

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

WRIT PETITION NO. 3103 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:

Khandaker Md. Mainuddin Ishaque

... Petitioner

-Versus-

Artha Rin Adalat No. 2, Dhaka and  
others

... Respondents

Mr. Kamal Hosain Meahzi, Advocate

.....For the petitioner

Ms. Umme Apanan for

Mr. Mohammad Mijanur Rahman,  
Advocate

..... For the respondent No. 2

The 16<sup>th</sup> day of October, 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 impugned order No. 24 dated 16.02.2020 (Annexure-C) passed by the learned Artha Rin Adalat No. 2, Dhaka in Artha Jari Case No. 77 of 2015 rejecting the application of the petitioner to release the land in question under section 57 of the Artha Rin Adalat Ain should not be declared to have been done 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, Jamuna Bank Limited as plaintiff obtained a decree from the Artha Rin Adalat, 2<sup>nd</sup> Court, Dhaka for Tk.107,86,90,728.62 along with interest up-to-date till realization. Pursuant the said decree the Artha Execution Case No. 77 of 2015 was filed for realization of the decretal dues. In the execution proceeding, the petitioner filed an application under section 57 of the Artha Rin Adalat Ain, 2003 on 26.11.2019 praying for passing an order to set aside the auction held on 31.10.2019. The Adalat by the impugned order dated 16.02.2020 rejected the said application. Against the said order, the writ petitioner filed this writ petition and obtained the instant Rule Nisi.

The respondent-bank did not file any affidavit-in-opposition.

Mr. Kamal Hossain Meahzi, learned Advocate for the petitioner submits that the petitioner is neither a mortgagor nor a guarantor and the subject property was not incorporated in the plaint even. By exercising fraud the Bank obtained the order of attachment relating to the subject property during pendency of the suit under Order 38 Rule 5 of the Code of Civil Procedure

(“**the Code**”) and as such it cannot be disposed of under the present execution case. He further submits that the subject property is ejmali property and a partition suit is now pending before the competent Court. Therefore, without disposal of the said suit, the execution case relating to the said property should not be proceeded.

Ms. Umme Apanan, learned Advocate for the respondent-bank contends that the petitioner did not avail the remedy under section 32 of the Artha Rin Adalat Ain, 2003 to claim the property under the execution proceeding and that since there is a specific provision, the application under section 57 of the Artha Rin Adalat Ain, 2003 was not maintainable. Considering which the Adalat rejected the application.

In reply, Mr. Kamal Hossain Meahzi, learned Advocate for the petitioner further submits that the property was attached before judgment and thereby it became part of the decree. In such circumstances, section 32 is not applicable due to which the petitioner filed the application under section 57 of the Act, 2003. In support of his submission, learned Advocate refers to the case reported in 2 CLR (AD) 54.

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

To appreciate the submissions of both the parties, we have gone through section 32 of the Artha Rin Adalat Ain, 2003 which runs as follows:

“৩২। ১ অর্থঋণ আদালতের ডিক্রী বা আদেশ হইতে উদ্ধৃত জারী মামলায় কোন তৃতীয় পক্ষ দেওয়ানী কার্যবিধি আইনের বিধানমতে দাবী পেশ করিলে আদালত প্রাথমিক বিবেচনায় উক্ত দাবী সরাসরি খারিজ না করিলে ডিক্রীদার অনুধর্ষ ৩০ ত্রিশ দিবসের মধ্যে উহার বিরুদ্ধে লিখিত আপত্তি দায়ের করিয়া শুনানী দাবী করিতে পারিবেন।

২ উপরোক্ত মতে দাবী পেশ করিবার ক্ষেত্রে দরখাস্তকারী ডিক্রীকৃত অর্থের অথবা ডিক্রীকৃত অর্থের আংশিক ইতিমধ্যে আদায় হইয়া থাকিলে অনাদায়ী অংশের ১০ এর সমপরিমাণ জামানত বা বন্ড দাখিল করিবে এবং অনুরূপ জামানত বা বন্ড দাখিল না করিলে উক্ত দাবী অগ্রাহ্য হইবে।

৩ অর্থঋণ আদালত উপ ধারা ১ এর অধীনে কোন দাবী বিবেচনার্থগ্রহণ করিলে সংশ্লিষ্ট বিষয়ে লিখিত আপত্তি দাখিল হওয়ার ৩০ ত্রিশ দিবসের মধ্যে উহা নিষ্পন্ন করিবে এবং কোন কারণে ৩০ ত্রিশ দিবসের মধ্যে উহা নিষ্পন্ন করিতে ব্যর্থহইলে কারণ লিপিবদ্ধ করতঃ উক্ত সময়সীমা অনুধর্ষআরো ৩০ ত্রিশ দিবস বর্ধিত করিতে পারিবে।

৪ উপ ধারা ৩ এর অধীন দাখিলকৃত লিখিত আপত্তি নিষ্পন্ন করিয়া আদালত যদি অবধারণ করিতে পারে যে উপ ধারা ১ এর অধীন দাবী সম্বলিত দরখাস্তটি ডিক্রীদারের পাওনা বিলম্বিত বা প্রতিহত করিবার অসাধু উদ্দেশ্যে দায়ের করা হইয়াছিল তাহা হইলে আদালত উক্ত দরখাস্ত খারিজ করিবার সময় একই আদেশ দ্বারা উপ ধারা ২ এর অধীন দাখিলকৃত জামানত বা বন্ড বাজেয়াপ্ত করিবে এবং ডিক্রীকৃত টাকা যে পদ্ধতিতে আদায় করা হয় বা জেয়াপ্ত জামানত বা বন্ডের অধীন টাকা একই পদ্ধতিতে আদালত আদায় করিবে এবং আদায়কৃত অর্থডিক্রীদারকে প্রদান করিবে।”

From record it appears that the property was put on auction in connection with the execution case and it is also admitted position that the property was attached during pendency of the suit. However, any party can claim a property under the execution proceeding under the Artha Rin Adalat Ain, 2003. But he has to come under section 32 of the Artha Rin Adalat Ain, 2003, in compliance with the provisions and requirement provided therein. In seeking relief under section 32, the claimant can take aid of the Code, in particular, Order XXI and its relevant rules.

We have also gone through the cited case wherein the Appellate Division in doing complete justice considered certain circumstances and fraud in mortgaging the schedule property.

Considering the same, the apex Court in doing complete justice exempted the parties from seeking the relief under section 32 of the Act, 2003. But in the present case the property was attached by a judicial order by the Artha Rin Adalat and it was remained unchallenged.

Secondly, section 32 incorporates the provision allowing a third party to claim a property under the execution and in making the claim, according to the said provisions, the Code of Civil Procedure (the Code) is indicated, in particular, Order XXI. Although in Order XXI Rule 58 of the Code it was mentioned specifically that the attached property under the execution case would be subject matter of the claim. But section 32 of the Artha Rin Adalat Ain does not specify attachment or mortgage and rather the provision flatly provides scope to claim any property by the 3<sup>rd</sup> party claimant in accordance with the Code and it is the Rule 58, Order XXI of the Code which incorporates provision for investigating 3<sup>rd</sup> party's claim. Therefore, the petitioner had remedy to seek relief under section 32 of the Act, 2003 and so section 57 incorporating inherent power will not be applicable in this particular execution case.

Considering all these aspects, we do not find any illegality in passing the impugned order. Hence, the Rule fails.

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

**Razik-Al-Jalil, J:**

I agree.

S.L.B.O.