

Bench:
Mr. Justice Md. Ruhul Quddus
and
Mr. Justice S.M. Maniruzzaman

Writ Petition Number 11098 of 2017

Anwara Begum and others

..... Petitioners

-Versus-

Government, represented by the Secretary,
Ministry of Finance, Bangladesh Secretariat,
Dhaka-1000 and others

....Respondents

Mr. Maqbal Ahmed with
Mr. Md. Khairul Hasan, Advocates

..... for the petitioners

Mr. Md. Imam Hasan, Adcocate

.....for the respondent number 3

Judgment on 31.10.2022

S.M. Maniruzzaman, J:

This *rule nisi* was issued calling upon the respondents to show cause as to why the Judgment and Order dated 08.04.2015 (Annexure-A-1 to the writ petition) passed by respondent number 2 (District Judge, Chattogram) in Miscellaneous Case Number 11 of 2014 directing the petitioner to pay more than three times of the principal amount of loan in violation of Section 47 of the Artha Rin Adalat Ain, 2003 (in short, the Ain, 2003) and the proceedings in Miscellaneous Execution Case Number 16 of 2016 (Annexure-B1) filed by Bangladesh House Building

Finance Corporation (respondent number 3) pending before the District Judge, Chattogram should not be declared to have been passed without lawful authority and is of no legal effect.

At the time of issuance of the rule, the operation of the impugned judgment and order was stayed by this Court.

Facts relevant for disposal of the rule, in short, are that Bangladesh House Building Finance Corporation (in short, the Corporation) was established under the President's Order Number 07 of 1973. The petitioners enjoyed house building loan amounting to Taka 7,64,000.00/- from the Corporation and failed to repay the loan. In that event, the Corporation filed Miscellaneous Case Number 16 of 2015 for realization of the loan amounting to Taka 15,86,224.22/- under PO Number 7 of 1973 and obtained judgment on 08.04.2016. Thereafter, the Corporation filed Miscellaneous Execution Case Number 16 of 2015 claiming more than 200% interest in violation of Section 47 of the Artha Rin Adalat Ain, 2003. Hence the instant writ petition is filed.

Mr. Maqbal Ahmed, learned Advocate for the petitioners submits that the Corporation in violation of Section 47 of the Ain, 2003 filed the Miscellaneous Execution Case claiming more than 200% interest the judgment and as such, the Miscellaneous Execution Case is liable to be declared to be without lawful authority.

On the other hand, Mr. Md. Imam Hasan, learned Advocate for respondent number 3 referring to the affidavit-in-opposition submits that

the judgment and order passed by the District Judge, Chattogram in Miscellaneous Case Number 11 of 2014 is appealable under Clause-27(10) of the PO Number 7 of 1973, however, but the petitioners without filling any appeal have filed the instant writ petition, which is not maintainable.

We have considered of the submissions of the learned Advocates of both the sides and gone through the writ petition, affidavit-in-opposition and annexures appended thereto.

It appears that the Corporation filed the miscellaneous case for recovery of outstanding loan from the petitioners under the PO Number 7 of 1973. Subsequently, the case was disposed of under Article-27(5) thereof. The petitioners had a forum of appeal against the said judgment under Article-27(10) of the PO Number 7 of 1973. But without exhausting the statutory forum the petitioners have filed the instant writ petition which is not maintainable.

Moreover the execution proceeding has been initiated under the PO Number 7 of 1973 before the District Judge, Chattogram not under the Artha Rin Adalat Ain, 2003. Thus Section 47 of the Ain, 2003 is not applicable in the petitioners' case.

In view of the discussions made hereinabove, we do not find any legal infirmity in the impugned judgment and order as well as in the impugned proceedings of the miscellaneous execution case.

Accordingly, the rule is discharged, however, without any order as to costs. The order of stay granted earlier stands vacated. The Executing Court is at liberty to proceed with the miscellaneous execution case.

Communicate a copy of the judgment and order to the respondent number 2 at once.

Md. Ruhul Quddus, J:

I agree.