

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

Writ Petition Number 7709 of 2017

Agrani Bank Limited, Nandir Bazar Branch, Post
Office: Nandir Bazar, Police Station: Sherpur,
District- Sherpur represented by its Manager.

..... Petitioner

-Versus-

Joint District Judge and Artha Rin Adalat
Number 1, 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 challenging the Order Number 2 dated 08.02.2017 passed by the Artha Rin Adalat Number 1, Sherpur in Artha Execution Case Number 04 of 2017 dismissing the Artha Execution Case as barred by limitation under Section 28(4) of the Artha Rin Adalat Ain, 2003 [in short, the Ain, 2003 (Annexure-C)].

Facts, relevant for disposal of the rule, are that the petitioner is a nationalized banking company and has been releasing its activities by establishing branches all over the country. Respondent number 2 obtained loan from the petitioner-bank and failed to repay the loan. Consequently, the petitioner-bank instituted Artha Rin Suit Number 06 of 2009 in the

Artha Rin Adalat Number 1, Sherpur and got exparte decree on 27.10.2009. The decree-holder bank put the decree in execution by filing Artha Execution Case Number 04 of 2010 which was dismissed for default on 17.08.2016. Thereafter, the decree-holder bank filed second/new Artha Execution Case Number 04 of 2017 before the same Artha Rin Adalat on 01.02.2017 which was dismissed by the impugned order dated 08.02.2017 as barred by limitation under Section 28(4) of the Ain, 2003.

Mr. Shaikh Mohammad Zakir Hossain, learned Advocate for the petitioner mainly submits that First Artha Execution Case Number 04 of 2010 was filed on 24.02.2010, which was dismissed for default on 17.08.2016. The petitioner-bank in compliance of Section 28(3) of the Ain, 2003 filed the Second Artha Execution Case Number 04 of 2017 on 01.02.2017 within 1(one) year from the date of dismissal for default of the first artha execution case. However, the Executing Court without considering of Section 28(3) of the Ain, 2003 rejected the second execution case by order dated 08.02.2017, which was illegal.

Mr. Hossain further submits that the decree holder-bank is entitled to recovery of the decretal amount from respondent number 2 and there is only forum to realize the decretal amount by way of artha execution case, but due to dismissal of both the execution cases, there was no other alternative forum available to the petitioner-bank. Therefore, the impugned order dated 08.02.2017 passed by respondent number 1 is against the provisions of the Ain, 2003 as well as the Code of Civil Procedure.

We have considered the submissions of the learned Advocate and gone through the record. It appears that the petitioner-bank got the exparte

decree on 27.10.2009. It filed Artha Execution Case Number 04 of 2010 on 27.10.2009, which was dismissed for default on 17.08.2016. The petitioner filed Second/New Artha Execution Case Number 04 of 2017 on 01.02.2017 which was dismissed by the Executing Court on 08.02.2017 as barred by limitation under Section 28(4) of the Ain, 2003 which is under challenged in the instant writ petition. Admittedly, the Second Artha Execution Case Number 04 of 2017 was filed by the decree-holder bank after expiry of 6 (six) years from the date of filling First Artha Execution Case Number 04 of 2010.

The moot contention of the petitioner is that the bank filed the second artha execution case within 1(one) year from the date of dismissal of the first execution case. In order to appreciate this argument, let us have a look at the relevant provision of Section 28 of the Ain, 2003 which is quoted below;

“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 and combined reading of Sub-sections (1), (2), (3) and (4) of Section 28 of the Ain, it already appears that the first execution case shall be instituted within 1(one) year from the date of decree and after expiry of 1(one) year, first execution case will be barred by limitation. However, second or further execution case shall be filed within 1(one) year from the date of rejection or disposal of the first execution case and, but after expiry of 6 (six) years from the date of filing of the first execution case, the second execution case shall be barred by limitation.

Now the issue required adjudication in the instant rule is that whether any second execution case filed after expiry of 6(six) years from the date of filing of first execution case but within one year from dismissal of first execution case, whether the second/new execution case would be maintainable under the Ain, 2003.

This issue has already been settled by this Division in several cases. In the case of A.B.M.Ashrafullah-vs-Bangladesh and others reported in 17 BLT (HCD) 343, 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 case of *Iftekhhar-vs-Artha Rin Adalat* reported in 17 BLC (HCD) 220, the High Court Division observed;

“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 taken 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 observed;

“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 statute 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, the instant Fresh Execution Case Number 4 of 2017 was filed by the petitioner after expiry of 6(six) years from the date of filing of

the First Execution Case Number 04 of 2010. So, the Fresh Execution Case is barred by limitation under Section 28(4) of the Ain, 2003.

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

Communicate a copy of the judgment to the court below.

Md. Ruhul Quddus, J:

I agree.