

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)

WRIT PETITION NO. 9021 OF 2023

IN THE MATTER OF:

An application under Article 102 of the
Constitution of the People's Republic of
Bangladesh.

And

IN THE MATTER OF:

Md. Shahid Ullah

.... Petitioner

-Vs-

***Brac Bank Limited, represented by its
Managing Director, Head Office, Tejgaon,
Dhaka and others.***

....Respondents.

Mr. M. Tashdid Anwar, Advocate

..... For the Petitioner

Mr. Syfuzzaman, Advocate

..... For the Respondent No.1

Heard & Judgment on: 10.12.2023.

Present:

Mr. Justice Md. Iqbal Kabir

and

Mr. Justice S.M. Maniruzzaman

S.M. Maniruzzaman, J:

This is an application for discharging the Rule.

Mr. Syfuzzaman, the learned Advocate for the respondent No. 1
Bank by referring the Title Deed No. 4039 dated 12.04.2023 registered
before the Sub-registrar, Demra, Dhaka submits that the respondent bank
published auction notice under Section 12(3) of the Artha Rin Adalat
Ain, 2003 for selling of the mortgaged property towards recover of the

outstanding loan. Accordingly, the bank accepted the highest bid of Anwara Begum as the highest bidder. Subsequently the sale deed was registered in her favour. In view of the above, the learned Advocate submits that since the property has been sold by the bank and as such there remains no cause of action requiring adjudication in the instant Rule. Accordingly, he prays for passing necessary order.

Heard the learned Advocate, perused the application and it appears that the mortgaged property has been sold by the bank under Section 12(3) of the Ain, 2003. Thereafter sale deed was registered on 12.04.2023 in favour of the auction purchaser. Moreover, the respondent Brac Bank Limited is a Private Banking Company it is well settled by good number of cases [*Pubali Bank Ltd.-Vs-Md. Abdur Rashid Mia and others* reported in **22 BLC(AD) 27**, *ABM Kamrul Ahsan-vs-Bangladesh Bank and others* reported in **17 BLC (HCD) (2012) 404** and *Mamun-ur-Rashid (MD)-vs-Ministry of Law and others* reported in **18 BLC (2013) 162**] that writ against the private company is not maintainable.

Furthermore, our Appellate Division in the case of *Banesa Bibi-Vs-The Senior Vice-President and others* reported in **18 BLT (AD) 507**, where it has been held *inter alia*,

"As per Section 12(8) of the Artha Rin Adalat Ain, 2003 and proviso thereof, which provided that in case of an auction sale held illegally or with irregularity, the same cannot be challenged. However, owner may sue the bank concern of any loss, if suffered because of such illegal or irregular auction sale."

However, in the instant case the petitioner without filing any civil suit challenging the sale of the property under Section 12(8) of the Ain which filed the instant writ petition which is misconceived one and not maintainable.

In view of the discussions made herein above and the cited judgment we do not find any legal infirmity in the impugned auction sale. Accordingly, the Rule is discharged, however, without any order as to costs.

Communicate the copy of a judgment and order to the respondents.

Md. Iqbal Kabir, J:

I agree.

M.A. Hossain-B.O.