

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

**CIVIL REVISION NO. 88 OF 2023**

In the matter of:

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

AND

In the matter of:

Mrs. Nurjahan Begum and others

.... Petitioners

-Versus-

The City Bank Limited

....Opposite-party

Mrs Nurun Nahar, Advocate

... For the petitioners

Mr. Ashraful Hadi with

Ms. Sumaiya Binte Tanvir. Advocates

....For the opposite party

**Heard on 12.05.2024 13.05.2024**

**and Judgment on 13.05.2024**

**Present:**

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

**Md. Mozibur Rahman Miah, J:**

At the instance of the defendant nos. 2 and 4 in Artha Rin Suit No.  
1043 of 2018 and those of the applicants in Transfer Miscellaneous Case  
No. 491 of 2022, this rule was issued calling upon the opposite-party to  
show cause as to why the order dated 16.10.2022 passed by the learned

District Judge (in charge), Dhaka in Transfer Miscellaneous Case No. 491 of 2022 rejecting the Miscellaneous case filed under section 24 of the Code of Civil Procedure should not be set aside and why Artha Rin Suit No. 1043 of 2018 pending in the court of Artha Rin Adalat, Court No. 3, Dhaka should not be transferred to any other Court having competent jurisdiction and/or such other or further order or orders be passed as to this court may seem fit and proper.

At the time of issuance of the rule, all further proceedings of the Artha Rin Suit was stayed initially for a period of 8(eight) weeks which was lastly extended on 13.11.2023 till disposal of the rule.

The short facts leading to issuance of the instant rule are:

The present opposite party as plaintiff originally filed an Artha Rin Suit being No. 1043 of 2018 before the court of learned judge, Artha Rin Adalat, 3<sup>rd</sup> court, Dhaka claiming an amount of taka 19,67,33,622/- against the present petitioners and others. As the defendants of the said suit failed to repay the said loan in time resulting in the said loan became defaulted loan. The defendant nos. 1,2 and 4-6 entered appearance in the suit and filed written statement denying all the material averment so made in the plaint and prayed for dismissal of the suit. When the suit was at the stage of further hearing, the present petitioners filed an application under section 24 of the Code of Civil Procedure before the learned District Judge, Dhaka for transfer of the said Artha Rin Suit to any other court having competent jurisdiction on the ground that they had not been given any opportunity to cross examine the plaintiff's witness no. 1 and even then they were given the opportunity but the learned judge of the Artha Rin Adalat did not allow the said defendants to put material questions to the plaintiff's witness no. 1

for which they apprehended that they will not get proper justice from the said Artha Rin Adalat that compelled them to file the Miscellaneous Case. The said Miscellaneous case was taken up for hearing by the learned District Judge and vide order dated 02.08.2022 rejected the case however they (the defendants) were allowed to cross examine the plaintiff's witness before the Artha Rin Adalat fixing next date on 07.08.2022. But as on that very date as fixed by the learned District Judge, the Artha Rin Adalat kept on proceedings with the Artha Rin Suit setting the suit for argument hearing, and then to pass the judgment, the petitioners then filed another Miscellaneous case being Miscellaneous Case No. 406 of 2022 before the learned District Judge. But as it has been found by the learned judge that there has been clear provision in the Artha Rin Adalat Ain 2003 to file a transfer Miscellaneous Case the said transfer Miscellaneous case was also dismissed on 22.10.2022. Then the petitioners filed an application under section 5(10) of the Artha Rin Adalat Ain, 2003 for transfer of the Artha Rin Suit No. 1043 of 2018 to any other judge of the Artha Rin Adalat and the said application gave rise to Miscellaneous Case No. 491 of 2022 and the learned judge vide impugned order dated 16.10.2022 rejected the same holding that, the Artha Rin suit has already been transferred and the Case has become infructuous. It is at that stage, the defendant nos. 1 and 4 as petitioners came before this court and obtained the instant rule and order of stay.

Ms. Nurun Nahar, the learned counsel appearing for the petitioners upon taking us to the revisional application and all other documents and the supplementary-affidavit filed at the time of filing of the Miscellaneous case at the very outset submits that, since earlier Advocate conducted the Artha

Rin Suit for the petitioners had been changed and the newly engaged learned Advocate after going through the materials on record found that, that the plaintiff's witness should be cross examined for which the learned Advocate prayed for adjournment though the same was allowed upon a cost of taka 3000/- and subsequently for another adjournment a cost of taka 10000/- was also imposed upon the petitioners but while the learned Advocate conducted the case for the petitioners put material questions to the plaintiffs witness no. 1, the learned judge of the Artha Rin Adalat became irritated and debarred the learned Advocate for the petitioners to put such material question which cast a serious doubt of getting fair justice from the learned judge of the Artha Rin Adalat. The learned counsel further contends that though the learned District judge in spite of rejecting the application under section 24 gave opportunity to the petitioners to cross examine the plaintiff's witness by sending the back the case to the learned judge, Artha Rin Adalat but without giving opportunity to cross examine the witness, the learned judge of the Artha Rin Adalat set the next date for argument hearing as well as passing the judgment depriving the petitioners to make their defense.

The learned counsel also contends that, though the Miscellaneous case has not been allowed by the learned District Judge yet in the impugned order the learned judge of the Artha Rin Adalat under misconception found that the Artha Rin suit has been transferred which exemplifies non application of judicial mind of the learned District Judge and therefore the impugned order cannot be sustained and prayed for making the rule absolute.

On the contrary, Mr. Ashraf Hadi, the learned counsel appearing for the plaintiff-opposite party by filing an affidavit-opposition annexing plaint, written statement and all the orders of the Artha Rin suit at the very outset submits that, on the date fixed for cross examining the plaintiff's witness, the learned Advocate for the petitioners kept on praying for adjournment and it is the petitioners for whose mischievous practices, the proceedings of the Artha Rin Suit could not be completed though there has been a clear provision in section 17 of the Artha Rin Adalat Ain that, the proceeding of an Artha Rin Suit has to be disposed of within 120 days in total from filing of the suit however the learned counsel finds it difficult to defend the impugned order since on the face of the materials on record the Artha Rin Suit has not been transferred by any Miscellaneous Case. Together, the learned counsel contends that, if the petitioners are allowed to cross examine the plaintiff's witness no. 1 on setting an specific date and a direction is given to the learned judge of the trial court to dispose of the suit within a time frame, in that case none of the parties to the suit would have been prejudiced though prays for discharge of the rule.

We have considered the submission so advanced by the learned counsel for the petitioners and that of the plaintiff opposite party and perused the revisional application, supplementary-affidavit and that of the counter-affidavit filed by the plaintiff-opposite party. There has been no gainsaying the facts that, the suit could not be disposed of for adopting dilatory tactic by the defendants who kept on filing transfer Miscellaneous case one after another on flimsy grounds without having any proof that they were not allowed to put material question to the plaintiff's witness no. 1. Furthermore, since the Artha Rin Adalat Ain, 2003 is a special law

having special provision to dispose of the Artha Rin Suit so the learned judge of the Artha Rin Adalat invariably remains cautious to complete the proceedings within the statutory time frame. Further, from the order sheets so submitted by the opposite party with the counter-affidavit we also find that, in spite of giving repeated time to the defendants to cross examine the plaintiff's witness no. 1 they took different pleas not to cross examine the said witness compelling the learned judge, to set the next date for argument haring and then for passing the judgment which we don't find any illegality. Regardless, since we find that, impugned order has not been passed in accordance with the materials on record so the same can not be sustained. However, from the submission so placed by the learned counsel for the opposite party we are of the view that, a direction should be given to the learned judge of the Artha Rin Adalat to dispose of the suit within a time frame set by this court.

Accordingly, the rule is disposed of.

The impugned order dated 16.10.2022 passed by the learned District Judge, Dhaka in Transfer Miscellaneous Case No. 491 of 2022 is thus set aside.

However, the learned judge of the Artha Rin Adalat, 3<sup>rd</sup> court, Dhaka is hereby directed to dispose of the Artha Rin Suit No. 1043 of 2018 within a period of 60(sixty) days from the date of receipt of the copy of this order intimating the learned Advocate of the parties by fixing two specific dates for cross examining the plaintiff's witnesses no. 1 by the defendants and to dispose of the suit within the time given without entertaining any adjournment petitioner from any party to the suit.

The order of stay granted at the time of issuance of the rule is thus recalled and vacated.

Let a copy of this order be communicated to the court concerned forthwith.

**Md. Bashir Ullah, J:**

I agree.

Kawsar /A.B.O