

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

**WRIT PETITION NO. 5931 OF 2017**

**IN THE MATTER OF:**

Application under Article 102 of the  
Constitution of the People's Republic of  
Bangladesh.

And

**IN THE MATTER OF:**

Fazlul Huq and others

.... Petitioners

-Vs-

Bangladesh and others

.... Respondents.

Mr. S.R.M. Lutfor Rahman Akhand, Advocate  
..... For the petitioner

Mr. Asadur Rahman, Advocate  
..... For the respondent No.3

**Heard on: 31.01.2024**

**Judgment on: 22.02.2024**

**Present:**

Mr. Justice Md. Iqbal Kabir  
and  
Mr. Justice S.M. Maniruzzaman

**S.M. Maniruzzaman, J:**

This *Rule Nisi* was issued calling the respondents to show cause as to why order No. 125 dated 12.02.2017 passed by the Artha Rin Adalat, 1<sup>st</sup> Court, Dhaka in Title Execution Case No. 35 of 1992 directing to kept the audit report submitted on 01.06.2016 by the chartered accountant namely T. Husain and Co. in the file (Annexure-J) 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 passed as to this Court may seem fit and proper.

At the time of issuance of the Rule, the proceedings of Title Execution Case No. 35 of 1992 was stayed by this Court for a prescribed period.

Facts, in brief, relevant for disposal of the Rule, are that the petitioner obtained loan from the respondent No. 3, Agrani Bank Ltd. Farashganj Branch, Dhaka. Subsequently, the petitioner failed to repay the loan and bank instituted Title Suit No. 227 of 1987 which was decreed on 22.01.1990. The petitioner as judgment-debtor failed to pay the decretal amount within the stipulated time prescribed therein. The bank put the decree in execution by filing Title Execution Case No. 35 of 1992 in the concerned Court. During pendency of the execution case the present petitioner filed an application for appointment audit firm to calculate interest of the petitioner loan account. Pursuant to the order M/S. Sunbeam (Pvt.) Ltd. prepared an audit report which was submitted before the Executing Court but the Executing Court did not accept the audit report by the impugned order dated 12.02.2017.

Being aggrieved thereby, the petitioner moved this application and obtained present Rule along with interim order of stay.

Mr. S.R.M. Lutfor Rahman Akhand, the learned Advocate appearing for the petitioner submits that the present petitioner before the decree of the Title Suit paid some loan amount but which was not considered by the Adalat in the decree and as such the audit team

considering the said fact submitted report but the Executing Court without accepting the report directed to proceed the execution case. Mr Akhand next submits that after decree the present petitioner also deposited some amount of decretal amount but which was not adjusted by the bank in the execution application. Subsequently the audit report find out the said payment, but the Executing Court without considering the payment of the judgment debtor homologically denied to accept the audit report by the impugned order. In view of the above, the learned Counsel prays for making the Rule absolute.

On the other hand Mr. Asadur Rahman, learned Advocate for the respondent No. 3-bank submits that the decree holder bank put the decree in execution for realization of decretal amount by selling the mortgaged property. The present petitioner without challenging the decree in the proper forum disputed the decree by the audit report and considering the said fact the Artha Rin Adalat rightly rejected the application.

We have considered the arguments so advanced by the learned Advocates for both the sides and gone through the writ petition and relevant materials on record so appended thereto.

It appears from record that the decree holder bank put the decree in execution by filing the execution case in question. During pendency of the execution case an audit report so prepared by M/S. Sunbeam (Pvt.) Ltd. company which was submitted by the petitioner before the Executing Court for consideration the same. But four corners of the decree there is no findings to appoint any audit team for examination of

the statement of the bank account. The Executing Court is authorised by law to realize decretal amount by execution of decree and there is no scope to go beyond the decree. The Execution Court rightly rejected the application holding;

“যেহেতু Executing Court ডিক্রী বহির্ভূত ভাবে জারী কার্যক্রম পরিচালনা করতে এখতিয়ার সম্পন্ন নয় সেহেতু ডিক্রী বহির্ভূতভাবে প্রদত্ত সি,এ ফার্ম এর রিপোর্ট অত্র জারী মামলার বর্তমান পর্যায় বিবেচনা করার মত আইনতঃ কোন সুযোগ না থাকায় উহা নথিভুক্ত রাখা হোক”

In view of the stated circumstances, we do not find any legal infirmity in the impugned order and as such the Rule is discharged however, without any order as to costs.

The Artha Rin Adalat No. 1, Dhaka is directed to proceed with the execution case in according with law. The petitioner is at liberty to settle the loan with the bank at any time and that event the bank may consider the petitioner application in accordance with Artha Rin Adalat Ain.

Communicate a copy of the judgment and order to the respondent No. 1.

Md. Iqbal kabir, J:

I agree.