

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

Present:

Mr. Justice Kazi Md. Ejarul Haque Akondo

And

Mr. Justice Mohi Uddin Shamim

Civil Revision No. 3087 of 2019

IN THE MATTER OF

Md. Sirajul Karim and others

.....Defendants-Petitioners

1. Bangladesh Industrial Finance Company Limited

.....Plaintiff-Opposite party

2. Judge, Artha Rin Adalat No.2, Dhaka

.....Opposite party

No one appears

.....For the petitioners

Mr. Md. Nasir Shikder, Advocate

.....For opposite party No. 1

Heard and judgment passed on 30.05.2024

Kazi Md. Ejarul Haque Akondo, J.

This Rule, under section 115(1) of the Code of Civil Procedure, 1908, was issued in the following terms-

“Record of the case need not be called for and let a Rule be issued calling upon the opposite parties to show cause as to why the order being No. 10 dated 07.08.2019

passed by the learned Judge of the Artha Rin Adalat No. 2, Dhaka in Artha Zari Case No. 688 of 2018 rejecting the application of the petitioner for permission to sell the mortgaged property under private negotiation under Order 21 Rule 83 of the Code of Civil Procedure, and thereby allowing the petition of the decree-holder under section 33(4) of the Artha Rin Ain, 2003 should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.”

The present opposite party No. 1 Bangladesh Industrial Finance Company Limited as the plaintiff filed Artha Rin Suit No. 671 of 2017 before the Artha Rin Adalat No. 2, Dhaka praying for a decree for an amount of Tk. 8,19,26,841/68 as of 25.09.2017 against the present petitioners as the defendants. The defendants contested the suit by filing a written statement. After the conclusion of the trial, the learned Trial Judge decreed the suit on a compromise on 10.06.2018. Thereafter, according to the above judgment and decree the plaintiff filed Artha Jari Case No. 688 of 2018 for the realization of the decretal amount. In the execution

case, the learned Judge of the Adalat ordered for auction sale of the mortgaged property but the same failed. In the meantime, the present petitioners filed an application before the Adalat under Order 21 Rule 83 of the Code of Civil Procedure, 1908 read with Section 57 of the Artha Rin Adalat Ain, 2003 praying for permission to sell the mortgaged property under private negotiation and to make payment of the loan amount as the plaintiff failed to sell the said property in auction. After hearing the application the learned Judge by order No. 10 dated 07.08.2019 rejected the same and allowed the prayer of the plaintiff under section 33(4) of the Artha Rin Adalat Ain. Against which the defendants as the petitioners had preferred this civil revision before this Court and obtained the instant Rule.

Anyway, at the time of hearing the Rule the learned filing Advocate for the petitioners Ms. Marjina Raihan Modina appeared before this Court and informed us that she on asking handed over the file of the instant matter to the petitioners with a no objection certificate much earlier, and in the premises, she is unable to press

the Rule. However, on perusal of the record, it appears that the petitioners did not file any new Vokalatnama on their behalf.

Conversely, Mr. Md. Nasir Shikder, the learned Advocate appearing on behalf of plaintiff-opposite party No. 1 Bangladesh Industrial Finance Company Limited at the time of hearing the Rule by filing an application for discharging the Rule as being not maintainable submits that all the judgments and orders not being a decree of the Artha Rin Adalat have been treated as final and conclusive. In such a situation the party aggrieved by such judgment or order of the Artha Rin Adalat cannot invoke revisional jurisdiction of the Civil Court including the High Court Division under section 115 of the Code of Civil Procedure, 1908.

He next submits that Artha Rin Adalat Ain is a special statute that bars revision against an order passed by the Adalat as envisaged under section 44 of the Ain and as such, when there is an express provision barring revision, no such revision is entertainable and thus the Rule is liable to be discharged.

He lastly submits that legislature by incorporating section 44 in the Artha Rin Adalat Ain, 2003 has expressly debarred filing

revisional application against the interlocutory order passed by the Adalat pending execution proceeding. The impugned order passed by the Adalat in the present case is no doubt an interlocutory order and accordingly, as per section 44 of the Ain that order is not revisable under section 115 of the Code of Civil Procedure and as such, the Rule is liable to be discharged as being not maintainable.

In the facts and circumstances of the case and the materials on record, we find substance in the submissions made by the learned Advocate for the plaintiff-opposite party No.1. Accordingly, the application for discharging the Rule as being not maintainable is allowed.

As a result, the Rule is discharged as being not maintainable. No cost.

Send a copy of this judgment to the Court below at once.

Mohi Uddin Shamim, J:

I agree.