an opportunity to correct the plaint by filing a duly affirmed affidavit, thereby correcting the omission which was made at the time of filing the suit. The learned Advocate further submits that the learned Judge of the Adalat had rightly rejected the petitioners application to order VII, Rule II of the Code of Civil Procedure read with section 57 of the Ain and therefore, the impugned order does not warrant any interference from this Court.

7. We have perused the instant application and considered the submission advanced by both the learned Advocates of the contending sides.

8. A reading of sub-section 2 of section 6 of the Ain makes it abundantly clear that the requirement laid down in the section are mandatory and not obligatory or directory in nature. The language used in the section makes it clear that the plaint has to be filed along with an affidavit, both as to the statements made in the plaint as well as to the documents annexed with the plaint. Therefore, non-compliance with the mandatory requirement of law has rendered the plaint invalid in the eye of law and consequently, the impugned order passed by the learned Judge of the Adalat cannot be sustained in law.

9. However, in our view, the learned Judge of the Adalat, in compliance with the mandatory requirement of section 2(6) of the Ain, ought to have directed the plaintiff Bank to correct the defect in the plaint by filing an affidavit in support of the statement made in the plaint as well as the documents annexed thereto. However, without doing so, the learned Judge erred in rejecting the application out right by the impugned order dated 01.09.2014.

10. We are of the view that instead of issuing a Rule and stopping all further proceedings of the suit, the writ petition may be disposed of with an appropriate direction. Accordingly, we are direct the learned Judge to afford an opportunity to the Bank to file an affidavit with regard to the statement made in the plaint as well as the documents filed in support of the plaint with a period of 4(four) weeks from the date of receipt of this order.

11. The learned Judge shall also provide an opportunity to the defendants to file a reply, if so advised, within a period of 4(four) weeks from the date of filing of the amended plaint, as

indicated above. Thereafter, the learned Judge shall proceeded with the suit in accordance with law.

12. With the observation and directions made above, the Rule is disposed of.

13. The order of stay of all further proceedings of Artha Rin Suit No. 42 of 2013, granted at the time of issuance of the Rule, is hereby vacated.

14. There will be no order as to cost.

15. The office is directed to communicate the order forthwith.