

Bench:
Mr. Justice Md. Ruhul Quddus
and
Mr. Justice S.M. Maniruzzaman

Writ Petition Number 2082 of 2017

Agrani Bank Limited, Sherpur Branch, Police
Station: Sherpur Sadar, District- Sherpur
represent by its Manager.

..... Petitioner

-Versus-

Joint District Judge and Artha Rin Adalat
Number 1, District- Sherpur and others

....Respondents

Mr. Shaikh Mohammad Zakir Hossain with
Mr. Faysal Mustafa and Mr. Raziah Sultana,
Advocates

.....for the petitioner

No one appears for the respondents

Judgment on 01.09.2022

S.M. Maniruzzaman, J:

This *rule nisi* was issued calling upon the respondents to show cause as to why the Order No. 2 dated 22.09.2016 passed by the Joint District Judge and Artha Rin Adalat Number 1, Sherpur in Artha Execution Case Number 04 of 2016 rejecting the same (Annexure-D) should not be declared to have been passed without lawful authority and is of no legal effect and or such other or further order or orders should not be passed as to this Court may seem fit and proper.

Facts, relevant for disposal of the rule, are that Agrani Bank Limited is a nationalized banking company and the petitioner is one of

the branches of the said bank. As per request of respondent number 2, the petitioner-bank sanctioned and disbursed loan in his favour. Subsequently, he failed to repay the loan. As a result, the petitioner-bank instituted Artha Rin Suit Number 35 of 2008 in the Artha Rin Adalat Number 1, Sherpur which was decreed *exparte* on 12.05.2009. The bank put the decree in execution by filing Artha Execution Case Number 36 of 2009, which was dismissed for default on 26.06.2016. Thereafter, the bank filed application before the concerned Executing Court under Section 57 of the Artha Rin Adalat Ain, 2003 (in short, the Ain) read with Section 151 of the Code of Civil Procedure on 04.08.2016 which was ultimately rejected by order dated 14.08.2016. Further, the bank filed a fresh execution case being Artha Execution Case Number 4 of 2016 before the concerned Artha Rin Adalat on 21.08.2016, which was rejected on 22.09.2016 as barred by limitation under Section 28(4) of the Ain, 2003. Being aggrieved by and dissatisfied with the said order, the decree holder-bank moved in this Court and obtained the present *rule*.

Mr. Shaikh Mohammad Zakir Hossain, learned Advocate for the petitioner submits that the first case being Artha Execution Case Number 36 of 2009 was filed on 27.10.2009, which was dismissed for default on 26.06.2016. The petitioner-bank in compliance of Section 28(3) of the Ain filed Artha Execution Case Number 4 of 2016 within 1(one) year from the date of dismissal for default of the First Artha Execution Case. However, the respondent number 1 (Joint District Judge, Artha Rin Adalat Number 1) without considering Section 28(3) of the Ain, 2003 most illegally rejected the Second Execution Case. Mr. Hossain further submits that the petitioner as decree holder-bank is entitled to recovery

of decretal amount from the respondents number 2-5 and there is only forum to realize the decretal amount from the respondents number 2-5 by way of execution case under the provisions of the Ain, but due to dismissal of both the execution cases, the petitioner bank has no other alternative forum available under any provision of the law to realize the decretal amount from the respondents number 2-5. Therefore, the impugned order dated 22.09.2016 is passed against the scheme of the Ain.

We have considered the submissions of the learned Advocate for the petitioner and gone through the materials on record and consulted of the relevant provisions of law. It appears that the petitioner-bank got the exparte decree on 05.05.2009 and thereafter, put the decree in execution by filing Artha Execution Case Number 36 of 2009 before the Artha Rin Adalat on 27.10.2009, which was dismissed for default on 26.06.2016. Thereafter, the petitioner filed a fresh execution case being Artha Execution Case Number 4 of 2016 on 21.08.2016, which was rejected by the Executing Court on 22.09.2016 as barred by limitation under Section 28(4) of the Ain, 2003.

It thus appears that the fresh case i.e. Artha Execution Case Number 4 of 2016 was filed after expiry of 6(six) years from the date of filling the first case i.e. Artha Execution Case Number 36 of 2009.

In this regard, the moot contention of the petitioner is that the decree-holder bank filed next artha execution case within 1(one) year from the date of dismissal for default of the first execution case in compliance of Section 28(3) of the Ain, 2003.

In order to appreciate the argument advanced by the learned Advocate for the petitioner-bank, let us have a look at the relevant provision of Section 28 of the Ain, 2003, which is quoted below:

“ধারা ২৮ঃ

(১) The Limitation Act, 1908 এবং The Code of Civil Procedure, 1908 এ ভিন্নতর যে বিধানই থাকুক না কেন, ডিক্রীদার, আদালতযোগে ডিক্রী বা আদেশ কার্যকর করিতে ইচ্ছা করিলে, ডিক্রী বা আদেশ প্রদত্ত হওয়ার অনূর্ধ্ব ১(এক) বৎসরের মধ্যে, ধারা ২৯ এর বিধান সাপেক্ষে জারীর জন্য আদালতে দরখাস্ত দাখিল করিয়া মামলা করিবে।

(২) উপ-ধারা (১) এর বিধানের ব্যত্যয়ে, ডিক্রী বা আদেশ প্রদানের পরবর্তী ১(এক) বৎসর অতিবাহিত হইবার পরে জারীর জন্য দায়েরকৃত কোন মামলা তামাদিতে বারিত হইবে এবং অনুরূপ তামাদিতে বারিত মামলা আদালত কার্যার্থে গ্রহন না করিয়া সরাসরি খারিজ করিবে।

(৩) জারীর জন্য দ্বিতীয় বা পরবর্তী মামলা, প্রথম বা পূর্ববর্তী জারীর মামলা খারিজ বা নিষ্পত্তি হওয়ার পরবর্তী ১(এক) বৎসর সময় উত্তীর্ণ হওয়ার পরে দাখিল করা হইলে, উক্ত মামলা তামাদিতে বারিত হইবে এবং তামাদিতে বারিত অনুরূপ মামলা আদালত কার্যার্থে গ্রহন না করিয়া সরাসরি খারিজ করিবে।

(৪) জারীর জন্য কোন নতুন মামলা প্রথম জারীর মামলা দাখিলের পরবর্তী ৬(ছয়) বৎসর সময় অতিবাহিত হইবার পরে দাখিল করা হইলে, উক্ত মামলা তামাদিতে বারিত হইবে এবং তামাদিতে বারিত অনুরূপ মামলা আদালত কার্যার্থে গ্রহন না করিয়া সরাসরি খারিজ করিবে।”

From a plain reading of the afore quoted Sub sections (1), (2), (3) and (4) of Section 28 of the Ain, it is apparent that the first execution case shall be filed within 1(one) year from the date of decree and if it is filed after expiry of 1(one) year from the date of decree that shall be barred by limitation. However, second or further execution case shall be filed within 1(one) year from the rejection or disposal of the first execution case. But if the 2nd/fresh execution case is filed after expiry of 6(six) years from date of first execution case, the second or next execution case shall be barred by limitation.

Now the issue requires to be adjudicated in the instant rule is that whether any artha execution case is dismissed after expiry of the 6(six) years from the date of filing the first execution case, the second/new execution case is maintainable under the Act, 2003.

The said issue has already been settled by this Court in several judgments.

In the case of *A.B.M.Ashrafullah-vs-Bangladesh& others* reported in 17 BLT(HCD) 343, where it has been held:

“We have considered the argument of the learned Advocate for the petitioner and examined the Writ petition and the papers annexed thereto. Admittedly, the present execution case was filed long 8 years after dismissal of the 1st execution case and long 16 years after passing of the decree. The learned advocate appearing for the respondent No. 3 decree-holder bank also has frankly conceded this fact that the execution case in question has not been filed within the time prescribed in Article 182 of the Limitation Act and in section 48 of the Code of Civil Procedure. So, in this circumstances without any further discussion it may be said that the execution case in question being hopelessly barred by limitation is unlawful and as such the impugned orders passed in this execution case also are of no legal effect.

In the circumstances, the rule is made absolute without any order as to costs. It is declared that the proceeding of Artha Execution Case No. 1, Chittagong as well as the order No. 32

dated 23.03.2004 and the order No. 41 dated 17.05.2005 passed in that Artha Execution Case are unlawful and of no legal effect.”

In the case of *Iftexhar-vs-Artha Rin Adalat* reported in 17 BLC(HCD) 220, it has been further held:

“It is true that the second execution was filed on 28.08.2003 after the Ain came into operation. But according to section 28(3) (4) of the Ain, the second execution case is to be file within one year from the date of disposal of the previous execution case, and or within 6 years from the date of filing of the first execution case. however, as the Ain came into operation on 01.05.2003 the provision of section 48 of the Code and not the Ain shall be applicable for counting the period of limitation. Moreover, the second execution case has not also been filed within one year from the date of disposal the previous execution case or within the period of 6 years from the date of filing of the first execution case or within 12 years from the date of the decree and so, the execution case cannot be said to have been filed within time.”

Similar view has been held in the case of *Birendra Nath-vs-Rupali Bank Ltd.* reported in 18 BLC(HCD) 118, observed *inter alia*:

“From a combined reading of the provisions of sub-sections 1, 2, 3 and 4 of section 28 of the Artha Rin Adalat Ain, 2003, it is clear that if the 2nd Execution Case is filed after expiry of 1 year from the rejection or disposal of the 1st Execution Case or if any new execution case is filed after expiry of six years of filing the first

execution case, the same would be barred by limitation.

I have already found that in this case, 1st Artha Execution Case was filed on 16.11.2003 and the same was disposed of on 14.09.2004 and 2nd Artha Execution Case was filed on 14.09.2005. therefore, the aforesaid provisions of the Ain, 2003 clearly justify that the 2nd Artha Execution Case was not barred by limitation inasmuch as, 2nd Artha Execution Case was filed within 6 years of filing the first Execution Case.”

In the case of *Janata Bank Ltd.-vs-Bangladesh* reported in 20 BLC(HCD) 751, it has been held;

“In the instant case, the admitted position is that the first execution was not filed within 1(one) year from the date of the decree in compliance with the provisions of sub-section (1) of section 28 of the Ain and therefore the 1st execution case was rejected on 15.06.2011 by the Executing Court under sub-section (2) of section 28. The rights of the decree-holder in accordance with the statue has apparently been extinguished as a legal consequence of the special provision of limitation incorporated therein. Since, the first execution case was time barred under the special provision of limitation as provided for in sub-section (2) of section 28 of the Ain, the second execution case if continued, will render the aforesaid provisions nugatory. It is possible that under sub-section (3) of section 28 of the Ain, a second execution case can be maintained when

it is filed within one year from the date of rejection or disposal of the first execution case, however that course is available only when the first execution case is rejected for reasons other than the ground of limitation. If the second execution case is continued after rejection of the first execution case on the point of limitation it will defeat the special provision of limitation as contemplated in the statute.”

No doubt, in the instant case the next execution case being Execution Case Number 4 of 2016 was filed by the petitioner after expiry of 6(six) years from the date of filing First Execution Case Number 36 of 2006, which was barred by limitation under Section 28(4) of the Ain, 2003.

In view of the discussions made herein above and the cited decisions, we do not find any legal infirmity in the impugned order. Accordingly, the rule is discharged without any order as to costs.

Communicate a copy of the judgment to respondent number 1.

Md. Ruhul Quddus, J:

I agree.