

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)

Present:

Mr. Justice Md. Badruzzaman.

And

Mr. Justice Sashanka Shekhar Sarkar

CIVIL REVISION No. 2903 OF 2017.

Sonali Bank Limited.

...Petitioner.

-Versus-

M/S Asha Textile International and others.

....Opposite parties.

Mr. A.Z.M Fariduzzaman, Advocate

... for the petitioner

Mrs. Salina Akter, Advocate

... for the opposite party Nos. 1-4

Heard and judgment on: 15.01.2024,

Md. Badruzzaman,J

This Rule was issued calling upon the opposite parties to show cause as to why order being No. 02 dated 01.03.2017 passed by learned Judge, Artha Rin Adalat No. 01, Dhaka in Artha Jari Suit No. 106 of 2017 (arising out of Artha Rin Suit No. 66 of 2009) dismissing the suit filed by the decree holder-petitioner should not be set aside.

At the time of issuance of Rule this Court vide order dated 20.08.2017 stayed operation of the impugned order for a period of 06 (six) months which was, subsequently, extended till disposal of the Rule.

Facts relevant, for the purpose of disposal of this Rule, are that the petitioner as plaintiff instituted Artha Rin Suit No. 66 of 2009 against the opposite parties in the Court of Artha Rin Adalat No. 01, Dhaka which was decreed *ex-parte* vide judgment and decree dated 11.04.2010. Thereafter, the petitioner filed Artha Jari Suit No. 204 of 2010 on 11.04.2010 before the same Court and got a certificate under

section 33(5) and 33(7) of the Artha Rin Adalat Ain, 2003 and the execution suit was disposed of on 02.03.2016. After disposal of said first execution suit the petitioner filed second execution suit being Execution Suit No. 106 of 2017 before the same Court on 16.02.2017. The Execution Court upon hearing the issue of maintainability, by impugned order dated 01.03.2017, dismissed the suit as being barred by limitation. The petitioner has challenged said order dated 01.03.2017 in this revision and obtained the instant Rule and order of stay, as stated above.

Opposite party Nos. 1-4 have entered appearance by filing Vokatnama to contest the Rule.

Mr. A.Z.M Fariduzzaman, learned Advocate appearing for the petitioner submits that after disposal of the first execution suit the second execution suit was filed within one year in view of the provision under sub-section (3) of section 28 of the Artha Rin Adalat Ain, 2003 but the Court below without taking into consideration of said provision illegally came to the conclusion that the second execution suit is barred by limitation as it has been initiated beyond the period of six years in view of the provision under sub-section (4) of section 28 of the Artha Rin Adalat Ain, 2003 and as such, committed an error of law resulting in an error in the decision occasioning failure of justice and accordingly, interference is called for by this Court.

As against the above contention Ms. Salina Akter, learned Advocate appearing for opposite party Nos. 1-4 submits that in view of the provision of sub-section (3) read with sub-section (4) of section 28 of Artha Rin Adalat Ain, 2003 if the second execution suit is filed after expiry of one year from the rejection or disposal of the first execution suit or if any new execution suit is filed after expiry of six years of the filing of the first execution suit the same would be barred by limitation. Learned Advocate further submits that in the instant case though the

second execution suit has been filed within one year from the date of disposal of first execution suit but it has been filed after expiry of six years of filing of the first execution suit and as such, the suit is barred by limitation and accordingly, the Court below committed no illegality in dismissing the execution suit being barred by limitation.

We have heard the leaned Advocates, perused the revisional application and other materials available on record. Admittedly, the second execution suit has been filed beyond the period of six years of the filing of first execution suit. Sub-section (3) of section 28 stipulates that second or subsequent execution suit is to be filed within one year from the date of disposal or settlement of the first or previous execution suit and if not filed within that period the suit shall be barred by limitation. On the other hand, sub-section (4) of section 28 of Artha Rin Adalat Ain, 2003 stipulates that where any new execution suit is filed on the expiry of six years from the date of filing of the first execution suit, the said suit shall be barred by limitation and the Court shall not admit the suit, so barred by limitation for action and shall directly dismiss the same.

The provisions under sub- section (3) read with sub-section (4) of section 28 of the Artha Rin Adalat Ain clearly suggest that the decree holder has an option to file second execution suit within one year from the date of disposal of first execution suit and the second or new execution suit must be filed within six years from the date of filing of the first execution suit. In other wards, if the second execution suit is filed after expiry of one year from the rejection or disposal of the first execution suit or if any new execution suit is filed after expiry of six years of filing the first execution suit, the same would be barred by limitation. This view finds support in the case of Birendra Nath Ray vs. Rupali Bank Limited 18 BLC 118 and Iftekhar Uddin Ahmed vs. Artha Rin Adalat 17 BLC 220.

In the instant case, admittedly, the second or new execution suit has been filed after expiry of six years from the date of filing of the first execution suit which is barred by limitation in view of the provision under sub-section (4) of section 28 of the Artha Rin Adalat Ain, 2003.

In that view of the matter the Execution Court committed no illegality in dismissing the second execution suit by the impugned order and as such, we find no merit in this Rule.

In the result, the Rule is discharged however, without any order as to costs.

The order of stay granted earlier by this Court is hereby recalled and vacated.

Communicate a copy of this judgment to the Court below at once.

(Justice Md. Badruzzaman)

I agree.

(Mr. Justice Sashanka Shekhar Sarkar)