

**In the Supreme Court of Bangladesh  
High Court Division  
(Special Original Jurisdiction)**

**Writ Petition No.12519 of 2018**

**IN THE MATTER OF:**

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

**-AND-**

**IN THE MATTER OF:**

Alhaj Md. Ajijur Rahman

.....Petitioner

**-Versus-**

Artha Rin Adalat, Chattogram and others

.....Respondents

Mr. Md. Zakir Hossain, Advocate

...for the petitioner

Mr. Md. Saidul Alam Khan, Advocate

...for the respondent No.2

**Heard on: 05.01.2023, 19.01.2023**

**Judgment on: 09.02.2023**

**Present**

**Mr. Justice Abu Taher Md. Saifur Rahman**

**And**

**Mr. Justice A.K.M. Rabiul Hassan**

**A.K.M. Rabiul Hassan, J:**

This Rule was issued on an application filed by the petitioner under Article 102 of the constitution, calling upon the respondents to show cause as to why the impugned order No.69 dated 19.08.2018 passed by the learned Judge, Artha Rin Adalat, Chattogram in Artha Jari Case No.64 of 2011 allowing an application filed by the plaintiff

for inclusion the properties of the petitioner in the aforesaid Artha Jari Case and rejecting the application for striking out the name of the defendant - petitioner dated 19.03.2018 should not be declared to have been passed without lawful authority and is of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper.

At the time of issuance of the Rule, this Court was pleased to stay all further proceedings of Artha Jari Case No.64 of 2011 for a period of 6 (six) months from the date.

For the purpose of disposal of the Rule, the relevant facts may briefly be stated as follows:

That the respondent No.2, Standard Bank Limited as plaintiffs filed an Artha Rin Suit No.11 of 2010 for the realization of the outstanding loan amounting to Tk.6,67,97,331.18/- (Taka Six Crore Sixty Seven Lac Ninety Seven Thousand Three Hundred Thirty One and Eighteen Paisa) which was decreed on contest vide its judgment and order dated 31.05.2011 (decree signed on 06.06.2011). Thereafter, the said decree was put into execution by way of filing an Artha Jari Case No.64 of 2011 for the realization of the unpaid dues amounting to Tk.7,88,88,145.79 (Taka Seven Crore Eighty Eight Lac Eighty Eight Thousand One Hundred Forty Five and Seventy Nine Paisa). During the proceedings of the aforesaid Artha Jari Case, the decree-holder bank has taken the initiative for selling the mortgaged property

under section 33(1) of the Artha Rin Adalat Ain, 2003 but failed. Thereafter, the decree-holder bank filed an application for attachment of other properties of the petitioner–judgment debtor. On the other hand, the petitioner–judgment debtor also filed another application dated 22.04.2018 for striking out the name of the petitioner-judgment debtor from the Artha Jari Case. After hearing the said application, the execution court below allowed the application filed by the decree-holder bank and thereby attached the other properties of the petitioner and rejected the application filed by the petitioner–judgment debtor by the impugned order. Being aggrieved, the petitioner has preferred this application before the Court and obtained the instant Rule and stay.

Mr. Md. Zakir Hossain, the learned Advocate for the petitioner submits that in the instant case, there is a mortgaged property but without selling the said mortgaged properties, the execution court below on an application filed by the decree-holder bank attached the other properties of the petitioner in the aforesaid Artha Jari Case, which is illegal and not sustainable in law.

Mr. Md. Saidul Alam Khan, the learned Advocate for the respondent No.2 submits that since the decree-holder bank failed to sell out the mortgaged properties of the petitioner under Section 33(1) of the Artha Rin Adalat Ain, 2003, the execution court below rightly attached the other properties of the petitioner on an application filed

by the decree-holder bank, which does not call for any interference by this court under writ jurisdiction.

Heard the submissions of the learned Advocates for both sides and perused the instant writ petition along with the impugned order thoroughly.

On perusal of the plaint of the Artha Rin Suit No.11 of 2010, it transpires that there is a mortgaged property as mentioned in Schedule No.2 as evident from Annexure – A to the writ petition. We have further noticed that the decree holder bank has taken the initiative to sell the mortgaged properties but failed. Thereafter, the decree-holder bank did not file any application for obtaining the certificate under section 33(5) or 33(7) of the Artha Rin Adalat Ain, 2003 and without adjustment the loan amount, the decree-holder bank filed an application for attachment of the other properties of the petitioner. But the execution court below failed to appreciate the aforesaid legal aspects as involved in the instant case and thereby attached the other properties of the petitioner, which is illegal and not sustainable in law.

We have also noticed that the aforesaid Arth Rin Suit was decreed on contest vide its judgment and order dated 31.05.2011 but the petitioner–judgment debtor did not prefer any appeal against the aforesaid judgment and decree. Moreover, during the trial, the petitioner also did not raise the issue of striking out his name from the aforesaid Artha Rin Suit. Accordingly, the execution court below rightly rejected the petitioner’s application under Order 1 Rule 10(2) of Code of Civil Procedure.

In considering all aspects of the case, we find substance in the contention of the learned Advocate for the petitioner so far as relates to the attachment of the other properties of the petitioner.

As a result, the Rule is made absolute in part.

Accordingly, the impugned order No.69 dated 19.08.2018 passed in Artha Jari Case No.64 of 2011 arising out of Artha Rin Suit No.11 of 2010 allowing an application dated 18.03.2018 filed by the plaintiff–decree holder bank for attachment of the other properties of the petitioner– judgment debtor is hereby set aside.

The Execution Court below is hereby further directed to comply with the provision of section 33(5) or 33(7) of the Arth Rin Dalat Ain, 2003 as the case may be, and thereafter, proceed with the aforesaid Artha Jari Case No.64 of 2011 in accordance with the law.

Let a copy of this judgment be communicated to the respondents at once.

**Abu Taher Md. Saifur Rahman, J:**

I agree.