

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)
WRIT PETITION NO. 2351 OF 2021

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. Rafiqul Islam (Fenu)

.....Petitioner

-Versus-

Judge, Artha Rin Adalat & Joint District
Judge, 1st Court, Shylet and another

..... Respondents

Mr. Chowdhury Murshed Kamal Tipu,
Advocate

...for the petitioner

Mr. ASM Abdur Razzaque, Advocate

...for the respondent No.2

Heard on: 09.02.2023

Judgment on: 29.08.2023

Present:

Mr. Justice Abu Taher Md. Saifur Rahman

And

Mr. Justice A. K. M. Rabiul Hassan

A. K. M. Rabiul Hassan, J:

This Rule was issued on an application filed by the Petitioner under
Article 102 of the constitution, calling upon the respondents to show
cause as to why the proceedings of the Artha Rin Suit No.34 of 2015

shall 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.

At the time of issuance of the Rule, this court was pleased to stay the further proceedings of the aforesaid Artha Rin Suit No. 34 of 2015 for a period of 3(three) months from the date, which was time to time extended by this court.

For disposal of this Rule, the relevant facts may briefly be stated as follows:

That the Respondent No.2, Pubali Bank Limited as a Plaintiff filed an Artha Rin Suit No.34 of 2015 against the petitioner and others for the realization of the outstanding loan amounting to Tk.10,20,24,028.53 (Taka Ten Crore Twenty Lac Twenty Four Thousand Twenty Eight and Fifty Three Paise) before the Second Court of Artha Rin Adalat and Joint District Judge, Sylhet. Thereafter, the present petitioner duly appeared in the aforesaid Artha Rin Suit and submitted a written statement. Thereafter, the suit was ready for hearing and at this stage, the petitioner challenging the proceeding of the aforesaid Artha Rin Suit No.34 of 2015 in violation of the provision of Section 6(2) of the Artha Rin Adalat Ain, 2003 and obtained the instant Rule and stay the proceeding of the aforesaid Artha Rin Suit No.34 of 2015.

Mr. Chowdhury Mirshed Kamal Tipu, the learned Advocate for the petitioner submits that Artha Rin Adalat Ain is a special law and special procedures have been laid down therein. As per provision of section 6(2)

of the Artha Rin Adalat Ain, 2003, the plaint has to be submitted before the Court along with an ad valorem fees. In the instant case, the aforesaid Artah Rin Suit was filed on 27.05.2015 without depositing the required court fees, which is a clear violation of the aforesaid provision of Section 6(2) of the Artha Rin Adalat Ain, 2003 and, as such, the aforesaid proceeding is initiated without lawful authority and is no legal effect. In support of his contention, he relied upon the decision in the case of *M.A. Bari Talukder Vs. Agrani Bank Limited and others* as reported in 8 ADC (AD) page 425.

As against this, Mr. ASM Abdur Razzaque, the learned Advocate for the respondent No.2 submits that the instant case was filed on 27.05.2015, and subsequently, as per court order dated 07.06.2015, the plaintiff bank deposited the rest of the court fees of amounting to Tk.49,900/- on 07.06.2015 and thereafter, the concerned court below proceed with the suit and issued summons upon the defendants vide its order dated 07.06.2015. So after complying with provision of the Section 6(2) of the Artha Rin Adalat Ain, 2003, the aforesaid suit was filed in accordance with law.

Heard the submissions of the learned Advocate for both sides and perused the writ petition along with the materials on record thoroughly.

In order to appreciate the contention of the learned Advocate for the petitioner it is necessary to examine the relevant provision of Section 6(2) of the Artha Rin Adalat Ain, 2003, which reads as follows:

“A suit under this Act shall be instituted by presenting a plaint by the financial institution, an affidavit shall be enclosed with the plaint in support of the statement of the plaint and the relevant documentary evidence, the Court – fees (ad valorem) payable with the plaint shall be paid, and the plaint, so presented, if found just and proper shall be included at seriatim in the prescribed register of the Court.”

On perusal of the aforesaid provisions, it transpires that section 6(2) of the Ain prescribed the procedure for filing an Artha Rin Suit before the Court wherein it provides that an Artha Rin Suit has to be filed by presenting a plaint along with an affidavit in support of the averments of the plaint and the relevant documentary evidence and the required advalorem court fees for the purpose of registration of the suit. So it is clear that unless an affidavit in support of the plaint and the requisite ad valorem court fees has been filed it cannot be said that the Artha Rin Suit has been registered properly.

On perusal of the instant writ petition it transpires that the trial court vide its order No. 1 dated 27.05.2017 registered the suit as Artha Rin Suit No. 34 of 2015 and fixed the next date on 07.06.2015 for submitting the deficit court fees by the plaintiff bank. Accordingly, the plaintiff bank deposited the rest of the court fees amounting to Tk.49,900/- on 07.06.2015. After depositing the required court fees, the trial court below passed the order 07.06.2015, which is reproduced as follows:

“আরজির অপূরনীয় কোর্ট ফি দাখিল এর জন্য দিন ধার্য। বাদী পক্ষ আরজির লিখিত অপূরনীয় ৪৯,৯০০/- টাকার এডভোলারাম কোর্ট ফি দাখিল। কোর্ট ফি নথি সামিলে রাখা হোক। কোর্ট ফি সঠিক থাকিলে আগামী ০৭/০৭/২০১৫ইং তারিখ ফেরত ধার্যে সমনাদি ইস্যু করা হোক। ধার্য তারিখ সমন/এডি ফেরত।”

On perusal of the aforesaid order it transpires that only after depositing the required ad valorem court fees, the trial court proceed with the case and issued the summons accordingly. Since at the time of filing the Artha Rin Suit on 27.05.2015, the plaint was not accompanied with the requisites advoerem court fee the plaint was not filed property as per Section 6(2) of the Artha Rin Adalat Ain, 2003. On 07.06.2015 only when the ad valorem court fee was filed then only the plaint of the Artha Rin Suit in question become ready for registration as quoted above Section 6(2) of the Artha Rin Adalat Ain, 2003. Where the special law clearly provides when the plaint of the Artha Rin Suit is filed properly i.e. filed along with an affidavit and ad valorem court fee then only it can be registered, the registration of the Artha Rin Suit in question before filling of the ad valorem court fee was illegal being in contravention of the provision of section Section 6(2) of the Artha Rin Adalat Ain, 2003. So in view of the above discussion, our view is that since in the present case the ad valorem court fee was filed on 07.06.2015 the plaint has to be deemed to have been filed and registered on that very date i.e. 07.06.2015. Our this view gets support from the decision in the case of *M.A. Bari Talukder –vs- Agrani Bank and others* reported in 8 ADC 424. Therefore, in the instant case, we do not find any violation of the

provision of Section 6(2) of the Artha Rin Adalat Ain, 2003. So the contention as raised by the petitioner is not accepted.

Having regard to the facts and circumstances of the case and the reasons as stated above, we do not find any substance of this Rule.

As a result, the Rule is discharged.

Since the aforesaid Artha Rin Suit No.34 of 2015 is an old case and therefore, the concerned trial court below is hereby directed to dispose of the aforesaid Artha Rin Suit No.34 of 2015 expeditiously without giving any unnecessary adjournment to either parties.

Communicate this judgment and order to the concerned court below at once.

Abu Taher Md. Saifur Rahman, J

I agree.