

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)

WRIT PETITION NO. 8650 OF 2019

IN THE MATTER OF:

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

And

IN THE MATTER OF:

Salam Hossain Chowdhury
.... Petitioner

-Vs-

Artha Rin Adalat, 4th Court, Dhaka and another
.... Respondents.

Mr. Munshi Moniruzzaman with
Mr. Faysal Mustafa, Advocates
..... For the petitioner

Mr. ASM Abdur Razzaque, Advocate
..... For the respondent No. 2

Heard on 03.03.2024

Judgment on: 04.03.2024

Present:

Mr. Justice Md. Iqbal Kabir
and
Mr. Justice S.M. Maniruzzaman

S.M. Maniruzzaman, J:

In this *Rule Nisi*, the respondents have been called upon to show cause as to why the Order No. 100 dated 03.07.2019 passed by the Artha Rin Adalat No. 4th Court, Dhaka in Artha Rin Suit No. 73 of 2007 rejecting the application for Alternative Disputed Regulation dated 03.07.2019

(Annexure-D) should not be declared to have been passed without any lawful authority and is of no legal effect 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, the impugned order No. 100 dated 03.07.2019 was stayed by this Court for a prescribed period.

Facts, in brief, relevant for disposal of the Rule, are that M/S. Packers Garments Limited as borrower obtained loan from the respondent No 2 (Uttara Bank Limited, Foreign Exchange Branch, Dhaka) mortgaging the property as security of the loan. Subsequently, the borrower failed to repay the loan resulting the bank has instituted Artha Rin Suit No.73 of 2007 for realization of loan to the tune of Tk. 18,24,350 with up-to-date interest implicating the mortgagor/guarantor in the category of the loan. The defendants of the suit contested the suit by filing written statement denying all the marital allegations so made in the plaint. The suit is still pending for final disposal.

During disposal of the suit, the defendant No. 5, Shamsul Hossain Chowdhury died and his legal heirs and successors sub-statuted in the suit as defendant Nos. 5(Ka) to 5(Uma). The suit was appeared in the list on 03.07.2019 for experte hearing and on the same day the petitioner along with others 4 filed an application under Sections 22 and 29 read with Section 57 of the Artha Rin Adalat Ain, 2003 (in short, the Ain, 2003) for settlement of liability by appointing mediation which was rejected by the Judge, Artha Rin Adalat by the impugned order dated 03.07.2019.

Being aggrieved thereby, the petitioner moved this application before this Court and obtained present Rule along with interim order of stay.

Mr. Munshi Moniruzzaman, learned Advocate appearing for the petitioner submits that since the legal heirs and successors of late Shamsul Hossain Chowdhury have sub-statuted in the suit by order dated 29.10.2018. and hence the Artha Rin Adalat ought to have sent the suit before the ADR under Section 22 of the Ain, 2003, but the Judge without applying his judicial mind reject the application.

On the other hand Mr. ASM Abdur Razzaque, learned Advocate for the respondent No. 2-bank by filing affidavit-in-opposition submits that the predecessor of the petitioner earlier filed several writ petitions and obtained Rules only for tacting delay for payment of outstanding loan of the bank. Mr. Razzaque next submits that the petitioner has no intention to pay his outstanding loan because the petitioner as well as the principal borrower did not communicate with the bank to settle the loan by amicably. The petitioner only for tacting delay for payment of loan has filed the instant writ petition. In view of the above the Rule is liable to be discharged.

We have heard the learned Advocates for both the sides, gone through the writ petition, affidavit-in-opposition and relevant materials on record so appended thereto.

It, however, appears from record that pursuant to the order dated 29.10.2018 the petitioner along with others added respondents in the suit and submitted written statement on 17.04.2019 which was duly accepted by

the Artha Rin Adalat and fixed the date on 22.05.2019 for further hearing but Section 22 of the Ain, 2003 provides *that*;

“২২(১) চতুর্থ পরিচ্ছেদে বর্ণিত সাধারণ পদ্ধতিতে মামলার বিচার বা মধ্যস্থতা শুনানী সম্পর্কিত যে বিধানই থাকুক না কেন , এই আইনের অধীন দায়েরকৃত কোন মামলায় বিবাদী কর্তৃক লিখিত জবাব দাখিলের পর, আদালত, ধারা ২৪ এর বিধান সাপেক্ষে , মধ্যস্থতার মাধ্যমে বিরোধ নিষ্পত্তির লক্ষ্যে, মামলাটি, নিযুক্ত আইনজীবীগণ কিংবা আইনজীবী নিযুক্ত না হইয়া থাকিলে পক্ষগণের নিকট প্রেরণ করিবে।”

Thus, from quoted Section 22(1) it however appears that when the written statement is submitted by the defendant of the suit, the Artha Rin Adalat will send the matter before the Alternative Disputed Resolution (ADR) for settling the issue out of the Court.

Admittedly, in the instant case the respondent Nos. 5(Ka) to 5(Uma) submitted written statement on 17.04.2019 and the Artha Rin Adalat without referring the matter before the ADR fixed the date for further hearing on 22.05.2019. Subsequently on 03.07.2019 the defendant Nos. 5(Ka) to 5(Uma) filed an application for settlement the loan by mediation but the learned Judge of the Artha Rin Adalat without considering the provision of Section 22 of the Ain, 2003 rejected the application holding that there is no scope to settle the liability by mediation at this stage.

However, in the instant case the petitioner as well as the defendant Nos. 5(Ka) to 5(Uma) have appeared in the Artha Rin suit dated 29.10.2018 and accepted the written statement of the petitioner on

05.03.2019 and fixed the date on 17.08.2019 for further hearing, but without giving any opportunity to settle the issue by ADR.

In view of the above facts and circumstances of case, we find substance in the submissions so made by the learned Advocate for the petitioner and thus merit in the Rule. Accordingly, the Rule is made absolute, however, without any order as to costs.

The impugned order No. 100 dated 03.07.2019 issued by the respondent No. 1 is hereby declared to have been passed without lawful authority and no legal effect. The application so filed by the defendant Nos. 5(Ka) to 5(Uma) under Section 22 and 23 read with Section 57 of the Ain, 2003 is allowed.

The respondent No. 1 Artha Rin Adalat, Dhaka is further directed to refer the matter before the ADR in accordance with law.

Communicate a copy of the judgment and order to concerned respondent.

Md. Iqbal kabir, J:

I agree.