

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

**CIVIL REVISION NO. 3668 OF 2005**

In the matter of:

An application under Section 115(1) of the Code of Civil Procedure, 1908.

AND

In the matter of:

Sonali Bank Head Office, Motijheel C/A, Dhaka represented by Assistant General Manager, Sonali Bank Corporate Branch, Bogra Road, Barisal City Corporation Barisal.

.... Petitioner

-Versus-

Farooque Hosain, son of late Habibur Rahman of village Ruiya, Police Station- Kotwali, District- Barisal.

....Opposite-parties

No one appears

... For the petitioner

**Heard and Judgment on 29.07.2024.**

**Present:**

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

**Md. Mozibur Rahman Miah, J:**

At the instance of the defendant no. 1 in Title Suit No. 74 of 2004 and that of the opposite-party no. 1 in Miscellaneous Case No. 06 of 2005

so filed under section 24 of the Code of Civil Procedure, this rule was issued calling upon the opposite-party no. 1 to show cause as to why the order no. 6 dated 25.05.2005 passed by the learned District Judge, Barisal in the said Miscellaneous Case transferring Title Suit No. 74 of 2004 pending in the court of Senior Assistant judge, Barisal Sadar, Barisal to the Joint District Judge, 1<sup>st</sup> Court, Barisal for hearing the two suits simultaneously should not be set aside and/or such other or further order or orders be passed as to this court may seem fit and proper.

At the time of issuance of the rule, all further proceeding of Title Suit No. 37 of 2005 was stayed till disposal of the rule.

The short facts leading to issuance of the instant rule are:

The present petitioner initially filed a suit being Artha Rin Suit No. 53 of 2004 before the court of Joint District Judge, 1<sup>st</sup> court, Barisal against one, M/s Ruiya Textile Mills (Pvt.) Limited and 12 others for recovery of defaulted loan amounting to taka 5,13,66,236/17 seeking following prayers:

“(ক) আরজির প্রকাশিত মতে বাদী ব্যাংক অনুকূলে এবং বিবাদীগন প্রতিকূলে ইং ১৯.০৪.২০০৪ তারিখ পর্যন্ত (১৫.০৪.২০০৪ ইং তারিখ পর্যন্ত আরোপিত সুদ সহ) এস,বি,আই,সি,এস, প্রকল্প খাতে ১,৭১,৪১,৫৩০/ ১৫ স্বল্প মেয়াদী খাতে ৩০,২০,৬৫৩/- চলতি মূলধন খাতে ৫৬,০৮,৭০১/১২। বি,এস, আর,ই প্রকল্প খাতে ২,০২,৪২,২৯৭/- ও বি,এস,আর,ই চলতি মূলধন খাতে (হাইপো) ৫৩,৫৩,০৫৪/৯০ সর্বমোট ৫,১৩,৬৬,২৩৬/১৭ টাকা পাওনা মর্মে প্রাথমিক ডিক্রি দেওয়ার,

(খ) প্রদত্ত ডিক্রি মোতাবেক বিবাদীগণ আদালতে নির্ধারিত তারিখের মধ্যে বিবাদীগণের নিম্ন (খ) তফসিল বর্ণিত সম্পত্তি নিলাম বিক্রয় করিয়া লব্ধ অর্থদ্বারা বাদী ব্যাংকের পাওনা টাকা আদায়ের চূড়ান্ত ডিক্রি দেওয়ার,

(গ) প্রাথমিক ডিক্রির টাকার উপর ১৬.০৪.২০০৪ ইং তারিখ হইতে আদায়ের দিন পর্যন্ত ত্রৈমাসিক ভিত্তিতে আরোপ যোগ্য ব্যাংক প্রচলিত হারে সুদ সহ পাওনা টাকা আদায়ের জন্য বাদী ব্যাংক অনুকূলে ও বিবাদী ব্যাংক প্রতিকূলে ডিক্রি দেওয়ার,

(ঘ) তফসিল বর্ণিত সম্পত্তি বিক্রয় লব্ধ অর্থে বাদী ব্যাংকের পাওনা টাকা আদায় সংকুলান না হইলে বিবাদীগণের বিরুদ্ধে ব্যক্তিগত ডিক্রি দেওয়ার,

(ঙ) মোকদ্দমার যাবতীয় খরচ বাদী ব্যাংক অনুকূলে এবং বিবাদী ব্যাংক প্রতিকূলে ডিক্রি দেওয়ার,

(চ) আইন ও ইকুইটি মোতাবেক বাদী ব্যাংক আর যে সকল প্রতিকার পাইতে পারে তাহার ডিক্রি দেওয়ার।”

In the said suit, the predecessor of the opposite-party no. 1, Md. Habibur Rahman was made as defendant no. 5 in the said Artha Rin Suit. Thereafter, the opposite-party no. 1, Farooque Hosain as plaintiff filed a suit being Title Suit No. 74 of 2004 against the present petitioner for permanent injunction seeking following reliefs:

“(ক) আরজির বর্ণিত মতে নিম্ন তপছিল বর্ণিত ভূমি যাহাতে বিবাদী পক্ষ নিলাম বিক্রয় করিতে না পারে এবং উক্ত ভূমিতে বাদী পক্ষের শান্তি পূর্ণ দখলের কোন রূপ বিঘ্ন সৃষ্টি করিতে না পারে তৎমর্মে বিবাদী পক্ষের বিরুদ্ধে চিরস্থায়ী নিষেধাজ্ঞার ডিক্রী দেওয়ার,

(খ) মোকদ্দমার খরচ বিবাদী বিরুদ্ধে ডিক্রী দিবার,

(গ) আদালতের ন্যায় বিচারে আইন ও ইকুইটির বিধান মতে বাদী আর যে, যে, প্রতিকার পাইতে পারে তাহাও বিবাদী প্রতিকূলে ডিক্রী দিবার আঞ্জা হয়।”

After filing of the suit, the opposite-party no. 1, Farooque Hosain filed an application under section 24 of the Code of Civil Procedure praying for analogous or simultaneous hearing of Artha Rin Suit No. 53 of 2004 with Title Suit No. 74 of 2004 stating *inter alia* that, the defendant no. 5 of the suit has been impleaded in the capacity of guarantor of loan taken by the defendant no. 1 in Artha Rin Suit No. 53 of 2004 belonged to  $31\frac{1}{2}$  decimals of land. Subsequently, that very Habibur Rahman for want of money offered to sale the said land in favour of the plaintiff of Title Suit No. 74 of 2004 namely, Farooque Hosain and accordingly on 02.10.1993 an agreement for sale (*bainapatra*) was executed by receiving taka 55,000/- but during his lifetime Habibur Rahman could not register sale deed in favour of the plaintiff, (Title Suit No. 74 of 2004), Farooque Hosain and ultimately on 06.04.1994, he died. After the demise of Habibur Rahman, his heirs by three registered sale deeds dated 10.03.1997, 12.03.1997 and 03.06.1997 transferred  $38\frac{1}{4}$  decimals of land in his favour and thereby the plaintiff acquired title and possession thereof. Subsequently, the plaintiff came to learn that the said land was mortgaged by the defendant no. 1 of Artha Rin Suit No. 53 of 2004 in favour of the plaintiff of that Artha Rin Suit by registered deed of mortgage dated 06.10.1994. Thereafter, the plaintiff came to learn that, the plaintiff of Artha Rin Suit, Sonali Bank was going to sale the said land

by publishing auction notice in the daily newspaper '*Ajker Barta*' dated 08.10.2004 when he asked the said bank not to sell the said property and to redeem the same in his favour and since the plaintiff-bank of Artha Rin Suit No. 53 of 2004 did not pay heed to the said request, the plaintiff then compelled to file Title Suit No. 74 of 2004.

It has further been stated in that application for analogous or simultaneous hearing that, to avoid multiplicity of suit as well as to pass any conflicting decision out of the two suits, both the suits are required to be heard and disposed of before the learned Joint District Judge, 1<sup>st</sup> Court, Barisal where the Artha Rin Suit No. 53 of 2004 was pending. However, the said application gave rise to Miscellaneous Case No. 06 of 2005.

Against that application, Sonali Bank as opposite-party filed a written objection denying all the material averments so made in the application. The learned Judge ultimately took up the said application for hearing on 25.05.2005 and allowed the same holding that, though under the provision of section 18(3) of the Artha Rin Adalat Ain, 2003, there has been clear bar for analogous hearing but there has been no prohibition to hear both the suits simultaneously and accordingly, the learned District Judge transferred Title Suit No. 74 of 2004 to the learned Joint District Judge, 1<sup>st</sup> Court, Barisal where Artha Rin Suit No. 53 of 2004 was pending for simultaneous hearing when it was registered as Title Suit No. 37 of 2005.

It is at that stage, the plaintiff of Artha Rin Suit No. 53 of 2004 and that of defendant no. 1 of Title Suit No. 74 of 2004 as petitioner came

before this court and obtained instant rule and order of stay as has been stated hereinabove.

It is worthwhile to mention here that, this matter has been referred by an office order of the Hon'ble Chief Justice of Bangladesh to dispose of the same finding it a long pending case and that matter has been appearing in the list on several occasions with the name of the learned counsel for the petitioner but none appeared to press the rule.

Be that as it may, we have perused the revisional application and all the documents appended therewith including the impugned judgment and order and the relevant provision of Artha Rin Adalat Ain, 2003 in particular, section 18(3) thereof.

On going through the impugned order, we find that, though the learned District Judge found clear prohibition in hearing any matter analogously with any Artha Rin Suit but the learned District Judge found that there has been no binding to hear any suit simultaneously with Artha Rin Suit but in section 18(3) of the Ain, there has been clear bar even to hear any matter with Artha Rin Suit simultaneously but that very statutory provision so provided in section 18(3) of the Ain has clearly been sidetracked by the learned District Judge. Since section 18(3) of the Ain clearly put a legal bar either to hear any matter analogously or simultaneously with any Artha Rin Suit so we are of the view that, the impugned order runs counter to the express provision of law resulting in, the impugned order cannot sustain at all.

In the result, the rule is made absolute however without any order as to cost.

The impugned judgment and order dated 25.05.2005 passed by the learned District Judge, Barisal in Miscellaneous Case No. 06 of 2005 is thus set aside.

However, the learned Joint District Judge, 1<sup>st</sup> Court, Barisal is hereby directed to dispose of the Artha Rin Suit No. 53 of 2004 vis-à-vis the learned Senior Assistant Judge, Barisal Sadar, Barisal directed to dispose of Tile Suit No. 74 of 2004 independently as expeditiously as possible preferably within a period of 6(six) months from the date of receipt of the copy of the order.

The order of stay granted at the time of issuance of the rule stands recalled and vacated.

Let a copy of the judgment be communicated to the court concerned forthwith.

**Md. Bashir Ullah, J:**

I agree.