

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

WRIT PETITION NO. 12284 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:

Wazir Mohammad Khan

..... *Petitioner*

-vs-

***Government of Bangladesh, represented by the
Secretary, Finance Division, Ministry of Finance,
Bangladesh Secretariat, Ramna, Dhaka and
others.***

.....*Respondents.*

And

Ms. Fahima Barrin, Advocate

..... For the Petitioner.

Mr. S.M. Rafiqul Islam Rabbi, Advocate

For the respondent No.4

Heard and judgment on:10.01.2024

Present:

Mrs. Justice Farah Mahbub.

And

Mr. Justice Muhammad Mahbub Ul Islam

Farah Mahbub, J:

In this Rule Nisi, issued under Article 102 of the Constitution of the People's Republic of Bangladesh, the respondents concerned have been called upon to show cause as to why a direction should not be given upon Bangladesh Bank, respondent No.2 to exercise its jurisdiction as contemplated under Sections 45 and 49(1)(Cha) of the Bank Companies Act,

1991 to dispose of the petitioner's application dated 24.10.2022 (Annexure-F) in connection with the defaulted loan amount in question.

At the time of issuance of the Rule the operations of the auction process, scheduled to be held on 24.10.2022 pursuant to auction notice dated 18.09.2022 published by the respondent No.4 in the "Daily Kaler Kantho" (Annexure-D), was stayed by this Court for a prescribed period subject to payment of Tk.15,00,000/- (Taka fifteen lac) within a period of 60 days from the date and thereafter to pay a further amount of Tk.15,00,000/- (Taka Fifteen lac) within the period of 12(twelve) months in 12 equal installments, failing which the Rule would stand discharged with costs of Tk.50,000/- (fifty thousand).

Meanwhile, the respondent bank was directed to maintain *status quo* in respect of possession and position of the schedule property as mentioned in the auction notice.

In view of the statements so made in the writ petition, we have heard Ms. Fahima Barrin, the learned Advocate appearing for the petitioner.

At this juncture, Mr. S.M. Rafiqul Islam Rabbi, the learned Advocate appearing on behalf of the respondent No.4 upon placing the application filed earlier for vacating the order of stay submits that the petitioner challenging the respective auction notice published by the respondent No.4 under Section 12(3) of the Artha Rin Adalat Ain, 2003(in short, the Ain, 2003) filed the instant writ petition and obtained the present Rule along with an order of stay of operation of the said auction process with direction to pay the outstanding loan amount in installment. In this regard, he submits that till date the petitioner did not comply with the said direction so was given by this Hon'ble Court at the time of issuance of the Rule. In the given context,

he submits that the Rule is liable to be discharged along with costs to be paid by the petitioner for playing foul with the process of this Hon'ble Court.

Ms. Fahima Barrin, the learned Advocate appearing for the petitioner submits that the petitioner did not give any update position as to compliance of the direction given by this Hon'ble Court at the time of issuance of Rule. Hence, she prays for passing necessary order for the cause of justice.

The assertions so have made by the respondent-bank by filing application for vacating the order of stay has not been controverted by the petitioner, though copy of the same has been duly received by the learned Advocate appearing for the petitioner.

The petitioner filed the instant writ petition challenging the auction process initiated by the respondent bank under Section 12(3) of the Artha Rin Adalat Ain, 2003 for auction sale of the mortgaged property which has been claimed by the respondent bank as collateral security for recovery of the defaulted loan amount. The petitioner has been able to obtain ad-interim order of stay of the auction process subject to payment of the respective amount within the prescribed period, but did not comply with the same.

Considering the above uncontroverted position of facts as well as consequent to default order this Rule is accordingly stood discharged with costs of Tk.50,000/-(Taka fifty thousand) only to be paid by the petitioner to the respondent-bank within a period of 3(three) months from the date of receipt of the copy of this order.

If the petitioner fails to pay the said amount, the respondent-bank is at liberty to realize the said amount in due compliance of law.

The order of stay granted earlier by this Court is hereby vacated.

The respondent-bank is at liberty to proceed with the property in question in accordance with law.

Application for vacating the order of stay is kept with the record.

Communicate the judgment and order to the respondents concerned at once.

Muhammad Mahbub Ul Islam, J:

I agree.