

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Syed Mahmud Hossain,
Chief Justice
Mr. Justice Muhammad Imman Ali
Mr. Justice Hasan Foez Siddique
Mr. Justice Mirza Hussain Haider
Ms. Justice Zinat Ara
Mr. Justice Abu Bakar Siddiquee
Mr. Justice Md. Nuruzzaman

CIVIL PETITION FOR LEAVE TO APPEAL NO.3970 OF 2018.

(From the judgment and order dated 05.10.2017 passed by the High Court Division in Writ Petition No.13673 of 2017.)

National Bank Limited and another : Petitioners.

=Versus=

M.R. Trading Company, represented by Alhaj Md. Mizanur Rahman and others : Respondents.

For the Petitioners : Mr. Rakanuddin Mahmud, Senior Advocate, instructed by Mr. Zainul Abedin, Advocate-on-Record.

For the Respondents : Mr. Abdul Baset Majumder, Senior Advocate (with Mr. Farid Ahmed, Senior Advocate) instructed by Mr. Md. Ferozur Rahman, Advocate-on-Record.

Date of hearing and judgment on : 16.05.2019.

ORDER

Delay in filing this petition is condoned.

In unprecedented circumstances, National Bank Ltd. and another have filed this leave petition against the interim order dated 05.10.2017 passed in Writ Petition No.13673 of 2017 inasmuch as Rule issued in the said writ petition was discharged as not being pressed within 42 days of issuance of the same.

On 01.03.2016, (1) National Bank Limited and (2) Agrani Bank Limited filed Artha Rin Suit No.382 of 2016 before the Artha Rin Adalat No.3, Dhaka against (1) Md. Mizanur Rahman and (2) Razia Rahman for recovery of loan of Tk.209,83,85,128.63 (two hundred nine crore eighty three lac eighty five thousand one hundred twenty five and paisa sixty three) and, if so required, by selling the mortgaged property as described in the schedule to the plaint.

The defendant respondent No.1 filed an application for getting a decree in the said suit in terms of a memorandum of understanding allegedly entered into on 30.08.2017 between National Bank Limited and Md. Mizanur Rahman which was rejected vide order No.19 dated 27.09.2017 by the Artha Rin Adalat No.3, Dhaka in Artha Rin Suit No.382 of 2016. Against that rejection order, the defendant No.1 writ petitioner filed writ petition No.13673 of 2017 in the High Court Division.

A Division Bench of the High Court Division, on hearing the learned Advocate for the writ petitioner passed the following order, on 05.10.2017, as prayed for in terms of prayers (a) and (b) to the said Writ Petition:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the impugned order No.19 dated 27.09.2017 (Annexure-D) passed by the Artha Rin Adalat, No.3, Dhaka in Title Suit No.382 of 2016 rejecting the application of the petitioner filed praying for decreeing the suit as per terms of the contract entered into between the parties on 30.08.2017 Annexure-A 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.

The respondent No.1 is directed to pass a decree for an amount of tk.126(one hundred and twenty six crore) in Artha Rin Suit No.382 of 2016 and tk.10(ten) crore in Artha Rin Case No.1618 of 2016 i.e. total tk.136(one hundred and thirty six crore) as per terms of the contract (Annexure-A) and to return the rest of the sale proceeds amounting to tk.48,56,00,000/-(forty eight crore fifty six lac) after adjustment of the loan to the petitioner within 7(seven) days from the date of receipt of this order and redemption of the rest mortgaged property i.e. 8.50 floors(eight point fifty floors) total 261460(two lac sixty one thousand four hundred and sixty) square feet area of 37 Dilkusha Commercial Area, Dhaka and land of plot No.355 and 555 of Mouza Paikpara, Dhaka together with building standing on the land of said plots within a period of 7(seven) days from the date of receipt of this order.

The Rule is made returnable within 4(four)weeks.”

The defendant writ petitioner did not implead the Agrani Bank Ltd. in the said writ petition though Agrani Bank was plaintiff No.2 in the suit.

On 16.11.2017, pursuant to the interim order of the High Court Division, the Artha Rin Adalat passed the following judgment and decree in the two Artha Rin Suits.

The contents of the judgment and decree passed by the Artha Rin Adalat No.3 in Artha Rin Suit No.1618 of 2016 are as follows:-

“Heard. The judgment dated 15.10.2017 of the honorable High Court Division in Writ Petition No.13673 of 2017 in short is that-

‘The respondent No.1 is directed to pass a decree for an amount of tk.126(one hundred and twenty six crore) in Artha Rin Suit No.382 of 2016 and tk. 10(ten) crore in Artha Rin Case No.1618 of 2016 i.e. total tk. 136(one hundred and thirty six crore) as per terms of the contract (Annexure-A) and to return the rest of the sale proceeds amounting to tk.48,56,00,000/-(forty eight crore fifty six lac) after adjustment of the loan to the petitioner within 7(seven) days from the date of receipt of this order and redemption of the rest mortgaged property i.e. 8.50 floors(eight point fifty floors) total 2,61,460 (two lac sixty one thousand four hundred and sixty) square feet area of 37, Dilkusha Commercial Area, Dhaka and land of plot No.355 and 555 of Mouza Paikpara, Dhaka together with building standing on the land of said plots within a period of 7(seven) days from the date of receipt of this order.

Thus it appears that the honorable High Court Division has directed this Court, to pass decree in above way.

According to the above direction of the honorable High Court Division in Writ Petition No.13673 of 2017 the suit bearing number Artha Rin Suit No.1618 of 2016 be decreed for an amount of tk.10(ten) crore as per terms of the contract (Annexure-A) and the rest of the sale proceeds amounting to

tk. 48,56,00,000/-(forty eight crore fifty six lac) be returned after adjustment of the loan to the petitioner within 7(seven) days from the date of receipt of the order of the honorable High Court Division and redemption of the rest mortgaged property i.e. 8.50 floors (eight point fifty floors) total 2,61,460(two lac sixty one thousand four hundred and sixty)square feet area of 37, Dilkusha Commercial Area, Dhaka and land of plot No.355 and 555 of Mouza Paikpara, Dhaka together with building standing on the land of this plots within a period of 7(seven) days from the date of receipt of the order of the honorable High Court Division.”

Similarly, said Artha Rin Adalat passed the judgment and decree in Artha Rin Suit No.382 of 2016 as well. The contents of the said judgment and decree run as follows:

“Heard. The judgment dated 05.10.2017 of the Hon’ble High Court Division in Writ Petition No.13673 in short is that-

‘The respondent No.1 is directed to pass a decree for an amount’ of tk.126(one hundred and twenty six crore) in Artha Rin Suit No.382 of 2016 and tk.10(ten) crore in Artha Rin Case No.1618 of 2016 i.e. total tk.136(one hundred and thirty six crore) as per terms of the contract (Annexure-A) and to return the rest of the sale proceeds amounting to tk.48,56,00,000/- (Forty eight crore fifty six lac) after adjustment of the loan to the petitioner within 7(seven) days from the date of receipt of this order and redemption of the rest mortgaged property i.e. 8.50 floors (eight point fifty

floors) total 261460(two lac sixty one thousand four hundred and sixty) square feet area of 37, Dilkusha, Commercial area, Dhaka and land of plot No.355 and 555 of Mouza Paikpara, Dhaka together with building standing on the land of said plots within a period of 7(seven) days from the date of receipt of this order.

Thus, it appears that the honourable High Court Division has directed this Court to pass decree in the above way.

According to the above direction of the hon'ble High Court Division in Writ Petition No.13673 of 2017 the suit bearing number Artha Rin Suit No.382 of 2016 be decreed for an amount of tk.126(one hundred and twenty six crore) as per terms of the contract (Annexure-A) and the rest of the sale proceeds amounting to tk.48,56,000,00(forty eight crore fifty six lac)be returned after adjustment of the loan to the petitioner within 7(seven) days from the date of receipt of the order of the honorable High Court Division and redemption of the rest mortgaged property i.e. 8.50 floors (eight point fifty floors) total 2,61,460(two lac sixty one thousand four hundred and sixty) square feet area of 37 Dilkusha Commercial Area, Dhaka and land of plot No.355 and 555 of Mouza Paikpara, Dhaka together with building standing on the land of said plots within a period of 7(seven) days from the date of receipt of the order of the honorable High Court Division.”

It further appears from the materials on record that after getting decrees in the aforesaid two Artha Rin Suits, the writ petitioner respondent prayed before the High Court Division for non-prosecution of the writ petition and the said bench of the High Court Division passed the following order:

“The 16th day of November, 2017.

Mr. Md. Humayun Bashar,

-----For the Petitioner

The learned Advocate for the petitioner submits that he has instructions from his client not to proceed with the Rule.

In the result, the Rule is discharged for non-prosecution.”

On 28.04.2019, that is, long after passing order of discharging the Rule, the writ petitioner respondent filed Contempt Petition No.239 of 2019 in another bench of the High Court Division against Chowdhury Mustak Ahmed, Managing Director of the National Bank Ltd. bringing allegation of violation of interim order dated 05.10.2017 passed in the aforesaid writ petition No.13673 of 2017 inasmuch as interim order lost its existence after passing the order discharging the said Rule on 16.11.2017. In the said Contempt Petition, said Bench of the High Court Division issued Rule and directed the contemner Chowdhury Mustak Ahmed to appear in the Court personally. In such peculiar circumstances, the petitioners have filed this civil petition for leave to appeal.

Mr. Rokanuddin Mahmud, learned Senior Counsel appearing for the petitioners, submits that the High Court Division exceeded its jurisdiction in directing the Artha Rin Adalat to pass decrees inasmuch as it can not

dictate the Adalat or any other court, subordinate to it, mentioning terms of the decree. He submits that such type of interim direction without hearing the other side is unprecedented and law does not permit the High Court Division to make such command to the Adalat where the suit is pending for adjudication. He further submits that after getting the decrees on 16.10.2017 the writ petitioner got an order discharging the Rule from the High Court Division practising fraud upon the Court. He further submits that after discharging the Rule, the interim order passed by the High Court Division became non-existent so the decrees passed pursuant to the interim order became nullity. Lastly, he submits that initiation of contempt proceeding in Contempt Petition No.239 of 2019 in the High Court Division on the basis of non-existent order is liable to be dropped.

Mr. Abdul Baset Majumder, learned Senior Counsel appearing for the respondent, submits that earlier the respondent filed an application before the Artha Rin Adalat for decreeing the suit in terms of the agreement dated 30.08.2017. Since there is an agreement between the parties, the High Court Division did not commit any error of law in passing the impugned direction.

Fraud and collusion are secret in its origin and inception. Collusion may be either apparent and patent or what is more common secret and covered by apparent show of honesty. A deliberate deception with the design of securing some unfair or undeserved benefit are elements of fraud and collusion which must necessarily be inferred from the circumstances, considering all the facts together. Let us examine the facts and circumstances of this case.

For our perusal, we brought the record of Writ Petition No.13673 of 2017 from the record room of the High Court Division and perused the cause list dated 05.10.2017. It appears from the original Writ Petition that affidavit of the same was sworn on 05.10.2017. The petitioner served notice to the office of the Attorney General vide serial No.13476 dated 05.10.2017. From the cause list dated 05.10.2017 it appears that the same appeared as item No.70 in the cause list of the said Division Bench of the High Court Division on the same date, i.e. 05.10.2017. It is the usual practice of the Court that the Bench Officer, on receiving the writ petition, would post the petition in the cause list of the next working day and send the same to the press for publication through concerned officials. That is, in order to post the instant writ petition on 05.10.2017, concerned Bench Officer, at least, should have received the said writ petition on 04.10.2017 for communicating its number and names of the parties to the press for publishing the same in the cause list of the next date, that is, on 05.10.2017 keeping the petition in the custody of the Court. In such view of the matter, it is apparent that posting of the writ petition on 05.10.2017, that is, on the date of swearing affidavit and serving notice to the office of Attorney General, was unusual and result of manipulation and high-handedness. Keeping National Bank and Agrani Bank Ltd. (Plaintiff No.2 but not made party in writ petition) in the dark, the defendant writ petitioner respondent No.1 managed to get the impugned order collusively from a particular Bench of the High Court Division, which has got the force of final order.

From order No.19 dated 27.09.2017 it appears that the Adalat, while rejecting the prayer of the defendant writ petitioner-respondent, observed that-

“এমতাবস্থায় ধার্য তারিখ বিহীন অধার্য তারিখে নথি উপস্থাপন করে চুক্তিপত্রে উল্লেখিত সম্পত্তি সংক্রান্তে চুক্তিপত্রের b,e,g,h, i ক্রমিকে বর্ণিত শর্ত সমূহ চুক্তিপত্রের Seller অর্থাৎ দরখাস্তকারী বিবাদীপক্ষ প্রতিস্থাপন না করেই সম্পত্তির মূল্য বাবদ ঋণের টাকা সমন্বয় হবে মর্মে অত্র মামলায় ডিক্রী প্রদানের প্রার্থনা করে বাদীপক্ষ কর্তৃক উল্লেখিত আইনের ১৩(৩) ধারা মোতাবেক উক্তরূপ স্বীকৃতির ভিত্তিতে যেরূপ রায় বা আদেশ পেতে বাদী অধিকার, সেবূপ রায় বা আদেশ প্রার্থনায় আদালতের নিকট দরখাস্ত প্রদানের জন্য নথিতে বিদ্যমান ধার্য তারিখ পর্যন্ত সময় ক্ষেপণ না করে তাৎক্ষণিক আদেশ প্রার্থনা করে মামলায় বর্তমান পর্যায়ে আইনত বিবেচনাযোগ্য নয় বিধায় বিবাদীর দরখাস্ত দোতরফাসূত্রে বিনা খরচায় না মঞ্জুর করা হলো।

ধার্য তারিখ কপি জমাঅন্তে পক্ষভুক্তি দরখাস্ত শুনানী।” (underlined by us)

It further appears from the said order that the writ petitioner-respondent in his application, inter alia, stated, “অত্র মামলায় ডিক্রী প্রদানের প্রার্থনা যুক্ত দরখাস্ত মঞ্জুর অন্যথায় নামঞ্জুরের প্রার্থনা করেন। (underlined by us) It further appears from the aforesaid order that the learned Advocate for the plaintiff writ respondent-petitioner prayed for time for hearing of the said application on the date fixed for hearing of the suit. The Adalat observed, “এমতাবস্থায় উভয়পক্ষের শুনানী অন্তে বিবাদীপক্ষের অদ্যই অর্থাৎ তাৎক্ষণিক আদেশ প্রদানের প্রার্থনার প্রেক্ষাপটে বিবাদীর বিগত ২১/০৯/২০১৭ তারিখে দাখিলী দরখাস্ত বিষয়ে আদেশের জন্য নেয়া হলো।” (underlined by us) which indicates that the defendant made pressure upon the Adalat to dispose of the application instantly with a definite object. It further observed that, “রেকর্ড পর্যালোচনায় দেখা যায় দরখাস্তকারী বিবাদীপক্ষ অত্র মামলায় লিখিত জবাব দাখিল করেন নাই। এবং নথিতে আগামী ১৩/১১/২০১৭ইং তারিখ একতরফা শুনানীর জন্য দিন ধার্য আছে মধ্যবর্তী সময়ে ধার্য তারিখ ব্যতিরেকে দরখাস্তকারী

বিবাদী অত্র দরখাস্ত দাখিল করে তাৎক্ষণিক আদেশ প্রার্থনা করেন।” (underlined by us). It is to be mentioned here that Section 13(3) of Artha Rin Adalat Ain provides that if at any stage of the suit, the statement in the plaint of the plaintiff be admitted by the defendant out of his written statement or by any other means and the plaintiff submits a petition in the Court praying for such judgment or order as he is entitled to on the basis of such admission, the Court will pass suitable judgment or order without waiting for setting other points in issue existing among the plaintiff and the defendant. Here, in this case, prayer for decree was filed by the defendant not by the plaintiff. The law, as mentioned above, does not provide any provision to file such application by the defendant. Another important aspect of this case is that the defendant in its application (annexure-“B” to the writ petition) prayed for passing decree in following terms:

“১। উপরোক্তভাবে ৪৬১৪০ বর্গফুট (১ম পক্ষ ও হারাহারিভাবে জমির মূল্য সহ মোট মূল্য ১৮৪,৫৬,০০,০০০/- (একশত চুরাশি কোটি ছাপান্ন লক্ষ) টাকা হইতে ঋণ ও সুদ সহ ১২৬,০০,০০,০০০/- (একশত ছাব্বিশ কোটি) টাকা ঋণ সমন্বয় হইবে এই মর্মে মোকদ্দমাটি ডিক্রী হইবে। বাদী বাকী ৪৮,৫৬,০০,০০০/- (আট চল্লিশ কোটি ছাপান্ন লক্ষ) টাকা এম,আর, ট্রেডিং এর বরা বরে ডিক্রীর তারিখ হইতে ৩০(ত্রিশ) দিনের মধ্যে ফেরৎ দেওয়ার ডিক্রী হইবে।

২। উক্ত ঋণের বিপরীতে বাদী ব্যাংকে জব্দকৃত বক্রী ৮ তলা, অর্থাৎ ২,৬১,৪৬০ (দুই লক্ষ একষট্টি হাজার চারশত ষাট) বর্গফুট স্পেস ২০টি কমন স্পেস সহ ৩৭, দিলকুশা বানিজ্যিক এলাকার ভূমি সহ বন্ধককৃত সম্পত্তি এই বিবাদী এম,আর, ট্রেডিং কোং এর বরাবরে ডিক্রীর দাবী হইতে ৩০ (ত্রিশ) দিনের মধ্যে (অপার্ট্য) করে দেওয়ার ডিক্রী হইবে।”

Maintainability of such prayer for decreeing the suit, at the instance of the defendant, regarding his claim in Artha Rin Suit and jurisdiction of

the Adalat to pass such decree in favour of the defendant was vital issue in the suits but the High Court Division did not allow the Adalat to consider such issue by commanding/dictating the Adalat to decree the suits.

Earlier the Adalat, on perusal of the application as well as the agreement, particularly, terms No.b,e,g,h and i of the same, rejected the said application. Thereafter, the said defendant rushed to the High Court Division and obtained Rule and ad-interim order as mentioned earlier, thereby, compelled the Adalat to pass the defendant's desired decrees in two suits as per prayer quoted above.

From the Rule issuing order dated 05.10.2017 it appears that the substantive prayer of the writ petitioner-respondent was for declaring the order No.19 dated 27.09.2017 passed by the Artha Rin Adalat in Title Suit No.382 of 2016 was without lawful authority and of no legal effect. That is, the writ petitioner-respondent was entitled to get an order for simple declaration that the order No.19 dated 27.09.2017 passed by the Artha Rin Adalat No.3, Dhaka in Title Suit No.382 of 2016 unlawful in terms of the prayer if the Rule was made absolute. It is not understood, how the High Court Division could direct the Adalat to decree the suits before setting aside the order No.19 dated 27.09.2017 and also before hearing of the National Bank Ltd. and Agrani Bank Ltd, the two plaintiffs of the said suit.

From the ad-interim order passed in the said writ petition, it appears that the said Division Bench of the High Court Division directed Artha Rin Adalat to pass a decree for an amount of Tk.126 Crore in Artha Rin Suit No.382 of 2016 and Tk.10(ten) Crore in Artha Rin Suit No.1618 of 2016, that is, in total for a sum of Tk.136 crore and it also directed to return the rest of the sale proceeds amounting to Tk.48,56,00,000/- to the writ

petitioner within 7 days after adjustment of the aforesaid loan amount and to redeem the rest of the mortgaged property. Even after final hearing of writ petition the defendant writ petitioner was not entitled to get such order since the High Court Division cannot dictate any Court to pass a decree mentioning the terms and conditions of the agreement, if any, without examining the validity of such agreement upon hearing the other party to the said agreement. Even the High Court Division itself did not bother to examine the alleged agreement nor as to whether the application filed by the defendant with the prayer quoted above was maintainable or not. We do not find any provision within the four corners of the Artha Rin Adalat Ain to decree the suit in favour of the defendant considering his claim. It is to be mentioned here that the defendant got such decree before filing his written statement.

From the materials on record as well as from the statement made in this civil petition it appears that pursuant to the aforesaid ad-interim direction, the Artha Rin Adalat passed decrees in two Artha Rin Suits upon quoting the aforesaid direction, thereby, complied with the direction of the High Court Division in favour of the defendant inasmuch as the Rule was issued to verify whether the impugned Order No.19 dated 27.09.2017 passed only in Title Suit No.382 of 2016 was in accordance with law or not. Though no Rule was issued in respect of the Artha Rin Suit No.1618 of 2016, the said Bench of the High Court Division also directed to decree the suit in respect Artha Rin Case No.1618 of 2016 as well, which was not only unprecedented but under no circumstance can be sustained in law. Such direction/ command was not issued bonafide and fairly. In fact, it was collusive, cunning, deceitful and fraudulent order.

Mysterious enough is that in the said ad-interim direction, the said Bench of the High Court Division also directed to return the sale proceed of Tk.48,56,00,000/- to the writ petitioner-respondent after adjustment of the loan of the writ petitioner in the bank which was a sum of Tk.136,00,00,000/- within 7(seven) days and to redeem the rest of the mortgaged property without giving any opportunity to the writ respondent-petitioners of being heard. Even the High Court Division did not bother to allow the Artha Rin Adalat to examine the witnesses to prove the alleged memorandum of understanding and to ascertain as to whether the same was genuine and lawful or not and the same was entertainable and enforceable in the Artha Rin Adalat or not. Perhaps this is the only case, where the defendant not being a bank or a financial institution obtained decree for Tk.48,56,00,000/- after adjustment of the entire loan amount and got an order of redemption of mortgaged property without filing any suit in the competent court or making set off or counter claim, though not permissible in the Artha Adalat Ain. The entire facts and circumstances appear to be grossly against the law and judicial conscience.

How has the case of the Agrani Bank Ltd. been adjudicated upon? We do not find any answer anywhere either in the order of the High Court Division or in the decrees of the Adalat.

It is well settled that after discharging the Rule the ad-interim order passed earlier became non-existent and it loses its efficacy but the present writ petitioner filed contempt petition before another bench of the High Court Division bringing allegation that Chowdhury Mustak Ahmed, Managing Director of National Bank Limited has violated the judgment and order dated 05.10.2017 passed in Writ Petition No.13673 of 2017

willfully and, accordingly, said Bench issued Rule upon said Chowdhury Mustak Ahmed asking him as to why proceeding of contempt of Court should not be drawn up against him for willful violation of the order dated 05.10.2017 passed by the High Court Division in Writ Petition No.13673 of 2017. That Bench of the High Court Division also directed him to appear before the Court in person on 12.05.2019 at 10.30 a.m. to give explanation with regard to non-compliance of the order passed by the High Court Division dated 05.10.2017 in Writ Petition No.13673 of 2017, when at the instance of the writ petitioner-respondent the said Rule was discharged as not being pressed, consequently, ad-interim direction given by the High Court Division became non-est. In fact, a gigantic fraud has been committed upon the Court inasmuch as the writ petitioner was active in concealing the facts having full knowledge of the fact that the interim order passed in Writ Petition No.13673 of 2017 does not exist. Having full knowledge the respondent resorted to such fraudulent attempt of misleading another Bench of the High Court Division only to harass and humiliate Chowdhury Mustaq Ahmed, the Managing Director of National Bank Ltd. bringing contempt petition against him. It is to be mentioned here that Mr. Md. Humayun Bashar, learned Advocate prepared both the writ petition and the contempt petition in his office and put his signatures in both the vokatnamas. Said Humayun Bashar himself prayed for non-prosecution of the Rule issued in Writ Petition No.13673 of 2017 and got the order discharging the said Rule. Knowing full well about the said order discharging the Rule he prepared and filed the contempt petition on behalf of the contempt petitioner respondent No.1 and, thereby, deliberately committed fraud upon the Court.

It is settled principle that the relief which cannot be granted in the Rule should not be granted in the interim prayer. An interim relief can be granted only in aid of and as ancillary to the main relief which may be available to the party on final determination of his right in a proceeding. The main purpose of passing an interim order is to evolve a workable formula or the workable arrangement to the extent called for by the demands of the situation. It is well settled that an interim order merges with the final order and does not exist by itself. An interim order would be non-est in the eye of law when the Rule is discharged. It must, in such circumstances, take effect as if there were no interim order. Here in this case, the respondent hurriedly obtained the interim order and rushed to the Artha Rin Adalat and obtained the decrees as mentioned above. Thereafter, the writ petitioner prayed for discharging the Rule issued in the writ petition as not being pressed. After discharging the Rule, the interim order became non-est and the basis of the aforesaid two decrees lost its existence, and, consequently, the decrees became nullity.

The writ petitioner- respondent moved Contempt Petition No.239 of 2019 on 28.04.2019 against the leave petitioner No.2 alleging violation of the order dated 05.10.2017 passed in Writ Petition No.13673 of 2017. The said order was non-est in the eye of law because the Rule issued in the said writ petition was discharged long before initiation of contempt proceeding. Every person is liable to make full and correct statement in his petition. Suppression of the fact of getting the Rule discharged and production of such non-est interim direction at the time of filing of the contempt petition bringing allegation of violation of the said non-est interim order and obtaining Rule on such misconceived contempt petition

is tantamount to practising fraud upon the Court. Knowing full well about the non-existent interim order, the respondent made false representation before the Court of law with dishonest intention, so he is guilty of practising fraud upon the Court.

The leave petitioners have filed this leave petition against the interim order dated 05.10.2017 passed in Writ Petition No.13673 of 2017 inasmuch as the said interim order does not exist after the Rule was discharged. But fact remains that pursuant to the interim order, the Artha Rin Adalat decreed the suits in Artha Rin Suit Nos.382 of 2016 and 1618 of 2016. In view of such peculiar and extraordinary circumstances, we have no option but to set aside those decrees exercising our jurisdiction vested under article 104 of the Constitution. When collusion and fraud have been established and illegal order/direction and decrees have been obtained from the Courts, this Court cannot shut its eyes and remain a silent spectator. This Court must come forward to undo the wrongs by setting aside the illegal decrees. This Apex Court has the duty and obligation to rise to the occasion in order to do substantial and complete justice. Since collusion and fraud affect the solemnity, regularity and orderliness of the proceedings of the Courts, this Court, in exercise of its extra-ordinary power, is authorised to set aside the decrees obtained illegally by collusion.

It is to be remembered here that it is the duty of the Judges to maintain high ethical standard and impartiality. It is duty of the Judges to act at all times in a manner that promotes public confidence in respect of the integrity and impartiality of the Judges and the judiciary as a whole. In view of the facts and circumstances stated above what would be the perceptions of a reasonable person ?

A reasonable person would perceive that the Judges' ability to carry out judicial responsibilities with integrity, honesty, impartiality and competence has been impaired and that their conduct reflects adversely on their honesty, impartiality, temperament and fitness to serve as Judges.

The learned Judges of the High Court Division have issued an absolutely illegal order directing the Artha Rin Adalat to decree the suits in a specified manner which has eroded the confidence of the litigants to the suits and will have the effect of undermining the credibility of the judiciary as whole.

Similarly, the lawyers being officers of the Court are equally responsible to maintain the dignity, prestige and image of the Court as well as the judiciary as a whole. In this case, they totally failed to perform their duties as deserved by the Court. Particularly, the lawyer, who filed contempt petition bringing allegation of violation of the interim order after getting the order discharging the Rule issued in Writ Petition No.13673 of 2017, must answer about his conduct and *bona fide*.

Accordingly, the leave petition is disposed of. The judgments and decrees dated 16.10.2017 passed by the Artha Rin Adalat No.3, Dhaka in Artha Rin Suit Nos.382 of 2016 and 1618 of 2016 are set aside. The Adalat is directed to proceed with both the suits in accordance with law. The Rule issued in Contempt Petition No.239 of 2019 is hereby discharged.

Alhaj Md. Mizanur Rahman, proprietor of M.R. Trading Company of No.37, Dilkusha Commercial Area, Motijheel, Dhaka is directed to pay cost of Tk.1,00,00,000/-(Tk.one crore) within 15(fifteen) days from the date of service of the copy of this order.

Let a copy of this order be communicated to Alhaj Md. Mizanur Rahman, Proprietor of M.R. Trading Company of No.37, Dilkusha Commercial Area, Motijheel, Dhaka at once. The amount of said Tk.1,00,00,000/-(Tk.one crore) as cost is to be deposited in the account of this Court.

C.J.

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The 16th May, 2019.

M.N.S./words-5032/