

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

CIVIL REVISION NO. 3810 OF 2018

In the matter of:

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

AND

In the matter of:

Shahar Banu

.... Petitioner

-Versus-

AB Bank Limited and others

....Opposite-parties

None appeared

... For the petitioner

None appeared.

...For the opposite party no. 1

Heard and Judgment on 08.01.2024

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Mohi Uddin Shamim

Md. Mozibur Rahman Miah, J:

At the instance of the third party of Artha Execution Case No. 145 of 2015 (arising out of judgment and decree passed in Artha Rin Suit No. 134 of 2012), this rule was issued calling upon the opposite-party to show cause as to why the order no. 36 dated 30.07.2018 passed by the learned Joint District Judge and judge Artha Rin Adalat in Artha Execution Case No.

145 of 2015 rejecting an application under section 57 of the Artha Rin Adalat Ain, 2003 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.

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

The present opposite party no. 1 as plaintiff originally filed a suit being Artha Rin Suit No. 134 of 2012 before the court of learned judge, Artha Rin Adalat, Chattogram for realization of taka 14,,97,20,092.06 as of outstanding dues against the present opposite party nos. 2 and 3 as the defendant nos. 2-3. As the defendants of the said suit did not turn up in the suit, the learned judge, Artha Rin Adalat eventually vide judgment and decree dated 09.04.2015 decreed the suit ex parte asking the defendants to pay the decretal amount within a period of 60 days. Since the defendant did not come forward to pay the decretal amount, the present opposite party as decree holder then initiated an Artha Rin Execution case being Arthe Execution Case No. 145 of 2015. During the proceedings of the said execution case, the present petitioner as third party on 20.03.2016 filed an application under section 57 of the Artha Rin Adalat Ain for releasing the property so described in schedule 1 to the said execution case from the execution proceedings claiming that, she got the said property and accordingly latest BS record was prepared in her name and she has been in possession over the same when the judgment debtor, have got no right, title, interest and possession over the said property. Rather challenging the propriety of title stands in the name of the present petitioner, they earlier filed, a suit being Other Class Suit No. 67 of 1996 which was also dismissed on contest against the defendants and they also preferred an

appeal being Other Class Appeal No. 454 of 2011 which was also dismissed. However, the said application was taken up for hearing by the learned judge and vide impugned order rejected the said application holding that, mere preparing latest record in the name of the petitioner does not *ipsofacto* disentitle the judgment debtor in acquiring title and possession over the said scheduled land. It is at that stage, the third party as petitioner came before this court and obtained the instant rule.

None appeared for the petitioner to press the rule though the matter has been appearing in the list at the top for hearing.

On the contrary, though one Mr. Nirupam Pundit on behalf of Mr. Md. Golam Sarwar fixed the matter but at the time of hearing of the rule that Mr. Md. Golam Sarwar did not turn up to oppose the rule as well.

However, since there has been no embargo to hear and dispose of a revision on merit so we have gone through the revision application, grounds taken thereof as well as document so appended therewith. On going through the impugned order we find that the learned judge while rejecting the application brought by the petitioner also discussed the merit of the application without touching the legal point in entertaining such kinds of application. However, since there has been clear embargo under the provision of section 44(2) of the Artha Rin Adalat Ain to entertain any revision against an interim order so the instant revision itself is not maintainable. Furthermore, there has been clear provision provided in section 33(2) of the Artha Rin Adalat Ain which obligates a third party to deposit 10% of the decretal amount to file an application for releasing the property from the execution case which has not been done here as well. So

on those two legal provisions there has been no scope to entertain this revisional application. Further we find that, the petitioner filed the application for releasing the schedule 1 property from the execution case, under section 57 of the Artha Rin Adalat Ain which is the inherent power of the court but since there has been express statutory provision of law in this regard to file and entertain such kinds of application to be filed by a third party so there has been no scope to exercise any inherent power on that point by the Artha Rin Adalat. For those obvious reasons, we don't find any iota of substance in the rule.

Accordingly, the rule is discharged however without any order as to cost.

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

Mohi Uddin Shamim, J:

I agree.

Kawsar /A.B.O