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

WRIT PETITION NO. 7604 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:
Younus Bhuiyan
... Petitioner
-Versus-

Judge (Joint District Judge), Artha Rin Adalat, Chattogram and others
... Respondents
Mr. Muhammad Rejaul Husain (Morshed) with
Mr. Mohammad Jahedul Alam Chowdhury, Advocates
.....For the petitioner
Mr. Shamim Khaled Ahmed, Advocate
….. For the respondent No. 4

The 10th day of August, 2023

Present:
Mr. Justice J.B.M. Hassan
and
Mr. Justice Razik-Al-Jalil

J.B.M. Hassan, J:

The Rule Nisi was issued calling upon the respondents No. 1, 3 and 4 to show cause as to why the impugned Order bearing No. 47 dated 23.03.2023 passed by the learned Judge (Joint District Judge), Artha Rin Adalat, Chattogram in Artha Rin Suit No. 466 of 2017 allowing an application filed by the plaintiff-Bank under section 13 read with section 57 of the Artha Rin Adalat Ain, 2003

and thereby decreeing the suit directing the defendant-petitioner and other defendants to pay Tk.4,61,70,16,910.18 in favour of the plaintiff Bank within 60 (sixty) days (Annexure-D to the writ petition) 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.

Relevant facts leading to issuance of the Rule Nisi are that the respondent-bank, namely, Sonali Bank Limited instituted Artha Rin Suit No. 466 of 2017 before the Artha Rin Adalat, Chattogram for realization of loan amounting to Tk.4,61,70,16,910.18 along with up-to-date interest.

The petitioner as defendant No. 5 contested the suit by filing written statement denying plaintiff's claim. In the suit, the defendant-petitioner filed an application praying to examine statements of account of the plaintiff-Bank by a certified audit firm alleging that the Bank unauthorisedly imposed excess interest and also did not adjust the petitioner's deposit properly. Ultimately, the audit firm submitted audit report supporting the plaintiff's claim. The defendant-petitioner again raised objection against the audit report. On the other hand, the plaintiff Bank filed an application under section 13 read with section 57 of the Artha Rin Adalat Ain, 2003 (The Act, 2003) for decreeing the suit. The defendant-petitioner filed written objection against the said

application. After hearing both the parties regarding objection against audit report and also Bank's application, the Adalat by the impugned order dated 23.03.2023 allowed the application and thereby decreed the suit under section 13(4) for Tk.461,70,16,910.18. In this backdrop, the petitioner filed this writ petition challenging the said decree and obtained the present Rule Nisi.

Mr. Muhammad Rejaul Husain (Morshed), learned Advocate for the petitioner submits that the petitioner along with other defendants raised specific denial against the plaintiff's claim and also against the audit report. Despite ignoring the same, the Adalat on misconception of section 13 of the Artha Rin Adalat Ain, 2003 (the Act, 2003) decreed the suit which is apparent illegal. He further submits that although it is an appealable decree but the illegality is apparent and the decree suffers from malice in law. As such, it is without jurisdiction and so the writ petition is maintainable. In support of his submissions learned Advocate refers to the case of *Managing Director, Rupali Bank and others vs Tafazal Hossain and others*, reported in 44 DLR (AD) 260 and the case of *Md. Arfan Uddin Akand and others Vs. Joint District Judge and Artha Rin Adalat No. 1, Gazipur and another*, reported in 15 BLT (HCD) 343.

Conversely, by filing Affidavit-in-Opposition Mr. Shamim Khaled Ahmed, learned Advocate for respondent No. 4 (Plaintiff-Bank) at the very outset raises the question of maintainability against the Rule Nisi submitting that it is the established principles of law in our jurisprudence that artharin suit decree cannot be challenged under writ jurisdiction instead of preferring appeal under the Act. 2003. In support of his submission, he refers to the case of *Agrani Bank vs. Mrs. Hosne Ara Begum and another,* reported in 1 LM (AD) 334, the case of Rupali Bank Ltd. Vs Md. Shamser Ali and others reported in 22 BLC(AD) 424 and the case of *Fariduddin Mahmud vs. Md. Saidur Rahman and others*, reported in 63 DLR(AD) 93. He, however, submits that if the decree is interfered, the suit should be tried expeditiously as early as possible without giving any adjournment on the prayer of the learned Advocate for the defendants.

We have gone through the writ petition and the affidavit-in-opposition, filed by the respondent-Bank, the cited cases as well as the provision of section 13 of the Artha Rin Adalat Ain, 2003 (The Act, 2003) and other materials on record.

To appreciate the submissions of both the parties, let us first examine the relevant provisions of section 13(4) of the Act, 2003 under which the Adalat passed the impugned order and decree.

Section 13(4) of the Act, 2003 runs as under:

"(১)-(৩) ----------

(৪) মামলার শুনানীর জন্য ধার্য প্রথম তারিখে অথবা মামলার যে কোন পর্যায়ে যদি আদালতের নিকট প্রতীয়মান হয় যে, পক্ষদ্বয়ের মধ্যে ঘটনা অথবা আইনগত বিষয়ে কোন বিবাদ নাই, তাহা হইলে, আদালত, অবিলম্বে রায় বা আদেশ প্রদান করিয়া মামলা চূড়ান্তভাবে নিষ্পত্তি করিবে।"

(Underlined)

On perusal of the aforesaid provision it appears that the Statute has given authority to the Adalat to dispose of the suit finally by passing the decree directly without entering into the trial, if it is apparent from the plaint, written statement and other materials on record that there is no dispute between the parties on factual and legal aspects.

Here in this case, we find that the petitioner filed written statements specifically denying the plaintiff's claim. Although petitioner defendant admits granting loan and receiving the same but the amount claimed under the plaint has been specifically denied by the defendant-petitioner. **Secondly**, at the instance of the petitioner, the Adalat appointed Auditor to examine the statements of accounts under the plaint and although the report supports the plaintiff's claim, but the petitioner has again raised objection denying the Auditor's report. We find that the Adalat considering this audit report passed the impugned decree under section 13(4) of the Ain, 2003.

Under the aforesaid scenario question arises whether the present writ petition is maintainable inasmuch as the petitioner did not avail the statutory remedy under section 41 of the Act, 2003. It has been settled by the consistent views of our apex Court that the decree under the Artha Rin Adalat Ain has to be challenged under appeal in accordance with the provisions provided therein. Yet in certain situations, in particular, in the case of *Fariduddin Mahmud vs. Md. Saidur Rahman and others*, reported in 63 DLR(AD) 93 and the case of *Managing Director, Rupali Bank and others v Tafazal Hossain and others*, reported in 44 DLR(AD) 260, the apex Court has kept some passages under certain circumstances to challenge the decree under the writ jurisdiction without availing the statutory remedy of appeal. In particular, in the case reported in 63 DLR (AD) 93 the Apex Court held as under:

> "20.----------.A writ of certiorari may issue in exceptional cases, where the proceeding of the Tribunal are absolutely void or where the Tribunal has purported to act in a judicial capacity which is not properly constituted or where there is error apparent on the face of the record or where the Tribunal's conclusion is based on no evidence on record whatsoever, or where the decision of the Tribunal is vitiated by malafide, or the Tribunal has acted without jurisdiction or acted in excess of jurisdiction or acted contrary to the fundamental principles or acted malice in law, interference is called for."
>
> (Underlined)

The above ratio of our Apex Court, has drawn out guidelines to the effect that the High Court Division can interfere with the

appealable decree exercising its judicial review under Article 102 of the Constitution in the following circumstances:

i. When the proceeding is absolutely void or the Court/Tribunal was not properly constituted;
ii. Where there is error apparent on the face of the record;
iii. The impugned decision is based on no evidence;
iv. The decision is vitiated by malafide;
v. The Court acted without jurisdiction or in excess of jurisdiction;
vi. The Court acted contrary to the fundamental principles; And
vii. The Court acted malice in law.

To introduce the term “malice in law” in the case of Shields Vs Shearer and another. Shield, (1914) AC 808 Lord Chancellor Haldane observed as under:

> “A person who inflicts an injury upon another person in contravention of the law is not allowed to say that he did so with an innocent mind; he is taken to know the law, and he must act within the law. He may, therefore, be guilty of malice in law, although so far as the state of his mind is concerned, he acts ignorantly, and in that sense innocently.”

On perusal of section 13(4) of Act, 2003 it is crystal clear that when there is no dispute against claim under the plaint or in other words, pleadings do not disclose any dispute, in that context only, the provision of section 13(4) can be exercised by the Adalat. But here the defendant petitioner is contesting the suit raising objection to the plaintiff’s claim. Although Audit report supports the plaint’s claim but it is subject to proof under adjudication through trial. Thus, there was no circumstances in the

suit to pass the decree under section 13(4) of the Act, 2003 and as such, the decree was passed beyond the scope of law (section 13(4) of the Act, 2003). Secondly, passing the decree exercising section 13(4) of the Act, the Adalat exceeded it's authority which is without jurisdiction and definitely, a legal error apparent on the face of record. Thirdly, inspite of unambiguous facts involved in the case as to applicability of an unambiguous law, the wrong done was apparent illegal and according to case of House of Lords as mentioned above, it is malice in law.

This being the position, the present issue in hand, attracts the circumstances enunciated in the above referred ratio, 63 DLR (AD) 93 (supra). Therefore, it is a fit case to interfere with the impugned decree by the judicial review of this Court.

This view of ours finds support from another case of our High Court Division i.e the case of Md. Arfanuddin Akand Vs Joint District Judge and Artha Rin Adalat No.1, Gazipur and another reported in 15 BLT (HCD) page 343 wherein their Lordships held as under:

> "13.----------.Considering the facts and circumstances stated hereinabove, it can be said that when the Adalat passed the impugned judgment beyond the scope of law as provided for in section 13 of the Ain then it can be said that the same is without jurisdiction. But when it appears from the impugned judgment that the same is passed upon complying with the

> provision of section 13 it cannot be said that the same is without jurisdiction.
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> Considering the decisions referred above and discussions made herein above, we are of the view that if the Adalat passes any order which is wholly without jurisdiction, not in excess of jurisdiction, then despite of the fact that the law provided forum for appeal, the petitioner cannot be debarred from availing the jurisdiction under Article 102 of the constitution. Because the question of jurisdiction of the Court goes to the very root of the matter brought before it and when the court does not have any jurisdiction to see, everything done subsequent thereto shall fall through and the Court which has got no jurisdiction to pass such order over the matter shall not go into the merit of the matter as decided in the case of the Managing Director, Rupali Bank Ltd. And others Vs. Tafazal Hossain and others reported in 44 DLR (AD) 260."
>
> (Underlines Supplied)

We also find the case of Sankar Kumar Kundu Vs Judge, Artha Rin Adalat, Bogura and others reported in 25 BLC (HCD) page 124 wherein the High Court Division held as under:

> "9. After reading the above observation of the Adalat, we have failed to understand as to how the Adalat reached such conclusion that the petitioner had admitted the claims of the plaintiff. Not only that, the petitioner even filed an application for framing of issues in the suit expressing his willingness to contest the suit in accordance with law. Therefore, under no circumstances, it can be said that the defendant has admitted the claims of the plaintiff. Thus, this case is not at all a fit case in which a judgment may be delivered without framing issues or without trial in view of the provisions under section 13(1) of the said Act.

> 10. This case is a clear example of how the Adalat concerned may deliver a judgment in such a mechanical manner without considering the relevant provisions of law. In this case, the Adalat not only acted illegally but also deprived the petitioner of his legal right to contest the suit. Apart from that, this is a clear example of violation of principle of natural justice. Since, under the Constitution, the petitioner has fundamental rights to be treated in accordance with law and only in accordance with law under Article 31, we are of the view that, the fundamental rights of the petitioner have been violated by this impugned order and, accordingly, this writ petition is directly maintainable."

In view of above discussions and the cited ratio, we find merit in the Rule Nisi.

In the result, the Rule is made absolute without any order as to costs.

The impugned Order No. 47 dated 23.03.2023 (the decree signed on 28.03.2023) passed by the learned Judge (Joint District Judge), Artha Rin Adalat, Chattogram in Artha Rin Suit No. 466 of 2017 decreeing the suit in favour of the plaintiff-decree holder bank (Annexure-D to the writ petition) is hereby declared to have been passed without lawful authority and is of no legal effect.

The Artha Rin Suit No. 466 of 2017 is hereby restored and the Artha Rin Adalat, Chattogram is directed to proceed with the suit from its last stage and to dispose of the same expeditiously as early as possible. The Adalat shall consider the prayer of any adjournment very strictly and conservatively keeping in mind that

the claim under the plaint involves a huge amount of public money.

Communicate a copy of the judgment and order to the respondents at once.

Razik-Al-Jalil, J:

I agree.