

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)

WRIT PETITION NO. 9947 OF 2018

IN THE MATTER OF:

Application under Article 102 of the Constitution
of the People's Republic of Bangladesh.

And

IN THE MATTER OF:

M/S. Paradise Point Complex and another
.... Petitioner

-Vs-

Artha Rin Adalat No. 4, Dhaka and others
....Respondents.

Mr. Anayet Rabbi, Advocate
.... For the petitioner

Mr. Md. Imam Hasan, Advocate
..... For the respondent No. 2

Heard and Judgment on: 06.02.2024

Present:

Mr. Justice Md. Iqbal Kabir
and
Mr. Justice S.M. Maniruzzaman

S.M. Maniruzzaman, J:

This *Rule Nisi* was issued calling upon the respondents to show cause as to why order No.75 dated 25.04.2018 (Annexure-E) passed by the respondent No. 1, Artha Rin Adalat No. 4, Dhaka in Miscellaneous Case No. 26 of 2011 arising out of Title Suit No. 16 of 1999 rejecting the miscellaneous case without complying with the direction of the High Court Division given by the judgment and order dated 26.02.2017 passed in Writ Petition No. 4485 of 2014 (as contained in order No. 38 dated 06.10.2013 should not be declared to have been passed without lawful authority and is

of no legal effect and or such other or further order or orders passed as to this Court may seem fit and proper.

At the time of issuance of the Rule, no order of stay has been passed by this Court.

Mr. Anayet Rabbi, the learned Advocate appearing for the petitioner by referring the order dated 26.02.2017 passed by this Division in Writ Petition No. 4485 of 2014 submits that the High Court Division directed the Executing Court to dispose of the miscellaneous case after taking evidence in support of date of knowledge of the exparte judgment and decree passed in Title Suit No. 16 of 1999 by the Artha Rin Adalat, but the Executing Court without considering the said order of the High Court Division dismissed the miscellaneous case for default by the impugned order and as such the impugned order is liable to be declared to have been passed without lawful authority and is of no legal effect.

On the other hand Mr. Md. Imam Hasan, the learned Advocate for the respondent No. 2, bank submits that the Executing Court fixed the several dates for taking steps pursuant to the judgment and order dated 26.02.2017 passed by the High Court Division but the petitioner failed to take any step as well as to produce any witnesses before the Executing Court as per direction of the High Court Division. The Executing Court considering the provision of the Artha Rin Adalat Ain, 2003 rejected the miscellaneous case for default. Moreover, the judgment and decree of the Title Suit has already been acted upon by issuing certificate under Section 33(7) of the Ain, 2023. In view of the above the learned Advocate for the respondent prays for discharging the Rule.

We have considered the submissions so advanced by the learned Advocates for both the sides, gone through the writ petition and relevant materials on record so appended thereto.

It, however, appears from record that Title Suit No. 16 of 1999 was decreed ex-parte on 20.04.2000. Subsequently challenging the said ex-parte judgment and decree the petitioner filed Miscellaneous Case No. 26 of 2011 under Section 19 of the Ain, 2003 and the Artha Rin Adalat after hearing the parties setting-aside the ex-parte judgment and decree and thereby restored the suit in its original number and file by his order dated 20.04.2000.

Challenging the said order, the decree-holder bank filed Writ Petition No. 2826 of 2012 before this Court and obtained Rule and thereafter the said Rule was disposed of by this Court by judgment and order dated 02.10.2012 holding *inter alia*;

“In the result, the Rule is made absolute without any order as to costs. The impugned judgment and order dated 14.02.2012 passed by the learned Judge of the Artha Rin Adalat No.4. Dhaka in Miscellaneous Cruse No. 20 of 2011 (Annexure-H to the writ petition) is hereby declared in have been passed without lawful authority and is of no legal effect. The learned Judge of the Artha Rin Adalat No. 4, Dhaka is directed to hear the Miscellaneous Case No. 26 of 2011 filed under section 19 of the Ain afresh in the light of observations made herein above in order to satisfy as to whether the Application has been filed within 30 days from the date of knowledge about the ex-parte decree. Communicate the judgment and order to the respondent No. 1 expeditiously.”

On receipt the said judgment, the Artha Rin Adalat without taking any evidence as per direction of the High Court Division set-aside the ex-parte judgment and decree by his order dated 04.03.2014.

Further challenging the order dated 04.03.2014 the decree-holder bank filed another Writ Petition No. 4485 of 2014 and obtained Rule. After hearing the Rule, the High Court Division by its judgment and order dated 26.02.2017 made the Rule absolute and thereby directed the Artha Rin Adalat to dispose of the miscellaneous case upon taking evidence. The said order is quoted bellow for ready reference;

“The learned Judge of the Adalat, if necessary, must take evidence about the date of knowledge of the judgment-debtors in respect of the ex-parte judgment and decree and also allow both parties to adduce evidence, if any, in support of their respective case about date of knowledge of the judgment-debtors in respect of the ex-parte judgment and decree.”

Said order was received by the Artha Rin Adalat on 26.02.2017 and fixed the date on 22.05.2017 for taking necessary step by the petitioner of the miscellaneous case but the petitioner did not take any step. Subsequently, the Adalat further fixed on 04.07.2017, 24.07.2017, 17.08.2017, 11.10.2017, 22.11.2017, 28.02.2018 and 25.04.2018 for taking step as per direction so given by the High Court Division in Writ Petition No. 4485 of 2014, but the present respondent-petitioner failed to take any step in the miscellaneous case. Consequently, the Artha Rin Adalat rejected the miscellaneous case for default by the impugned order dated 25.04.2018. In view of the above we think that the petitioner has no interest to continue the miscellaneous case.

It, however, further appears that pursuant to the ex-parte judgment and decree, the Artha Execution Case No. 1313 of 2003 arising out of the decree passed in Title Suit No. 16 of 1999 so filed by the bank which was finally disposed of by issuing certificate under Section 33(7) of the Ain, 2003 and as such the decree so passed by the Adalat has already acted upon.

Last but not the least, the learned Advocate for the petitioner at the midst of the hearing submits that since the petitioner is trying to settle the loan with the bank by amicably and considering the said contention of the petitioner, this Court is allowed the petitioner to settle the loan amount by amicably with the bank within 120 (one hundred twenty) days from the date of receipt of a copy of this judgment and order. In this regard the bank will be at liberty to consider the settlement of the loan in accordance with law.

In view of the above we do not find any reason to interfere the instant Rule at this stage, accordingly, the Rule is discharged, however without any order as to costs.

The Executing Court will be at liberty to proceed with the execution case in accordance with law.

Communicate a copy of the judgment and order to the concerned respondents.

Md. Iqbal kabir, J:

I agree.