

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

**First Miscellaneous Appeal No. 205 of 2021
with
(Civil Rule No. 131 (FM) of 2021)**

In the matter of:

K.H. Reza

... Appellant-petitioner

-Versus-

National Bank Limited

... Respondents-opposite party

Mr. Mrinal Kanti Biswas, Advocate

... For the appellant-petitioner

Mr. Md. Mahbub Hasan Chowdhury, Advocate

.... For the respondent-opposite party

**Heard on 07.07.2024 08.07.2024
and Judgment on 08.07.2024**

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

Md. Mozibur Rahman Miah, J.

Since the point of law and facts so figured in the appeal as well as rule are intertwined they have heard together and are being disposed of with this common judgment.

At the instance of the defendant no. 1 of Artha Rin Suit No. 397 of 2003, this appeal is directed against the judgment and order bearing no. 108 dated 22.10.2020 passed by the learned Joint District Judge and Artha Rin Adalat, Chattogram rejecting an application so filed by the said defendant for mediation.

The short facts leading to preferring this appeal are:

The present respondent no. 1 namely, National Bank Limited as plaintiff originally filed a suit being Artha Rin Suit No. 397 of 2003 against the present appellant and 10 others for recovery of loan amounting to taka 57,92,53723.91 as of defaulted loan. To contest the said suit, the present appellant entered appearance and filed a written statement jointly with defendant nos. 3,4 and 7 denying all the material statement so made in the plaint and finally prayed for dismissing the suit. After that, the learned judge of the Artha Rin Adalat vide order dated 10.03.2019 sent the matter for mediation under the provision of section 22 of the Artha Rin Adalat Ain, 2003. Accordingly, the mediator so appointed by the plaintiff and the defendant took step to mediate the dispute among themselves. However, since the defendant-appellant did not come forward to mediate the dispute, the mediator then filed report on 29.01.2020 to the learned judge, Artha Rin Adalat seeking order for winding up the said mediation process and ultimately the learned judge of the Artha Rin Adalat vide order dated 20.09.2020 allowed the said application and accepted the report filed by the mediator setting 08.03.2020 for framing issues. However, on 22.10.2020 the defendant-appellant filed another application praying for mediation for resolving the dispute among themselves when the Artha Rin Suit was at the stage of peremptory hearing. However, the learned judge vide impugned judgment and order rejected the said application holding that, there has been no scope to resolve the dispute through mediation for the second time. It is at that stage, the defendant as appellant came before this court

and preferred this appeal as well as obtained the instant rule and order of stay and status quo on filing a separate application for stay.

Mr. Mrinal Kanti Biswas, the learned counsel appearing for the appellant-petitioner at the very outset submits that, there has been no provision in section 22 of the Artha Rin Adalat Ain, 2003 saying that no mediation can be held for the second time but when he was confronted with our query having provision in section 23 of the said Act where it has been provided that the second mediation can only be held if the other side to the suit ever gives consent to the said mediation, and at that the learned counsel finds it difficult to controvert the said legal provision of law.

In contrast, Mr. Md. Mahbub Hasan Chowdhury, the learned counsel appearing for the respondent by asserting the impugned judgment and order submits that, there has been no illegality in the impugned order since the plaintiff herein respondent, Bank did not consent to the mediation as per section 23 of the Act and thus the impugned order is liable to be sustained.

We have considered the submission so placed by the learned counsel for the appellant-petitioner and that of the respondent-opposite party and perused the impugned judgment and order and all the document so have been annexed with the application for stay. Aside from that, we have also meticulously gone through the provision so provided in section 22 and section 23 of the Artha Rin Adalat Ain, 2003. On going through the provision of section 22 we find that moment the defendant of the Artha Rin Suit files written statement the court has no

other option but to send the dispute to the concerned lawyers of the parties who then can appoint a mediator to settle the dispute amicably. In the instant case it has been found that, both the parties to the suit appointed the mediator but fact remains, though the plaintiff Bank took several steps to settle the dispute through mediation but the defendant did not come forward to mediate the dispute for which the mediator eventually filed the report before the court seeking order for wrapping up the mediation resulting in, the learned judge of the Artha Rin Adalat accepted the said report and wound up the mediation fixing 08.03.2020 for framing issues. After framing issues on that very date, when the suit was posted for peremptory hearing, the defendant then filed an application on 22.10.2020 for resolving the dispute through mediation when the learned judge of the Artha Rin Adalat rejected the application finding that, there has been no scope for second mediation which has rightly been passed. Be that as it may, though in the impugned order the learned judge has not asserted that, the second mediation can only be done if other side of the suit consents to it under section 23 of the Act. But the case in hand, since the plaintiff Bank admittedly has not consented to the mediation as sought by the defendant the learned judge has thus very perfectly rejected the application of the defendant for holding mediation which calls for no interference. On top of that, the instant appeal itself is not maintainable under section 44(2) of the Artha Rin Adalat Ain, 2003.

Given the above facts and circumstances we don't find any illegality or impropriety in the impugned judgment and order which is liable to be sustained.

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

Since the appeal is dismissed, the connected rule being Civil Rule No. 131(FM) of 2021 is hereby discharged.

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

The learned judge of the trial court is hereby directed to dispose of the Artha Rin Suit No. 397 of 2003 as expeditiously as possible preferably within a period of 02(two) months from the date of receipt of the copy of this order.

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

Md. Bashir Ullah, J.

I agree.