

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Hasan Foez Siddique,
Chief Justice

Mr. Justice Obaidul Hassan

Mr. Justice M. Enayetur Rahim

CIVIL APPEAL NO. 20 OF 2014.

(From the judgment and order dated 19.08.2010 passed by the High Court Division in Civil Revision No.185 of 2010)

Sonali Bank Limited : Appellant.

=Versus=

Mosammat Salma Begum and others : Respondents.

For the Appellant : Mr. A.M. Aminuddin, Senior Advocate with Mr. Biswajit Debnath, Advocate, instructed by Mrs. Mahmuda Begum, Advocate-on-Record.

For the Respondent No.1: Mr. A.F. Hassan Ariff, Senior Advocate, instructed by Mr. Soyeb Khan, Advocate-on-Record.

For the Respondent No.2: Mr. Hefzul Bari, Advocate, instructed by Mrs. Shahanara Begum, Advocate-on-Record.

Respondent Nos.3-4 : Not represented.

Date of hearing : 12.04.2022 & 20.04.2022.

Date of judgment : 21.04.2022.

J U D G M E N T

Hasan Foez Siddique, C. J: This civil appeal is directed against the judgment and order dated 19.08.2010 passed by the High Court Division in Civil Revision No.185 of 2010 making the Rule absolute upon setting aside the judgment and order dated 09.11.2009 passed by the Additional District Judge, 2nd Court, Dhaka in Miscellaneous

Appeal No. 230 of 2009 dismissing the same affirming those dated 20.07.2009 passed by Artha Rin Adalat No.1, Dhaka in Miscellaneous Case No.27 of 2009 dismissing the application under order XXI Rule 58 of the Code of Civil Procedure.

The relevant facts, for the disposal of this appeal, are that on 26.04.2003 the appellant Sonali Bank Limited, filed Artha Rin Suit No.131 of 2003 against respondent No.4 and another for realization of Tk.47,40,875/- stating that one Saleha Khatun (now dead) and her son Abdul Latif, took loan by mortgaging the scheduled land including the structures thereon. Said suit was decreed ex-parte. Execution Case No.355 of 2004 was started on 01.06.2004 and the Adalat invited tender notice for selling the scheduled land in auction which was published in "The Daily Prothom Alo" and "The Dainik Sangbad" on 13.08.2005, but no one participated in auction. Then, the decree-holder bank made a prayer before the Adalat on 08.01.2006 to issue certificate under section 33(5) of the Artha Rin Adalat Ain, 2003. Accordingly, certificate was issued on 09.01.2007. On the basis of the said certificate, the decree holder bank invited tender notice for holding auction of the scheduled property. The tender

notice was published in "The Daily Janakantha" on 23.04.2009. Following the invitation of tender notice, the scheduled property was sold in auction and, accordingly, a deed was registered on 29.06.2009 in favour of the auction purchaser. Thereafter, the respondent No.1 along with three others filed an application on 04.05.2009 under Order XXI Rule 58 of the Code of Civil Procedure before the Adalat for getting release of the scheduled property, which was registered as Miscellaneous Case No.27 of 2009. They also submitted a bond amounting to 10% of the decretal dues. The decree holder bank contested the said Miscellaneous case which was, ultimately, dismissed on 20.07.2009. Then the respondent No.1 preferred Miscellaneous Appeal No.230 of 2009 which was dismissed on 09.11.2009. Thereafter, the respondent No.1, filing revisional application in the High Court Division, obtained Rule. The High Court Division by the impugned judgment and order dated 19.08.2010 made the Rule absolute. Thus, the Sonali Bank Limited has preferred this appeal upon getting leave.

Mr. A.M. Amin Uddin, learned Senior Counsel, with Mr. Biswajit Debnath, Deputy Attorney General (instructed by Ms. Mahmuda Begum,

Advocate-on-Record) appearing for the appellant, submits that the Execution Case was finally disposed of under section 33(9) of the Artha Rin Adalat Ain, 2003 on 22.02.2007 and, thereafter, the application under Order XXI Rule 58 of the Code of Civil Procedure was filed by the respondent No.1. So, there was no scope of entertaining such application. The High Court Division erred in law in making the Rule absolute. He further submits that the High Court Division erred in law in not holding that application filed by the respondent No.1 under Order XXI Rule 58 of the Code of Civil Procedure was not maintainable after sale of the mortgaged property, particularly, in a proceeding under Artha Rin Adalat Ain. He, lastly, submits that respondent No.1 Most. Salma Begom is one of the heirs of the judgment debtor late Saleha Khatun. Therefore, her application under Order XXI Rule 58 of the Code of Civil Procedure was not sustainable, the High Court Division erred in entertaining such application.

Mr. A.F. Hassan Ariff, learned Senior Counsel appearing for the respondent No.1, in his submission, supported the judgment and order of the High Court Division.

The plaintiff bank filed instant Artha Suit against the respondent No.1 and all the heirs and successors of late Jummun Miah for realization of outstanding loan amount of Tk.42,85,027/- and interest till realization of outstanding dues and got decree. Thereafter, decree holder bank filed Execution Case. In order to realize the total dues, the bank obtained certificate under section 33(5) of the Artha Rin Adalat Ain, 2003 on 09.01.2007 which authorises the Adalat to issue certificate vesting the right of possession and enjoyment of the mortgaged property and authority to transfer/ sell the mortgaged property. Thereafter, the decree holder bank published a tender notice in "the daily Janokantho" and sold the scheduled property in auction on 29.06.2009.

It appears from the materials on record that earlier Salma Begum filed Writ Petition No.7932 of 2009 against impugned order of the Adalat, which was rejected summarily on 24.11.2009. They filed Civil Petition for Leave to Appeal No. 199 of 2009 in this Division which was also dismissed. This Court earlier refused to entertain such prayer of the respondent No.1 treating her prayer as an application under section 32 of the Ain. Now, she

has adopted the instant procedure claiming her prayer as an application under Order XXI Rule 58 of the Code of Civil Procedure. Under the aforesaid provision, an application has to be filed where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court, shall proceed to investigate the claim or objection with the like power as regards the examination of the claimant objector, and in all respects, as if he was a party to the suit. Rule 59 provides that claimant or objector must adduce evidence to show that at the date of the attachment he had some interest in or was possessed of, the property attached. The aforesaid provisions contemplated an inquiry into questions including questions relating to right, title or interest in the property attached. It seems to us, having regard to the relevant provisions, that the stage at which a claim is to be preferred under Order XXI Rule 58 is intended to be a stage before the sale has actually been held and the attachment is pending. It is open to the Court under sub-rule(2), Rule 58 to postpone the sale pending investigation of the claim. In

the instant case auction has already been held at the instance of the bank itself after getting certificate under section 33(5) of the Ain. The High Court Division acted in excess of its authority in allowing claim petition preferred under Order XXI Rule 58 of the Code of Civil Procedure after the property attached was sold. A reading of the provisions indicates that it can be by a person other than the party to the suit. Moreover, earlier this Division and the High Court Division have maintained the impugned order of the Adalat.

Accordingly, we find merit in the instant appeal.

Thus, the appeal is allowed. The judgment and order dated 19.08.2010 passed by the High Court Division in Civil Revision No. 185 of 2010 is hereby set aside.

C.J.

J.

J.

The 21st April, 2022.

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