

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

WRIT PETITION NO. 6700 OF 2021

IN THE MATTER OF:

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

-AND -

IN THE MATTER OF:

Aklima Khatun @ Aklima Khanam
... Petitioner

-VS-

Joint District Judge, Additional Court
and Artha Rin Adalat, Jashore and
another

.....Respondents

Mr. M. Sayed Ahmed, Senior
Advocate with

Mr. Md. Tazul Islam, Advocate

.....For the Petitioner

Mr. Mohammad Arife Billah,
Advocate

... For the respondent No.2

Mr. Shah Monjurul Hoque, Senior
Advocate, with

Mr. Md. Uzzal Hossain, Advocate

... For the respondent No.3

Present:

Mr. Justice Zafar Ahmed

And

Mr. Justice Khandaker Diliruzzaman

Heard on : 30.11.2022, 01.06.2023,
02.08.2023, 02.11.2023 and 08.11.2023
Judgment on : 15.11.2023

Zafar Ahmed, J.

In the instant writ petition, the petitioner has challenged the Order No. 93 dated 20.06.2021 (Annexure-Q) passed by the Joint District Judge, Additional Court and Artha Rin Adalat, Jashore in Miscellaneous Case No. 03 of 2016 rejecting the application filed by the petitioner under Section 19 of the Artha Rin Adalat Ain, 2003 for setting aside the *ex parte* judgment and decree dated 24.08.2004 passed in Money Suit No. 83 of 2004.

This Court, on 12.01.2022, issued a Rule Nisi and passed an interim order directing the parties to maintain *status quo* in respect of possession of the following properties:

- (ক) জেলা-যশোর মৌজা বেজপাড়া জে.এল নং ৮১, খতিয়ান নং সাবেক ৩২৩, ২৫৪, হাল ৫১৫, ৩২৩ দাগ নং সাবেক ২৭৯/৩২০ হাল-৩৯৯, ৫০০, জমির পরিমান-১৬.৩৬ কাঠা এবং উক্ত জমির উপর নির্মিত ইমারত।
- (খ) জেলা-যশোর মৌজা পুরাতন কসবা জে.এল নং ৯৩ খতিয়ান নং ২০৫৭, দাগ নং সাবেক ১১৮৪ হাল-১২২৮ জমির পরিমান-৩.৯৪ কাঠা এবং উক্ত জমির উপর নির্মিত ইমারত।
- (গ) জেলা-যশোর মৌজা-থড়কী জে.এল নং ৭৯ খতিয়ান নং সাবেক ৬১৫ হাল ১৭ ও ১৮ দাগ নং হাল ১৫৭, সাবেক ২০০, জমির পরিমান- ৩.০০ কাঠা এবং জমির উপর নির্মিত ইমারত।

Challenging the interim order the respondent No. 3 filed Civil Petition For Leave to Appeal No. 799 of 2022. The Apex Court, vide order dated 13.06.2022 disposed of the civil petition directing this Bench to dispose of the Rule. The Apex Court

further directed the parties to maintain *status quo* till disposal of the Rule.

Thereafter, this Court, vide order dated 01.11.2022 directed the concerned Artha Rin Adalat to transmit the records of the case to this Court. The respondent No. 2 bank was also directed to transmit the concerned loan records to the Court.

Respondent No. 2 Bangladesh Development Bank Ltd. (BDBL) (former Bangladesh Shilpa Bank), and respondent No. 2 Syed Masudur Rahman (3rd party auction purchaser) contested the Rule by filing separate affidavit-in-opposition.

Miscellaneous Case No. 93 of 1992 (1st suit):

The case has a chequered history. The petitioner's husband Alam Khan (since deceased) was the Managing Director of M/S Jess Tools Manufacturing Co. Ltd. situated at BSCIC Industrial town, Jashore. The company obtained loan facilities to the tune of Tk. 16,83,000/- from the then Bangladesh Shilpa Bank, now Bangladesh Development Bank Ltd. (BDBL) as per the sanction advice dated 14.05.1982. The borrower company defaulted in repaying the loan. The bank (the then Bangladesh Shilpa Bank) filed Miscellaneous Case No. 93 of 1992 (1st suit) before the Artha Rin Adalat, Jashore

on 02.05.1992 impleading M/S Jess Tools Manufacturing Co. Ltd. represented by the petitioner's husband as Managing Director as defendant No. 1 and two other directors of the company as defendant Nos. 2 and 3 for realization of total Tk. 31,86,833/- (disbursed amount and interest accrued thereon). Later on, three more private individuals were added as defendants in the suit. Plot Nos. C-38, C-39, C-48 and C-49 measuring total 18,000 square feet and building constructed thereon including machineries etc. situated at Mouza BSCIC Industrial Estate, Police Station-Kotowali, District-Jashore were stated in the plaint to be the mortgaged property. The property was shown in the plaint as schedule property.

Money Execution Case No. 1 of 1994:

None of the defendants contested the Miscellaneous Case (1st suit). The Artha Rin Adalat decreed the suit *ex parte* on 11.09.1993. The bank filed Money Execution Case No. 1 of 1994 before the Artha Rin Adalat on 17.01.1994 claiming total Tk. 44,61,636/- which includes interest accrued on the decretal amount. The mortgaged property was sold in auction on 31.08.2000 by the Artha Rin Adalat. One Md. Asadur Rahman was the highest bidder, the bid being Tk. 6,85,000/- which was

accepted by the Adalat. After completion of the requisite formalities, the possession of the property was handed over to the auction purchaser. The execution case was disposed of, vide order No. 131 dated 14.05.2003.

Death of petitioner's husband:

Be it mentioned that during pendency of the execution case, the petitioner's husband passed away in 2001. He did not enter appearance in the execution case. None of his legal heirs was made party in the execution case.

Money Suit No. 83 of 2004 (2nd suit):

Thereafter, the then Bangladesh Shilpa Bank, now the BDBL filed Money Suit No. 83 of 2004 (2nd suit) in the Court of Artha Rin Adalat, Jashore on 26.04.2004 impleading M/S Jess Tools Manufacturing Co. Ltd., its directors, guarantors and legal heirs of Alam Khan as defendants for realization of Tk. 64,28,000/-. The present petitioner was impleaded as defendant No. 7(ka). In the plaint of the said Money Suit (2nd suit), the properties, which are subject matter of the interim order of *status quo*, were shown as mortgaged properties.

Money Execution Case No. 9 of 2005:

The Money Suit (2nd suit) was decreed *ex parte* on 24.08.2004. The bank filed Money Execution No. 9 of 2005 on 16.01.2005. The execution Court allowed the bank's application for issuance of the certificate under Section 33(7) of the Artha Rin Adalat Ain, 2003 on 17.07.2006 for transferring the ownership of the title of the properties in favour of the bank. The certificate was issued on 26.09.2006 and the execution case was disposed of on the same day, vide order No. 20. Neither the present petitioner nor any of the legal heirs of the petitioner's deceased husband entered appearance in the execution case.

2nd Money Execution Case No. 12 of 2007:

The bank filed 2nd execution case being Money Execution Case No. 12 of 2007 on 12.08.2007. It is stated in the writ petition that the petitioner was unaware of the Artha Rin Suits and the Execution Cases. After the death of her husband in 2001, she went to her father's house situated at District-Narail and since then she has been living there. On 06.08.2011, she came to Jashore to collect rent from the tenant who informed her that the bank had filed several cases and the property is now owned by the bank. On 07.08.2011, the

concerned branch Manager of the bank told her that the bank had obtained certificate of ownership of the property. Having come to the knowledge of Money Suit No. 83 of 2004 (2nd suit), the petitioner deposited 10% of the decretal amount and filed an application under Section 19 of the Ain, 2003 for setting aside the *ex parte* judgment and decree dated 24.08.2004 passed in the 2nd suit. The bank contested the application by filing written objection. The Adalat, vide order dated 25.09.2011 allowed the petitioner's application and set aside the *ex parte* judgment and decree.

Miscellaneous Case No. 3 of 2016 under Section 19 of Ain, 2003:

Challenging the order dated 25.09.2011 the bank filed Writ Petition (WP) No. 10545 of 2011. This Division on 24.07.2013 made the Rule absolute, set aside the order dated 25.09.2011 and sent back the case to the Adalat to hear and dispose of the application filed by the petitioner under Section 19 treating the same as a proper miscellaneous case. Accordingly, Miscellaneous Case No. 3 of 2016 was registered. In the said miscellaneous case the present petitioner, the Chairman of a Union Parishad, the petitioner's brother deposed as PW Nos. 1-3 and the Principal Officer of the bank deposed

as DW1. The Adalat, vide order No. 93 dated 20.06.2021 rejected the miscellaneous case. Thereafter, the bank sold the property mentioned as item No. Kha (জেলা-যশোর মৌজা পুরাতন কসবা জে.এল নং ৯৩ খতিয়ান নং ২০৫৭, দাগ নং সাবেক ১১৮৪ হাল-১২২৮ জমির পরিমান-৩.৯৪ কাঠা এবং উক্ত জমির উপর নির্মিত ইমারত) in the schedule of the Artha Execution Case No. 9 of 2005 to the respondent No. 3 Syed Masudur Rahman, vide registered sale deed No. 9332/2021 dated 15.07.2021. Subsequently, the property was mutated in the name of the respondent No. 3 and Khatian No. 5377 was published accordingly. It is stated in the writ petition that the petitioner is the owner of the property in question and she is in possession of the same.

Challenging the order No. 93 dated 20.06.2021 passed by the Artha Rin Adalat in Miscellaneous Case No. 3 of 2006 rejecting the petitioner's application under Section 19 of the Artha Rin Adalat Ain, 2003, the petitioner filed the instant writ petition and obtained the Rule.

Arguments:

Mr. M. Sayed Ahmed, the learned Senior Advocate appearing with Mr. Md. Tazul Islam, learned Advocate for the petitioner, refers to materials on record including the lower

Court records (LCR) as well as loan records produced by the bank, various provisions of the Artha Rin Adalat Ain, 2003, the Code of Civil Procedure (CPC), Civil Rules and Orders (CRO), case laws and submits that the bank was debarred from filing the 2nd artha rin suit. The learned Advocate raised a serious allegation against the bank regarding practicing fraud upon the Court. He submits that both 1st and 2nd artha rin suits were filed in respect of the same loan transaction, but the matter was not disclosed in the plaint of the 2nd suit. He also refers to other examples, which he submits, constitute fraud. The learned Advocate further submits that the plaint of the 2nd suit was filed without affidavit in violation of the mandatory provisions of law. The learned Advocate finally submits that fraud vitiates everything and as such, the 2nd decree obtained by practicing fraud cannot be sustained in law.

Mr. Md. Arife Billah, the learned Advocate appearing for the respondent No. 2 bank, denies the allegation of fraud. He submits that the cause of action for filing the 2nd suit was completely separate from that of the 1st suit. He further submits that the instant writ petition has been filed challenging the order of rejection of the miscellaneous case filed under Section 19 for setting aside the decree passed in the 2nd suit and hence, this

Court should confine itself to the terms of the Rule and should not travel beyond that. The learned Advocate points out that the petitioner had ample opportunity to raise the issues in WP No. 10545 of 2011 which was filed by the bank challenging the earlier order allowing the application filed under Section 19 by the present petitioner without registering the said application as miscellaneous case and without taking evidence. The learned Advocate submits that since the petitioner did not raise the issues in the earlier writ petition, she cannot raise those in the instant writ petition in which a third case is made out which is beyond the ambit of the terms of the Rule.

Mr. Shah Monjurul Hoque, the learned Senior Advocate appearing for the respondent No. 3 (3rd party auction purchaser) submits that the respondent No. 3 is a bonafide purchaser for value without notice.

Findings:

It is stated in the cause title of plaint of the 1st suit (Miscellaneous Case No. 93 of 1992) that the petition is filed under Article 33 of the Bangladesh Shilpa Bank Order, 1972 (P.O. No. 129 of 1972). Under Article 33, any application has to be filed before the concerned District Judge. The 1st suit was

filed before the Artha Rin Adalat, Jashore. Under Section 4(2) of the Artha Rin Adalat Ain, 1990 (repealed by the Artha Rin Adalat Ain, 2003), a Subordinate Judge was the presiding Judge of the Adalat and the artha rin suit had to be filed in the said Adalat. The suit was tried and decreed by the concerned Subordinate Judge designated as Artha Rin Adalat. Therefore, quoting Article 33 of the P.O. No. 129 of 1972 does not make it a case under the P.O. Reference to Article 33 was a mere mistake of law and the 1st suit is deemed to be a suit filed under the Artha Rin Adalat Ain, 1990 and decreed accordingly.

Except Sections 46 and 47, the remaining provisions of the Artha Rin Adalat Ain, 2003 came into force on 01.05.2003. The Artha Rin Adalat Ain, 1990 was repealed by Section 60 of the Ain, 2003. Section 60 of the Ain, 2003 contains repeal, savings and transitional provisions. Section 60 is quoted below for ready reference:

“৬০। (১) অর্থ ঋণ আদালত আইন, ১৯৯০ (১৯৯০ সালের ৪নং আইন) এতদ্বারা রহিত করা হইল।
 (২) এই আইন প্রবর্তনের পূর্বে হাইকোর্ট বিভাগে উপ-ধারা (১) দ্বারা রহিত বিধানাবলী আইনের অধীনে বিচারাধীন সকল আপীল, যাহা অর্থ ঋণ আদালতের আদেশ বা ডিক্রির বিরুদ্ধে আনীত হইয়াছিল, উহাদের পূর্বের ন্যায় এমনভাবে নিষ্পত্তি করা হইবে যেন উক্ত আইন রহিত করা হয় নাই, তবে উহাদের নিষ্পত্তির ক্ষেত্রে এই আইনের

বিধানসমূহ, যতদূর সম্ভব, এমনভাবে প্রযোজ্য হইবে, যেন উহারা এই আইনের অধীনেই দায়ের হইয়াছিল।

(৩) অর্থ ঋণ আদালত আইন, ১৯৯০ এর রহিতকরণ সত্ত্বেও, উক্ত রহিত আইনের অধীনে অর্থ ঋণ আদালতে বিচারাধীন সকল মামলা অত্র আইনের অধীনে প্রতিষ্ঠিত বা ঘোষিত অনুরূপ আদালতে বিচারাধীন মামলা হিসাবে বদলী হইবে এবং উহারা পূর্বের আদালতে যে পর্যায়ে বিচারাধীন ছিল সেই পর্যায়ে হইতে বিচারাধীন থাকিবে এবং ঐ সকল মামলার ক্ষেত্রে এই আইনের বিধানাবলী, যতদূর সম্ভব, এমনভাবে প্রযোজ্য হইবে, যেন উক্ত মামলাসমূহ এই আইনের অধীনেই দায়ের হইয়াছিল।”

The 1st artha rin suit was decreed *ex parte* on 11.09.1993.

Execution case was disposed of on 14.05.2003. Therefore, according to the provisions of Section 60 of the Ain, 2003 the execution is deemed to have been disposed of under the Ain, 2003.

Under Section 6(2) of the Ain, 2003 an affidavit has to be enclosed with the plaint in support of the statement made in the plaint and relevant documentary evidence and the payable Court fee (ad valorem) has to be paid with the plaint.

In *Rupali Bank Ltd. vs. Md Shamsar Ali and others*, 69 DLR (AD) 366, the bank filed two separate artha rin suits against the same set of defendants on 24.04.2004 with deficit Court fee which was paid on 20.05.2004 and 13.05.2004 respectively. The bank's claim exceeded 200% of the principal loan amount. Both the suits were decreed. The Apex Court held

that the Adalat illegally entertained the plaint and allowed time to the bank to pay the deficit Court fee. The Apex Court further observed that the Adalat followed a totally wrong procedure in entertaining and registering the suit in violation of Section 6(2) of the Ain, 2003 which is a special law providing special provision for presenting a plaint under Section 6(2) which prevails over the provisions of the CPC and has to be followed strictly. It is further held that if the affidavit and deficit Court fees are not filed with the plaint, the same shall not be treated as a plaint in the eye of law. The Apex Court disposed of the civil appeals by doing complete justice invoking its power under Article 104 of the Constitution.

In the case in hand, the 2nd artha rin suit was filed on 26.04.2004. It is stated in order No. 1 dated 26.04.2004, “নিবন্ধন করা হউক।বাদী পক্ষ ফিরিস্তি মোতাবেক দলিল পত্রের ফটোকপি হলফনামা ও পেপার বিজ্ঞপ্তি দাখিল করিয়াছে। উহা নথিভুক্ত রাখা হউক।” On perusal of the LCR, we did not find any affidavit enclosed with the plaint. The plaint was filed with verification (সত্য পাঠ) only. In view of the mandatory provisions of Section 6(2) of the Ain, 2003 and its interpretation given in *Rupali Bank's* case (*supra*), we hold

that the plaint of the 2nd artha rin suit is not a plaint in the eye of law.

The matter does not end here. There are more issues to be addressed. Under Section 33(6) of the Ain, 2003 if the sum recovered by sale is less than the decretal amount, more execution cases shall, subject to the provisions of Section 28, be admissible for the remaining sum. Section 28(3) provides that if any second or subsequent execution case is filed on the expiry of one year following the dismissal or disposal of the first or previous execution case, the said case shall be barred by limitation and the Adalat shall not admit the case and shall reject the same. Section 28(4) further states that if the new execution case is filed after expiry of 6 years following the filing of the 1st execution case, the said case shall be barred by limitation and the Adalat shall directly reject the same.

In the case in hand, the first execution case under the decree passed in the 1st suit was filed on 17.01.1994 and was disposed of on 14.05.2003. The bank filed fresh artha rin suit (2nd suit) on 26.04.2004. It is argued on behalf of the bank that the 2nd suit was filed in respect of separate loan transactions. Per Contra, the petitioner's specific case is that both the suits

arose out of the same loan transactions. The further case of the petitioner is that the bank resorted to fraud in obtaining the decree passed in the 2nd suit.

It is stated in the plaint of the 1st suit that the bank on 14.05.1982 sanctioned loan of US\$ 37,911 equivalent to BDT 9,33,000 and Tk. 8,00,000 total Tk. 17,33,000 in favour of the company. Out of the total sanctioned amount, the bank disbursed Tk. 16,83,000 which the company did not repay. It is stated in the plaint of the 2nd suit that in May, 1982, the bank sanctioned long term loan of Tk. 13,33,000 and on 12.10.1988 further sanctioned loan of Tk. 4,00,000, total Tk. 17,33,000 in favour of the company out of which the bank disbursed Tk. 16,83,000. It is further stated in the said plaint of the 2nd suit that the borrower partially adjusted the loan by selling the mortgaged property at Tk. 6,85,000 (বাদী/দেনাদারগণ গৃহিত ঋণের বিপরীতে বাদী/পাওনাদার ব্যাংকের নিকট বন্ধকী হিসাবে প্রদানকৃত সম্পত্তি বিক্রয়পূর্বক ৬.৮৫ লক্ষ টাকা ঋণের বিপরীতে সমন্বয় করিয়াছে). We recall that challenging the decree passed in the 2nd suit, the present petitioner filed an application under Section 19 of the Ain, 2003 for setting aside the *ex parte* decree which gave rise to Miscellaneous Case No. 3 of 2016. In the said miscellaneous

case, the then Principal Officer of the BDBL Bank, Jashore branch deposed as DW1, who stated in cross-examination that in Execution Case No. 1 of 1994 (execution of decree passed in 1st suit) the property was sold by the bank through the Adalat at Tk. 6,85,000. He further deposed that after disposal of the said execution case, the bank filed Money Suit No. 83 of 2004 (2nd suit) for the rest mortgaged properties. DW1 further stated that there was no registered mortgage properties in Money Suit No. 83 of 2004 because the system of registered mortgage was not prevalent at that time (১/৯৪ নং জারি মোকদ্দমায় বিসিকে অবস্থিত প্রকল্প সম্পত্তি ০৬ লাখ ৮৫ হাজার টাকায় আদালতের মাধ্যমে ব্যাংক বিক্রয় করেছিল।...১/৯৪ নং মোকদ্দমা নিষ্পত্তি হবার পর বিক্রীত তফশীল বাদ দিয়ে সহবন্ধকী সম্পত্তি বাবদ ৮৩/০৪ নং মানি মামলা দায়ের করি। ৮৩/০৪ নং মোকদ্দমার কোন রেজি: মর্টগেজ করা হয় নাই। কারণ তখন রেজি: মর্টগেজ চালু ছিল না).

We have gone through the concerned loan records produced by the bank. The loan records, statements made in the respective plaints of the 1st and 2nd suits and the above-quoted deposition of DW1 unequivocally establish the fact that both the suits were filed in respect of the same loan transactions. The Ain, 2003 does not allow a financial institution to file a new/fresh/successive suit for realisation of outstanding liability

of the borrower in respect of which a decree is already passed in an earlier suit and execution case is disposed of. The only option open to the financial institution is to file more execution case/s under Section 28 read with Section 33 subject to the period of limitation prescribed in Section 28.

Section 8(1)(ga) of the Ain, 2003 requires that the plaint shall contain particulars as to all facts relating to the claim (দাবীর সহিত সম্পর্কিত সকল ঘটনা). In the instant case (2nd suit), the bank suppressed the material facts as to the decree passed in the 1st suit and the earlier execution case. Section 8(2)(Kha) further requires that the plaint shall include a schedule showing detailed identification, description and financial valuation, if made, of all movable and immovable properties given in mortgage or security against the loan and of the concerned mortgage or security document. In the schedule of the plaint of the 2nd suit, 3 properties, which are the subject matter of the *status quo* order, were described as mortgaged properties. The 2nd suit was decreed, vide order No. 06 dated 24.08.2004. The said order runs as follows:

“অদ্য একতরফা আদেশের জন্য ধার্য্য আছে। নথী আদেশের জন্য পেশ করা হইল।

বাদী ব্যাংকের ব্যবস্থাপক এ,এস,এম, আহসান আলী কর্তৃক পি,ডব্লিউ-১ হিসাবে প্রদত্ত জবানবন্দী দেখিলাম। দাখিলকৃত দলিলাদি ও নথি পর্যালোচনা করিলাম। দাখিলকৃত দলিলাদি প্রদর্শনী ১-৩০ চিহ্নে চিহ্নিত হইয়াছে। পি,ডব্লিউ-১ আরজীর পোষকতায় জবানবন্দী প্রদান করিয়াছেন। বাদী ব্যাংক মোকদ্দমা প্রমাণে সক্ষম হইয়াছেন। তাহারা তাহাদের প্রার্থিত প্রতিকার পাইতে হকদার।

আরজীর প্রদত্ত কোর্ট ফি সঠিক।

অতএব,

আদেশ হইল যে,

অত্র মানি মোকদ্দমাটি একতরফা বিচারে বিবাদীগণের বিরুদ্ধে খরচা সহ ৬৪,২৮,০০০/- (চৌষট্টি লক্ষ আটশ হাজার) টাকার বাবদ ডিক্রী প্রদত্ত হইল। বিবাদীগণ অদ্য হইতে আগামী ৬০ (ষাট) দিনের মধ্যে ডিক্রীকৃত টাকা বাদী ব্যাংকের অনুকূলে পরিশোধ করিয়া দিবে। ব্যর্থতায় বাদী ব্যাংক ডিক্রী জারীর মাধ্যমে বিবাদীগণের নিকট হইতে ডিক্রীকৃত টাকা আদায় করিয়া লইতে পারিবে। মোকদ্দমা দায়ের কালীন সময় হইতে ডিক্রীকৃত টাকা আদায় কাল পর্যন্ত ব্যাংক বিবাদীগণের নিকট হইতে ডিক্রীকৃত টাকার উপর আইন নির্ধারিত হারে সুদ প্রাপ্য হইবে।”

The decree passed in the 2nd suit was signed on 30.08.2004. It appears from the LCR that the plaintiff bank filed an application before the Adalat to receive back the documents produced by it in the suit. The Adalat, vide order No. 8 dated 01.11.2004 allowed the application. It further appears from the LCR that the learned Advocate of the plaintiff bank received back the documents on 17.11.2004. The relevant

note states, “Received back documents as per list. Signature (illegible). Adv. 17/11/04”. Order XIII, rule 9 of the CPC provides provisions for return of the admitted document. The 1st proviso to rule 9(1) provides that a document may be returned if the person applying therefor delivers to the proper officer a certified copy to be substituted for the original and undertakes to produce the original if required to do so. The LCR does not contain the certified copies or copies of the exhibited documents as required under rule 9.

The specific case of the petitioner is that the properties mentioned as mortgaged properties in the schedule to the plaint of the 2nd suit were not mortgaged properties and further that the title deeds of those properties were not deposited with the bank. The loan records transmitted to this Court by the bank do not contain any document to show that the properties in question were mortgaged properties or that the title deeds of those documents were deposited with the bank. The learned Advocate appearing for the respondent bank could not lay his hands in matter.

Facts narrated above are summarised as follows:

- (a)plaint of the 2nd artha rin suit was filed without affidavit in violation of Section 6(2) of the Ain, 2003 and as such, the same cannot be treated as a plaint in the eye of law (***Rupali Bank's*** case);
- (b)both the 1st and 2nd suits were filed regarding the same loan transactions, but the facts as to the 1st suit and the execution case, which were disposed of already, were not stated in the plaint of the 2nd suit. In the miscellaneous case arising out of Section 19 of the Ain, 2003, the bank (DW1) admitted the facts as to the 1st suit and the execution case;
- (c)3 properties were shown as mortgaged properties in the schedule of the plaint of the 2nd suit, but those were neither mortgaged properties not title deeds of those were deposited with the bank.

Filing the plaint of an artha rin suit under the Ain, 2003 without an affidavit as stated in (a) above can be treated as a procedural error. However, this error goes to the root of the jurisdiction of the Court and all actions taken by the Court based on a *non-est* plaint are a nullity in law.

Facts stated in the (b) and (c) above clearly establish that the 2nd artha rin suit is based on falsehood and fraud upon fraud committed by the bank. There are a series of judicial pronouncements that fraud vitiates everything.

In *S.P. Chengalvaraya Naidu vs. Jagannath* (1994) 1 SCC 1 it has been observed:

“The Courts of law are meant for imparting justice between the parties. ...We have no hesitation to say that a person whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation. ... A fraud is an act of deliberate deception with the design of securing something by taking advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. ...A litigant, who approaches the Court, is bound to produce all the documents executed by him, which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the Courts as well as on the opposite party.”

In the famous case of *Lazarus Estates Ltd .v. Beasley* (1956) 1 QB 702, Lord Denning said,

“No judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud. Fraud unravels everything.”

In ***Government of Bangladesh and another vs. Mashiur Rahman and others***, 50 DLR (AD) 205, our Apex Court held:

“The trial Court found that some sort of fraud had been committed, but ultimately held that the Miscellaneous case was barred by limitation as the defendant had knowledge of the date of *ex parte* disposal of the suit.

....
....
....

It is a cardinal principle of administration of justice that no result of any judicial proceeding should be allowed to receive judicial approval from any court of law whenever it is obtained by practising fraud upon the court, reason being fraud demolishes the very foundation of sanctity of such judicial proceeding. It is also well established principle of law that fraud vitiates all judicial proceedings. Thus contravention of the provision of law cannot be a valid ground for allowing an order obtained by fraud to stand. When the trial Court itself on consideration of the materials on record was satisfied that a fraud had been committed in obtaining the *ex parte* decree it

was the duty of the trial Court to set aside the *ex part* decree. The failure of the trial Court in the performance of its legal obligations ought not to have been maintained by the High Court Division in affirming the finding of the trial Court.

Fact of fraud is a matter of inference from proved facts and circumstances of each case and the evidence received by the court. Each circumstance by itself may not tell much, but when a bundle of circumstances are taken together they may bring into light a fraudulent or dishonest plan to commit fraud.”

In *Abdul Jalil and others vs. Islami Bank Bangladesh Ltd. and others*, 64 DLR (AD) 107, it is observed:

“It is true that fraud vitiates everything; even a judgment and decree affirmed by the apex Court of the country can be declared illegal and void by the trial Court if it is proved that the judgment and decree was obtained by practicing fraud upon Court.”

The upshots of the above discussions are that there was no scope under the Artha Rin Adalat Ain, 2003 to file the 2nd suit (Money Suit No. 83 of 2004) by the respondent No. 2 bank; the plaint of the 2nd suit was filed without affidavit in violation of Section 6(2) of the Ain, 2003 and hence, the same is not a plaint in the eye of law [*Rupali Bank*, 69 DLR (AD) 366]; and

the bank practised fraud upon the Court in obtaining the decree in the 2nd suit. Being fortified with the law declared in *Mashiur Rahman*, 50 DLR (AD) 205 and *Abdul Jalil*, 64 DLR (AD) 107, we are of the view that the plaint of the 2nd suit, the *ex parte* judgment and decree dated 24.08.2004 passed in Money Suit No. 83 of 2004 (2nd suit), both the 1st execution case (Money Execution Case No. 9 of 2005) and the 2nd execution case (Money Execution Case No. 12 of 2007) arising out of the 2nd suit and sale of the property in question to the 3rd party (respondent No. 3) in the 2nd execution case are illegal and as such, are liable to be set aside.

In the result, the Rule is made absolute. The *ex parte* judgment and decree dated 24.08.2004 passed in Money Suit No. 83 of 2004 (2nd suit) as well as the plaint of the suit, the subsequent execution cases and all proceedings based on the said decree including sale of the property in question to the 3rd party (respondent No. 3), vide registered sale deed No. 9332 of 2021 dated 15.07.2021 are declared to have been done without lawful authority and are of no legal effect. Those are set aside.

The respondent No. 2 bank is directed to return the sale price of the property in question sold to the respondent No. 3,

vide registered sale deed No. 9332 of 2021 together with 8% (eight percent) interest *per annum* from the date of receipt of the money to the date of judgment (15.11.2023) within a period of 4(four) months from the date of receipt of this judgment and order.

The concerned Adalat is directed to return the deposit of 10% of the decretal amount to petitioner forthwith which she deposited at the time of filing the application under Section 19 for setting aside the *ex parte* decree dated 24.08.2004 passed in Money Suit No. 83 of 2004 (2nd suit).

Send down the LCR at once. The learned Advocate of the respondent No. 2 bank has already submitted copies of the concerned loan records. Those loan records be kept with the records of the case. The learned Advocate is permitted to take back the original loan records.

Khandaker Diliruzzaman, J.

I agree.

Arif, ABO