

Present:
Mr. Justice Md. Iqbal Kabir
And
Mr. Justice Md. Riaz Uddin Khan

Civil Revision No. 1236 of 2018

Md. Tarik Ullah

....Petitioner

Versus

BRAC Bank Limited, Head Office 1, Gulshan
Avenue, Gulshan, Dhaka-1212, and others

....Opposite Parties

Mr. Sajjad Hossain, Advocate with
Mr. Md. Mostafa, Advocate

....For the Petitioner

Mr. Md. Nasir Shikder, Advocate

....For the Opposite Party No. 1

Judgment on 28.05.2025.

Md. Iqbal Kabir, J:

This Rule was issued calling upon the opposite party Nos. 1 & 2 to show cause as to why the impugned order dated 12.03.2018 passed by the learned 2nd Court of Artha Rin Adalat, Dhaka in Artha Jari Case No. 228 of 2015 rejecting the prayer for bail and issuing warrant of arrest should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

Short facts stated in this Rule are that the petitioner/defendant No. 1 took a loan from the plaintiff bank and, to secure the credit facilities, signed and executed various charged documents. In this case, defendant Nos. 2, 3, and 4 became personal guarantors by signing personal letters of guarantee. The defendants failed to repay the loan. Therefore, upon serving legal notice requesting them to pay the outstanding due, they did not pay the outstanding amount. Thus, the plaintiff filed the suit for the recovery of money. The suit was decreed ex-parte against the defendants with costs on 06.08.2014. The plaintiff bank filed the Artha Jari Case, and the same was registered as Artha Jari Case No. 228 of 2015. Subsequently, the decree-holder Bank filed an application under Section 34 of the Artha Rin Adalat Ain, 2003, for issuing a warrant of arrest against the judgment-debtor. However, on 01.01.2017, the judgment-

debtor petitioner appeared in the Court and prayed for bail. The judgment-debtor defendant No. 1 loanee deposited Tk. 2,86,906/- and obtained bail, the Court recalled the process and fixed on 15.02.2017 for the rest of the decretal amount.

However, the bail was **canceled** and based on the prayer of the decree-holder bank, the learned Adalat vide its order dated 15.11.2017 passed an order relates with civil prison for a period of 6 (six) months under Section 34(7) of the Artha Rin Adalat Ain, 2003 and issued warrant of arrest. Thereafter, Artha Rin Adalat, 2nd Court, Dhaka in Artha Jari Case No. 228 of 2015, rejected the prayer for bail vide its order dated 12.03.2018.

Against the order dated 12.03.2018, passed by the learned Artha Rin Adalat, 2nd Court, Dhaka in Artha Jari Case No. 228 of 2015, rejected the bail application and thereby, issued a warrant of arrest filed the above-mentioned Civil Revision, thereby obtaining Rule and interim order so far as it relates to the issue of warrant.

Mr. Sajjad Hossain with Mr. Md. Mostafa, learned Advocates for the petitioner submits that no show cause notice was issued upon the judgment debtor-petitioner asking them why they should be detained in civil prison for their failure to pay the decretal amount as such the Artha Rin Adalat committed an error of law resulting in an error in the decision occasioning failure of justice.

He submits that the order dated 03.03.2016 is in conformity with section 51 and XXI Rule 37 of the Code of Civil Procedure as such the order dated 03.03.2016 and subsequent orders are illegal, but the learned Adalat failed to consider such aspect of the case and thereby, committed an error of law resulting in an error in the decision occasioning failure of justice.

He submits that the impugned order was passed in violation of a mandatory provision of sub-section 5 of section 6 of the Artha Rin Adalat Ain, as such, the impugned order dated 12.03.2018 is liable to be set aside for ends of justice.

Mr. Md. Nasir Shikder, the learned Advocate for the opposite party No. 1, submits that all judgments and orders not being a decree of the Artha Rin Adalat have been treated as final and conclusive. In such a situation the party

aggrieved by such judgment or order of the Artha Rin Adalat cannot invoke revisional jurisdiction of the Civil Court including the High Court Division under section 115 of the Code of Civil Procedure and as such, the instant Rule issued in the above numbered Civil Revision is liable to be discharged on the ground of as being not maintainable.

He submits that Artha Rin Adalat Ain is a special statute that bars revision against an order passed by the Adalat as envisaged under section 44 of the Ain and as such, when there is an express provision barring revision, no such revision is entertainable and thus, the Rule is liable to be discharged on the ground of being not maintainable.

He submits that the legislature, by incorporating section 44 of the Artha Rin Adalat Ain, 2003, has expressly barred to filing of a revisional application against the interlocutory order passed by the Adalat pending execution proceeding. The impugned order passed by the Adalat in the present case is no doubt interlocutory, and accordingly, given section 44 of the Ain, that order is not revisable under section 115 of the Code of Civil Procedure, and as such, the Rule issued in this case is liable to be discharged as being not maintainable.

Mr. Sajjad Hossain, learned Advocate for the petitioner submits that section 34 does not exclude the operation of section 51 and Order XXI, rule 37 of the Code specifically or by necessary implication rather the Ain of 2003 is read as whole, no inference other than that the *adui alteram partem* rule shall be followed by Adalat/s in making an order of civil prison of judgment debtors in executing proceedings. In support of his submission cited a judgment passed in the case of *Rahima Auto Rice Mills vs. Manager, Pubali Bank Ltd*, reported in 60 DLR (2018) 313 and took us to paragraphs 24 and 39, thereby drawing our attention.

Against which the learned Advocate for the opposite party No. 1, in support of his submission, cited a judgment passed in the case of *Manik K Bhattacharjee vs. Artha Rin Adalat and others*, reported in 16 BLC, 195, and brought to notice that the alleged issue has been discussed in the above-noted decision. According to him, the decision reported in 60 DLR, 313 is in no manner applicable to the present case.

Further, another decision reported in 15 MLR 122 has brought our notice wherein it has held that :

“From a comined reading of those sub-sections of section 34 of the Artha Rin Adalat Ain, 2003 it transpires that the Adalat is empowered to pass an order of warrant of arrest/civil imprisonment directly when no auction sale is possible to be held for any reason.”

The decision was challenged before the Appellate Division through the Civil Petition for Leave to Appeal which was dismissed.

It is also pertinent to note that our Apex Court accepted the decision passed by the High Court Division to the effect that a warrant of arrest may be issued directly, if no auction is possible for any reason, and the decisions of the Appellate Division is binding upon us.

Indeed, it transpires from the impugned judgment that in the instant case sale through auction was not possible as the property was not mortgaged to the bank. The facts and circumstances of the case being similar to the view taken in the above decisions, as referred to by the learned Advocate for the Bank, are squarely applicable in this case.

We find no substance and force in the arguments advanced by Mr. Sajjad Hossain, learned Advocate for the petitioner, and consequently find no merit in the Rule.

In the above context, the impugned order of issuance of a warrant of arrest against the judgment-debtor-petitioner does not suffer from any infirmity; rather, it is well-founded in law.

Accordingly, the Rule is discharged without order as to cost.

The order of stay granted at the time of issuance of the Rule is hereby recalled and vacated.

Let a copy of this judgment and order be communicated to the Court concerned forthwith.

Md. Riaz Uddin Khan, J:
I agree.