

**IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(Civil Appellate Jurisdiction)**

**First Miscellaneous Appeal No. 185 of 2025**

**with**

**Civil Rule No. 735 (FM) of 2024**

**In the matter of:**

Zarrin Suba

...Applicant-Appellant.

-Versus-

National Credit and Commerce Bank Limited  
and others

...Opposite parties-Respondents.

Mr. Md. Sheikh Awsafur Rahman, Senior  
Advocate with

Mr. A. K. M. Ashiful Haque and

Mr. Eeshith Monzul Shohiny, Advocates

...For the Appellant.

Mr. Monjur Elahi Porag, Advocate

... For the Respondents.

**Heard on 30.06.2025, 01.07.2025 and 07.07.2025**

**Judgment on 10.07.2025**

**Present:**

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

**Md. Bashir Ullah, J.**

Since the point of law and facts so figured in the appeal and the rule are intertwined, those have been heard together and are being disposed of by this common judgment.

At the instance of the applicant in Miscellaneous Case No. 06 of 2024 preferred under section 32 of the Artha Rin Adalat Ain, 2003, read with Order 21 Rule 58 of the Code of Civil Procedure, 1908, this appeal is directed against the judgment and order dated 28.10.2024, passed by

the learned Judge, Artha Rin Adalat No. 1, Dhaka disallowing the same on contest.

The short facts leading to preferring this appeal are:

The applicant purchased the suit Flat No. 2-B, measuring 2353.32 square feet from opposite party no. 3, (Amena Islam) by a Sale Deed No. 3852 dated 02.09.2020 and took possession of the property completing all legal requirements and formalities of Rajdhani Unnayan Kartripakkha (RAJUK) and other government authorities. While in possession of the disputed property, the applicant mutated her name with RAJUK and also with the office of the Assistant Commissioner (Land). The applicant has been paying land development tax for the disputed flat regularly. Prior to the sale of the disputed property to the applicant, her vendor, Amena Islam (Opposite Party No. 3), applied to RAJUK on 08.12.2019 seeking permission to sell the disputed flat to the applicant, whereupon, RAJUK duly granted permission to sell the disputed flat. While the applicant was enjoying peaceful possession in the disputed flat, all of a sudden, she received a Legal Notice dated 04.11.2020 issued by one, Mr. Nasir Uddin, Advocate, Supreme Court of Bangladesh, on behalf of opposite party no. 1-bank stating *inter alia* that opposite party no. 2 namely Fartex Fashion Wear Limited availed loan facility to the tune of Tk.3,70,00,000/- (Taka Three Crore Seventy Lac) only from opposite party no. 1 when opposite party no. 3 mortgaged the disputed flat to opposite party no. 1 by Mortgage Deed No. 10608 dated 14.05.2007 who also executed and registered an Irrevocable General Power of Attorney being No. 10609 dated 14.05.2007 in favour of opposite party no. 1

against availing of such loan for opposite party no. 2. As the borrower, opposite party no. 2 failed to repay the loan amount, opposite party no. 1 as plaintiff then instituted Artha Rin Suit No. 194 of 2012 before the Artha Rin Adalat, 3<sup>rd</sup> Court, Dhaka and got a decree *ex parte*. Thereafter, opposite party no. 1 filed Artha Execution Case No. 1386 of 2019 before the same Court on the basis of the said decree. It has further been stated that, the opposite party no. 1 also initiated a Complaint Case being C. R. Case No. 469 of 2020 on 11.11.2020 under Sections 417/467/47/406/420/409/34 of the Penal Code, 1860 against the applicant and her vendor, Amena Islam (opposite party no. 3). Upon investigation of the case, the Police Bureau of Investigation (PBI) submitted Final Report discharging the applicant and submitted Charge Sheet against the applicant's vendor Amena Islam (opposite party no. 3) and opposite party no. 4. On the other hand, the applicant also filed a complaint case being C. R. Case No. 2784 of 2020 on 31.12.2020 under Sections 420/406/467/468/471 of the Penal Code, 1860 against the opposite party no. 3 and her daughter, Abeda Islam and PBI submitted Charge Sheet against the opposite party no. 3 who also found involvement of one, Md. Saiful Alam, Assistant Director, Estate and Land- 1, RAJUK, in the matter.

However, the applicant came to know that Artha Rin Suit No. 194 of 2012 was decreed *ex parte* on 29.08.2019 and a decree was drawn on 05.09.2019 and pursuant to the said decree, opposite party no. 1 filed Artha Execution Case No. 1386 of 2019 (later renumbered as Artha Execution Case No. 156 of 2024) before the Artha Rin Adalat, 3<sup>rd</sup> Court,

Dhaka. The applicant also came to know that the executing Court vide Order No. 6 dated 02.11.2020 fixed the date of auction of the mortgaged properties to be held on 20.01.2021 by publishing auction notice in the 'Daily Amader Shomoy' and the 'Daily Samakal' on 14.12.2020 inviting bids from interested purchaser. The applicant finding no other alternative then filed Miscellaneous Case No. 04 of 2021 (later renumbered as Miscellaneous Case No. 06 of 2024) before the Artha Rin Adalat, 3<sup>rd</sup> Court, Dhaka, under Section 32 of the Artha Rin Adalat Ain, 2003 read with Order 21 Rule 58 of the Code of Civil Procedure, 1908 praying for releasing the disputed flat from auction sale. Upon hearing, the learned Advocates for the applicant and the opposite party no. 1, bank, the Artha Rin Adalat, 3<sup>rd</sup> Court, Dhaka, initially vide order dated 11.02.2021 stayed the auction of the disputed flat.

The respondent no.1 as opposite party no.1 contested the Miscellaneous Case by filing a written objection denying all the material statements so made in the application contending *inter alia* that the application is not maintainable, which is liable to be rejected.

In order to dispose of the Miscellaneous case, the learned Judge of the trial court framed 02(two) distinct issues and the applicant examined 02(two) witnesses in support of her case while the opposite parties examined 01(one) witness. Apart from that, the petitioner produced several documents which were marked as exhibit nos. '1-15' series while the opposite parties also produced some documents which were marked as exhibit nos. '1-3 series'.

Upon hearing the parties and due considering the materials and evidence on record, the learned Judge dismissed the Miscellaneous Case on contest against opposite party no. 1 by impugned judgment and order dated 28.10.2024.

Being aggrieved by and dissatisfied with the said order dated 28.10.2024 passed by the learned Judge, Artha Rin Adalat No.1, Dhaka in Miscellaneous Case No. 06 of 2024, the applicant as appellant preferred this appeal.

At the time of admission of the appeal, the appellant as petitioner filed an application for stay of the operation of the impugned judgment and order dated 28.10.2024 and this court vide order dated 15.12.2024 issued Rule and stayed the operation of the impugned judgment and order passed in Miscellaneous Case No.06 of 2024 for a period of 06(six) months which was lastly extended on 01.06.2025 for 03(three) months.

Mr. Md. Awsafur Rahman along with Mr. Eeshith Monzul Shohiny, the learned counsels appearing on behalf of the appellant upon taking us to the impugned judgment and order, Memorandum of Appeal and application for stay at the outset submits that, the learned judge erred in law in failing to consider the case of the applicant in its proper perspective and had the case of the applicant considered, the impugned judgment and order would have been otherwise. To supplement the said submission, the learned counsel further submits that the Court did not proceed to examine or investigate the claim and objection raised by the applicant and no enquiry was made and thereby committed a grave

illegality and hence the impugned judgment and order suffers from infirmity.

The learned counsel further contends that the foundation of Artha Rin Suit no. 194 of 2012 was based on fraudulent activities allegedly committed by respondent no. 3 in collusion with respondent no.1 and therefore the respondent no.1 thus cannot reap the benefits out of such fraud, in view of the established legal maxim that “fraud vitiates all judicial proceedings” as held by the Appellate Division in the case of *Government of Bangladesh and another vs. Mashiur Rahman and others* reported in 50DLR(AD)205.

He next contends that the learned Judge, Artha Rin Adalat No. 1, Dhaka, while passing the impugned Judgment and Order dated 28.10.2024 disregarded the fact that the disputed property being a leasehold property, sale permission was obtained from the original Lessor i.e. the Rajdhani Unnayan Kartripakkha (RAJUK) prior to purchase.

The learned counsel next submits that the disputed property is the only homestead of the appellant and in purchasing the disputed flat, the appellant and her husband exhausted all their personal savings and also borrowed a large amount of money from their close relatives and by committing fraud the respondent nos. 1 and 3 has put the appellant in extremely vulnerable and precarious position, which was not properly appreciated by the Court below rendering the impugned judgment and order unsustainable in law.

In the same vein, Mr. A.K.M. Ashiful Haque, the learned counsel contends that, the respondent no.3 obtained permission from RAJUK to mortgage the suit property to respondent no.1 for a home renovation loan but fact remains the respondent no. 1 disbursed a commercial loan and thereby committing a serious fraud but the learned judge failed to evaluate this aspect and thus most erroneously passed the impugned judgment and order which is liable to be set aside.

In support of his contention, the learned counsel has referred to the decisions passed in the cases of *Md. Sekandar and another Vs. Janata Bank and others*, reported in 9ALR(AD)81, *National Bank Limited and another Vs. MR Trading Company and others*, reported in 72DLR(2020)1, *Grindlays Bank Ltd Vs. Murree Brewery Company Ltd and another*, reported in PLD 1954 Lahore 745, *Ram Chandra Singh Vs. Savitri Devi and others*, reported in (2003) 8 SCC319. With these submissions and relying on these decisions, the learned counsel finally prays for allowing the appeal by setting aside the impugned judgment and order and making the rule absolute.

*Per contra*, Mr. Monjur Elahi Porag, the learned Advocate appearing on behalf of the respondent-opposite party no. 1 by filing a counter-affidavit, very robustly opposes the contention taken by the learned senior counsel for the appellant and contends that the applicant-appellant's allegation that RAJUK was unaware of the mortgage of the disputed property in favour of the opposite party no.1-bank has not been substantiated by any document where RAJUK has not denied of taking mortgage of the disputed flat and thus mere allegation of fraud

unsupported by evidence cannot stand in the eye of law. He further submits that the opposite party no. 1-bank did not commit any fraud in obtaining the decree from the Artha Rin Adalat nor by publishing auction notice by filing execution case to sell the mortgaged property and the Artha Rin Adalat by considering the evidence rightly rejected the Miscellaneous Case.

The learned Advocate further contends that if the applicant-appellant feels aggrieved by the conduct of opposite party no.3-judgment-debtor, she may initiate independent legal proceedings against her and RAJUK and may claim appropriate compensation from them but she is not entitled to any remedy out of the Miscellaneous Case. He further contends that whether the loan disbursed to the judgment-debtor no. 3 for commercial or residential purpose and whether the mortgagor committed fraud in taking permission from RAJUK are all immaterial in adjudicating the Miscellaneous Case filed under section 32 of the Artha Rin Adalat Ain, 2003.

The learned counsel submits that the deed of mortgage was executed on 14.5.2007 in favour of the respondent no. 1 and after a lapse of 13 years, the opposite party no.3 sold the self same flat to the appellant on 02.09.2020 depriving the opposite party no.1-bank from realising its decretal dues where there is no illegality or infirmity in the impugned judgment and order which is liable to be sustained. With these submissions, the learned counsel prays for dismissing the appeal by affirming the impugned judgment and order and discharging the rule.



We have carefully considered the submissions advanced by the learned counsels for both the parties, perused the memorandum of appeal, counter-affidavit, impugned judgment and order and other materials on record.

It is undisputed that respondent-opposite party no. 2 namely, M/S. Fartex Fashion wear Ltd. availed loan facilities of Taka 3,70,00,000/- from opposite party no.1, namely National Credit and Commerce Bank Ltd. by mortgaging the suit flat along with other properties. Opposite party no.3, Mrs. Amena Islam mortgaged the suit flat to opposite party no.1 through Mortgage Deed No. 10608 on 14.05.2007 as a collateral of the said loan. But as the opposite party nos. 2 and 3 failed to repay the loan, the bank instituted Artha Rin Suit and the Artha Rin Adalat decreed the suit *ex parte*. But since the judgment-debtor failed to repay the decretal amount to the bank as decree holder filed the Artha Execution Case. Meanwhile, the appellant as third party to the execution case filed the Miscellaneous Case. However, the execution Court passed the impugned judgment and order on 28.10.2024 dismissing the case refusing to release the suit flat.

On going through the impugned judgment and order, we find that the claimant-applicant examined as many as two witnesses in support of her case and produced several documents which were marked as exhibit nos. '1-15' series and opposite party-respondent no.1 also examined one witness and produced documents in support of their case. After considering the submission advanced by the petitioner to the

Miscellaneous Case, the Artha Rin Adalat passed the impugned judgment and order which we find to be reasonable.

Further, the evidence of Mr. Sheikh Awshafur Rahman, appeared as Pt.W 1 reveals that no search was conducted by the appellant before the concerned sub-registry office before purchasing the suit property as in his cross-examination, he asserted that “তফসিল বর্ণিত ভূমি ক্রয়ের সময় বন্ধকী দলিল বিষয়ে জানতাম না। নালিশী জমি ক্রয়ের পূর্বে সাব রেজিঃ অফিসে তল্লাশি করি নাই। দরকার ছিল না।” But the appellant as purchaser of the suit flat was responsible to verify the genuineness and non-encumbrance of the suit flat to ascertain whether the transferor, Amena Islam has valid title and ownership over the suit flat.

It appears from the record that the Mortgage Deed No. 10608 was executed by the respondent no. 3 in favour of respondent no. 1 on 14.05.2007 whereas the sale deed in favour of the appellant was executed on 02.09.2020 that is, after a lapse of 13 years. It is a settled principle that an earlier deed will take precedence over a subsequent deed. It is decided by this Court in *Jainullah and another Vs. Anu Mia and others*, reported in 15DLR77 that in case of successive transfers of the self same property in favour of different persons by a common vendor by registered documents, the dispute as to the precedence of one document over the other has to be determined in accordance with the principles laid down in section 47 of the Registration Act. Thus the subsequent deed dated 02.09.2020 is hit by the provision laid down in section 47 of the Registration Act.

It is claimed by the appellant that the respondent-opposite party no. 3 obtained permission from RAJUK to mortgage the property to respondent no. 1 for the purpose of a house renovation loan, but the bank disbursed a commercial loan and thereby the opposite party no. 3 in collusion with the opposite party no. 1-bank committed a serious fraud. In reply, the learned Advocate for the opposite party-respondent no. 1 submits that whether the loan disbursed was commercial or residential and whether the permission given by RAJUK was for renovation of home loan are immaterial in the context of loan recovery proceedings under the Artha Rin Suit as well as Artha Execution Case which is not matters to be determined in a Miscellaneous case filed under section 32 of Act. We find substance in the submission made by the learned Advocate for respondent no. 1-bank. The applicant-appellant being a subsequent transferee is not entitled to take advantage of the fraud alleged to have committed between opposite party nos. 1 and 3.

On top of that since the suit flat was earlier mortgaged with respondent no. 1 by the respondent no. 3 and respondent no. 1 got a decree so there is no legal impediment to sell the mortgaged flat in execution case through auction and for the obvious reason, the appellant is not entitled to have the suit flat released.

We find no illegality or perversity in the impugned judgment and order passed by the learned judge of the Artha Rin Adalat. The appellant has failed to prove her claim under section 32 of the Artha Rin Adalat Ain.

Given the above facts and circumstances, we do not find any iota of illegality in the judgment and order passed by the learned Judge, Artha Rin Adalat No. 1, Dhaka in Miscellaneous Case No. 06 of 2024. We also find no merit or substance in the appeal and the Rule.

Accordingly, the appeal is dismissed, however without any order as to costs.

The judgment and order dated 28.10.2024 passed by the learned Judge, Artha Rin Adalat No. 1, Dhaka in Miscellaneous Case No.06 of 2024 is hereby affirmed.

Since the appeal is dismissed, the connected rule being Civil Rule No. 735(FM) of 2024, is thus discharged.

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

Let a copy of this judgment and order along with the lower courts record be communicated to the Court concerned forthwith.

**Md. Mozibur Rahman Miah, J.**

I agree