

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

In the matter of:

Applications under Article 102 of the
Constitution.

-And-

In the matter of:

WRIT PETITION NO. 8750 of 2023

With

WRIT PETITION NO. 11383 of 2023

-And-

In the matter of :

Taipei Bangla Fabrics Limited

..... Petitioner

(In both the writ petitions)

-Versus-

The Artha Rin Adalat No.1, Dhaka and others

..... Respondents

(In both the writ petitions)

Mr. Moksadul Islam, Advocate

...For the petitioner

(In both the writ petitions)

Mr. M. Shakhawat Hossain, Advocate

... For the respondent No.2-Sonali Bank Limited PLC

(In both the writ petitions)

Judgment on 31.01.2024

Present:

Justice Muhammad Khurshid Alam Sarkar

&

Justice Sardar Md. Rashed Jahangir

Both the writ petitions are heard together and disposed of by a single
Judgment as there involve common questions of fact and law.

In the writ petition No. 8750 of 2023, the Rule was issued on
17.07.2023 in the following manner;

“From the submissions so far have been made by the learned
Advocate for the petitioner for obtaining a Rule in tandem
with an interim order, this Court is of the view that apparently
this writ petition is not maintainable. However, upon relying
on the humble prayer of the learned Advocate for the
petitioner that he shall be able to satisfy this Court on the

issue of maintainability of this petition, if he is allowed to place his case at length, this Court is inclined to issue a Rule subject to the condition that at the time of hearing of the substantive application if the petitioner fails to satisfy this Court regarding maintainability of this petition, he shall be under an obligation to non-prosecute this writ petition. If he does not non-prosecute this petition and wishes to receive a full-fledged Judgment, in that event, this Court shall slap an exemplary costs of Tk. 10,00,000/- (ten lac) upon the petitioner.

Accordingly, let a Rule Nisi be issued calling upon the respondents to show cause as to why the Order No. 12 dated 05.06.2023 and the Order No. 13 dated 09.07.2023, rejecting the application for an original document, which the petitioner wants to exhibit in the trial Court (Annexure-C) passed by the learned Artha Rin Adalat No.1, Dhaka in Artha Rin Suit No. 168 of 2022 should not be declared to have been passed without lawful authority and is of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper.

The Rule is made returnable within 10 (ten) days from date.

And, at the time of issuance of this Rule, this Court of its own volition passed a direction upon the Managing Director of Sonali Bank Limited (respondent No. 2) in the following manner;

“It appears to this Court that for an effective and fair disposal of this matter, presence of the respondent No.2- Sonali Bank Limited (hereinafter referred to as the SBL) is necessary and, accordingly, Mr. Muhammad Shakhawat Hossain, the learned Advocate (who usually appears before this Court on behalf of the respondent No.2-SBL and now is present before this Court), is directed to take this Order by hand from the Bench Officer of this Court and communicate

the same to the respondent No.2-SBL, so that he can assist this Court towards expeditious disposal of the matter.

Accordingly, the Managing Director of respondent No.2-SBL is directed to engage the learned Advocate-Mr. Muhammad Shakhawat Hossain in this case as its lawyer within 27.07.2023 without any fail, so that he can conduct the hearing of this case.

The office is directed to communicate this Order to the Managing Director of the respondent No.2-Sonali Bank Limited at once by Fax/E-mail with the aid of registrar's office and also through Special Messenger.”

The purpose of issuance of the afore-quoted direction was to get the Rule heard as expeditiously as possible and, accordingly, the instant Rule was fixed for hearing on 27.07.2023 on priority basis upon allocating a time-slot.

However, on the scheduled date the learned Advocate for the petitioner failed to attend the hearing and, accordingly, on 01.08.2023 this Court passed the following Order;

“Today, after perusal of the affidavit-in-opposition, filed by the learned Advocate for the respondent No.3-Sonali Bank Limited, when this Court expressed its mind that there is no substance in the instant Rule, the learned Advocate for the petitioner insisted upon this Court to fix a date for hearing of this Rule, so that he can receive a full-fledged Judgment, even at the costs of Tk. 10,00,000/- (ten lac) only, as per condition of the Rule- issuing Order.

After hearing the learned Advocate for the petitioner and perusing the petition together with its annexures, Order sheet along with the affidavit-in-opposition, filed by the learned Advocate for the respondent No.3-Sonali Bank Limited, it appears to this Court that the lender-Bank has filed

the Artha Rin Suit No. 168 of 2022 for recovery of an amount of Tk. 397,87,08,177.43 (three hundred ninety seven crore eighty seven lac eight thousand one hundred seventy seven taka and forty three paisa) and the petitioner is trying to delay the disposal of the ArthaRin Suit.

However, since this Court expressed its mind that apparently this writ petition is not maintainable, nevertheless, the petitioner is adamant to receive a full-fledged Judgment even at the costs of Tk. 10,00,000/- (ten lac) only, this Court is inclined to fix the matter for hearing with a direction upon the ArthaRin Adalat to proceed with the Artha Rin Suit towards its expeditious disposal.

Accordingly, let the matter be appeared in the daily cause list under the column 'For hearing'. And, the Artha Rin Adalat No.1, Dhaka is directed to complete the trial of the ArthaRin Suit No. 168 of 2022 towards its final disposal as expeditiously as possible preferably within 6 (six) months.

The office is directed to communicate this Order at once to the Court concerned through Fax/E-mail with the aid of registered office.”

Thereafter, Mr. Moksadul Islam, the learned Advocate for the petitioner appearing before this Court placed an Order passed by Hon’ble Appellate Division in CPLA No. 2308 of 2023, and informed this Court that the operation of the Order passed by this Court on 01.08.2023 with regard to direction upon the ArthaRin Adalat No.1, Dhaka to complete the trial of the ArthaRin Suit No. 168 of 2022 towards its final disposal has been stayed by the Hon’ble Judge-in-Chamber of the Hon’ble Appellate Division vide its Order dated 13.08.2023 and, subsequently, on 09.10.2023, the Hon’ble Appellate Division passed the following Order;

:The 09th October. 2023. :ORDER:

“The petitioner has filed this Civil Petition for Leave to Appeal against the interim order dated 01.08.2023 passed by the High Court Division in Writ Petition No.8750 of 2023 and obtained the order of stay from the learned Judge-in-Chamber on 13.08.2023.

We have heard the learned Counsel appearing for the petitioner and perused the impugned order of the High Court Division as well as other materials on record. Upon hearing the learned Counsel, we are of the view that justice would be best served, if the Rule itself is disposed of on merit by the High Court Division.

Let the Rule be heard and disposed of by the High Court Division expeditiously. However, the order of stay granted earlier by the learned Judge-in-Chamber shall continue till disposal of the Rule.

Accordingly, this Civil Petition for Leave to Appeal is disposed of with the above observations and direction.”

Subsequently, the learned Advocate for the respondent No.2-Bank brought to the notice of this Court that upon failure to obtain Stay Order from this Court, the petitioner has filed another Writ Petition being No. 11383 of 2023 by approaching a different Bench presided over by his Lordship Mr. Justice Nazrul Islam Talukder where he succeeded in obtaining an interim Order staying the proceedings of the Artha Rin Suit No. 168 of 2022 which was prayed under the prayer B of the instant Writ Petition No. 8750 of 2023, which runs as follows;

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the impugned Order No. 17 dated 13.08.2023 passed by the Respondent No.1 in Artha Rin Suit No.168 of 2022 rejecting the application, to appoint District Accounts Officer, Dhaka. to audit the loan account, filed under Section 57 read with 8(2) of the Artha Rin Adalat Ain,

2003 and Order 26 Rule 11 of the Code of Civil Procedure (Annexure-G) should not be declared to have been passed without lawful authority and is of no legal effect and (ii) as to why Respondent No.4 should not be directed to appoint an auditor to audit the loan accounts of the petitioner, they maintain with the Respondent No.3 Bank, and/ or (iii) as to why a reputable Chartered Accountant Firm should not be appointed to audit the loan accounts of the petitioner, they maintain with the Respondent No.3 Bank and/or such other or further order or orders as to this court may seem fit and proper.

Pending hearing of the Rule Nisi, let the operation of the Artha Rin Suit No. 168 of 2022, now pending in the Court of learned Artha Rin Adalat No.01, Dhaka be stayed till 10.10.2023.”

This is how, this Court came to know that though this Court was not inclined to pass any interim Order staying the proceedings of the Artha Rin Suit No. 168 of 2022 which was prayed under the prayer B of the instant Writ Petition No. 8750 of 2023 but the petitioner succeeded in obtaining the aforesaid interim Order by approaching before a different Bench albeit by challenging a different Order being No. 17 dated 13.08.2023.

Now, let us take up the Orders challenged in the Writ Petition No. 8750 of 2023 in which Rule was issued by this Bench. The aforesaid impugned Order Nos. are Order Nos. 12 & 13. For ready reference, the said impugned Order Nos. 12 & 13 passed by the Artha Rin Adalat No.1, Dhaka are quoted below;

অর্থগাদালত নং-১, ঢাকা।

১২-০৫/০৬/২৩- অদ মঙ্গলকরীর প্রতিবেদন দাখিলের জন্য দিন ধার্য আছে বাদী পক্ষও বিবাদী পক্ষ হাজিরা দাখিল কব্বিযাচ্ছে। মঙ্গলকরীর প্রতিবেদন দাখিল কব্ব নাই। নথি পেশ করা হইল। শুদ্ধামা মঙ্গলকরীর প্রতিবেদন দাখিল না কব্ব এক আইনের নিষিদ্ধিত সময় অতিবাহিত হওয়ায় মঙ্গলকরীর কার্যক্রম সমাপ্ত করা হইল।

আগামী ৯/৭/২০২৩ ইং তারিখ ইস্যু গঠনএবংজন্য ধার্যবইলা আমর কথিত মতে
।

স্বা/-মোহাম্মদ ফায়েজআলকরনী, জজ
তর্ধগআদালতনং-১, ঢকা।

১৩-০৯/০৭/২০২৩---অদ্য ইস্যু গঠনেরতর্ধদিন ধার্যআছ বাদীপক্ষহাজিরা দাখিল
করনা বিবাদী পক্ষ হাজিরা দাখিল কর তর্ধর আদালতআইন২০০৩ এর ৫৭ এক
দেশ্যনী কর্মবিধি আছন এর ৩০ এক ১৫১ ধারা সহ ১১ আদো ১২ বিধি মোতাবেক
মামলার ১৯/০৪/২০১৮ তারিখের সববাহুরে স্মারক লিপির মূল কপি দাখিলের উল্য
আবেদন করনা নথি দো করা হলো। শ্রুতলামা ১/২/৩ নং বিবাদীপক্ষ তর্ধন
আইন২০০৩ এর ৫৭ ধারা এক দেশ্যনী কর্মবিধির ৩০ ধারা ও ১১ আদো ১২ নিয়মের
বিধান মোতাবেক ১৯/০৪/২০১৮ ইং তারিখে সববাহুরে স্মারকলিপির মূল কপি দাখিলের
প্রার্থন্য দাখিলী দখ্যাস্তন নথি পর্যালোচনা করলাম সার্বিক পর্যালোচনায় তর্ধ মোকদ্দমার
নিষ্পত্তির নিমিত্ত মোকদ্দমার এই পর্যায়ে উক্ত স্মারকলিপির আবশ্যকতা রয়েছে মর্মে তর্ধ
আদালতের নিকট প্রতিজ্ঞান হযনি বর উক্ত স্মারকলিপি প্রদানকরী পক্ষ তর্ধ এই
বিবাদীপক্ষ তর্ধের দাবী চূড়ান্ত শ্রুতীর পর্যায়েত সম্পর্কিত দাবী মৌখিক ও দালিলিক
সাক্ষ্য প্রমাণ দ্বারা এক বাদীপক্ষের সাক্ষ্যকে জেরা কর স্মারকলিপি সম্পর্কিত তথ্য
উন্মোচনের সুযোগ রয়েছে সার্বিক বিবেচনায় দখ্যাস্ত বর্ধিত প্রার্থনা নামঞ্জুর করা হইল।
প্রিডিস পর্যালোচনায় তর্ধ মোকদ্দমায় ইস্যু গঠনকরা হইল। গঠনকৃত ইস্যু সম্বন্ধিত
কাজ নথির সাক্ষি করা হউক আগামী ২৪.০৭.২০২৩ ইং তারিখ চূড়ান্ত শ্রুতী। (ঐ).

আমর কথিত মতে টাইপকৃতও সংশোধিতঃ
স্বা/-মোহাম্মদ ফায়েজআলকরনী
জজ
তর্ধগআদালতনং-১, ঢকা।

On perusal of the aforementioned impugned Orders, this Court doesn't find any illegality in passing the Order Nos. 12 & 13 by the ArthaRin Adalat No.1, Dhaka inasmuch as, on minute perusal of the previous Orders specifically Order No. 7 dated 31.10.2022 to Order No.11 07.05.2023, this Court finds that this petitioner was not cooperative in proceeding with the Court's Order with regard to proceeding of the mediation. It further appears to this Court that the mediation being a mandatory provision has been complied with by the trial Court. Further, since the provision of Section 57 of the ArthaRin Adalat Ain remains in operation, allthrough the time of trial and execution, the petitioner will have an opportunity to approach the Bank for any kind of settlement amicably and, therefore, the petitioner is not going to be prejudiced in any manner, if the petitioner is bonafide to settle the dispute amicably out of the Court.

However, from the conduct of the petitioner, this Court finds that the petitioner is not bonafide; rather his intention is merely to delay the disposal of the ArthaRin Suit. The second reason for passing the aforesaid observation with regard to bonafides of the petitioner is that the petitioner after becoming unsuccessful in obtaining any interim Order from this Court in Writ Petition No. 8750 of 2023, very cunningly succeeded in staying the further proceedings of ArthaRin Suit by filing the subsequent Writ Petition No. 11383 of 2023, at the point of a particular time when this Court was in seisin of the case, having fixed the Rule issued in Writ Petition No. 8750 of 2023 on priority basis for its early hearing upon allocating a time-slot.

Further, it appears very mysterious to this Court that even after coming to know that proceeding of the ArthaRin Suit No. 168 of 2022 has been stayed vide an interim Order passed by a different bench of this Court, the Managing Director of the Sonali Bank Limited (hereinafter referred to as the SBL) did not give any instruction to its lawyer to challenge the said Order before the Hon'ble Appellate Division. Furthermore, when this Court passed an Order on 1st August, 2023 directing the trial Court to proceed with the trial of the ArthaRin Suit No. 168 of 2022, that has been challenged by the petitioner before the Hon'ble Appellate Division, this time also, the Managing Director of SBL did not appoint any lawyer before the Hon'ble Appellate Division to place the background events of these 2 (two) Writ Petitions. That is why, this Court finds that the conducts of the Managing Director and other officials of SBL who deal with the legal affairs of the SBL are not fair and befitting with their responsibilities.

With regard to the merit of Rule issued in the Writ Petition No. 11383 of 2023, this Court is of the view that since, in a proceedings of a

Suit under ArthaRin Adalat Ain, the defendant-petitioner shall have the opportunity to look at all the papers, particularly, the bank statements, loan sanctioned letters, documents as to furnishing guarantee etc., there is no need to appoint any auditor for that purpose. Further, as per Sections 3 & 4 of the Evidence Act, 2021, the SBL is bound to produce all these documents before the concerned ArthaRin Adalat, fromwhere the defendant-petitioner also have the opportunity to look into all those documents. Therefore, the prayer made by the petitioner for appointment of Auditor appears to this Court is nothing but a purposeful attempt to waste the valuable working hours of the trial Court and the High Court Division.

Further, from the manner and style of sanctioning the loan by the SBL in favour of the petitioner for an amount of nearly Tk. 300 (three hundreds) crore, it appears to this Court the same has been sanctioned and disbursed in a very cavalier fashion in connivance with the Members of the Board of Directors and Managing Director who primarily took the decision for sanctioning the loan money. Because it is evident from the annexed papers that this petitioner-company, namely, Taipei Bangla Fabrics Limited was incorporated on 14.02.2010 and it is basically a 2 (two) men company; one is husband, namely, Mohammad Sorwar Hossain son of late Sultan Hossain and another is wife, namely, Mrs. Rehana Sorwar wife of Mohammad Sorwar Hossain and immediate after its incorporation on 14.02.2010, an amount of Tk. 65,78,45,000/- was sanctioned in favour of the petitioner-company and just after 06 (six) months i.e. on 16.08.2010 the aforesaid loan limit was enhanced to an amount of Tk. 1,12,78,36,000/- and again on 31.12.2014 an amount of Tk. 1,20,00,000/- was sanctioned and this is how, a total amount of Tk. 232,78,36,000/- (two hundred thirty two

crore seventy eighth lac thirty six thousand) only was sanctioned in favour of the petitioner-company against which only a nominal quantum of properties was mortgaged as security.

From a plain reading of entire provisions of ArthaRin Adalat Ain, it appears to this Court that the very purpose of enactment of ArthaRin Adalat Ain is to recover the loan-money as speedily as possible. Therefore, the Legislature has provided a time-limit for each of the stages of a Artharin Suit i.e. for filling written statements, for mediation, if the defendant(s) do not/doesn't appear, then for ex-party judgment for taking witnesses and for all other steps.

In fact, the plain intention of the Legislature was to recover the money without even approaching the Court i.e. ArthaRin Adalat. And, for the said purpose, the Legislature enacted Section 12 of the ArthaRin Adalat Ain, so that any Bank or Financial Institution can recover the entire amount of loan money by merely selling out the mortgaged property or liened or hypothecated/pledged goods. Therefore, this Court is of the view that when it was the intention of the Legislature that the Bank/Financial Institution should not bother to appear the Court for recovery of the loan money, now, this petitioner very cunningly has been filing petitions/applications one after another either on this or that plea and, that is how, wasting the valuable working hours of the ArthaRin Adalat, High Court Divisions as well as Apex Court of the country and, therefore, this Court is of the view that both the Rules should be discharged with a cost of Tk. 10,00,000/- (ten lacs) upon the petitioner.

Be that as it may, in compliance with the Order passed by the Hon'ble Appellate Division, this Court proceeded with the hearing of this

Rule. For the last few months both the matters are being heard analogously and these Rules were heard on numerous occasions at length i.e. these Rules were taken up for hearing on 31.07.2023, 01.08.2023, 02.08.2023, 08.11.2023, 09.11.2013, 13.11.2023 16.11.2023, 27.11.2023 11.12.2023, 30.01.2024, 31.01.2024 and after hearing the learned Advocates for the petitioner, the learned Advocate for the lender-Bank and on perusal of the petitioner's application as well as the affidavit-in-opposition filed by the respondents together with their annexures and having read the relevant statutory laws, this Court opined that there is no substance in these two Writ Petitions and the petitioner was given an opportunity to non-prosecute the instant Rules with an observation that if it does not non-prosecute this Rule and wishes to receive a full-fledged Judgment, in that event, this Court shall slap a cost of Tk. 10,00,000/- (ten lac) upon the petitioner as per the condition of the Rule-issuing Order in line with Judgments passed by this Court in the cases of (i) ABB India Limited Vs Power Grid company of Bangladesh Limited 2020 ALR (HCD) Online, Page 1 (ii) Bandarnagari Bahumukhi Samabay Samity Ltd Vs Bangladesh 5 ALR 2015(1) 194, (iii) Osman Gazi Vs Artharin Adalat 2016(1) LNJ 167, (iv) Hasan Chowdhury Vs Judge Artharin Adalat 22 BLC 545, (v) Salahuddin Vs Bangladesh 69 DLR 454 and (vi) Abdur Rashid Bhuiyan Vs Bangladesh Bank 68 DLR 343.

Yesterday, i.e. on 30.01.2024, this Court suggested the learned Advocate for the petitioner that he may take instructions from his client to non-prosecute the Rule in terms of the Rule-issuing Order, so that he can save the payment of costs to be slapped by this Court. Today, when the matter is taken up for hearing, the learned Advocate for the petitioner

having appeared before this Court submits that the petitioner is adamant to receive a full-fledged Judgment, event at the costs of Tk. 10,00,000/- (ten lac).

Before parting with this Judgment, this Court finds it appropriate to jot down here that in sanctioning of the loan-money in question, the concerned Board of Directors, Managing Director and other concerned Bank officials of SBL did not play their expected role as the trustees of the money deposited by the common people of this country. Therefore, there must be an investigation to be carried out by a judicial officer to determine the true fact/issue as has been raised by this Court hereinbefore.

Given the scenario, this Court finds it proper to assign a judicial officer to conduct a fair and detailed investigation and, accordingly, Mr. Md. Moyeed Islam, a Retired Senior District Judge (Mobile: 01715345019), is hereby appointed as an investigation officer with the following observations and directions;

- (i) The Court-appointed investigation officer is directed to peruse the application for sanctioning the first loan along with all the applications and sanctioning letters by which further facilities were given to the petitioner-company.
- (ii) For the purpose of investigation, the Court-appointed investigation officer shall be competent to ask any question(s) to any person he thinks proper, including the Managing Director, Members of Board of Directors and other concerned Bank officials of SBL.
- (iii) He shall visit all the mortgaged properties and shall collect the valuation report from the surveyor of all the moveable and immovable properties, including goods/machineries which have been liened/pledged.

- (iv) He shall submit a report containing as to whether the factory is a running-concern or not, and shall prepare an inventory of the Machineries installed in the factory together with the current valuation of the said machineries.

Direction upon the SBL

- (i) Managing Director, Members of Board of Directors, and other concerned Bank officials of SBL are directed to assist the Court-appointed judicial investigation officer, as and when he approaches them.
- (ii) Managing Director of SBL is directed to pay a consolidate fees of Taka 5,00,000/- (Five lac) to the Court-appointed judicial investigation officer.

The Court-appointed investigation officer is directed to file his report in the form an affidavit before this Court on or before 15.05.2024 stating the outcome of the investigation.

Let the matter appear in the daily cause list on 15.05.2024 to see the compliance and for necessary order.

In the result, both the Rules are discharged along with the above Observations and Directions with costs of Tk. 10,00,000/- (ten lac) upon the petitioner.

Communicate this order at once.

Sardar Md. Rashed Jahangir, J:

I agree.