

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

WRIT PETITION NO. 1415 OF 2007

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:

Anwar Hossain.

..... Petitioner

-Vs-

***Bangladesh, represented by The Secretary, Ministry
of Law, Justice and Parliamentary Affairs,
Bangladesh Secretariat, Ramna, Dhaka-1000 and
others***

...Respondents

Mr. Mohammad Bakir Uddin Bhuiyan, Advocate
..... For the petitioner

Mrs. Khalifa Shamsun Nahar Bari, Advocate
..... For the respondents No. 3

Heard and Judgment on: 31.01.2024.

Present:

Mr. Justice Md. Iqbal Kabir
and
Mr. Justice S.M. Maniruzzaman

S.M. Maniruzzaman, J:

In this *Rule Nisi*, issued under Article 102 of the Constitution of the
People's Republic of Bangladesh, the respondents have been called upon to
show cause as to why the proceedings of Mortgage Execution Case No.
170 of 2003 now pending before the Artha Rin Adalat, Narayangonj should
not be declared to have been continued without lawful authority and is of

no legal effect and/or such other or further order or orders passed as to this court may seem fit and proper.

At the time of issuance of the Rule all further proceedings of Mortgage Execution Case No. 170 of 2003 now pending before the Artha Rin Adalat, Narayangonj was stayed for a prescribed period.

Facts, relevant for disposal of the Rule, in short, are that the petitioner obtained loan from the respondent No. 3, Agrani Bank, Mirjumla Road Branch, Narayangonj but failed to repay the loan within time. The bank instituted Mortgage Suit No. 10 of 2003 before the Artha Rin Adalat, Narayangonj which was decreed exparte on 02.08.2003. However, the petitioner failed to repay the decretal amount within the stipulated time as prescribed in the decree, consequently the bank put the decree for execution in the concerned Artha Rin Adalat being Execution Case No. 170 of 2003 which is pending before the concerned Executing Court for execution of degree.

During pendency of the execution case the petitioner challenging the proceedings of the case moved this application before this Court and obtained the instant Rule and order of stay.

Mr. Mohammad Bakir Uddin Bhuiyan, the learned Advocate appearing for the petitioner mainly submits that the respondent decree holder bank obtained final decree on 09.08.2003 but instituted the execution case on the basis of preliminary decree and as such the proceedings of artha execution case is barred under the law. By referring the supplementary affidavit, learned Advocate further submits that during pendency of the Rule the petitioner has deposited Tk. 16,05,353.34 in his

loan account and he is ready to pay rest outstanding amount after disposal of the proposal of waiver of interest.

In view of the above the learned Advocate prays for making the Rule absolute.

On the other hand, Mrs. Khalifa Shamsun Nahar Bari, learned Advocate for the respondent No. 3, Bank contesting the Rule by filing affidavit-in-opposition submits that since the suit was decreed on 02.08.2003, the present petitioner as judgment debtor without challenging the judgment and decree under the Artha Rin Adalat Ain, 2003 (in short, the Ain) filed the instant writ petition challenging the proceedings of execution case and as such the Rule is not maintainable.

We have heard the learned Advocate of both the sides, have perused the writ petition, affidavit-in-opposition and relevant materials on record so appended thereto.

Admittedly, the petitioner as borrower obtained loan by mortgaging the property as security and the bank obtained decreed on 02.08.2003. However, the petitioner without challenging the said decree or final decree before the appropriate appellate forum under Section 41 of the Ain, 2003 filed the instant writ petition challenging the proceedings of the execution case. The decree obtained by the bank which is unchallenged still now and as such the decree-holder Bank has legally filed the execution case for recovery of the decretal amount within the specific time as contemplated in Section 28 of the Ain, 2003.

In view of the above, we do not find any illegality in the proceedings of the execution case.

Accordingly, the Rule is discharged however without any order as to costs.

The order of stay granted earlier by this Court is hereby recalled and vacated. The respondent No. 2, Artha Rin Adalat, Narayanganj is directed to proceed with the execution case in accordance with law.

The petitioner will be at liberty to settle his loan liability with the bank amicably at any time.

Communicate a copy of the judgment and order to the concerned respondent forthwith.

Md. Iqbal Kabir, J:

I agree.