

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL APPELLATE JURISDICTION)

Present:

Mr. Justice S M Kuddus Zaman

And

Ms. Justice Tamanna Rahman Khalidi

*First Miscellaneous Appeal No.234 of 2019 with
Civil Rule No.631(F.M.) of 2019*

Mohammad Nurunnabi Talukder

....Appellant

-Versus-

Export Import Bank of Bangladesh Limited,
Chattogram and others

.... Respondents

None appears

.... For both the sides.

Heard on 13.05.2026 and Judgment on 14.05.2026.

S M Kuddus Zaman, J:

This First Miscellaneous Appeal is directed against the order dated 25.04.2019 passed by the learned Joint District Judge, Artha Rin Adalat, Chattogram in Miscellaneous Case No.04 of 2018 filed by the defendant No.3-judgment debtor-appellant (Arising out of Artha Rin Suit No.45 of 2009 and Execution Case No.127 of 2009) under Section 57 of the Artha Rin Adalat Ain, 2003 read with Section 476 of the Code of Criminal Procedure read with Sections 192/193/196 of the Penal Code to lodge complain after preliminary enquiry.

In this First Miscellaneous Appeal the petitioner sought an order of stay on further proceeding of Execution Case No.127 arising out of Artha Rin Suit No.45 of 2009 and on that application Civil Rule No.631(FM) of 2019 was issued. Since this First Appeal and the Civil Rule relate to same matter those are heard together and being disposed of by this single judgment.

Facts in short are that the appellant obtained loan of Taka 3,0000000/- from the respondent and as security of above loan executed and registered a deed of mortgage on 22.05.2004. Above respondent having failed to make repayment of above loan in accordance with the terms of the loan agreement the respondent as plaintiff filed Artha Rin Suit No.45 of 2009 on 30.06.2009 for recovery of Taka 3,27,32,817.19/-. The appellant having not entered appearance in above suit the learned Judge of the Artha Rin Adalat decreed above suit ex-parte on 20.08.2009.

The respondent filed above execution case and the appellant entered appearance and filed a petition on 25.10.2018 stating that the deed of mortgage allegedly executed by the appellant as security of above loan was a forged and concocted document which was not executed and registered by the respondent. On the basis of above objection Miscellaneous Case No.34 of 2018 was initiated and on consideration of submissions of the learned Advocate for the respective parties and materials on record the learned Judge of the Artha Rin

Adalat rejected above case by impugned judgment and order dated 25.04.2019.

Being aggrieved by and dissatisfied with above judgment and order of the learned Judge of the executing Court above petitioner as appellant moved to this Court and preferred this First Miscellaneous Appeal.

No one appeared for the appellant or respondents when above First Miscellaneous Appeal and Civil Rule were taken up for hearing on several dates, as such above matters were taken up for pronouncement of judgment under Order 41 Rule 30(2) of the Code of Civil Procedure, 1908.

We have carefully examined the petition dated 25.10.2018 filed by the appellant in Execution Case No.127 of 2009, the impugned judgment and order passed by the learned Joint District Judge, Artha Rin Adalat, Chattogram and all other materials on record.

It turns out from the petition dated 25.10.2018 that the appellant judgment debtor raised objection as to the genuinity and correctness of the registered deed of mortgage executed by the appellant which was produced by the respondent at trial of Artha Rin Suit No.45 of 2009 and marked as an exhibited document. It has been alleged that above deed of mortgaged was a forged and concocted document and the appellant did not execute and register above document.

An executing Court is only authorized to execute the decree in accordance with the provisions of law and an executing Court cannot go beyond the decree under execution and examine the correctness or genuinity or falsity or forgery of any document which was produced by the decree holder before the trial Court.

The appellant also sought criminal sanction under Section 476 of the Code of Criminal Procedure, 1898 alleging that above forged registered deed of mortgage was used in evidence in above proceeding of Artha Rin Suit. Above registered deed of mortgage was used as evidence before the learned Judge of the Artha Rin Adalat in Artha Rin Suit No.45 of 2009. Above mortgage deed was not produced in evidence before the learned Judge of the executing Court. Section 476 of the Code of Criminal Procedure, 1898 provides that Criminal sanction for prosecuting an offence punishable under Sections 193, 194, 195, 196, 199, 200, 205, 207, 208, 209, 210, 211 and 228 of the Penal Code, 1860 for using forged document in evidence or giving of false evidence in a Court may be granted by the Court in which above forged document was used or false evidence was given or by the Court to which above trial Court is sub-ordinate. An executing Court in which the decree was produced for execution cannot grant sanction for such criminal prosecution.

In above view of the facts and circumstances of the case and materials on record we hold that the learned Judge of the executing

Court on correct appreciation of above materials on record rightly rejected above petition which calls for no interference.

In the result, the First Miscellaneous Appeal is dismissed and the connecting Civil Rule No.631(F.M.) of 2019 is discharged.

However, there will be no order as to cost.

Tamanna Rahman Khalidi, J:

I agree.

MD. MASUDUR RAHMAN
BENCH OFFICER