

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

WRIT PETITION NO. 2806 of 2023

IN THE MATTER OF:

An application under Article 102 of the
Constitution of the People's Republic of
Bangladesh

And

IN THE MATTER OF:

Md. Amdad Ali @ Md. Emdad Ali

..... *Petitioner*

-vs-

***Bangladesh Bank, represented by its Governor,
Head Office, Bangladesh Bank Bhaban, P.S.
Motijheel, District-Dhaka and others.***

..... *Respondents.*

And

Mr. M.A. Muntakim, Advocate with

Mr. Md. Nur Hossain, Advocate

..... For the Petitioner.

Mr. S.M. Rafiqul Islam Rabbi, Advocate

For the respondent No.3

Heard on: 05.12.2023 and

Judgment on:06.12.2023

Present:

Mrs. Justice Farah Mahbub.

And

Mr. Justice Muhammad Mahbub Ul Islam

Farah Mahbub, J:

In this Rule Nisi, issued under Article 102 of the Constitution of the People's Republic of Bangladesh, the respondent No.1 have been called upon to show cause as to why a direction should not be given upon the respondent concern to dispose of the petitioner's application dated 26.02.2023 (Annexure-D) exercising its jurisdiction as contemplated under

Sections 45 and 49(1)(Cha) of the Bank Companies Act, 1991 in connection with the respective loan liabilities of the petitioner.

At the time of issuance of the Rule operation of the auction process, scheduled to be held on 08.03.2023 pursuant to auction notice dated 08.02.2023 published by the respondent No.3 in the “Daily Jugantor” (Annexure-B), was stayed by this Court for a prescribed period.

In view of the statements so made in the writ petition, we have heard Mr. Md. Nur Hossain, the learned Advocate appearing on behalf of Mr. M.A. Muntakim, the learned Advocate for the petitioner.

At this juncture, Mr. S.M. Rafiqul Islam Rabbi, the learned Advocate appearing on behalf of the respondent No.3 pressing the application filed earlier by the respondent-bank for vacating the order of stay submits that the petitioner on suppressing materials facts as to filing two other writ petitions bearing Nos.16575 of 2017 and 13566 of 2018 on similar issues challenging the respective auction notices published by the respondent No.3 under Section 12(3) of the Artha Rin Adalat Ain, 2003(in short, the Ain, 2003) filed the instant writ petition and obtained the present Rule along with an order of stay of operation of the said auction process with direction upon the petitioner to pay the outstanding amount in installment. In this regard he submits that till date the petitioner did not comply with the said direction nor he complied with the direction so was given earlier by this Hon’ble Court at the time of issuance of the Rule in connection with writ petition No.16575 of 32017. In the given context, he submits that the Rule is liable to be discharged along with costs to be paid by the petitioner for playing foul with the process of this Hon’ble Court.

Mr. Md. Nur Hossain, the learned Advocate appearing on behalf of Mr. M.A. Muntakim, the learned Advocate for the petitioner submits that the petitioner did not give any update position as to compliance of the direction given by this Hon'ble Court at the time of issuance of Rule. Hence, he prays for passing necessary order for the cause of justice.

The assertions so have made by the respondent-bank by filing application for vacating the order of stay has not been controverted by the petitioner, though copy of the same has been duly received by Mr. Jakaria Habib, the learned Advocate appearing on behalf of Mr. M.A. Muntakim, the learned Advocate for the petitioner.

In view of the above, there is no doubt to find that the petitioner on similar issue earlier filed three other writ petitions bearing Nos.16575 of 2017, 13566 of 2018 and 2205 of 2021 including the present one challenging the auction process initiated by the respondent bank under Section 12(3) of the Artha Rin Adalat Ain, 2003 for auction sale of the mortgaged property of the petitioner which has been claimed by the respondent bank as collateral security for recovery of the defaulted loan amount. However, on every occasion, except writ petition No.13566 of 2018 which was not even moved before this Court, though the petitioner has been able to obtain ad-interim order of stay of the auction process subject to payment of the respective amount within the prescribed period, but on every occasion he did not comply with the same. Further fact remains that while filing the instant writ petition the petitioner suppressed the facts of filing two other writ petitions bearing Nos.16575 of 2017 and 13566 of 2018 on similar issues and based on similar contentions respectively.

Considering the above admitted position of facts as well as consequent to default order this Rule is accordingly discharged with costs of Tk.5,00,000/-(Taka five lacs) only to be paid by the petitioner to the respondent-bank within a period of 3(three) months from the date of receipt of the copy of this order.

If the petitioner fails to pay the said amount, the respondent-bank is at liberty to realize the said amount in due compliance of law.

The order of stay granted earlier by this Court is hereby vacated.

The respondent-bank is at liberty to proceed with the property in question in accordance with law.

Application for vacating the order of stay is kept with the record.

Communicate the judgment and order to the respondents concerned at once.

Muhammad Mahbub Ul Islam, J:

I agree.