

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

CIVIL REVISION NO. 387 OF 2021

In the matter of:

An application under Section 115(1) of the Code of Civil
Procedure.

AND

In the matter of:

Md. Akbor Hossain and others

.... Petitioners

-Versus-

Islami Bank Bangladesh

....Opposite-party

Mr. Kabir Mia Sarkar, Advocate

... For the petitioner

Mr. Abdul Baten, Advocate with

Mr. Muhammad Mahadi Hassan, Advocate

....For the opposite party no. 1

Heard and Judgment on 28.05.2024

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

Md. Mozibur Rahman Miah, J:

At the instance of the judgment debtor in Money Execution Case No. 1 of 2020 (formally Artha Execution Case No. 14 of 2016), this rule was issued calling upon the opposite-party no. 1 to show cause as to why the order dated 07.10.2020 passed by the learned 1st Joint District Judge and Artha Rin Adalat, Bhola in Money Execution Case No. 1 of 2020 rejecting

the application for rejection of the case should not be set aside set aside and/or such other or further order or orders be passed as to this court may seem fit and proper.

At the time of issuance of the rule, all further proceedings of the said Money Execution Case was stayed for a period of 06(six) months which was lastly extended on 03.04.2023 till disposal of the rule.

The salient facts leading to issuance of the instant rule are:

The present opposite party namely, Islami Bank Bangladesh Limited filed a case being Money Suit No. 1 of 1999 before the court of Joint District Judge, 1st court, Bhola claiming an amount of taka 45,73,550/- and in the said suit the present petitioner as sole defendant entered appearance and filed written statement to contest the same and ultimately the said suit was taken up for hearing for peremptory hearing (PH) on 24.07.2024 and the defendant prayed for adjournment which was rejected and on the following day dated 25.10.2004 it was fixed for passing judgment and the learned judge of the Artha Rin Adalat 1st court, Bhola decreed the suit on contest against the defendant directing him to pay the decretal amount with interest at the rate of 15% per annum within 30 days. However, against the said judgment and decree the present petitioner as sole defendant preferred an appeal before this court being First Appeal No. 283 of 2004 which was dismissed on 08.06.2008 for default. Then the present petitioner filed an application for re-admission of the appeal which was out of time by 3099 days and thus an application was filed under section 5 of the Limitation Act for condoning the delay, and this court upon hearing issued rule which gave rise to Civil Rule No. 148(F) (Con) of 2017. It has been informed by the learned counsel that the said rule was taken up for

hearing by this court on 18.01.2022 and the rule was discharged. In the midst of the proceedings the judgment debtor petitioner filed an application for dismissing the execution case asserting that the said case is hopelessly barred by Article 182 of the Limitation Act as that very provision clearly stipulates to file execution case within 3(three) years from the date of passing the decree and since the decree holder did not file the said execution case within time, the same cannot be proceeded with. Against that very application no written objection was filed by the decree holder and the learned judge of the Artha Rin Adalat 1st court, Bholā took up the said application for hearing on 07.10.2020 and rejected the same holding that, the said application is not liable to be entertained (দহখাস্থ মম্জুর যোগ্য ও বিবেচিত না হওয়ায়). It is at that stage, the judgment debtor as petitioner came before this court and obtained the instant rule and order of stay.

Mr. Kabir Mia Sarkar, the learned counsel appearing for the petitioner upon taking us to the revisional application in particular, the impugned order at the very outset submits that, though in the application for rejection of the execution case, the judgment debtor petitioner specifically asserted in paragraph no. 3 how the execution case will be dismissed quoting the provision of Article 182 of the 1st scheduled of Limitation Act but the learned judge while rejecting the application did not take into his judicial notice about the said legal provision and therefore the impugned order cannot sustain in law.

The learned counsel further contends that, even if the decree holder had taken resort to the provision of section 48 of the Code of Civil Procedure then the same ought to have filed within 12 years yet the execution case has also been filed beyond the said time limit provided in

section 48 of the Code of Civil procedure as well. However, the learned counsel in support of his submission placed his reliance in the decision reported in 16 BDL AD 73 and read out the relevant paragraphs thereof.

On the contrary, Mr. Abdul Baten, the learned counsel appearing for the opposite party no. 1 opposes the contention taken by the learned counsel for the petitioner and contends that, since against the judgment and decree passed dated 25.07.2004 the present petitioner preferred First Appeal No. 283 of 2004 and record of the Money Suit was kept lying with this Hon'ble court and it was sent back only on 08.09.2016 and upon receiving the record the decree holder bank then filed the Execution Case No. 144 of 2016 on 22.09.2016 having no scope to find the said execution case barred by limited. To fortify such submission, the learned counsel also placed annexure 'B' where decreed holder filed an application for converting the Artha Execution Case into Money Execution Case where it had stated the averment as to why the said Execution Case will not be registered as Artha Execution Case rather a Money Execution Case since the Money Suit had been filed against its employee (the defendant petitioner) of the bank and the said application was allowed by the learned judge and therefore there has been no reason to find the Money Execution Case is barred by limitation since the petitioner has not challenged that very order. On those scores the learned counsel finally prays for discharging the rule.

We have considered the submission so advanced by the learned counsel for the petitioner and that of the opposite party. We have also gone through the revisional application in particular, the impugned order and other document appended therewith. In the first place, we have perused the

impugned order. On going through the same we find that, the learned judge simply rejected the application of the petitioner without assigning any reason though fact remains, the petitioner in the body of the application in particular paragraph no. 3 has clearly asserted the legal provision asserting that the Money Execution Case is barred under Article 182 of the Limitation Act. We find the assertion so made by the petitioner basis because it is admitted possession that the Money Suit No. 1 of 1999 was decreed on 25.07.2004 and the Artha Execution Case was filed on 22.09.2016 that is after more than 12 years of passing the said decree. It is the contention of the learned counsel for the decree holder opposite party that, since the lower court record was called for in connection with the First Appeal for that obvious reason, it could not prefer the execution case but that very proposition does not bear any basis as in filing an Execution Case there has been no necessary of the entire record of the trial court other than the impugned judgment and decree even for consultation which needs not to be annexed with the execution case either. The decree holder has to file the Execution Case within the statutory period of time as provided in Article 182 of Limitation Act or section 48 of the Code of Civil Procedure. The decree holder has failed to take resort to these provision of law and hence the Money Execution Case No. 1 of 2020 is absolutely barred by limitation.

We don't find any shred of substance in the impugned judgment and order which is liable to be set aside.

Accordingly, the rule is made absolute however without any order as to costs.

Resulting in, the Money Execution Case No. 1 of 2020 stands dismissed.

The order of stay granted at the time of issuance of the rule is thus recalled and vacated.

Let a copy of this order be transmitted to the court concerned forthwith.

Md. Bashir Ullah, J:

I agree.

Kawsar /A.B.O