

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

WRIT PETITION NO.3805 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. Amjad Hossain Molla
..... ***Petitioner***

-VS-

Bangladesh Bank and others
.....***Respondents.***

And

None appears

..... For the Petitioner.

Mr. S.M. Rafiqul Islam Rabbi, Advocate
For the respondent No.4

Heard and judgment on:15.01.2024

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 respondents concerned have been called upon to show cause as to why the impugned order No.09 dated 29.03.2023 passed in Artha Jari Case No.233 of 2022, arising out of Artha Rin Suit No.654 of 2019 rejecting the application filed by the petitioner under Section 49(1) of the Artha Rin Adalat Ain, 2003 should not be

declared to have been passed without lawful authority and hence, of no legal effect.

At the time of issuance of the Rule all further proceedings of Artha Jari Case No.233 of 2022 arising out of Artha Rin Suit No.654 of 2019, was stayed by this Court for a prescribed period subject to payment of the entire outstanding loan amount to the decree-holder bank within 12(twelve) months in 12(twelve) equal installments, failing which the Rule would stand discharged with costs of Tk.1,00,000/- (Taka one lac).

No one appears on behalf of the petitioner.

At this juncture, Mr. S.M. Rafiqul Islam Rabbi, the learned Advocate appearing on behalf of the respondent No.5 upon placing the application filed earlier for vacating the order of stay submits that the petitioner had availed a credit facility against the mortgaged properties. However, the petitioner having defaulted to pay off the loan amount within the prescribed period the respondent bank instituted Artha Rin Suit No. 654 of 2019 before the Adalat concerned for realization of the outstanding loan amount. Said suit was ultimately decreed *ex-parte* vide judgment and decree dated 26.09.2022 and was subsequently put to execution by filing Artha Jari Case No. 233 of 2022 for realization of the decretal amount. In this regard, he also submits that pending execution proceeding the executing Adalat took initiatives for selling the mortgaged property through auction under 33(1) of the Artha Rin Adalat Ain, 2003 and fixed the date for auction on 29.03.2023. On the respective date 3(three) bidders participated in the auction. In the meantime, the petitioner judgment debtor filed the instant writ petition and obtained Rule on 03.04.2023 along with the interim order of stay of the auction proceeding subject to payment of the entire

outstanding loan amount within the period of 12 months in 12 equal installments, failing which this Rule would stand discharged with cost of Tk. 1,00,000/-.

In this connection he submits that so far, the petitioner has paid only two installments i.e. Tk.8,25,000/- on 26.06.2023 and Tk.8,25,000/- on 27.07.2023, but he did not pay any installment in May, 2023, August-2023, September-2023, October-2023 and November-2023; and at present, total claim stands at Tk.1,04,90,122.50 as on 09.11.2023. In other words, he submits that the petitioner did not comply with the said direction so was given by this Hon'ble Court at the time of issuance of the Rule.

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.

The assertions so have been 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 one Md. Abdul Aziz, office Assistant to Mr. Md. Akram Hossain, the learned Advocate appearing for the petitioner.

The petitioner filed the instant writ petition challenging the impugned order No.09 dated 29.03.2023 passed by the executing Adalat in Artha Jari Case No.233 of 2022 arising out of Artha Rin Suit No.654 of 2019 rejecting the application filed under Section 49(1) of the Artha Rin Adalat Ain, 2003 and obtained the present Rule along with the ad-interim order of stay of the proceeding of Artha Jari Case No.233 of 2022, arising out of Artha Rin Suit No.654 of 2019, subject to payment of the entire outstanding loan amount to

the decree-holder bank within a prescribed period, but he failed to comply with the same.

Considering the above uncontroverted position of facts as well as consequent to default order this Rule stood discharged with costs of Tk.1,00,000/-(Taka one lac) 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.