

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

**Writ Petition No. 12379 of 2016.**

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:**

Shahidul Islam

..... Petitioner

-Versus-

The Government of the People's Republic  
of Bangladesh represented by the Secretary,  
Ministry of Law, Justice and Parliamentary  
Affairs and others.

Mr. Sudhendu Kumar Biswas, Advocate  
. . . for the petitioner.

Mr. Md. Rukunuzzaman, Advocate  
. . . For the respondent No.2.

Present:

Mr. Justice J. B. M. Hassan  
and  
Mr. Justice Razik Al Jalil

Heard on 12.10.2023 and Judgment  
on 17.10.2023.

**J. B. M. Hassan, J.**

The petitioner obtained the Rule Nisi in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show  
cause as to why the impugned order No. 92 dated 15.06.2016  
passed by the respondent No.3, Judge, Artha Rin Adalat, 1<sup>st</sup>  
Court, Satkhira in Artha Rin Execution Case No. 20 of 2005  
disposing of the Artha Rin Execution Case No.20 of 2005  
pending execution of warrant of arrest issued earlier with a  
direction to proceed with the Artha Rin Execution Case No. 4

of 2012 (Annexure-F) should not be declared to have been passed without lawful authority and is of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper.”

Relevant facts leading to issuance of the Rule are that the respondent-Bank, namely, Sonali Bank Ltd. (respondent No.2) obtained a decree against the petitioner and others for Tk. 15,22,92,164.01 with up to date interest till realization of loan. To execute the said decree the Bank filed Artha Rin Execution Case No. 20 of 2005 and attempted to sell the mortgage properties. But failing to sell the mortgage property, the Adalat awarded civil imprisonment for six months to the petitioner and others. While the warrant was pending in 1<sup>st</sup> execution case, the decree holder Bank filed 2<sup>nd</sup> execution case No. 4 of 2012. Subsequently, by the impugned order dated 15.06.2016 the Adalat passed the following order:

“আদেশ হয় যে, অত্র জারী মামলাটির কার্যক্রম দেনাদারগণের বিরুদ্ধে ইস্যুকৃত ডব্লিউ/এ জামিলের প্রত্যশায় আপাততঃ নিষ্পত্তি করা হইল এবং সেই সাথে ডিক্রীদারপক্ষকে অর্থস্বল্প জারী ৪/১২ মামলায় হাজির হইয়া তাহাদের দাবী দাওয়া/বক্তব্য পেশ করিতে পারিবেন মর্মে ঘোষণা রহিল।”

In this backdrop, the petitioner filed this writ petition and the Rule Nisi was issued.

Mr. Sudhendu Kumar Biswas, learned Advocate for the petitioner submits that during existence of the 1<sup>st</sup> execution case, there is no scope to file 2<sup>nd</sup> execution case. Further, the warrant issued in the 1<sup>st</sup> execution case can not be executed in the 2<sup>nd</sup> execution case and so on misconception of law

the Adalat passed the impugned order which warrants interference by this Court.

Mr. Md. Rukunuzzaman, learned Advocate for the respondent No.2 contends that since the warrant of civil imprisonment was passed and warrant was not executed in the 1<sup>st</sup> execution case it may be continued for ends of justice.

We have gone through the writ petition and other materials on record.

In the first execution case the Adalat issued warrant of arrest but it could not be executed until disposal of the 1<sup>st</sup> execution. We fail to understand in such circumstances what prompted the Bank to file 2<sup>nd</sup> execution case. In the 1<sup>st</sup> execution case the Bank has the option to dispose of the mortgaged property and also to execute the warrant in connection with civil imprisonment. Even if the limitation period under section 28(4) of the Act, 2003 does not exist, the decree holder has the scope to remain in the 1<sup>st</sup> execution case and can realize the decretal dues by attaching new property, if the period of civil prison is served out and mortgaged properties are disposed of, but can not meet adjustment of entire decretal dues. Therefore, there is no necessity to file the 2<sup>nd</sup> execution case. In view of above, impugned order is declared to be without lawful authority and 2<sup>nd</sup> execution case No.4 of 2012 is set aside.

The Artha Rin Adalat and the Bank are directed to take all steps in 1<sup>st</sup> execution case and to proceed with the same in accordance with observation made above.

**With this observation and direction the Rule is disposed of.**

Communicate a copy of this judgment and order to the respondents at once.

J. B. M. Hassan, *J*

I agree.

**Razik Al Jalil, *J***