

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

Present

**Mr. Justice Md. Riaz Uddin Khan**

**And**

**Ms. Justice Urmee Rahman**

**Civil Revision No. 4161 of 2016**

**IN THE MATTER OF:**

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

-And-

In the Matter of:

Md. Monir Chowdhury

... Defendant-Petitioner

-Versus-

Uttara Bank Limited

... Plaintiff-Opposite Party

Mr. Md. Tawhidul Islam, Advocate

... For the Petitioner

Mr. Md. Jahirul Momeneen, Advocate on behalf of

Mr. Md. Sawkat Ali Bhuiyan, Advocate

... For the Opposite Party

**Judgment on: 30.08.2026**

**Md. Riaz Uddin Khan, J:**

At the instance of the defendant No.2 this Rule was issued by a Division Bench of this Court asking the plaintiff-opposite party to show cause as to why the impugned judgment and order dated 21.08.2016 passed by the District Judge, Dhaka in Miscellaneous Appeal No. 187 of 2016 dismissing the appeal and thereby affirming the order No. 20 dated 27.07.2016 and order No. 18 dated 18.07.2016 passed by the Artha Rin Adalat, 4<sup>th</sup> Court, Dhaka in Miscellaneous Case No. 07 of 2016 should not be set aside

and/or such other or further order or orders should not be passed as to this Court may deem fit and appropriate.

At the time of issuance of Rule prayer for stay was rejected. However, subsequently on 18.03.2025 upon an application for stay a single bench of this Court was pleased to allow the application and stayed the operation of the order No. 56 dated 26.01.2025 passed by the Artha Rin Adalat, 4<sup>th</sup> court, Dhaka in Artha Rin Execution Case No. 103 of 2016 for a period of 01 (one) month and further directed the petitioner to deposit 10% of the decretal amount within 18.04.2025 and to file compliance. This order of stay was extended time to time. The petitioner filed affidavit in compliance before this Court which was kept with the record by order dated 30.04.2025.

Facts for disposal of this Rule in substance are that the opposite party being the plaintiff instituted Artha Rin Suit No. 49 of 2015 before the Artha Rin Adalat 4<sup>th</sup> court, Dhaka for a decree of Tk-18,63,000.19/- contending *inter alia* that the defendant no. 2 being the proprietor of defendant no. 1 availed loan facility of Tk-12,00,000/- from the plaintiff bank by mortgaging his land property; thereafter, as the defendants failed to repay the loan as per the sanction letter, the plaintiff tried to sell off the mortgaged property but without success and

that the defendants had an outstanding loan liability of Tk-18,63,000.19/- as on 23/03/2015 hence the suit for recovery of loan with interest. The instant petitioner, being the defendant no. 2, filed written statement in the said Suit denying categorically all the material statements of the plaint stating *inter alia* that the defendant no. 2 being the proprietor of defendant no. 1 is a small businessman, and has been carrying on the business of 'watches' who could only availed four sixth of the total loan facility of Tk-12,00,000/- from the plaintiff bank because of the speed money the defendant has to give to the dishonest officials of the plaintiff bank and meanwhile the defendant has already paid half the amount of the loan liability he received from the plaintiff bank.

The suit was eventually decreed *ex parte* by the trial Court vide the judgment and decree dated 24.02.2016 (decree drawn on 28.02.2016) and against the said *ex parte* decree the petitioner on 30.05.2016 filed Miscellaneous Case No. 07 of 2016 under section 19(2) of the Artha-Rin Adalat Ain, 2003 with undertaking to deposit 10% of the decretal amount and prayed for setting aside the aforesaid *ex parte* decree and restore the original suit to give an opportunity to the defendant-petitioner to contest the suit. The aforesaid Miscellaneous Case was dismissed by the

trial court by Order No. 20 dated 27.07.2016. Being aggrieved the petitioner filed Miscellaneous Appeal No. 187 of 2016 before the learned District Judge, Dhaka again undertaking to deposit the required 10% of the decretal amount. The said Miscellaneous Appeal No. 187 of 2016 was summarily dismissed by the learned District Judge by his impugned judgment and order dated 21.08.2016 on the finding that the appellant neither deposited 10% of the decretal money in Misc Case No.7/16 nor in this appeal and as such the appeal is not tenable in law.

Being aggrieved by and dissatisfied with the impugned judgment and order dated 21.08.2016 the petitioner moved this Court and obtained the Rule and subsequent order of stay as stated at the very outset.

Mr. Md. Tawhidul Islam, the learned advocate appearing for the defendant-petitioner submits that the petitioner by order of this Court has deposited 10% of the decretal amount as prescribed under section 19(3) of Artha Rin Adalat Ain, 2003. Hence, the *ex parte* decree dated 24.02.2016 should be set aside and the petitioner should have given a chance to contest the suit and the order of stay of Money Execution Case No. 103 of 2016 for executing the said *ex parte* decree passed earlier by this Court should be continued. The learned advocate then submits that

the limitation period as stated in section 19(2) and 19(3) of the Ain is not mandatory rather directory and the Court has the inherent power in an appropriate case to accept the application considering the deposit of 10% of the decretal amount by the defendant petitioner. In support of his submission the learned advocate cited the decisions of Begum Sultana Mazid and others Vs Syedul Islam [10 MLR (AD) 186]; Afsaruddin Ahmed Vs Banque Indosuez [1992 BLD (AD) 156] and Fazlul Huq Vs Md Tohed Ali and others [47 DLR 326].

On the other hand Mr. Md. Jahirul Momeneen, the learned advocate appearing for the opposite party bank submits that the defendant-petitioner neither filed application under section 19(2) of the Ain for setting aside the *ex parte* decree within 30 days nor deposit the 10% of the decretal amount within 15 days of the application as stipulated in section 19(3) of the Ain, the statutory period and hence the trial court had no scope to allow the Miscellaneous Case setting aside the *ex parte* decree and the trial court rightly rejected the petitioners case and as such the rule should be discharged.

We have heard the learned advocates for both the parties, perused the revision petition along with the documents annexed therewith. We have also examined the

orders passed by the trial court as well as the judgment and order passed by the court of appeal below.

The defendant-petitioner filed an application under section 19(2) of the Artha Rin Adalat Ain, 2003. Section 19 of the Ain reads as under-

১৯। একতরফা ডিক্রী সম্পর্কিত বিধান।- (১) মামলার শুনানীর জন্য ধার্য কোন তারিখে বিবাদী আদালতে অনুপস্থিত থাকিলে, কিংবা মামলা শুনানীর জন্য গৃহীত হইবার পর ডাকিয়া বিবাদীকে উপস্থিত পাওয়া না গেলে, আদালত মামলা একতরফা সূত্রে নিষ্পত্তি করিবে।

(২) কোন মামলা একতরফা সূত্রে ডিক্রী হইলে, বিবাদী উক্ত একতরফা ডিক্রীর তারিখের অথবা উক্ত একতরফা ডিক্রী সম্পর্কে অবগত হইবার ৩০ (ত্রিশ) দিবসের মধ্যে, উপ-ধারা (৩) এর বিধান সাপেক্ষে, উক্ত একতরফা ডিক্রী রদের জন্য দরখাস্ত করিতে পারিবেন।

(৩) উপ-ধারা (২) এর বিধান অনুযায়ী দরখাস্ত দাখিলের ক্ষেত্রে বিবাদীকে উক্ত দরখাস্ত দাখিলের তারিখের পরবর্তী ১৫ (পনের) দিবসের মধ্যে ডিক্রীকৃত অর্থের ১০% এর সমপরিমান টাকা বাদীর দাবীর সেই পরিমাণের জন্য স্বীকৃতিস্বরূপ নগদ সংশ্লিষ্ট আর্থিক প্রতিষ্ঠানে, অথবা জামানতস্বরূপ ব্যাংক ড্রাফট, পে-অর্ডার বা অন্য কোন প্রকার নগদায়নযোগ্য বিনিমেয় দলিল (Negotiable Instrument) আকারে জামানত হিসাবে আদালতে জমাদান করিতে হইবে।

(৪) উপ-ধারা (৩) এর বিধানমতে ডিক্রীকৃত অর্থের ১০% এর সমপরিমাণ টাকা জমাদানের সংগে সংগে দরখাস্তটি মঞ্জুর হইবে, একতরফা ডিক্রী রদ হইবে এবং মূল মামলা উহার পূর্বের নম্বর ও নথিতে পুনরুজ্জীবিত হইবে, এবং আদালত ঐ মর্মে একটি আদেশ লিপিবদ্ধ করিবে; এবং অতঃপর মামলাটি যে পর্যায়ে এক তরফা নিষ্পত্তি হইয়াছিল, ঐ পর্যায়ের অব্যবহিত পূর্ববর্তী পর্যায় হইতে পরিচালিত হইবে।

(৫) বিবাদী উপ-ধারা (৩) বিধানমতে ডিক্রীকৃত অর্থের ১০% এর সমপরিমাণ টাকা বাদীর দাবীর সেই পরিমাণের জন্য স্বীকৃতিস্বরূপ নগদ সংশ্লিষ্ট আর্থিক প্রতিষ্ঠানে, অথবা জামানতস্বরূপ ব্যাংক ড্রাফট, পে-অর্ডার বা অন্য কোন প্রকার নগদায়নযোগ্য বিনিময়ে দলিল (Negotiable Instrument) আকারে জামানত হিসেবে আদালতে জমাদান করিতে ব্যর্থ হইলে, উক্ত দরখাস্তটি সরাসরি খারিজ হইবে; এবং আদালত ঐ মর্মে একটি আদেশ লিপিবদ্ধ করিবে।

(৬) অর্থ ঋণ আদালতে বিচারাধীন কোন মামলা, বাদীর অনুপস্থিতির বা ব্যর্থতা হেতু খারিজ করা যাইবে না, এবং এইরূপ ক্ষেত্রে আদালত, নথিতে উপস্থাপিত কাগজাদি পরীক্ষা করিয়া গুণাগুণ বিশ্লেষণে মামলা নিষ্পত্তি করিবে।

From reading of this section 19 it appears that in absence of the defendant on the date fixed as per sub-section (1) the Adalat can pass *ex parte* decree and for setting aside the said *ex parte* decree as per sub-section (2) the defendant has to file application within 30 days

from the date of such *ex parte* decree or of his knowledge about such *ex parte* decree and sub-section (3) provides that after filing such application the defendant has to deposit 10% of the decretal amount within 15 days of such application and sub-section (4) provides that if such 10% of the decretal amount is deposited, the prayer shall be granted, the *ex parte* decree shall be set aside and the original suit shall be restored under its previous file and number.

In the present case it is on record that the *ex parte* decree was passed on 24.02.2016 (decree drawn on 28.02.2016) and the defendant-petitioner filed application for setting aside the *ex parte* decree on 30.05.2016 and the trial court by order dated 18.07.2016 rejected the application when the petitioner was absent by petition on the ground of ailment but did not deposit 10% decretal amount. Thereafter, again the petitioner filed an application for setting aside the earlier order and by order dated 20.07.2016 the trial court also rejected the application on the finding that since the petitioner did not comply the provision of section 19(3) of the Artha Rin Adalat Ain the Court has no scope to allow such application. The petitioner filed Miscellaneous Appeal against the said orders of rejection passed in

Miscellaneous Case which is clearly filed on misconception of law. Because, as per section 20 of the Artha Rin Adalat Ain, 2003 there is no scope to file any appeal against any order passed by the Artha Rin Adalat except against the final decree, hence the Miscellaneous Appeal filed by the petitioner before the learned District Judge was a misconceived one. Be that as it may, the Miscellaneous Appeal was dismissed by the court of appeal below on different ground. Against that dismissal order this Rule was issued and a Division Bench of this Court while issuing Rule specifically refused to grant any interim order. However, the petitioner obtained a interim order by a Single Bench of this Court to deposit 10% decretal amount which was also in violation of the Supreme Court of Bangladesh (High Court Division) Rules, 1973.

Since the Artha Rin Adalat Ain, 2003 clearly provides specific provision for setting aside the *ex parte* decree being a special law there is no scope to direct the defendant to deposit 10% of the decretal amount beyond the prescribed time as per section 19(2) and 19(3) of the Ain, 2003. In the case of Pubali Bank Ltd Vs Bangladesh and others reported in 66 DLR 317 it is observed: “Therefore, it is clear that section 19(2) and 19(3) of the Ain, are complementary to each other and has to be read together. As

such, to file an application for setting aside *ex parte* decree the required conditions as provided in both the provisions i.e section 19(2) and 19(3) of the Ain, must be complied with. In other words, to file such application the defendant has to satisfy the Adalat about limitation period as per requirement of section 19(2) of the Ain and he is also required to comply the provision of section 19(3) of the Ain i.e deposit of 10% of the decretal dues and that the Adalat has no scope to consider such application if any of the aforesaid conditions is left in filing the application.” In the case of Osman Gazi Chowdhury Vs Artha Rin Adalat reported in 21 BLC 322 it has been observed: “Because of the percentage of deposit being only 10% of the decretal amount, the time-limitation of filing the application being sufficient (30 days from the date of knowledge of passing the *ex parte* decree plus further 15 days for deposit) and the mode of payment being flexible, for, it is permissible to pay in cash or submit bank draft, pay order, cheque and any other negotiable instrument, it would not be irrational to view these conditions as affordable for an aggrieved party.” In an unreported case of Prime Global Limited and others Vs. Sonali Bank Limited and others in Civil Appeal No. 86 of 2015 the Supreme Court, Appellate Division held that- “Thus, it is apparent

that the Adalat acted without compliance to the jurisdictional mandate of section 19(2) of the Ain, 2003 that the application for restoration must be filed within 30 days from the date of the *ex parte* decree or from the date of knowledge of the defendant and that 10% of the decretal amount is to be deposited within 15 days of filing thereof.” In those decisions it has been clearly spelt out that the Artha Rin Adalat had no jurisdiction to allow such application filed by the defendant-petitioner (judgment debtor) for setting aside an *ex parte* decree without following the provisions under section 19(2) and 19(3) of the Ain.

The decisions cited by the learned advocate for the petitioner, i.e [10 MLR (AD) 186], [1992 BLD (AD) 156] and [47 DLR 326], all of which have been passed not in any special law rather under Code of Civil Procedure and as such those are distinguishable from the present case.

In such view of the matter we have no option but to discharge the Rule.

Resultantly, the Rule is discharged. However, there will be no order as to cost.

The order of stay earlier granted by this Court stands vacated.

The trial court is at liberty to proceed with the execution case without any further delay keeping in mind that it was filed in the year 2016.

Communicate the judgment and order at once.

**Urmee Rahman, J:**

I agree.