

Bench:

Mr. Justice Md. Ruhul Quddus

and

Mr. Justice S.M. Maniruzzaman

Writ Petition Number 12992 of 2019

Sarker Nahidur Rahman

..... Petitioner

-Versus-

Artha Rin Adalat Number 2, Dhaka and others

....Respondents

Mr. Khandakar Ahsan Habib, Advocate

.....for the petitioner

Mr. Chowdhury Mokimuddin KJ Ali, Advocate

.....for respondent number 2

Judgment on 09.03.2023

S.M. Maniruzzaman, J:

In this *rule nisi*, the respondents have been called upon to show cause as to why the order dated 06.10.2019 passed by the Artha Rin Adalat Number 2, Dhaka in Miscellaneous Case Number 30 of 2019 (arising out of Artha Rin Suit Number 502 of 2017) rejecting the same should not be declared to have been passed without any lawful authority and is of no legal effect and or such other or further order or orders should not be passed as to this court may seem fit and proper. At the time of issuance of the rule, the operation of the judgment and decree dated 30.06.2009 passed in the original suit was stayed.

Facts, for disposal of the rule, are that the petitioner is a businessman and for expansion of his business obtained loan amounting

to Taka 8,00,000.00 (eight lac) from the BRAC Bank Limited, Head Office, Dhaka. As, the petitioner failed to re-pay the loan, the creditor-bank instituted Artha Rin Suit Number 502 of 2017 in the Artha Rin Adalat Number 2, Dhaka which was decreed ex parte on 30.06.2019 (decree signed on 07.07.2019). The petitioner after knowing about the ex parte decree filed Miscellaneous Case Number 30 of 2019 under Section 19(2) of Artha Rin Adalat Ain, 2003 (in short, the Ain) for setting aside the ex parte judgment and decree by depositing 10% of the decretal amount that came to Taka 1,51,629.20 through a pay order.

After hearing the petitioner, the Artha Rin Adalat summarily rejected the miscellaneous case by its order dated 06.10.2019. Being aggrieved by and dissatisfied with the said order, the petitioner moved with this application and obtained the *rule*.

The petitioner by filing a supplementary affidavit further stated that during pendency of the rule, the loan in question has already been re-scheduled by the bank and as per terms of the re-schedulment, the petitioner deposited Taka 5,06,630.00 and rest amount of Taka 1,51,629.20.00 will be paid after disposal of the Case.

Mr. Khandakar Ahsan Habib, learned Advocate submits that the petitioner as a bonafide businessman has no intention to avoid the payment of loan but due to pandemic situation he was quite unable to pay the loan within the stipulated time. The petitioner duly appointed his advocate to conduct the suit, but due to negligence of the learned advocate, the artha rin suit was disposed of exparte. As soon as the petitioner came to know about the exparte decree, he filed the

miscellaneous case by depositing 10% of decretal amount, but learned Judge of the Artha Rin Adalat without considering the fact summarily rejected the miscellaneous case by the impugned order. Mr. Habib next submits that since the loan in question has already been re-scheduled by the bank and for disposal of the suit in terms of solanama, the impugned order is to be set aside for the ends of justice.

Mr. Chowdhury Mokimuddin KJ Ali, learned Advocate for the respondent-bank accepts the submission of learned Advocate for the petitioner and affirms that the loan in question has already been re-scheduled by the bank by letter dated 26.02.2003 and as per terms of the re-schedulement, the petitioner has already paid Taka 4,05,000.00 (four lac five thousand) and the rest amount of Taka 1,51,630.00 will be paid after disposal of the case. In view of the said fact he prays for passing necessary order for the ends of justice.

We have considered the submissions of the learned Advocates of both the sides, gone through the writ petition, supplementary affidavits to the writ petition and materials on record appended thereto. It appears from record that the petitioner instituted Miscellaneous Case Number 30 of 2019 under Section 19(2) of the Ain, 2003 for setting aside the ex parte decree passed by the Artha Rin Adalat on 30.09.2019. The petitioner categorically stated that the ex parte decree came to his knowledge on 22.08.2019 and finally he was confirmed about the date of ex parte decree on 25.08.2019 from the learned Advocate of the trial Court. Thereafter, he instituted the miscellaneous case on 29.08.2019 within 30 (thirty) days from the date of his knowledge. It also appears

that the petitioner has deposited 10% of the decretal amount at the time of filing of the miscellaneous case.

Section 19 (2) of the Ain provides that if any suit is decreed ex parte, the defendant may within 30 (thirty) days from the dated of such exparte decree or his knowledge about such exparte decree subject to provision of Sub section 3 file a prayer for cancellation of such exparte decree. Sub section (3) provides that the defendant shall be required to deposit 10% of the decretal amount with the application under Section 19 (2) of the Ain.

It thus appears that the petitioner instituted the miscellaneous case within 30 (thirty) days from the date of his knowledge of the exparte decree by fulfillment of the requirement as provided in Section 19 (3) of the Ain, but the learned Judge of the the Artha Rin Adalat without applying his judicial mind and without considering the relevant facts summarily rejected the miscellaneous case by the impugned order and thereby committed an error.

It further appears from the supplementary affidavit filed by the petitioner that during pendency of the rule, the loan has already been re-scheduled by the bank. As per terms of the re-schedulement, the petitioner has deposited Taka 4,05,000.00 (four lac five thousand) and the remaining amount of loan will be adjusted after settlement of the case.

In view of the stated circumstances, we find substance in the submission made by the learned advocate for the petitioner and merit in the rule.

Accordingly, the rule is made absolute, however, without any order as to costs. The impugned order dated 06.10.2019 passed by the Artha Rin Adalat Number 2, Dhaka rejecting Miscellaneous Case Number 30 of 2019 (arising out of Artha Rin Suit Number 502 of 2017) is hereby declared to have been passed without lawful authority and of no legal effect. The Artha Rin Suit Number 502 of 2017 is restored in its original file and number.

Md. Ruhul Quddus, J:

I agree.