

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

Writ Petition No. 8525 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. Yasin Khan

... Petitioner

-Versus-

Judge, Artha Rin Adalat, Chattogram and others

... Respondents

No one appears for the petitioner

Mr. Khan Mohammad Shameem Aziz, Advocate

...For the respondent No. 3

Heard on: 08.05.2024

and

Judgment on: 09.05.2024

Present:

Justice Zafar Ahmed

and

Justice Sardar Md. Rashed Jahangir

Sardar Md. Rashed Jahangir, J:

The Rule Nisi was issued on an application under article 102 of the Constitution of the People's Republic of Bangladesh calling upon the respondents to show cause as to why the order No. 22 dated 06.09.2021 passed by respondent No. 1, Judge, Artha Rin Adalat, Chattogram in Artha Jari Case No. 6 of 2019, arising out of Artha Rin Suit No. 226 of 2013, issuing warrant of arrest against the petitioner should not be declared to have been made 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 Nisi, operation of the order No. 22 dated 06.09.2021 passed by the Judge, Artha Rin Adalat, Chattogram was stayed.

Short facts necessary for disposal are that the respondent No. 3 filed Artha Rin Execution Case No. 6 of 2019 for executing a decree of Tk.37,89,158.71 with interest, other charges and cost against the judgment-debtors including the present petitioner. In the said execution case, decree holder-bank filed an application on 14.07.2019 to pass an order of civil imprisonment confining the judgment-debtors in civil confinement. On 06.09.2021 learned Judge, Artha Rin Adalat, Chattogram by his order No. 22 issued warrant of arrest against the judgment-debtor Nos. 2-4; challenging the aforesaid order of the Artha Rin Adalat, Chattogram judgment-debtor No. 2 filed this writ petition and obtained the Rule Nisi together with an order of stay.

No one appears for the petitioner.

On the other hand, Mr. Khan Mohammad Shameem Aziz, learned Advocate by filing a Vokatnama appeared on behalf of respondent No. 3 and made his submission supporting the impugned order.

It appears that the respondent No. 3, Dhaka Bank Ltd, New Market Branch, Chattogram put the judgment and decree dated 27.09.2018 passed in Artha Rin Suit No. 226 of 2013 by the Artha Rin Adalat, Chattogram in execution by filing an application for execution of decree on 15.01.2019, being Artha Rin Execution Case No. 06 of 2019. In the execution proceeding decree-holder-bank on 14.07.2019 filed an application for issuance of warrant of arrest against the judgment-debtors, contending interalia that neither any property was

mortgaged against the loan nor was there any hypothecated moveable or immoveable property to satisfy the decree and upon due diligence and search the decree-holder-bank could not find out any property owned by the judgment-debtors which can be attached and in such a scenario it prayed for a necessary order issuing warrant of arrest against the judgment-debtors. The Judge of the Artha Rin Adalat, Chattogram on being pleased by his order No. 22 dated 06.09.2021 issued warrant of arrest against judgment-debtor Nos. 2-4 including the present petitioner upon allowing the application of decree-holder.

Section 34(1) of the Artha Rin Adalat Ain, 2003 authorizes the Artha Rin Adalat to pass an order of civil imprisonment up to 6(six) months, meaning thereby that the Court has authority to order civil imprisonment for any period up to 6(six) months or any lesser period against the judgment-debtors for the purpose of compelling them to satisfy the decretal amount, but which shall not be exceeded the period of 6(six) months and in order to execute the aforesaid order of civil imprisonment or for securing service of civil confinement the adalat can issue warrant of arrest against the said judgment-debtors. The purpose of ordering the civil imprisonment in a specified manner is also necessary to determine the period for which the judgment-debtor is to put in confinement and in absence of such specified order, issuance of warrant of arrest simplicitor is an illegality. Our such view gets support from the judgment passed in the case of Ziaur Rahman (Md) Vs. Artha Rin Adalat & others reported in 64 DLR 189.

In the premise above, the order No. 22 dated 06.09.2021 passed by the Judge, Artha Rin Adalat, Chattogram in Artha Jari Case No. 06 of 2019 issuing warrant of arrest simplicitor against the judgment-

debtor-petitioner is hereby declared to have been passed without lawful authority and is of no legal effect.

Accordingly, the Rule is made absolute without any order as to cost.

However, this judgment shall have no further bearing upon the proceeding of Artha Jari Case No. 06 of 2019 and the Judge of the Artha Rin Adalat, Chattogram is at liberty to proceed with the execution case in accordance with law.

Communicate the judgment and order at once.

Zafar Ahmed, J:

I agree.