

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

CIVIL REVISION NO. 4565 OF 2010

In the matter of:

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

AND

In the matter of:

Rupali Bank Limited, S.K. Road Branch, Narayanganj
represented by its Manager.

.... Petitioner

-Versus-

Md. Habibur Rahman, son of A. Rahman of R.K. Das
Road, Police Station and District- Narayanganj and
others.

....Opposite-parties

Mr. Md. Imam Hasan, Advocate

... For the petitioner

No one appears

...For the opposite-party nos. 3 and 4

Heard and Judgment on 07.01.2025.

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

Md. Mozibur Rahman Miah, J:

At the instance of the decree-holder, namely, Rupali Bank Limited
in Mortgage Decree Execution Case No. 48 of 2001, this rule was issued

calling upon the opposite parties to show cause as to why the order dated 04.08.2010 passed by the learned Additional District Judge, 2nd Court, Narayanganj in Miscellaneous Appeal No. 23 of 2008 dismissing the appeal and affirming the order dated 07.05.2008 passed by the learned Joint District Judge and Artha Rin Adalat, Narayanganj in Miscellaneous Case No. 13 of 2008 rejecting the application of the petitioner filed under order XXI, rule 90 of the Code of Civil Procedure for setting aside the auction sale held on 06.04.2008 in the said Mortgage Decree Execution Case should not be set aside 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, this court also stayed the operation of the impugned order dated 04.08.2010 passed by the learned Additional District Judge, 2nd Court, Narayanganj in Miscellaneous Appeal No. 23 of 2008 and all subsequent proceedings of Mortgage Decree Execution Case No. 48 of 2001 pending before the learned Joint District Judge and Artha Rin Adalat, Narayanganj initially for a period of 6(six) months which was lastly extended on 16.05.2011 for another 1(one) month. Record shows that no further extension was taken by the petitioner.

The short facts so figured in the instant revisional application are:

The petitioner as decree-holder of the Decree Execution Case as a plaintiff originally filed a Mortgage Suit bearing No. 31 of 2000 before the learned Joint District Judge, Narayanganj against the present opposite party nos. 2-4 impleading them as defendants for realization of defaulted loan amounting to taka 33,17,705/-. Though in the said suit, the opposite

parties made as defendants entered appearance but at the time of hearing of the suit dated 15.11.2000, the defendants did not turn up resulting in, the suit was decreed *ex parte* for an amount of taka 33,17,705/- directing the defendants to pay the said amount with interest at the rate of 18% per annum within 45 days.

Since the defendants of the suit did not come forward to pay the decretal amount, the plaintiff as decree-holder then filed an execution case being Mortgage Decree Execution Case No. 48 of 2001 claiming an amount of taka 40,24,611/-. In course of the said execution case, the property so mortgaged with the decree-holder-bank was put on auction sale on 06.04.2008 when as many as three bidders participated in the auction and the learned Judge of the Artha Rin Adalat then accepted the bid so offered by the present opposite party no. 1 at taka 14,00,000/-. However, on the date of holding auction and accepting the bid of the auction purchaser, the decree-holder-bank filed objection for not accepting the bid asserting that the approximate value of the mortgaged property was taka 21,00,000/-. However, without entertaining the said objection, the learned Judge of the Artha Rin Adalat accepted the bid of the auction purchaser, herein the opposite-party no. 1 and following that, possession of the mortgaged property was handed over in his favour by registering sale deed. After that, the decree-holder on 28.04.2008 filed an application under order XXI, rule 90 of the Code of Civil Procedure for set aside the auction sale which gave rise to Miscellaneous Case No. 13 of 2008 stating similar assertion made on the date of auction sale that is, the value of the mortgaged property so offered is low and prayed for setting

aside the sale. The said application was ultimately taken up for hearing by the learned Judge of the executing court and vide order dated 07.05.2008 dismissed the said Miscellaneous Case initiated under order XXI, rule 90 of the Code of Civil Procedure holding that, the decree-holder-bank has failed to assert that the value of the mortgaged property sold in auction is insufficient.

Challenging the said order dismissing the Miscellaneous Case No. 13 of 2008, the decree-holder then filed an appeal being Miscellaneous Appeal No. 23 of 2008 before the learned District Judge, Narayanganj and the said appeal was taken up for hearing by the learned Additional District Judge, 2nd Court, Narayanganj on transfer who ultimately dismissed the appeal affirming the judgment and order passed by the executing court in Miscellaneous Case No. 13 of 2008.

It is at that stage, the decree-holder as petitioner came before this court by filing the instant Civil Revision and obtained rule and order of stay as stated hereinabove.

Mr. Md. Imam Hasan, the learned counsel appearing for the petitioner upon taking us to the revisional application at the very outset submits that in spite of raising objection on the date of confirming sale of the scheduled property to the auction purchaser asserting the price quoted by the auction purchaser is low in comparison to the property adjacent to the scheduled property, yet the learned Judge of the Artha Rin Adalat accepted the bid of the opposite party no. 1 and therefore, an error of law innot setting aside the auction.

The learned counsel further contends that since in the application filed under order XXI, rule 90 of the Code of Civil Procedure, the petitioner has specifically asserted that the valuation of the scheduled land was approximately taka 21,00,000/- yet the learned Judge of the executing court as well as the appellate court did not take into consideration of the said material assertion and in a very perfunctory manner passed the impugned order which cannot be sustained in law.

The learned counsel by referring to the provision of section 32(kha) of the Artha Rin Adalat Ain, 2003 also contends that, that section clearly provides that if any objection is raised by the decree-holder, the Artha Rin Adalat is bound to entertain such objection however the learned counsel submits that the said provision came into effect in year 2010 but in spite of the said fact, the learned Judge ought to have taken into consideration of the objection raised by the decree-holder-petitioner since the execution case was filed for an amount of taka 40,24,611/-.

The learned counsel further contends that, if the mortgaged land is sold at taka 14,00,000/-, the decree-holder-bank would face difficulties to realize the claim amount made in the execution case.

When we pose a question to the learned counsel about the maintainability of filing the appeal as well as the revision in view of clear provision provided in section 44(2) of the Artha Rin Adalat Ain, the learned counsel finds it difficult to rebut the said legal assertion. On those submissions, the learned counsel finally prays for making the rule absolute.

Record shows that, the opposite party nos. 3 and 4 entered appearance to contest the rule but the learned counsels for the said opposite parties did not turn up to oppose the rule.

Anyway, we have considered the submission so advanced by the learned counsel for the petitioner, perused the revisional application and all the documents appended therewith.

Together, we have also gone through the provision so laid down in order XXI, rule 90 of the Code of Civil Procedure vis-à-vis the provision of section 44(2) of the Artha Rin Adalat Ain, 2003. On going through the provision so enshrined in order XXI, rule 90 of the Code of Civil Procedure, we find that the executing court can only interfere while setting aside auction sale if it finds any **material irregularity** or **fraud** in the process of sale. But on going through the order dated 06.04.2008 on which date, the mortgaged property was sold in auction, we find that the said execution case was filed back in the year 2001 and auction was held and mortgaged property was sold out after 7 years of filing the execution case and even on the date of holding auction, not only the auction purchaser herein opposite party no. 1 participated in the auction rather as many as three bidders participated in the auction. Given the above facts, we don't find any material irregularity in the process of auction sale or fraud committed upon the court by any parties to the execution case. So in that sense, the provision of order XXI, rule 90 of the Code of Civil Procedure does not at all attract with the alleged assertion so taken by the petitioner in its application.

On top of that, section 44(2) of the Artha Rin Adalat Ain clearly prohibits any aggrieved party to invoke appellate or revisional jurisdiction against any interim order passed by any Artha Rin Adalat because section 44(1) starts with the words “অর্থ ঋণ আদালত” and invariably the impugned order is an interim order (অন্তর্বর্তীকালীন আদেশ) that was passed by the Artha Rin Adalat acting as an executing court so there has been no occasion to interfere with the order passed by an Artha Rin Adalat by way of appeal or revision for having a statutory prohibition.

Given the facts, circumstances, discussion and especially express provision of law vis-à-vis having no elements provided in order XXI, rule 90 of the Code of Civil Procedure in the application so made by the petitioner in Miscellaneous Case No. 13 of 2008, we don't find any merit in this rule.

Resultantly, the rule is discharged however without any order as to costs.

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

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

Md. Bashir Ullah, J:

I agree.