

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

WRIT PETITION NO. 5516 OF 2020

IN THE MATTER OF

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

-AND-

IN THE MATTER OF:

Mortuzar Rahman

... Petitioner

-Versus-

Artha Rin Adalat No. 4, Dhaka and
another

... Respondents

Mr. Hossain Ahamed (Ashik), Advocate

.....For the petitioner

Mr. Iftekher Ahmed, Advocate

..... For respondent No. 2

The 08th day of November, 2023

Present:

Mr. Justice J.B.M. Hassan

and

Mr. Justice Razik-Al-Jalil

J.B.M. Hassan, J:

By filing an application under Article 102 of the Constitution,
the petitioner obtained the Rule Nisi in the following terms:

“Let a Rule Nisi be issued calling upon the
respondents to show cause as to why the order no.
27 dated 26.01.2020 passed by the learned Judge,
Artha Rin Adalat No. 4, Dhaka in Artha Rin Suit
No. 576 of 2017 rejecting the petitioner's
application for mediation under section 22 of the
Artha Rin Adalat Ain, 2003 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.”

Relevant facts for disposal of the Rule Nisi are that the respondent-bank, namely, Social Islami Bank Limited, Babu Bazar Branch, Dhaka, as plaintiff, instituted Artha Rin Suit No. 576 of 2017 before the Artha Rin Adalat, 4th Court, Dhaka (“**the Adalat**”) for realization of loan amounting to Tk.4,09,74,393.12 (four crore nine lac seventy four thousand three hundred ninety three and twelve paisa) with interest till realization.

In the suit, the petitioner as defendant No. 4 alongwith defendants No. 1 and 2 filed an application seeking appointment of Mediator in accordance with section 22 of the Artha Rin Adalat Ain, 2003 (“**the Act, 2003**”). The Adalat by the impugned order dated 26.01.2020 rejected the said application which led the petitioner to file this writ petition.

After placing the impugned order, Mr. Hossain Ahamed (Ashik), learned Advocate for the petitioner submits that appearing in the suit the petitioner filed written statement on 13.11.2019 and immediately thereafter, he alongwith two others filed the application for appointment of Mediator in accordance with section 22. But the Adalat on misconception of law rejected the prayer by the impugned order dated 26.01.2020.

On the other hand, Mr. Iftekher Ahmed learned Advocate for respondent No. 2 contends that the mediation process was exhausted earlier in accordance with section 22 of the Act, 2003 considering which the Adalat rejected the petitioner's prayer. As such, there is no illegality in passing the impugned order.

We have gone through the writ petition and other materials on record.

It appears that the suit was filed in the year 2017 and then it proceeded upto the stage of passing the ex-parte decree. At that time the defendant No. 3 appeared in the suit and filed written statement. At the relevant time, the suit was being at the stage for mediation, the Mediator was appointed on 29.05.2019 in accordance with section 22 of the Act, 2003. The mediation process ended on 16.07.2019. Thus, the mediation process under section 22 of the Act has already been exhausted at the instance of the Chairman of the borrower-company as defendant No. 3. Therefore, at this stage there is no scope to take back the suit again for mediation without consent of the bank. Considering all aspects, the Adalat rightly rejected petitioner's prayer.

In view of the above discussions, we do not find any merit in the Rule Nisi.

In the result, the Rule Nisi is discharged without any order as to costs.

Communicate a copy of the judgment and order to the respondents at once.

Razik-Al-Jalil, J:

I agree.