

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

Writ Petition No. 14197 of 2022.

In the matter of:

An application under article 102 (2) of the
Constitution of the People's Republic of
Bangladesh.

-And-

In the matter of:

Md. Golam Faruque

..... Petitioner

-Versus-

Judge (Joint District Judge), Artha Rin
Adalat, Chattogram and others.

Mr. Omar Faruq, Advocate

. . . for the petitioner.

Mr. Anjuman Ara, Advocate

. . . For the respondents No2-3.

Present:

Mr. Justice J. B. M. Hassan

and

Mr. Justice Razik Al Jalil

Heard on 12.10.2023 and Judgment
on 17.10.2023.

J. B. M. Hassan, J.

The petitioner obtained the Rule Nisi in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show
cause as to why the order No. 99 dated 30.10.2020 passed by
the respondent No.1 in Artha Rin Execution Case No. 86 of
2013 arising out of Artha Rin Suit No. 74 of 2011 dated
16.07.2013 issuing warrant of arrest against the petitioner
without selling the mortgaged property of the petitioner should
not be declared to have been made 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.”

Relevant facts leading to issuance of the Rule are that the respondent-Bank, namely, Social Islami Bank Limited (respondent No.3) (the Bank) obtained a decree under the Artha Rin Adalat Ain, 2003 (the Act, 2003) for Tk. 3,12,03,766.45 against the petitioner and others. Thereafter, the decree holder Bank filed Artha Rin Execution Case No. 86 of 2013 for realization of decretal dues and in the execution proceeding the Adalat by the impugned order dated 30.10.2020 awarded civil imprisonment to the petitioner and others for five months allowing an application of the decree holder Bank under section 34 of the Act, 2003.

Mr. Omar Faruq, learned Advocate for the petitioner submits that the petitioner was guarantor to the loan and that the loan was secured by the mortgaged properties. But without disposing of the said properties, the Adalat awarded civil imprisonment with malafide intention. He further submits that since the petitioner is a guarantor without exhausting all procedures against the principal borrower, the impugned order was issued. He also submits that under section 33 of the Act, 2003, the Adalat has to follow the relevant procedure, in particular, section 33(5) and 33(7) of the Act, 2003. But without doing so passed the impugned order and so, it can not sustain in the eye of law.

On the other hand, Ms. Anjuman Ara, learned Advocate the respondents No. 2-3 (the Bank) contends that through Adalat the Bank attempted to sell the mortgaged properties. But having not been found any

bidder, the properties could not be sold and thus the requirement of section 34(9) of the Act, 2003 has been complied with. Therefore, the impugned order was passed in accordance with law.

We have gone through the writ petition, supplementary affidavit thereto, affidavit in opposition filed by the respondents No. 2-3 and other materials on record.

In the Act, 2003, we find two ways for execution and realization of the decretal dues viz. disposal of the secured properties either by mortgage or attachment in accordance with section 33 of the Act, 2003 and secondly, by awarding civil imprisonment in accordance with section 34 of the Act, 2003 to compel the judgment debtor to pay the decretal dues. Both the methods are independent and have no relation to each other except for the subsections (9) and (10) of section 34 of the Act, 2003 which requires to take at least one attempt for selling the mortgaged property under auction or if the property is sold but it can not meet the adjustment of entire liability.

Here in this case, the Adalat attempted to sell the mortgaged property but auction could not be held as no bidder participated in the auction process. There is no illegality or legal obligation to take the property by the decree holder under section 33(5) and 33(7) of the Act, 2003 before taking step for awarding civil imprisonment to the judgment debtor. As such, we do not find any merit in the submissions of the learned Advocate for the petitioner.

Hence, the Rule Nisi fails.

In the result, the Rule is discharged without any order as to costs.

Communicate a copy of this judgment and order to the respondents at once.

J. B. M. Hassan, *J*

I agree.

Razik Al Jalil, *J*