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

Writ Petition No. 11651 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:

Engineer S. K. Quaisarul Islam (Shakil).

..... Petitioner

-Versus-

The Judge, Artha Rin Adalat No.1, Chattogram and another.

Mr. Saifuddin Ahmed Chowdhury, Advocate.

. . . For the petitioner.

Mr. Nikhil Kumar Biswas, Advocate

. . . For the respondent No.2.

Present:
Mr. Justice J. B. M. Hassan
and
Mr. Justice Razik Al Jalil

Heard on 09.11.2023, 16.11.2023 and Judgment on 20.11.2023.

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. 156 dated 29.08.2022 passed by the learned Judge of the Artha Rin Adalat, Chattogram in Artha Execution Case No. 54 of 2008 (Annexure-G to the writ petition) by issuing warrant of arrest for civil detention against the petitioner only under section 34 of the Artha Rin Adalat Ain, 2003 should not be declared to have been passed without lawful authority and 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 Nisi are that the respondent Bank, namely, Agrani Bank Limited, Chaktai Branch, Police Station-Kotwali, Chattogram (the Bank) obtained a decree from the Artha

Rin Adalat, Chattogram against the petitioner and others in Artha Rin Suit No. 137 of 2004 for Tk. 1,41,52,666.10 along with up to date interest. Pursuant to said decree, the Bank filed Artha Rin Execution Case No. 54 of 2008 for realization of decretal dues. In the execution proceedings the Bank obtained title certificate under section 33(7) of the Artha Rin Adalat Ain, 2003 (the Act, 2003) relating to the mortgaged properties. Subsequently, in order to compel the judgment-debtor to repay the balance decretal dues, the Adalat awarded civil imprisonment to the petitioner along with others allowing Bank's application under section 34 of the Act, 2003. Challenging the said order dated 29.08.2022, the petitioner filed this writ petition and obtained the present Rule Nisi.

Mr. Saifuddin Ahmed Chowdhury, learned Advocate for the petitioner submits that the Adalat issued title certificate relating to the mortgaged properties under section 33(7) of the Act, 2003 and immediately thereafter only option remains to the Adalat is, to dispose of the execution case and thereafter the Bank can file 2nd execution case for realization of remaining outstanding dues, if any. But without following the said procedure, the Artha Rin Adalat proceeded with the 1st execution case and issued warrant of arrest which is not tenable in the eye of law. In support of his submission, learned Advocate refers to the case of Sk. Mohiuddin Vs Joint District Judge and Artharin Adalat No.3, Dhaka and others reported in 13 MLR (AD) 356, the case of Sheuly Khanam Vs Artha Rin Adalat, 2nd Court, Dhaka and others reported in 17 BLC(HCD) 579 and the case of International Finance

Investment and Commerce Bank Limited Vs M/S Marinar Fashions Wear Pvt. Ltd and others reported in 15 BLT (HCD) 425.

On the other hand, Mr. Nikhil Kumar Biswas, learned Advocate for the respondent No.2 (the Bank) contends that the 1st execution case continued more than 06(six) years even after issuance of the title certificate under section 33(7) of the Act, 2003 for the purpose of identification and correction of the schedule of the mortgaged properties and recovery of possession thereof. Thus, due to aforesaid period of beyond 06(six) years, the decree holder had no scope to file 2nd execution case in view of limitation bar under section 28(4) of the Act, 2003. As such, the Adalat was not required to dispose of the 1st execution case in accordance with section 33(9) of the Act, 2003 after issuance title certificate. He further contends that after disposal of the mortgaged properties, the liability could not be satisfied due to which the Bank filed application for civil imprisonment as there is no other security against the liability. Considering this aspect, the Adalat passed the impugned order in accordance with law.

We have gone through the writ petition, affidavit in opposition along with supplementary affidavit and the cited cases.

It appears that the 1st execution case was filed in the year 2008. The title certificate under section 33(7) of the Act, 2003 relating to the mortgaged properties was issued on 30.03.2010. But in disposing of subsequent application for delivery of possession of the said properties, the schedule of the properties were found defective. Thus, in order to rectify the same, the executing Court proceeded with the said execution case for the

purpose of correction of the schedule properties and ultimately it was corrected in the year 2016. In the meantime 08 (eight) years have already been elapsed to come to the proper decision regarding the mortgaged properties on the basis of title certificate. Due to aforesaid facts, the Adalat did not pass any order disposing of the 1st execution case.

Submission of Mr. Chowdhury that immediately after issuance of title certificate under section 33(7) of the Act, the Adalat had to dispose of the 1st execution case, is not tenable in the eye of law unless ownership is vested by completing delivery of possession of the property. This view of ours finds support in the case reported in 15 BLT (HCD) page 425 (supra). For our better understanding relevant portions of the ratio are quoted herein below:

> "9. It appears that the decree-holder appellant filed an application praying for an order to put the decree-holder into possession of the concerned property as it was allegedly obstructed by the judgment-debtor but the learned Judge, Artha Rin Court, dismissed the petition on the ground that on the issuance of the certificate of title in favour of the decree-holder, the execution case had already been disposed of and the Court has got nothing further to do in this respect.
> With respect, we are unable to agree with the said views of the learned Judge, Artha Rin Court.
> Sub-Section 7 envisages vesting of ownership of the property of the judgment-debtor upon the decree-holder. The said vesting of ownership includes delivery of possession of the property. Without the delivery of possession, the execution case cannot be disposed of.
> Sub-Section 9 would make the position clearer. Sub-section 9 reads as follows:
>
> > "(৯) উপ-ধারা (৫) এর অধীনে সম্পত্তির দখল ও ভোগের অধিকার অথবা উপধারা (৭) এর অধীনে সম্পত্তির স্বত্ব ডিক্রীদারের অনুকূলে ন্যস্ত হইলে, ধারা ২৮ এর বিধান সাপেক্ষে, উক্ত ডিক্রিজারী মামলার চূড়ান্ত নিষ্পত্তি হইবে।"
>
> (The underlinings are mine)

> From a plane reading of the above provision it would be clear that only with the total vesting upon the decree-holder, the execution case would be disposed of, otherwise not.1.
>
> As such in the instant case, the learned Judge ought to have taken necessary steps to put the decree-holder in physical possession of the concerned property of the Judgment-debtor as prayed for."

Section 33(9) of the Act, 2009 incorporates provision allowing the Adalat to dispose of the execution case after issuance of the title or possession certificate only subject to limitation under section 28 of the Act, 2003. After six years from the date of filing the 1st execution case there is no scope to file 2nd execution case in view of section 28(4) of the Act, 2003. As such, the Adalat is not under obligation to dispose of the 1st execution case after issuance of certificate under sections 33(5) or 33 (7) of the Act, 2003, when the decree holder does not have option to go for 2nd exaction case due to limitation barrier under section 28(4) of the Act, 2003. Hence, we are unable to accept the submission of Mr. Chowdhury.

In an unreported case of Md. Ismail Hossain and another Vs The Artha Rin Adalat, Chattogram and others being writ petition No. 333 of 2022 this Court (both of us were parties) passed a judgment and order on 16.03.2023 holding that to file 2nd execution case, when the decree holder does not have statutory time of limitation under section 28(4) of the Act (6 years from the date of filing 1st execution case), the Adalat is not obliged to conclude 1st execution case after taking action under sections 33(5) or 33(7) of the Act if there remains unrealized decretal dues. Relevant portions of the said decision are as follows:

> "In other words, we are of the view that the words "ধারা ২৮ এর বিধান সাপেক্ষে" were used by the legislature in sub-section (9) for disposing of first execution case in order to provide scope to the decree holder to continue with the first execution case when he is debarred to go for second execution case by the barrier of limitation under section 28(4). As such, we find substance in the submission of the learned Advocate for the Bank that in the meantime due to expiry of six years for various reasons, beyond control of the decree holder, the Bank has no scope to file second execution case and that is why the Adalat is continuing rightly with the first execution case for realization of balance decretal dues in accordance with section 34 of the Act, 2003.
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> we hold that if the decree holder Bank can not proceed for second execution case due to time frame under section 28(4), the Artha Rin Adalat can proceed with the first execution case for realization of balance decretal dues even after issuing certificate under sections 33 (5) and 33(7) of the Act, 2003. Therefore, in this particular case, the Artha Rin Adalat rightly proceeded with the first execution case after issuance of possesion certificate under section 33(5) of the Act, 2003."

From the cases, cited by the learned Advocate for the petitioner, we find that in those cases the Artha Rin Adalat disposed of the 1st execution case under section 33(9) of the Act, 2009 due to which the Adalat became functous-officio. But here in this case, the executing Court did not dispose of execution case and rather the Adalat was continuing with the same and it was done having legal sanction under section 33(9) of the Act, 2003 due to limitation barrier provision. In the circumstance, there being balance unrealized decretal dues, remaining in the 1st execution case the Bank has filed the application for civil imprisonment in accordance with section 34(1)

of the Act, 2003 and on consideration thereof, the Adalat rightly disposed of the application passing the impugned order awarding civil imprisonment. Regard being had to the above, we do not find any impropriety in passing the impugned order. Hence, the Rule Nisi fails.

However, it appears from the order sheets of the execution case that after issuance of certificate under section 33(7) initially on 30.03.2010, the decree holder Bank had laches in taking steps to take over possession and rectification of the schedule of the mortgaged properties and due to such laches it could not be settled at the earliest stage having no fault on the part of the judgment debtor. Therefore, the Bank should not be allowed to charge interest on the liability after 30.03.2010 when the title of the property was given in favour of the Bank. In the circumstances, the liability shall be reassessed as on 30.03.2010 deducting properties' value from the decretal dues accrued on that date (30.03.2010) and the remaining outstanding amount, if any, would be interest free in accordance with section 50(3) of the Act, 2003.

In light of the above observation, the Bank shall file statement of accounts of remaining outstanding dues, if any, deducting incurred excess interest from 30.03.2010. On the basis of said statement the judgment debtor shall pay the liability, if any, within 3 (three) months from the date of submission of such reassessed statements of accounts. Failing which the interest on the reassessed outstanding dues shall run in accordance with law from the date of submission of reassessed outstanding dues.

With the above observations, the Rule Nisi is discharged without any order as to cost.

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

Razik Al Jalil, *J*

I agree.