

**District-Narsingdi**

**In the Supreme Court of Bangladesh**

**High Court Division,**

**(Civil Appellate Jurisdiction)**

**Present:**

**Mr. Justice Md. Toufiq Inam**

**Civil Revision No. 426 of 2008.**

Rupali Bank Limited,

represented by the Branch Manager, Narsingdi Branch,  
Dhaka.

..... Decree-Holder Appellant- Petitioner.

-Versus-

Md. Amjad Hossain Bhuiyan.

..... Judgment-Debtor Respondent-Opposite Party.

Mrs. Hossne Ara Begum, Advocate for

Mr. Md. Obaidur Rahman Mostofa, Advocate,

..... For the Decree-Holder Appellant- Petitioner.

Mr. Sk. Rezaul Hoque, Advocate

..... For the Defendant-Respondent-Opposite Party.

**Heard and Judgment Delivered On: 07.05.2025.**

**Md. Toufiq Inam, J.**

This Rule was issued to examine whether the judgment and order dated 05.11.2007 passed by the learned Additional District Judge, Narsingdi in Artha Rin Appeal No. 01 of 2006, affirming the order dated 25.09.2006 of the Artha Rin Adalat, 1<sup>st</sup> court, Narsingdi in Artha Rin Execution Case No. 14 of 2002 directing the decree-holder

bank to return the original title deeds to the judgment-debtor upon absolving him from further liabilities, should be set aside.

The background facts reveal that the Petitioner-Bank instituted Artha Rin Suit No. 04 of 2001 seeking recovery of outstanding dues from the opposite party. This suit was decreed *ex parte* on 22.08.2001. Upon failure of the judgment-debtor to satisfy the decretal dues, the bank-initiated execution proceedings through Artha Rin Execution Case No. 14 of 2002. The bank itself valued the mortgaged property at Tk. 12,00,000, which valuation was accepted by the court. The bank, despite such valuation, failed to sell the property through public auction following the procedure under Section 33 of the Artha Rin Adalat Ain 2003 (hereinafter “the Ain 2003”). At a stage, the bank applied under Section 33(5) of the Ain for issuance of a “certificate”, which the court allowed on 12.02.2004.

Subsequently, on 06.06.2006, the judgment-debtor filed an application before the execution court seeking exemption from further recovery on the ground that he had already paid Tk. 16,13,409.82 (as of 15.09.2005) against a principal loan amount of Tk. 5,00,000, and sought reimbursement of Tk. 1,13,409.82, which he had paid in excess of 200%. Relying upon Section 47 of the Ain, 2003, which limits a creditor’s recovery to no more than 200% of the principal loan, the execution court allowed the application in part. It directed the decree-holder bank to return the original title deeds to the

judgment-debtor and absolved him from further liabilities. This order was affirmed by the appellate court on 05.11.2007.

Aggrieved by the concurrent findings of the courts below, the petitioner-bank invoked the revisional jurisdiction of this Court and obtained the present Rule.

Mrs. Hossne Ara Begum, the learned Advocate for the petitioner submits that the decree in question was passed in the year 2001, which is prior to the enactment of the Ain, 2003. Therefore, the application of one of its provisions, namely Section 47, to the present execution proceedings is, according to her, erroneous and misconceived. She argues that both the courts below erred in law by applying a provision that was not in force at the time of the decree, and hence the impugned judgment and orders are liable to be set aside.

She further submits that Section 47(3) of the Ain 2003 specifically states that the provision would come into effect one year after the Act's commencement, i.e., on 01.05.2004. The proviso to that section allows a financial institution to apply the provision voluntarily before its formal enforcement date. Accordingly, she argues, the benefit of Section 47 can be invoked only at the discretion of the bank and not by the court on its own motion. On these grounds, she prays for making the Rule absolute.

She also submits that once the execution court issued a certificate under Section 33(5) of the Ain, 2003, the execution case stood automatically disposed of, leaving no scope for the executing court to entertain any further application by the judgment-debtor.

On the other hand, Mr. Sk. Rezaul Hoque, the learned Advocate appearing on behalf of the opposite party—judgment-debtor, at the very outset challenges the maintainability of the revisional application. He points out that, according to Issue No. 2 in the judgment delivered by the appellate court, the appellant-bank had paid only Tk. 10 out of the required Tk. 200 in court fees. The appellate court had expressly directed that this issue would be resolved in the appellant's favour only upon payment of the remaining court fee within 15 days from the date of the judgment. He submits that there is no material on record to show that the appellant complied with this condition. Therefore, he contends, the appellant's failure to deposit the requisite court fee renders the present revisional application non-maintainable.

Mr. Hoque further submits that a conjoint reading of Sections 47 and 60 of the Ain 2003 indicates that execution courts should apply the law in force at the time of execution, not at the time of passing the original decree. He contends that execution proceedings are governed by procedural law, and as such, any statutory limitations introduced

subsequently are applicable during execution, even in respect of earlier decrees.

He additionally submits that the petitioner-bank itself invoked Section 33(5) of the Ain 2003 and applied for a certificate in respect of the mortgaged property, which was subsequently granted by the executing court. Having thus availed itself of the benefits under the Ain 2003, the bank cannot now object to the application of another provision of the same statute, namely Section 47, simply because it favours the judgment debtor. Such conduct amounts to approbating and reprobating, which is impermissible in equity. Accordingly, both courts below rightly applied Section 47 of the Ain 2003 to exempt the judgment debtor from further liability, especially as it is undisputed that he has already repaid more than 200% of the principal loan amount. On these grounds, Mr. Hoque prays for the Rule to be discharged.

I have heard the learned advocates for the contesting parties and perused the revisional application along with the materials on record, including the impugned judgment and orders.

A preliminary objection was raised by Mr. Sk. Rezaul Hoque, learned Advocate for the opposite party, concerning the maintainability of the revisional application on the ground of deficit court fees. It was pointed out that the appellate court had conditionally entertained the appeal by directing payment of the balance court fees within 15 days

of the judgment, failing which the appeal would be non-maintainable. There is, however, no clear record before this Court establishing whether the unpaid court fees were paid.

This revisional application mainly calls into question the applicability of Section 47 of the Ain 2003 to an execution proceeding arising from a decree passed in the year 2001, prior to the enactment of the Ain 2003. The petitioner-bank contends that the said section, being introduced after the date of the decree, cannot retroactively limit its rights in execution. The learned Advocate for the petitioner also argues that the applicability of section 47, particularly prior to 01.05.2004, was voluntary and at the discretion of the financial institution under Section 47(3), and hence cannot be invoked by the court.

Section 47 and its sub-sections, it appears that the provision is intended to apply during filing the suit itself, not at the execution stage following a concluded decree. Section 47(2) provides that no court shall allow recovery of more than 200 percent of the principal amount "in the event of instituting a suit under this Ain," thereby clearly linking its application to the suit stage, not to execution proceedings for decrees passed prior to the Ain's enactment.

In the present case, the suit was decreed *ex parte* in 2001, before the Artha Rin Adalat Ain, 2003 came into force, and execution proceeded

accordingly. Execution is not merely a procedural formality but the enforcement of vested rights under a decree. Thus, the courts below incorrectly applied Section 47 at the execution stage to a decree passed prior to the enactment of the 2003 Ain. The provision does not have retrospective effect to that extent.

The petitioner's argument that the execution case stood concluded upon issuance of a certificate under Section 33(5) is equally untenable. By now, it is well-settled that an execution case remains pending until actual delivery of possession following sale or auction. Mere issuance of a certificate under Section 33(5) does not terminate the jurisdiction of the court over the execution proceedings.

Courts are not to act as mere enforcers of decrees in a mechanical fashion. The judicial function in execution includes an equitable responsibility. This Court cannot ignore the broader context in which execution courts operate. A pattern has emerged where banks and financial institutions appear to exert disproportionate effort in pursuing small borrowers to the fullest extent, often exhausting legal remedies against modest defaulters, while demonstrating noticeable reluctance or leniency when dealing with large or influential defaulters. Such selective enforcement undermines the integrity and equitable application of financial recovery mechanisms. If any amount paid exceeds the total obligation under the decree, the court cannot

allow further recovery, and must protect the judgment-debtor from excess liability.

In cases such as the present one, where the judgment-debtor has repaid well over 200% of the principal loan of Tk. 5,00,000, the execution court retains the inherent discretion to intervene against excessive or oppressive recovery, thereby ensuring justice and preventing abuse of process. Accordingly, while Section 47 may not strictly apply, the discretionary and equitable relief granted by the courts below is consistent with broader principles of justice.

Additionally, although the appellate court had conditionally entertained the bank's appeal subject to payment of deficit court fees within 15 days, there is no clear record confirming that such payment was made. In the absence of any cogent evidence of compliance, this Court finds no reason to interfere with the appellate court's decision. Although the impugned decision was reached through incorrect reasoning, it was ultimately correct on merits. The impugned decision suffers from no error warranting interference.

Accordingly, **the Rule is discharged.**

The judgment and order dated 05.11.2007 passed by the Additional District Judge, Narsingdi, and the order dated 25.09.2006 passed by the Artha Rin Adalat, 1st Court, Narsingdi, are hereby upheld. The



“certificate” issued to the petitioner under Section 33(5) of the Ain, 2003 is rendered redundant and ineffective. The petitioner-bank is directed to return the certificate to the execution court and to hand over the original title deeds to the opposite party, the judgment-debtor, within 30 (thirty) days from the date of receipt of this judgment and order.

Let the judgment be communicated at once.

**Justice Md. Toufiq Inam**

Ashraf /ABO.