

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)
WRIT PETITION NO. 2349 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:

Hafez Abdul Hannan Molla

.... Petitioner

- Versus -

The Government of People's Republic of
Bangladesh and others.

.....Respondents

Mr. Tajul Islam Miajee, Advocate

.....For the Petitioner

Mr. Ahmed Mahbubul .H. Khan, Advocate

.....For the Respondent No.3

Mr. Mohammad Waliul Islam Oli, D. A. G. with

Ms. Shadia Afrin Shapla, D. A. G. with

Ms. Nilufar Yesmin, A.A.G. with

Mr. Md. Moshir Rahman, A.A.G. with

Mr. Md. Motasim Billah Parvez, A.A.G. with

Mr. Md. Faridul Islam, A.A.G.

.....For the Respondents Government

**Heard on 03.12.2025, 04.12.2025 &
15.12.2025**

Judgment delivered on 18.12.2025

Present :

Mr. Justice Yousuf Abdullah Suman

And

Mr. Justice Dihider Masum Kabir

Dihider Masum Kabir, J

On an application filed under Article 102 of the Constitution of the
People's Republic of Bangladesh, the Rule was issued on 08.11.2021 and
Artha Execution Case No. 8 of 2013 was stayed for a period of 1 (one)
year from date as under:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the order dated 06.01.2021 passed by the learned Judge, Artha Rin Adalat No.1, Faridpur (Respondent No.4) in Artha Jari Case No. 8 of 2013 arising out of Artha Rin Suit No. 14 of 2007 rejecting the application of the petitioner challenging the aforesaid Artha Jari Case No. 8 of 2013 (Annexure-J to the writ petition) should not be declared to be without lawful authority and of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper.

Subject to the disposal of the Rule, all further proceedings of the Artha Jari Case No. 8 of 2013 arising out of Artha Rin Suit No. 14 of 2007 pending before the respondent No. 4 be stayed for a period of 01 (one) year from date.”

The facts relevant for the disposal of the instant Rule as made out in the writ petition, in short, are that the petitioner Hafez Abdul Hannan Molla is a mortgagor as well as a guarantor of the loanee Hasan Ali. Hasan Ali availed loan of Tk.200,000/- from respondent No. 3, Agrani Bank Ltd. and paid only Tk. 32,000/- and became loan defaulter. Subsequently, the respondent No. 3 filed Artha Rin Suit No. 14 of 2007 for liabilities amount as on 31.08.2007 at Tk.3,18,859.50. Thereafter, the respondent No.3 filed an Artha Execution Case No. 10 of 2008 against the petitioner and the borrower for realization of decretal amount of Tk.3,18,859.50 and order No. 46 dated 07.10.2012 was passed for issuing certificate under section 33 (5) of Artha Rin Adalat Ain, 2003 and the case was disposed of. Subsequently, the certificate was signed on 15.10.2012 vide order No.47. The respondent No. 3 filed another Artha Execution Case No. 08 of 2013 on 09.10.2013. The petitioner was not a loanee, he was mortgagor as well as a guarantor and paid Tk.1,92,000/=. The petitioner filed application on 06.01.2021 for dismissing the Artha Jari Case No. 8 of 2013 which was rejected on 06.01.2021 vide order No. 51. Challenging the rejection order dated 06.01.2021, the petitioner moved before this Division and obtained an ad-interim order of stay for a period of 1 (one) year from date.

Respondent No. 3, Manager, Agrani Bank PLC., filed affidavit in opposition on 31.07.2024 stating inter alia that the submissions of the writ petitioner are misconceived, misleading and not tenable in the eye of law, hence strictly denied by the respondent. The writ petition is not maintainable in law and insufficient for invoking writ jurisdiction.

Learned Counsel Mr. Tajul Islam Miajee appearing on behalf of the petitioner submits that the petitioner was not a borrower, was a mortgagor as well as a guarantor and paid Tk.1,92,000/-. He further submits that in this instant case the learned Artha Rin Adalat No. 1, Faridpur did not follow section 28(3) of Artha Rin Adalat Ain, 2003 and continued the 2nd execution case, though the 2nd execution case was filed after the prescribed time of 1(one) year . The case was filed on 09.10.2013 after 01(one) year and 02 (two) days of disposal of 1st execution case on 07.10.2012. So, the instant Rule should be made absolute.

On the other hand, learned counsel Mr. Ahmed Mahbubul H. Khan appearing on behalf of the respondent No.3 submits that in the Artha Jari Case No. 10/2008, the Artha Rin Adalat No.1, Faridpur delivered the mortgaged property in favour of the bank under section 33(5) of the Artha Rin Adalat Ain, 2003 on 07.10.2012 and the case is therefore finally disposed of under section 33(9) of the Ain, 2003. He also submits that after issuing certificate under section 33(5) of the Ain, 2003, the title and ownership of the property shall automatically be vested to the decree holder respondent No. 3, Agrani Bnak Ltd. under section 33(7) of the Ain and the court became functus officio and had no Jurisdiction to decide any matter on merit. Hence, the writ petition is not maintainable and the Rule is liable to be discharged.

We have considered the submissions of the learned counsels appearing on behalf of the petitioner and the respondent No.3, perused the writ petition and affidavit in opposition and other materials on records.

On perusal of the writ petition and affidavit in opposition, it is revealed that the petitioner challenged the Artha Execution Case No.8 of 2013 which was filed on 09.10.2013 after 1(one) year and 02(two) days of dispose of 1st Execution Case No. 10 of 2008 which was disposed of on 07.10.2012 though the certificate was issued on 15.10.2012. As per section 28(3) of Artha Rin Adalat Ain, 2003, 2nd execution case shall be filed within one year from the date of disposal of 1st execution case. Let us review the relevant portion of section 28 of the Artha Rin Adalat Ain, 2003.

অর্থ ঋণ আদালত আইন, ২০০৩

২৮। জারীর জন্য মামলা দাখিলের সময়সীমা

(১)

(২).....

(৩) জারীর জন্য দ্বিতীয় বা পরবর্তী মামলা, প্রথম বা পূর্ববর্তী জারীর মামলা খারিজ বা নিষ্পত্তি হওয়ার পরবর্তী এক বৎসর সময় উত্তীর্ণ হওয়ার পরে দাখিল করা হইলে, উক্ত মামলা তামাদিতে বারিত হইবে; এবং তামাদিতে বারিত অনুরূপ মামলা আদালত কার্যার্থে গ্রহন না করিয়া সরাসরি খারিজ করিবে।

On a plain reading of the above provision of law we have found that 2nd execution case shall be filed within 1(one) year from the disposal date of 1st execution case.

We also observe that Artha Rin Adalat No.1, Faridpur delivered the mortgaged property in favour of the decree holder respondent No.3, Agrani Bank Ltd, under section 33(5) of the Artha Rin Adalat Ain, 2003 on 07.10.2012 and having passed of 06 (six) years, the title and ownership of the property has been vested automatically upon the decree holder bank.

In view of the above observations as well as the facts and circumstances of the case, we find merit in the instant Rule Nisi and accordingly the Rule is made absolute with the above observation. The proceedings of Artha Execution Case No. 08 of 2013 is declared to have been made without lawful authority having no legal effect and accordingly set aside.

However, there is no order as to costs.

Communicate the judgment and order at once.

Yousuf Abdullah Suman, J

I agree.