

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

WRIT PETITION NO. 6473 OF 2022

IN THE MATTER OF:

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

-AND-

IN THE MATTER OF:

Zafar Sadek Zunayed, son of Md. Abdul Wadud,
Director, Reliable Sanitary Pvt. Ltd., 17/11
Paribagh, Sonargaon Road, Hatirpool, Dhaka.
..... Petitioner.

-Versus-

The Artha Rin Adalat No. 4, Dhaka and others.
.....Respondents.

Ms. Syeda Nasrin with
Mr. Md. Razu Howlader Palash,
Mr. Md. Saddam Hossain,
Mr. Bibek Chandra,
Mr. Md. Golam Kibria Sourav,
Mr. Md. Khandaker Sultan Ahmed,
Mr. Md. Murad Hossain,
Mr. Md. Zakaria Habib and
Mst. Jannat Peya, Advocates
.....For the petitioner.

Mr. Golam Ahmed, Advocate
....For the respondent no. 2.

Heard and Judgment on 01.08.2024.

Present:

Mr. Justice Md. Mozibur Rahman Miah

-And-

Mr. Justice Bhishmadev Chakraborty

-And-

Mr. Justice Sardar Md. Rashed Jahangir

Md. Mozibur Rahman Miah, J:

This matter has been referred to this Bench by the Hon'ble Chief Justice of Bangladesh by his order dated 02.06.2024.

On an application under Article 102 of the Constitution of the People's Republic of Bangladesh filed by the judgment-debtor no. 3 of Artha Rin Execution Case No. 162 of 2017, this Rule Nisi was issued calling upon the respondents to show cause as to why the proceeding of the said Artha Rin Execution Case arising out of Artha Rin Suit No. 1053 of 2014, now pending in the Artha Rin Adalat No. 4, Dhaka and why the order being no. 40 dated 10.04.2022 passed by the Judge of the said Artha Rin Adalat in Artha Rin Execution Case No. 162 of 2017 rejecting the petitioner's application under sections 27 and 57 of the Artha Rin Adalat Ain, 2003 read with order XXI, rule 5 and 6 of the Code of Civil Procedure, 1908 should not be declared to have been proceeded and passed without lawful authority and is of no legal effect and/or pass such other or further order or orders as to this court may seem fit and proper.

At the time of issuance of the rule, this court also stayed all further proceedings of the said Artha Execution Case for a period of 2(two) months which was subsequently extended from time to time and it was lastly extended on 27.02.2023 for another 1(one) year.

The salient facts so figured in the writ petition are:

The respondent no. 2 as plaintiff originally filed a suit being Artha Rin Suit No. 1053 of 2014 against the present petitioner who was impleaded as defendant no. 4 and others claiming an amount of taka 10,31,54,200/45 as defaulted loan. In the suit, though the said defendant entered appearance by

filing written statement but it was ultimately decreed *ex parte* on 30.03.2017. To execute the decree, the plaintiff no. 2 of the suit as decree-holder then initiated an execution case being Artha Rin Execution Case No. 162 of 2017 claiming an amount of taka 13,72,55,686/59. In the execution case, the judgment-debtor no. 3 (who was defendant no. 4 in the Artha Rin Suit) entered appearance and on 10.04.2022 filed an application under sections 27 and 57 of the Artha Rin Adalat Ain, 2003 read with order XXI, rule 5 and 6 of the Code of Civil Procedure for transferring the execution case to execute the decree so far as it relates to the property described in schedule-‘1’, schedule-‘3’ and schedule-‘4’ to the Artha Execution Case stating *inter alia* that, the properties described in those schedules are located within the territorial jurisdiction of the Artha Rin Adalats under the judgeship of District Judge, Gazipur and Manikganj and Artha Rin Adalat No. 4, Dhaka has no jurisdiction to execute the decree in regard to those scheduled properties. However, against that application, no written objection was filed by the decree-holder herein respondent no. 2. Eventually, the learned Judge of the Artha Rin Adalat No. 4, Dhaka vide impugned order dated 10.04.2022 rejected the application holding that, the process of auction in respect of all the scheduled properties have already been initiated under section 33 of the Artha Rin Adalat Ain and it would not be justified to transfer the execution case.

It is at that stage, the judgment-debtor no. 3 as petitioner came before this court and obtained instant rule and order of stay as has been stated hereinabove.

Ms. Syeda Nasrin, the learned counsel appearing for the petitioner upon taking us to the impugned order and all other documents appended

therewith in the writ petition at the very outset submits that, since the provision of section 27 of the Artha Rin Adalat Ain, 2003 has clearly mandated the Artha Rin Adalat to transfer the execution case to the District Judge enabling it to refer the said case to the District Judge under whose territorial jurisdiction execution of the decree can be made but in spite of having such clear provision, the learned Judge of the Artha Rin Adalat passed the impugned order assigning reasons which at all cannot be sustained in law.

When we pose a question to the learned counsel for the petitioner what would be the consequence of the attempt taken for holding auction by the respondent no. 1 under section 33 of the Ain in respect of the properties though it falls beyond its territorial jurisdiction, the learned counsel then retorted that, since admittedly no bidder participated in the auction on the date of auction in regard to the properties so mere publishing auction notice and set the date for holding auction for schedules-‘1’, ‘3’ and ‘4’ properties described in the execution case by the respondent no. 1 will not make any hindrance in sending the execution case through its District Judge to the respective District Judges enabling them to refer the cases to its Artha Rin Adalat whose territorial jurisdiction the properties mentioned in those schedules fall.

The learned counsel further contends that, since auction in respect of the properties described in schedules-‘1’, ‘3’ and ‘4’ have not yet been held so there has been no legal impediment to send the case to the respective District Judges under whose judgship Artha Rin Adalat has got the territorial jurisdiction to proceed with and dispose of the execution case.

However, in support of her submission, the learned counsel has placed her reliance in the decisions reported in 67 DLR (HCD) 583; 2019 ALR (HCD) 185; 72 DLR (HCD) 216; 67 DLR (2015) 545 and 18 ALR (HCD) 285 and finally prays for making the rule absolute.

In contrast, Mr. Golam Ahmed, the learned counsel appearing for the respondent no. 2 finds it difficult to circumvent the legal submission so placed by the learned counsel for the petitioner that based on the provision laid down in section 27 of the Artha Rin Adalat Ain, 2003 though he submitted an affidavit-in-opposition. Regardless, the learned counsel avers that, in order to delay the disposal of the execution case, the petitioner filed the application before the executing court in a very belated stage in spite of having knowledge about the location of properties described in schedules- '1', '3' and '4' to the execution case and then prays for discharging the rule.

We have considered the submissions so advanced by the learned counsels for the petitioner and that of the respondent no. 2-bank. We have also very meticulously gone through the provision so laid down in section 27 of the Artha Rin Adalat Ain, 2003.

For our ready reference, we feel it expedient to reproduce section 27 of the Artha Rin Adalat Ain, 2003 here:

“২৭। (১) অর্থ ঋণ আদালত কর্তৃক প্রদত্ত কোন আদেশ বা ডিক্রী

উক্ত আদালত কর্তৃক, অথবা উক্ত আদালত জারীর জন্য অন্য যে

আদালতে প্রেরণ করে, সেই আদালত কর্তৃক জারী হইবে।

(২) এই আইনের অধীনে দুই বা ততোধিক জেলার জন্য একটি মাত্র

অর্থ ঋণ আদালত প্রতিষ্ঠিত হইয়া থাকিলে এবং উক্ত অর্থ ঋণ

আদালত কর্তৃক প্রদত্ত রায় বা আদেশ হইতে উদ্ভূত জারী মামলার

কার্যক্রম এমন কোন জেলায় প্রয়োগ করা আবশ্যিক হয়, যাহা অর্থ ঋণ আদালত যে জেলায় অবস্থিত উক্ত জেলা হইতে ভিন্ন, তাহা হইলে আদালত, যে জেলায় অর্থ ঋণ আদালত অবস্থিত, সেই জেলার জেলা জজের মাধ্যমে, জারী মামলাটি কার্যকর করিবার জন্য উপরি-উল্লিখিত ভিন্ন জেলার জেলা জজের নিকট প্রেরণ করিবে।

(৩) উপ-ধারা (২) এর বিধানমতে প্রাপ্ত জারী মামলাটি জেলা জজ তাহার প্রশাসনিক নিয়ন্ত্রণাধীন উপযুক্ত ও এখতিয়ারসম্পন্ন কোন আদালতে নিষ্পত্তির জন্য প্রেরণ করিবেন এবং এইরূপ নিষ্পত্তির ক্ষেত্রে এই আইনের অধীন জারী বিষয়ক বিধানাবলী এমনভাবে প্রযোজ্য হইবে যেন, ঐ আদালতটি এই আইনের অধীনেই প্রতিষ্ঠিত একটি অর্থ ঋণ আদালত।”

On plain reading of the second part of section 27(1) of the Artha Rin Adalat Ain, we find that, it authorizes the executing court (essentially arising out of a decree passed in an Artha Rin Suit) to transfer the execution case to any court to execute the decree and what would be the *modus operandi* to execute such decree other than the executing court where the execution case has been pending has also been outlined in the second part of sub-section (2) of section 27 as well by adding word and (এবং).

Curiously enough, though the learned Judge of the Artha Rin Adalat No. 4, Dhaka has rejected the application of the petitioner seeking transfer of the execution case so far as it relates to the property described in schedules ‘1’, ‘3’ and ‘4’ to the execution case but by sidetracking the above clear statutory provision he imported some absurd proposition for rejecting the application that totally runs counter to what section 27 of the Ain denotes

which exemplifies his ineptness in adjudicating the issue. Further, though the learned counsel for the respondent no. 2 in his submission pointed at the petitioner for not bringing the said legal point at the very outset of the execution proceeding and alleged him to delay the disposal of the execution case but we don't find any substance in it, because it is not the duty of either of the judgment-debtor-petitioner or the decree-holder to bring it notice to the learned Judge of the Artha Rin Adalat rather it was also incumbent upon the learned Judge of the Artha Rin Adalat to examine the schedules described in the execution case to get himself assured of the location of the properties and apply the provision on its own which he eventually failed. Be that as it may, from the contents of the impugned order, we are of the view that, the learned Judge was either totally oblivious of the implication of the relevant provision or did not bother to go through it even though the petitioner filed the application specifying section 27 of the Artha Rin Adalat Ain, 2003 amongst other provision of law else he could not have passed such nonsensical order holding that, since process of auction has been taken under section 33 of the Ain, so it would not be wise to transfer the case.

Now naturally question may crops up about the consequence of the attempt for holding auction initiated by the learned Judge, Artha Rin Adalat No. 4, Dhaka (respondent no. 1) in respect of the properties located in Gazipur and Manikganj described in schedules- '1', '3' and '4' to the execution case for the transferee courts, in this regard, we cannot help but wholly agree with the submission so placed by the learned counsel for the petitioner, who firmly asserted that since auction was not materialized before respondent no. 1 as no bidder came forward to purchase the properties, so the process of auction in respect of schedules- '1', '3' and '4' property

became redundant in other words, the auction process initiated by respondent no. 1 proves to be *non est* in the eye of law leaving no legal bar for the Artha Rin Adalat, Gazipur and Manikganj to execute the decree under whose territorial jurisdiction the properties as described in schedules- '1', '3' and '4' are located. We with utmost importance have also examined the decisions so cited by the learned counsel for the petitioner and find the *ratio* settled in all the decisions to be squarely applicable in the facts and circumstances of the case in hand rather those decisions have fortified the spirit of section 27 of the Ain.

Overall, we don't find any iota of substance in the impugned order which is liable to be set aside.

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

The impugned order no. 40 dated 10.04.2022 passed by the learned Judge, Artha Rin Adalat No. 4, Dhaka in Artha Execution Case No. 162 of 2017 is thus set aside.

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

The learned Judge of the Artha Rin Adalat No. 4, Dhaka is hereby directed to transfer the execution case so far as it relates to the property of schedules-'1', '3' and '4' to the learned District Judge, Dhaka within 7(seven) days from the date of receipt of the copy of this order and the learned District Judge, Dhaka in his turn will transfer the execution case to the learned District Judge, Gazipur for the property of schedules-'1' and '3' as well as the learned District Judge, Manikganj for the property of schedule- '4' also within seven days from the date of receipt of the case

record. After receiving the record of the execution case, the learned District Judge, Gazipur and Manikganj will transfer the record of the execution case to its respective Artha Rin Adalat enabling them to proceed with the execution case by publishing auction notice in respect of the property described in schedules- '1', '3' and '4' respectively and to take other step in accordance with law as per their respective territorial jurisdiction to realize the decretal dues of respondent no. 2. The learned Judge of Artha Rin Adalat, Gazipur and Manikganj are also directed to dispose of the respective Artha Execution Case within a period of 3(three) months from the date of receipt of the case record from their respective District Judge.

Let a copy of this judgment be communicated to the respondent no. 1 as well as the learned District Judges, Dhaka, Gazipur and Manikganj forthwith.

Bhishmadev Chakraborty, J:

I agree.

Sardar Md. Rashed Jahangir, J:

I agree.