

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

CIVIL REVISION NO. 2742 of 2019

In the matter of:

An Application under section
115(1) of the Code of Civil
Procedure.

And

In the matter of:

South East Bank Limited
..... Petitioner.

Vs.

Md. A.S. M Rubaiyat Forman
and others.

.....Opposite Parties.

Present (Physically in Court Room) :

Mr. Justice Sheikh Hassan Arif

And

Mr. Justice Ahmed Sohel

Mr. K.S. Salah Uddin Ahmed,
Advocate (Appearing Virtually).

....For the petitioner.

Mr. Hassan M.S. Azim,
Advocate (Appearing Virtually).

..For the opposite party
No.1.

Heard on 24.06.2021,
12.08.2021 and 01.09.2021.
Judgment on 08.09.2021.

SHEIKH HASSAN ARIF, J

1. At the instance of the defendant No.1 in Money Suit No. 03 of 2019, Rule was issued calling upon the plaintiff-opposite party No.1 to show cause as to why the order dated 18.08.1999 passed by the First Court of Joint District Judge, Rangpur in the said suit rejecting petitioner's application filed under Order

VII, rule 11 of the Code of Civil Procedure for rejection of plaint, should not be set-aside and/or such other or further order or orders passed as to this Court may seem fit and proper. For the sake of clarity, the exact order issuing the said Rule (which was issued in Bengali language) is reproduced below.

“নথি তলব করা হউক।

যুগ্ম জেলা জজ, ১ম আদালত, রংপুর কর্তৃক মানি মোকদ্দমা নং ০৩/২০১৯-এ বাদীর মোকদ্দমা অর্থক্ষণ আইনের ২০ ধারা মোতাবেক বারিত বিধায় বিবাদী-দরখাস্তকারী কর্তৃক দেওয়ানী কার্যবিধির আদেশ ৭ নিয়ম ১১ মোতাবেক দাখিলকৃত দরখাস্ত দোতরফাসূত্রে শুনানী অন্তে নামঞ্জুরের বিগত ইংরেজী ১৮.০৮.২০১৯ তারিখের আদেশ কেন রদ, রহিত এবং বাতিল করা হবে না এবং অত্র আদালত কর্তৃক সঠিক এবং যথাযথ মনে করলে আরও অন্যান্য বা অতিরিক্ত আদেশ বা আদেশসমূহ কেন প্রদান করা হবে না মর্মে ১নং প্রতিপক্ষের প্রতি কারণ দর্শানোপূর্বক রুল নিশি জারী করা হল।”

2. Back Ground Facts:

2.1 Facts, relevant for the disposal of the Rule, is that the opposite party No.1, as plaintiff, filed the said Money Suit No. 03 of 2019 before the First Court of Joint District Judge, Rangpur seeking a money decree against the defendant No.1-petitioner and two others for an amount of Taka 2,43,38,000/-. The case of the

opposite party No.1-plaintiff, in short, is that 10.50 decimals of land appertaining to C.S Khatian No. 195, S.A. Khatian No.189, Mutation Khatian No.8003, C.S. Plot No. 110, R.S. Plot No. 2628 and C.S Plot No. ¹⁰⁶/₅₈₁ R.S Plot No. 2635 of mouza Satgara under P.S. Kotwali, District: Rangpur, as mentioned in schedule 'Ka' to the plaint, is the disputed land for the sale of which auction notice was published by the defendant No.1-Bank in view of the provisions under Section 33(5) of the Artha Rin Adalat Ain 2003. That after the said land was given in favour of defendant No.1-Bank under Section 33(5) of the Artha Adalat Ain 2003 in the Artha Execution Case No. 10 of 2013, the Bank published the said auction notice in two newspapers, namely Daily Khabar and Daily Prothom Khabar. Thereupon, the plaintiff submitted his bid and his offer was adjudged to be the highest.

2.2 That the plaintiff paid the entire bid money vide two pay orders issued by the defendant No.1-Bank for a total amount of Taka 52,00,000/00. That the executive committee of the Bank approved such sale for

execution of the sale deed in favour of the plaintiff in its Meeting No. 449 dated 23.10.2014. Accordingly, registered sale deed was executed, being Sale Deed No. 9356 dated 25.06.2015, in favour of the plaintiff. However, when the delivery of the said sold land was given, the defendant-Bank gave a different property, namely the land under R.S Plot No. 2029 under Bujarat Khatian No. 2110, D.P Khatian No. 3644, which was in fact belonged to one Umme Salma Begum. That, on 20.04.2018, the said Umme Salma Begum, wife of Dr. Abdur Rashid Alamgir, claimed her property by presenting her title deeds showing that she had never mortgaged the said property in favour of the defendant-Bank and, accordingly, she took-over possession of the land. That this mistaken or fraudulent delivery of possession of a wrong property in favour of the plaintiff caused serious mental and physical pain to him. That the plaintiff is the editor/publisher of Rangpur Chitra, a daily newspaper, and, accordingly, his reputation was tarnished by such fraudulent delivery of possession. That the plaintiff purchased the said property on the

expectation that such purchase would generate huge income in his favour, but he has now been suffering huge loss after such purchase.

2.3 That the plaintiff subsequently came to know that the mortgagor Selim Reza Labu did not have any title in the land delivered in favour of the plaintiff by the Bank. Thus, the plaintiff served a legal notice on the Bank and requested delivery of possession of the purchased land, but the bank officials, in reply, refused to do so. Accordingly, the plaintiff filed the said suit seeking a money decree for the said total amount of Taka 2,43,38,000/- as compensation for loss, injury etc.

2.4 Thereupon, after service of notice, the petitioner-Bank entered appearance and filed written statement denying material allegations in the plaint. The case of the defendant-bank is that upon tender sale, the plaintiff was delivered with possession of correct land and that the Bank did not commit any wrong or fraudulent act in such delivery and that the auction purchaser, after examining all relevant title deeds,

took possession of the said property. This being so, the suit is liable to be dismissed.

2.5 Along with the said written statement, the defendant-petitioner also filed an application for rejection of the plaint under Order VII, rule 11 read with Section 151 of the Code of Civil Procedure mainly contending that the suit filed by the plaintiff is barred by Section 20 of the Artha Rin Adalat Ain 2003. Thereupon, the Court below, vide impugned order dated 18.08.2019, rejected the said application. Being aggrieved by such rejection, the defendant-Bank moved this Court under civil revisional jurisdiction and obtained the aforesaid Rule. At the time of issuance of the Rule, this Court, vide ad- interim order dated 18.09.2019, stayed further proceedings of the said money suit for a period of 06(six) months, which was subsequently extended in due course.

2.6 The Rule is opposed by plaintiff-opposite party No.1, who has filed a counter-affidavit, mainly contending that the prohibition under Section 20 of the Artha Rin Adalat Ain 2003 applies only to the proceedings of the

Artha Rin Adalat including judgment, decree or order and that since the plaintiff in the suit concerned did not challenge such proceedings of the Artha Rin Adalat nor any proceedings of the execution case concerned, the said prohibition will not apply in the present scenario. The further case of the plaintiff-opposite party No.1 is that since the sale took place through a private arrangement between the Bank and the auction purchaser-plaintiff, the said prohibition provided by Section 20 of the Artha Rin Adalat Ain is not applicable. Further case of the opposite party No.1 is that the opposite party No.1 cannot go seeking relief before the Artha execution Court concerned as because the execution case has already been disposed of and that since the opposite party No.1, in the plaint, has not raised any issue for setting aside the auction sale on the ground of material irregularity or fraud in publishing or conducting the sale, but only raised an issue of fraudulent/wrongful delivery of possession of land, he does not have any scope to invoke provision under Section 32 of the Artha Rin Adalat Ain 2003.

3. Submissions:

3.1 Mr. K.S. Salah Uddin Ahmed, learned advocate appearing for the defendant-petitioner, submits that the case of the plaintiff-opposite party No.1 in the suit concerned is fully covered by the provisions under order XXI, rule 90 of the Code of Civil Procedure in that the plaintiff-opposite party, being the highest bidder of the auction sale, is an interested party whose interest has been affected by the alleged fraudulent delivery pursuant to the said auction sale. Therefore, according to him, the plaintiff could easily invoke the provisions under Section 32 of the Artha Rin Adalat Ain, 2003 as a third party claimant seeking cancellation of the sale or delivery of possession. By referring to a decision of our Appellate Division in **Mozher Sowdager vs. M. Zahirul Alam, 40 DLR (AD)(1988)-62**, Mr. Ahmed submits that even the second highest bidder in an auction has been held by our Appellate Division to have inchoate interest in the auction sale concerned and has been held to have the right to challenge such auction sale. Therefore, he submits,

it cannot be said that the plaintiff-opposite party No.1 cannot come under the category of the persons whose interests are affected by sale as provided by Rule 90 of Order XXI of the Code of Civil Procedure.

3.2 Mr. Ahmed further argues that the interest of the plaintiff cannot be said to have been created after the sale took place, rather his interest was an existing interest even before the sale as because he was adjudged the highest bidder in the auction. As regards alleged fraud, as stated by the plaintiff-opposite party in the plaint regarding wrongful delivery of possession of the land, Mr. Ahmed submits that even an outsider can bring a mistake or fraud to the notice of the Court and the Court is always inherently empowered to take notice of any such fraud or mistake suo-moto. In this regard, Mr. Ahmed refers to a decision of our Appellate Division in **Kamal Hossain vs Artha Rin Adalat, 15 BLC (AD) (2010)-177**. He then submits that since the plaintiff admittedly alleged a fraud or fraudulent act committed by the Bank officials in delivering the possession of the land, he was fully entitled to raise

this issue before the executing adalat concerned even after disposal of the said artha execution case and could have filed proper application for re-calling the order by which the execution adalat had disposed of the execution case concerned. Therefore, according to him, the Court below has committed gross illegality occasioning failure of justice in rejecting the application filed by the defendant-petitioner for rejection of plaint on the ground that the said suit was barred by Section 20 of the Artha Rin Adalat Ain 2003.

3.3 As against above submissions, Mr. Hasan M.S. Azim, learned advocate appearing for the plaintiff-opposite party No.1, submits that, admittedly, the opposite party No.1 was not a party in the Artha Rin suit or in the execution proceeding concerned. Therefore, the case of the plaintiff as regards the alleged fraudulent act committed by the Bank officials in respect of the delivery of possession of the land concerned is an affair beyond the scope of the Artha Rin Adalat and as such the suit concerned was well maintainable, he submits.

3.4 By referring to the provisions, in particular the words “whose interests are affected by sale” as provided by rule 90 of Order XXI of the Code of Civil Procedure, Mr. Azim submits that to maintain an application under Order XXI, rule 90 read with Section 32 of Artha Rin Adalat Ain, a third party claimant will have to be a person whose interest has been affected by the sale. He then submits that since the interest of the plaintiff was not affected by the sale, rather it was affected by the wrongful delivery of possession of the land, he cannot invoke the provisions under Order XXI, rule 90 of the Code of Civil Procedure.

3.5 Mr. Azim further argues that the ‘interest’ as mentioned in Rule 90 of the Order XXI of the Code of Civil Procedure means ‘the interest pre-existing sale’. Therefore, he argues that since the interest of the plaintiff was created after sale, his case is not covered by Order XXI, rule 90 of the Code of Civil Procedure.

4. **Deliberations, Findings and Orders of the Court:**

4.1 Before addressing the issues raised by the parties, let us first examine the relevant provisions of law, namely Sections 20 and 32 of Artha Rin Adalat Ain, 2003. Thereafter, we will examine the provisions under Order XXI, rule 90 of the Code of Civil Procedure. For our ready reference, Section 20 of the Artha Rin Adalat 2003 is quoted below:

“এই আইনের বিধান ব্যতিরেকে, কোন আদালত বা কর্তৃপক্ষের নিকট অর্থস্বর্ণ আদালতে বিচারাধীন কোন কার্যধারা বা উহার কোন আদেশ, রায় বা ডিক্রীর বিষয়ে কোন প্রশ্ন উত্থাপন করা যাইবে না, এবং এই আইনের বিধানকে উপেক্ষা করিয়া কোন আদালত বা কর্তৃপক্ষের নিকট আবেদন করিয়া কোন প্রতিকার দাবী প্রার্থনা করা হইলে, ঐরূপ আবেদন কোন আদালত বা কর্তৃপক্ষ গ্রাহ্য করিবে না”

(Underlines supplied)

4.2 Therefore, it appears from the above quoted provisions that the proceedings of the Artha Rin Adalat or its order, judgment or decree have been given protection by our Legislature in that the subject matters of those proceedings, order, judgment or decree cannot be called in question by any Court or authority by ignoring the provisions of the Artha Rin Adalat Ain, 2003. Therefore, it is clear that if anybody is aggrieved by any matters arising

out of the proceedings or order, judgment or decree of the Artha Rin Adalat, the aggrieved person may only invoke relevant provisions of the Artha Rin Adalat Ain, 2003 to redress such grievances, if the said Ain has provided any such provision for redressing such grievances. This provision under Section 20 applies not only to the parties to such proceedings, orders, judgment or decree, rather it applies to anyone even an outsider of such Artha Rin suit or execution proceedings.

- 4.3 As against above provision of complete prohibition which applies to anyone who may become aggrieved by any such proceedings, order, judgment and decree of the Artha Rin Adalat, section 32 of the Artha Rin Adalat Ain, 2003 has provided a scope for raising objection against execution of a decree of Artha Rin Adalat by a third party in accordance with the provisions of the Code of Civil Procedure. Therefore, it appears that even an outsider, who is not a party in the Arthat Rin suit concerned, may invoke the provisions of Section 32 of the Artha Rin

Adalat Ain to raise any objection against the execution of the Artha Rin decree.

4.4 Now, the question is, whether the plaintiff in the concerned suit, being an auction purchaser of a property sold in execution of Artha Rin decree, can invoke the provisions under Order XXI, rule 90 of the Code of Civil Procedure read with Section 32 of the Artha Rin Adalat Ain to challenge such sale or acts done, namely delivery of possession done subsequent to such sale. In this regard, we may reproduce the provisions under rule 90 of Order XXI of the Code of Civil Procedure for our ready reference:

'R.90 Application to set aside sale on ground of irregularity or fraud. (1) Where any immovable property has been sold in execution of a decree, the decree-holder, or any person entitled to share in a rateable distribution of assets, or whose interests are affected by the sale, may apply to Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it (or on the ground of failure to issue notice to him as required by rule 22 of this Order):

Provided (i) that no sale shall be set aside on the ground of such irregularity, fraud or failure unless, upon the facts proved, the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity, fraud or failure.

(ii) that no sale shall be set aside on the ground of any defect in the proclamation of sale at the instance of any person who after notice did not attend at the drawing up of proclamation or of any person in whose presence the proclamation was drawn up, unless objection was made by him at the time in respect of the defect relied upon.”

4.5 It appears from the above quoted provision of rule 90 of Order XXI of the Code that where any immovable property has been sold in execution of a decree, any person, amongst others, “whose interest are affected by sale”, may apply to the Court to set aside the sale on the ground of material irregularity or fraud in publishing or conducting such sale.

4.6 Now the question is whether the interest of the plaintiff in the suit concerned has been affected by the sale in question in this case. Admittedly, the

property in question, namely the 'Ka' schedule property to the plaintiff, has been handed over in favour of the decree-holder-petitioner Bank who published notice for sale of the said property in accordance with the relevant provisions of the Artha Rin Adalat Ain, 2003 through tender. Further admitted provision is that the opposite party No.1-plaintiff became the highest bidder in such sale and, accordingly, registered sale deed was executed in his favour in respect of the said property.

4.7 Now, according to Mr. Azim, learned advocate for the opposite party No.1, the interest in favour of the auction purchaser has in fact been created after such sale. Therefore, according to him, since the interest of the auction purchaser was not an interest pre-existing the auction sale, his case will not be covered by Order XXI, rule 90 of the Code of Civil Procedure. In support of his such submission, he has referred to two decisions of Kerala High Court and Kolkata High Court, namely the decisions in **K. Kattayil vs. Sathiavan Nair, AIR 1970 Ker. 94** and **Surendra**

Nath Das vs. Alauddin Mistry, AIR 1928, Calcutta-828.

4.8 Now, the legal question before us is whether the interest of the auction purchaser is an interest which pre-existed the auction sale concerned. Admittedly, the auction purchaser-opposite party No.1 was adjudged as the highest bidder of the auction sale. Had the Bank decided to sell the property in question to the second highest bidder or the lowest bidder, this auction purchaser would have had interest and right to challenge the said sale on the ground that he had acquired interests in the auction sale concerned being the highest bidder in the bidding process. Had the sale deed been executed in favour of the second or lowest bidder, even then this highest bidder could have challenged the said sale showing that he had already acquired some inchoate interest or the interest which was developing. We find support of this legal proposition in the case cited by learned advocate Mr. Ahmed, namely the decision of our Appellate Division in **Mozher Sowdager vs. M. Zahirul Alam, 40 DLR (AD)(1988)-62**. Therefore, it

cannot be said that the auction purchaser-opposite party No.1 did not have any right or interest which pre-existed the auction sale concerned.

4.9 Alternatively, even for the sake of argument, if we hold that the opposite party No.1-auction purchaser did not have any interest pre-existing the auction sale concerned, he can still invoke the provisions under Section 57 of the Artha Rin Adalat Ain, 2003 which clearly provides that the Adalat concerned always possesses an inherent power for ends of justice or for preventing abuse of the process of the Court.

4.10 It has already been well settled that any mistake on the part of the Court, or any mistake or fraudulent act by any party before the Court, can be corrected by the Court concerned in exercise of its inherent power. Even a learned advocate present in Court, who is not engaged by either of the parties, may draw the attention of the Court to any mistake committed by it or any fraudulent act committed by the parties, and for this attention of the Court, the person who is bringing such attention of the Court to such

fraudulent act or mistake need not be a party to the suit or execution proceedings concerned. Since the power to prevent the abuse of the process of the Court is an inherent power of a Court or Artha Rin Adalat under Section 57 of the Artha Rin Adalat Ain, the Adalat concerned can even suo-moto take cognizance of such fraudulent act or mistake committed by anyone before the Court or any parties of a particular proceeding in that Court.

4.11 Admittedly, the allegation of the opposite party No.1-plaintiff in the suit concerned is that while selling the 'Ka' schedule property through auction in view of the provisions under Section 33(5) of the Artha Rin Adalat Ain, the Bank officials fraudulently handed over a different plot of land in favour of the opposite party No.1. Therefore, according to such allegation, either a mistake has been committed by the Bank officials or a fraudulent act has been done by them. In both situations, the alleged victim of such fraudulent act or mistake can bring such mistake or fraudulent act to the notice of the Court concerned even after disposal of the proceeding. For bringing

such act to the notice of the Court, a person need not be a party to the proceedings concerned or he does not need to show that he had a right which pre-existed the sale concerned.

4.12 This being the position of law, we are of the view that the opposite party No.1-auction purchaser could have easily drawn the attention of the executing Adalat to the alleged fact that he had been given wrong plot pursuant to the auction sale under 33(5) of the Artha Rin Adalat Ain 2003. In which case, the Artha Rin Adalat concerned could have easily recalled the order by which the Artha Rin execution case was disposed of after such sale.

4.13 It cannot be denied that the auction sale concerned, though done by the Bank, was done in accordance with the provisions of the Artha Rin Adalat Ain, namely pursuant to a proceeding before the Artha Rin Adalat or an order from such proceedings. Therefore, it cannot be said that the sale concerned was not the subject matter of proceedings or order, judgment or decree of the Artha Rin Adalat given that

the Bank admittedly sold the said property in order for execution of a decree passed in its favour in the Artha Rin Adalat. However, while we are taking this view, we are of the view that once the opposite party No.1-plaintiff succeeds in proving that wrong plot had been delivered to him, he would be entitled to seek appropriate compensation against the Bank officials through a competent civil Court as the claim of such compensation would be a different issue. However, before seeking such compensation, the plaintiff will have to first establish that the delivery of possession was in fact given fraudulently, and to prove such allegation, the proper forum is the said executing Artha Rin Adalat.

4.14 This being the position, the suit concerned is directly hit by the provisions under Section 20 of the Artha Rin Adalat Ain 2003. Accordingly, the Court below has committed gross illegality in rejecting the application filed by the defendant-petitioner under Order VII, rule 11(d) read with Section 151 of the Code of Civil Procedure .This being our considered view, we hold that the plaint concerned was liable to

be rejected. In view above, we find merit in the Rule and as such the same should be made absolute.

4.15 In the result, the Rule is made absolute. The impugned order dated 18.08.1999 is set aside. Thus, the plaint in Money Suit No. 03 of 2019 is hereby rejected.

Send down the lower Court records at once.

Communicate this.

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(Sheikh Hassan Arif,J)

I agree.

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(Ahmed Sohel, J)