

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(CIVIL REVISIONAL JURISDICTION)

**Present:**  
**Mr. Justice Md. Moinul Islam Chowdhury**

**CIVIL REVISION NO. 2397 OF 2022**

**IN THE MATTER OF:**

An application under section 115(1) of the  
Code of Civil Procedure, 1908.

(Against Decree)

-And-

**IN THE MATTER OF:**

Manager, Mercantile Bank Limited,  
Patuakhali Branch, Holding No. 151-152,  
Ward No. 06 (Old-02), Sadar Road, Natun  
Bazar, Patuakhali Sadar, Patuakhali.

--- Defendant-Respondent-Petitioner.

-Versus-

Shahida Begum and others

--- Plaintiff-Appellant-Opposite Parties.

Mr. Tirtha Salil Pal, Advocate

--- For the Defendant-Respondent-Petitioner.

No one appears

---For the Plaintiff-Appellant-Opposite Parties.

**Heard on: 08.11.2023, 05.02.2024,  
07.02.2024, 18.02.2024, 22.02.2024 and  
29.02.2024.**

**Judgment on: 05.03.2024.**

At the instance of the present defendant-respondent-petitioner, Manager, Mercantile Bank Limited, Patuakhali Branch, Holding No. 151-152, Ward No. 06 (Old-02), Sadar Road, Natun Bazar, Patuakhali Sadar, Patuakhali, this Rule was issued upon a revisional application filed under section 115(1) of

the Code of Civil Procedure calling upon the opposite party Nos. 1-3 to show cause as to why the judgment and decree dated 29.11.2021 passed by the learned Senior District Judge, Patuakhali in the Title Appeal No. 09 of 2021 allowing the appeal and thereby reversing the judgment and decree dated 13.01.2021 passed by the learned Senior Assistant Judge, Sadar, Patuakhali in the Title/Civil Suit No. 486 of 2019 rejecting the plaint under Order VII Rule 11(d) of the Code of Civil Procedure, 1908 should not be *set aside*.

The relevant facts for disposal of this Rule, *inter-alia*, are that the present opposite parties as the plaintiffs filed the Title/Civil Suit No. 486 of 2019 in the court of the learned Senior Assistant Judge, Sadar, Patuakhali praying for a decree not allowing to sell the mortgaged property owned by Abul Kalam Talukder (now deceased) who was the husband of the plaintiff No. 1. Shahida Begum and father of the other plaintiffs. It further appears that the present plaintiff-opposite party No. 1 was the owner of M/S. Limon Trading. It further appears that upon her application the present defendant-petitioner Mercantile Bank Limited, Patuakhali Branch, Patuakhali sanctioned credit facilities of Tk. 2 crore and 50 lac to her on 28.09.2017. It also

appears that the plaintiff-opposite party No. 1 obtained the said credit facilities by executing a registered mortgage of the suit land in favour of the Bank. On 06.07.2018 the husband of the plaintiff No. 1 and father of the other plaintiff-opposite parties died and after his death, the plaintiff-opposite parties became defaulter in repaying the taken money by way of credit facilities. The defendant bank published an auction notice in the well-known Newspaper, namely, Samakal, for selling the mortgaged property. The defendant-petitioner as the bank instructed the plaintiffs to pay/deposit Tk. 1 crore and 95 lac to the bank on various dates. Thereafter, the defendant bank took other steps to sell the mortgaged property. The present plaintiff-opposite parties wished to pay the rest of Tk. 50 lac. The plaintiffs attempted to pay Tk. 50 lac for further settlement but without receiving the said amount the defendant bank expressed their desire to sell the mortgaged properties to the buyer.

The suit was contested by the defendant-petitioner-bank and on 14.12.2020 filed an application under Order VII Rule 11 of the Code of Civil Procedure in the learned trial court praying for rejection of the plaint which was filed by the plaintiff-opposite parties and against the said application present plaintiff-

opposite parties filed a written objection. After hearing the parties the learned Senior Assistant Judge, Sadar, Patuakhali allowed the application filed under Order VII Rule 11 of the Code of Civil Procedure to reject the plaint.

Being aggrieved the present plaintiffs as the appellants preferred the Title Appeal No. 09 of 2021 in the court of the learned District Judge, Patuakhali. After hearing the parties and considering the evidence adduced and produced by the parties the learned appellate court below allowed the appeal by *setting aside* the judgment and decree passed by the learned trial court by the impugned judgment dated 29.11.2021. Being aggrieved by the said impugned judgment this revisional application has been filed by the present defendant-petitioner-bank challenging the legality of the impugned judgment and decree passed by the learned appellate court below under section 115(1) of the Code of Civil Procedure and this Rule was issued thereupon.

Mr. Tirtha Salil Pal, the learned Advocate, appearing for the petitioner, submits that as per section 12 (8) of the Artha Rin Adalat Ain, 2003 there is no scope at all to challenge any auction held under section 12 of the Ain. The said provision allowed any aggrieved person to file the suit for compensation in the

competent court. Since the Artha Rin Adalat Ain, 2003 is a Special Law, there is no scope to bypass the abovementioned provision and initiate any civil suit challenging the concerned auction or praying for a declaration not to sell the mortgaged properties. However, without considering this strict legal provision the learned Senior District Judge, Patuakhali was pleased to allow the appeal and *set aside* the judgment passed by the learned Senior Assistant Judge, Sadar, Patuakhali in the Title Suit No. 486 of 2019 by the impugned judgment and decree. Hence, the impugned judgment passed by the learned appellate court below is error of law resulting in an error occasioning failure of justice, as such, the same is liable to be *set aside* and the Rule should be made absolute.

He further submits that the subject matter of the instant suit is absolutely based on banking credit and security collaterals. Such issues are exclusively dealt with by a special law i.e. Artha Rin Adalat Ain, 2003 and the concerned trial court established under the said Ain. If the other civil courts start to interfere with the issues of such banking credit and security collaterals then the purpose of the Artha Rin Adalat Ain, 2003 will be frustrated and a floodgate would be opened to interfere in the banking recovery

process of outstanding dues from the defaulted loan accounts. Hence, the impugned judgment and decree is error of law resulting in an error occasioning failure of justice, as such, the same is liable to be *set aside* and the Rule should be made absolute.

This Rule has been appearing in the daily cause list for a long period of time but no one appears before this court to oppose the Rule at any point of time of the hearing of this Rule.

Considering the above submissions made by the learned Advocate appearing for the defendant-petitioner-bank and also considering the revisional application filed under section 115(1) of the Code of Civil Procedure along with the annexures therein, in particular, the impugned judgment and decree passed by the learned appellate court below, this court carefully considered the revisional application and also considering the conflicting decisions passed by the learned courts below containing different findings.

In the above given factual and legal aspects presented by the parties, this court has to take a decision as to whether the actions and steps taken by the parties are valid and legal or not.

To answer the above question, this court carefully examined the findings of the learned courts below.

After hearing the parties the learned trial court i.e. the learned Senior Assistant Judge, Sadar, Patuakhali rejected the plaint on the legal ground of Order VII Rule 11 of the Code of Civil Procedure without entering into the merit of the case. Order VII Rule 11 has given authority to the court to reject a plaint if the proceeding of the case is barred by any existing valid law. In the instant case, an auction notice was served by the present defendant-petitioner-bank as to the auction by publishing in a well-known daily newspaper, namely, "The Samakal" in order to carry on an auction for selling the mortgaged property. In this regard, the Artha Rin Adalat Ain, 2003 contains section 12 which provides authority to the lending bank and other establishments empowering them with some legal steps for realizing borrowed money from any defaulters and also authorizing sell of any mortgaged property.

I have carefully examined the law and the facts of this Rule. The learned trial court without entering into the merit of the case, applied his correct discretion to sell the mortgaged property.

In the instant case, admittedly the plaintiff-opposite parties secured their loan by mortgaging the land and any construction thereon to sell the mortgaged property and the law itself contains restrictions upon the proceeding of the auction. However, the said sub-section also contains that the borrower will have the right to compensation from the lending bank if the mortgaged property is sold by an auction. Since no one appears in this court to oppose this Rule issued by this court and could not have any information as to any prayer for compensation from the lending bank. The learned trial court rejected the plaint by finding that the suit filed by the plaintiff-opposite parties is not maintainable under the provision of Order VII Rule 11 of the Code of Civil Procedure which states that the court can reject any “plaint in front of him on the basis that wherein the suit appears statement in the plaint to be barred by any law.”

The learned trial court rejected the plaint of the plaintiffs upon realizing the application filed by the lending bank as to embargo upon continuing a suit if only the suit is barred by the above provision of law.

Pursuant to the above, the learned trial court rejected the suit and thereby committed no error of law. However, the learned



appellate court below reversed and *set aside* the judgment passed by the learned trial court dated 13.01.2021 despite the learned trial court committed no error of law. However, the learned appellate court below reversed the judgment of the learned trial court by allowing the appeal preferred by the plaintiff-opposite parties.

I have carefully examined the impugned judgment which contains that the lending bank received a huge amount of repayment against borrowed money during the continuous process of the auction proceeding. I have also noticed that the learned appellate court below received repayment against the borrowed money during the continuation process of the auction proceeding. However, the learned appellate court below ignored the provision of law under Order VII Rule 11 of the Code of Civil Procedure but only on his finding that the bank received some repayment from the plaintiffs during the auction proceeding which was immoral and illegal. The learned appellate court came to a conclusion upon the receipt of money and repayment towards the borrowed money. The learned appellate court should have considered the provision of law described under Order VII Rule 11 of the Code of Civil Procedure but only

emphasized the auction by the bank for receiving amount as a repayment while continuing the auction proceeding. The fact of receiving the money as the repayment towards the borrowed money is a matter of fact but the learned appellate court below failed to examine the same which is an error of law and non-consideration of legal provision if the proceeding is not allowed and if the suit is barred by law, as such, the learned appellate court below passed the impugned judgment and decree without considering the relevant and appropriate and applicable provision of law in the instant case by allowing the appeal preferred by the plaintiff-opposite parties.

Now, I am going to examine the conflicting judgment passed by the learned trial court and by the learned appellate court below.

The learned trial court found that the suit is barred by law on the basis of the following findings:

...“বাদীপক্ষ ১ নং বিবাদী ব্যাংকের ঋণ দানির শর্তানুযায়ী নির্দিষ্ট সময়ের মধ্যে ঋণ পরিশোধের ব্যর্থ হবার পর ১ নং বিবাদী ব্যাংক অর্থঋণ আদালত ২০০৩ এর ১২ ধারার বিধান অনুযায়ী ঋণ গ্রহীতা বাদীর বন্ধকী সম্পত্তি নিলামে বিক্রয়ের জন্য উদ্যোগ গ্রহণ করিছেন। উক্ত নিলাম কার্যক্রম ৫ নং বিবাদী সর্বোচ্চ দরদাতা হিসেবে নিলাম ক্রেতা সাব্যস্ত হয়েছেন। এই পর্যায় ১ নং বিবাদীর নিলাম কার্যক্রম

কোন ক্রটি থাকলে অর্থক্ষণ আদালত আইনে ২০০৩ এর ১২ (৮) ধারার বিধান অনুযায়ী নিলাম ক্রেতার ক্রয়কে কোন ভাবেই তর্কিত করা যাবে না। তবে বাদীপক্ষ নিলাম কার্যক্রম দ্বারা ক্ষতিগ্রস্ত হলে ১ নং বিবাদী ব্যাংকের বিরুদ্ধে ক্ষতি পূরণ দাবী করে মোকদ্দমা দায়েরের অধিকার রাখেন। সার্বিক পর্যালোচনায় দেখা যায় যে, বাদী পক্ষের বর্তমান মোকদ্দমাটি অর্থক্ষণ আদালত আইন ২০০৩ এর ১২ (৮) ধারার বিধান দ্বারা বারিত। ফলে বাদীর আরজি The Code of Civil Procedure এর Order-7, rule- 11 (d) এর বিধান অনুযায়ী খারিজ যাওয়া...”...

On the other hand, the learned appellate court below came to a wrongful conclusion to allow the appeal and thereby reversing the judgment of the learned trial court on the basis of the following findings:

...“নথি পর্যালোচনায় আবিষ্কার দেখা যায় যে, বিবাদী ব্যাংক কর্তৃপক্ষ ৩০/০৬/২০১৯ তারিখ বাদীনী বরাবর লোন পরিশোধের জন্য পত্র প্রেরণ করেন। অপরদিকে ইং ১০/০৪/২০১৯ তারিখ বন্ধকী সম্পত্তি নিলাম বিক্রয়ের জন্য পত্রিকায় বিজ্ঞপ্তি দেন যা সম্পূর্ণরূপে একটি দ্বিমুখী কার্যক্রম। নথি পর্যালোচনায় দেখা যায় যে, ইং ৩০/০৬/২০১৯ তারিখ ব্যাংক কর্তৃক বাদীনী বরাবরে লোন পরিশোধের জন্য পত্র প্রেরণের পর বিভিন্ন তারিখে বাদীপক্ষ লোন একাউন্ট তার পক্ষে এক কোটি চল্লিশ লক্ষ টাকা জমা প্রদান করেন। পরবর্তীতে ইং ২২/১০/২০১৯ তারিখের দাখিলকৃত পঞ্চাশ লক্ষ টাকা গ্রহণ করত বিবাদী ব্যাংক অস্বীকার করেন। যখন ব্যাংক নিলাম কার্যক্রম শুরু করবে তারপর কোন ক্রমেই আর বাদী পক্ষের কাছ থেকে টাকা গ্রহণ করা সঠিক হয়নি। আর্থিক

প্রতিষ্ঠান কর্তৃক এরূপ অবৈতধা বা পদ্ধতিগত অনিয়মিত সুযোগ অবশ্যই বাদীপক্ষ পাবেন।”...

In view of the above discussions, I am of the opinion that the learned trial court committed no error of law by dismissing the suit on the basis of the provisions under Order VII Rule 11 of the Code of Civil Procedure. But the learned appellate court below did not consider the applicable provision of the Code of Civil Procedure by taking an emotional decision without passing on any legal aspect applicable in the appeal, as such, committed an error of law for misconstruing a legal possession and also disregarding the factual and legal aspects applicable in the appeal, as such, the learned appellate court below committed an error of law by passing the impugned judgment.

I am of the opinion that the learned trial court committed no error of law by dismissing the suit. On the other hand, the learned appellate court below without considering the relevant law emotionally passed the impugned judgment and thereby reversed the judgment passed by the learned trial court, as such, the learned appellate court below committed an error of law by taking the decision and reversing the judgment wrongfully.

I am therefore inclined to interfere upon the impugned judgment and decree passed by the learned appellate court below or the court of appeal below.

Accordingly, I find merit in the Rule.

In the result, the Rule is hereby made absolute.

The judgment and decree dated 13.01.2021 passed by the learned Senior Assistant Judge, Sadar, Patuakhali in the Title Suit No. 486 of 2019 properly is hereby affirmed.

The impugned judgment and decree dated 29.11.2021 passed by the learned Senior District Judge, Patuakhali in the Title Appeal No. 09 of 2021 wrongfully is hereby *set aside*.

The interim order passed by this court at the time of issuance of this Rule staying the operation of the impugned judgment and decree dated 29.11.2021 passed by the learned Senior District Judge, Patuakhali for a period of 04 (four) months and subsequently the same was extended for a further period of 06 (six) months are hereby recalled and vacated.

The concerned section of this court is hereby directed to communicate this judgment and order to the learned courts below at once.