

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

Present

Mr. Justice Md. Iqbal Kabir

And

Mr. Justice Md. Akhtaruzzaman

WRIT PETITION NO. 9922 OF 2019.

IN THE MATTER OF:

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

-AND -

IN THE MATTER OF:

Md. Mojibar Rahman.petitioner

-Vs-

The Government of the People's Republic of
Bangladesh and others.

.....respondents.

Mr. M. Moksadul Islam with

Mr. Md. Anisur Rahman, Advocates

.....for the petitioner.

Ms. Nasima K. Hakim, Deputy Attorney General

..... for the respondents.

Heard on 23.04.2024 .

Judgment on 24.04.2024.

Md. Akhtaruzzaman, J.

In this Rule Nisi, the petitioner called in question the legality of the order dated 16.04.2019 passed by the respondent No.2, in Artha Execution Case No. 16 of 2018 arising out of Artha Rin Suit No. 53 of 2005 issuing warrant of arrest for detaining the petitioner in civil custody for a period of 6(six) months under section 34(1) of the Artha Rin Adalat Ain, 2003(Annexure-D).

The facts of the case as narrated in the writ petition as well as in the supplementary affidavit, in brief, are as follows:

The respondent No.3, Bangladesh Krishi Bank, as plaintiff instituted Artha Rin Suit No. 53 of 2005 before the respondent No.2,

Artha Rin Adalat, Jamalpur for realization of an amount of Tk. 3,38,644/- against the present petitioner and obtained judgment and decree dated 30.01.2018. Subsequently, the Bank filed Artha Rin Execution Case No. 16 of 2018 for realization of the decretal dues. In the execution case, the Bank on 16.04.2019 filed an application under section 34 of the Artha Rin Adalat Ain, 2003 (the Ain) praying for issuing warrant of arrest against the instant petitioner for detaining him in civil custody. The Adalat by the impugned order dated 16.04.2019 allowed the application and thereby issued warrant of arrest against the petitioner. Challenging the said order, the petitioner filed this writ petition and obtained the Rule and order of stay.

Mr. M. Moksadul Islam with Mr. Md. Anisur Rahman, the learned Advocates appearing for the petitioner invites our attention to the application filed by the Bank for issuance of warrant of arrest and submits that on examination of the application filed under section 34(1) of the Ain, it is evident that the application is neither verified nor supported by any affidavit and it is not also signed by the Manager or any other authorized officer/person of the decree holder-Bank and therefore, the application is not in proper form. Mr. Islam next submits that the impugned order on an unlawful application is illegal and so, the impugned order is liable to be set aside. Mr. Islam further submits that the petitioner as a small trader of food grains, on 28.10.1997 obtained Tk. 1,50,000/- loan facility from the Bank and in the meantime he paid Tk. 96,278/- to the Bank. He finally submits that if the judgment debtor-petitioner be

given an opportunity to negotiate the matter with the decree holder Bank in that case he may adjust the loan amicably.

In reply, Ms. Nasima K. Hakim, the learned Deputy Attorney General appearing for the respondents finds it difficult to oppose the above submission. She next submits that the application has been filed by the learned Advocate for the Bank and it is neither verified nor supported by any affidavit. But the learned Deputy Attorney General adds that if the Rule is made absolute an opportunity may be given to the Bank to file a fresh application under section 34(1) of the Ain in proper form.

Heard the learned Advocates appearing for both the sides. We have also gone through the petition, supplementary affidavit, impugned order and other related papers and documents annexed with the petition carefully. No one disputes the proposition of law relating to warrant of arrest, which is no longer a resintegra. In this regard we may refer to section 34(1) of the Ain which is reproduced below:

“ ৩৪। (১) উপ-ধারা (১২) এর বিধান সাপেক্ষে, অর্থ ঋণ আদালত, ডিক্রীদার কর্তৃক দাখিলকৃত দরখাল্দের পরিপ্রেক্ষিতে, ডিক্রীর টাকা পরিশোধে বাধ্য করিবার প্রয়াস হিসাবে, দায়িককে ৬(ছয়) মাস পর্যন্ত দেওয়ানী কারাগারে আটক রাখিতে পারিবে।”

On perusal of the aforesaid provisions of law, it is clear that the Adalat is empowered under section 34(1) of the Ain to award civil imprisonment to a judgment debtor for any terms not exceeding six months to compel him for repaying the decretal dues and in doing so, the Adalat has power to issue warrant of arrest.

In the case of *Provat Kumar Das v. Agrani Bank*, 15 BLC (AD) 113, the Appellate Division observed as under:

“It appears that section 34 of the Artha Rin Adalat Ain, 2003 is clear and provides for ordering civil imprisonment upto 6 months against a judgment-debtor for compelling to satisfy the decree. Section 34 is not dependent upon section 33. In the instant case, the decree holder has taken step for auction sale of the property but there being no response, auction sale could not be held. Further, it appears from the provisions of section 34 of the Artha Rin Adalat Ain, 2003 that the law provides for simple civil imprisonment of the judgment-debtor to compel to make the payment for satisfaction of the decree and is not an alternative punishment in lieu of payment of the decretal amount. Civil imprisonment will not exempt payment of the decretal amount.

The impugned judgment and order has been passed by the High Court Division in accordance with law and no interference is called for.”

We have carefully examined the application filed by the Bank under section 34(1) of the Ain for issuance of warrant of arrest against the judgment debtors (Annexure-‘D’ to the writ petition). It appears that the application was filed on 16.04.2019 by the learned Advocate for the Bank under the provision of section 34(1) of the Ain, 2003. It further appears that the application was neither verified nor supported by any affidavit. Moreover, it is also not signed by the Manager or any other authorized officer of the Bank concerned and, as such, the impugned order dated 16.04.2019 for issuance of warrant of arrest cannot be said to be lawful.

In the case of *Sheikh Nazmul Haque v. Bangladesh and others*, reported in 14 BLC 107 it has been observed by a Division Bench of this Court:

“We have carefully examined the application under section 34 of the Ain, 2003, it appears that in the application under section 34 of the Ain, 2003 for issuing warrant of arrest against the judgment

debtors the concerned official/authority of the Bank neither put his signature nor made any verification/affidavit thereto and therefore, it cannot be said that the application in question was filed by the decree-holder-Bank as per provision of section 34(1) of the Ain, 2003.”

Further, in the case of *Marzan Abedin v. Judge, Artha Rin Adalat No. 4, Dhaka and others* reported in 65 DLR 79 another Bench of this Court held as under:

“In the context of section 34(1) of Ain it has been held that the application seeking warrant of arrest on behalf of the bank should be officially signed, verified and followed by affidavit. If the same is absent the application is not tenable under the law. We verily endorse the view taken in the said decision. We are in respectful agreement with the decision. In the case in hand, we have found that the application by which warrant of arrest was sought cannot be treated as an application in the eye of law since the same had not been signed by the official or authority of the bank neither the same had any verification. Simply it was filed by the concerned Advocate of the Respondent-Bank without following the procedure.”

On examination of the order dated 16.04.2019 passed by the learned Judge of the Adalat in Artha Execution Case No. 16 of 2018, it transpires that the judgment debtor did not take any steps to adjust the decial dues with the Bank. But admittedly, the judgment debtor had repaid Tk. 96,278/- to the Bank against the sanctioned loan. In that view of the matter, the parties can settle the loan amicably since law permits the contending parties to mediate it at any stage of the suit/proceedings.

In view the above discussion, it transpires that the impugned order, *ex-facie*, suffers from illegality and thus the Rule finds merit.

In the result, the Rule is made absolute without any order as to costs.

The impugned order dated 16.04.2019 passed by the learned Judge of the Artha Rin Adalat, Jamalpur in Artha Execution Case No.16 of 2018 is hereby declared to have been passed without lawful authority and is of no legal effect and hereby set aside. The order of stay stand vacated.

However, the respondent Bank may further file proper application under section 34(1) of the Ain, if so advised, in this regard.

Communicate the judgment to the respondents concerned at once.

Md. Iqbal Kabir, J.

I agree.