

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Special Original Jurisdiction)**

WRIT PETITION NO. 5106 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:

Nurul Azim Sohel

... Petitioner

-Versus-

Judge, Artha Rin Adalat No. 1, Dhaka and another

... Respondents

Mr. Md. Imam Hasan, Senior Advocate

...For the petitioner

Mr. Ziaul Haque Sarker, Advocate

...For the respondent no.2

**Heard on 22.04.2026, 29.04.2026, 30.04.2026
and Judgment on 30.04.2026**

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Rezaul Karim

Md. Mozibur Rahman Miah, J.

On an application under article 102 of the Constitution of the People's Republic of Bangladesh, a Rule Nisi was issued calling upon the respondents to show cause as to why the order No. 35 dated 04.04.2023 (Annexure –F to the writ petition) passed by the learned Judge, Artha Rin

Adalat No. 1, Dhaka in Artha Rin Suit No. 326 of 2022 rejecting an application filed under Order XI rule 21 of the Code of Civil Procedure read with section 57 of the Artha Rin Adalat Ain, 2003 for dismissing the Artha Rin suit for non compliance with the order dated 26.07.2022 directing the plaintiff to submit original documents viz, entire statement of accounts, statements of realizing the claim from insurance company and agreement/receipt letter dated 09.06.2017 taking back 04(four) vehicles from the petitioner as full and final settlement should not be declared to be without lawful authority and is of no legal effect and/or such other or further order or orders passed as to this Court may seem fit and proper.

At the time of issuance of the rule, further proceedings of Artha Rin Suit No. 326 of 2022 pending before the Artha Rin Adalat No. 1, Dhaka was stayed for a period of 03(three) months and the said order of stay was subsequently extended from time to time.

The short facts leading to issuance of the rule are:

The present respondent no.2 as plaintiff originally filed a suit being Artha Rin Suit No. 1191 of 2018 (which was subsequently renumbered as Artha Rin Suit No. 326 of 2022) claiming an amount of taka 1,39,86,073/67 against the present petitioner and 02 (two) others and the loan subsequently turned into default loan which was sanction as of lease finance to purchase 4(four) vehicles (tracks) by the petitioner. Since the defendants herein the petitioner failed to repay the said amount, as per the terms and conditions of respective sanction letters, the respondent no. 2 as plaintiff then filed the aforesaid suit claiming the said amount as of

30.09.2018. The present petitioner as defendant no. 1 entered appearance in the suit and filed written statement on 04.03.2020 denying all the material statement so made in the plaint and ultimately prayed for dismissal of the suit. When the suit was at the stage of peremptory hearing, the petitioner on 17.01.2022 filed an application under order 11 rule 14 of the Code of Civil Procedure read with section 57 of the Artha Rin Adalat Ain to pass an order by the Adalat to the plaintiff asking it to submit statements of account against two sanction letters, statements of payment so have been given by the insurance company to the bank against the claim it made for those four tracks as well as the copy of the agreement /receipt dated 09.07.2016 in taking back the tracks by the plaintiff, respondent no. 2 in its possession. The said application was not contested by filing any written objection by the respondent no. 2 and ultimately the same was taken up for hearing by the learned judge of the Artha Rin Adalat and vide order dated 26.07.2022 allowed the same and directed the plaintiff to supply the above 03(three) sorts of documents to the court fixing on 04.08.2022 for examination of plaintiffs witness no. 1. As the plaintiff failed to comply with the direction made by the Artha Rin Adalat vide order dated 26.07.2022, the defendant-petitioner on 31.08.2022 then filed an application for dismissal of the suit for non-compliance with the direction made earlier on 26.07.2022. However, against that application filed by the defendant, petitioner for dismissing the suit, the plaintiff filed an application seeking exemption from producing the documents alleging that out of the 03(three) sort of documents, the plaintiff had filed statements of accounts against two sanction letters and the claim made by

the defendant with regard to agreement dated 09.06.2017 as well as the statement of payment alleged to have made by the insurance company are not lying with it. However, the said application filed by the defendant petitioner under Order 11 rule 21 as well as the application filed by the plaintiff respondent no. 2 was taken up for hearing and vide impugned order, the application so filed by the defendant no. 1 as petitioner was rejected. It is at that stage, the defendant petitioner came before this court and obtained instant rule and order of stay as has been stated hereinabove.

Mr. Md. Imam Hasan, learned senior counsel appearing for the petitioner upon taking us to the writ petition and all the annexure so have been appended therewith, at the very outset submits that, the learned judge of the Artha Rin Adalat has very erroneously rejected the application filed by the petitioner under Order 11 rule 21 of the Code of Civil Procedure without comprehending the implicit application of that provision, which has been asserted by the petitioner in the application filed earlier under Order 11 rule 14 of the Code of Civil Procedure and reflected in the earlier order passed by the same court dated 26.07.2022 when the same court has no other option but to dismiss the suit basing on the statutory provision of Order 11 rule 21 of the Code of Civil Procedure.

The learned counsel further contends that, though out of 3(three) sort of documents so sought by the petitioner in his application under Order 11 rule 14 of the Code of Civil Procedure, the respondent no. 2, supplied a statement of accounts against 02(two) sanction letters but it cannot be said any statement as provided in the supplementary-affidavit filed by the said respondent no. 2 yet the learned judge of the Artha Rin

Adalat failed to understand that material point and very improperly allowed its application giving exemption from filing documents

The learned counsel further contends that, once the learned judge allowed the application filed under Order 11 rule 14 of the Code of Civil Procedure which was also heard on contest, so there is no scope to go beyond the said order and allow application of the plaintiff giving exemption from submitting the documents. In regard to factual aspect, the learned counsel further contends that, from the statements of account so have been given by the respondent no. 2 as has been annexed as of Annexure-‘D’ to the writ petition, it is a mere a collection statement which cannot be said to any statements of account showing payment of the petitioner since the very disbursement of loan till filing of the suit against two sanction letters and therefore the said statement cannot be termed as any statement sought by the petitioner in his application. However, in support of his submission, the learned counsel has also placed his reliance in the decision reported in 7 ADC 935 and takes us through paragraph no. 8 thereof and submits that similar facts has been described therein where the defendant had failed to produce documents as sought by the plaintiff and ultimately order was passed under Order 11 rule 21 of the Code of Civil Procedure which is squarely applicable in the facts and circumstance of the instant case. The learned counsel by referring to another decision reported in 18 BLC (HC) 74 and by taking us to paragraph no. 7 and 9 to the said decision, also contends that, the case also arose out of an Artha Rin Suit when the trail court gave exemption to the plaintiff in filing required documents vide subsequent

order though the plaintiff was directed to submit so in earlier order and the court came to a decision that by not submitting the documents earlier directed by the same court is derogatory to the order passed by the same trial court and finally directed the plaintiff to file the said documents within 15 days and therefore the said decision is also applicable in the facts and circumstances of the instant case.

The learned counsel by referring to the affidavit-in-opposition filed by the respondent no. 2 in particular, by drawing our attention to paragraph no. 7 thereof also contends that, it has been admitted by the respondent no. 2 that it has received the claim paid by the insurance company which proves, the document as regards to payment of claim by the insurance company has been lying with the respondent no. 2 having no scope not to produce the same before the court.

On those submissions, the learned counsel finally prays for making the rule absolute on setting aside the impugned judgment and order.

On the contrary, Mr. Ziaul Haque Sarker, learned counsel appearing for the respondent no. 2 by filing a supplementary-affidavit, affidavit-in-opposition and application for discharging the rule at the very outset submits that, the provision so have been provided in Order 11 rule 21 of the Code of Civil Procedure does not allow a court to dismiss a suit as there has been nothing in the said rule ever stated that for want of production of any document, a suit can be dismissed. In his second leg of submission, the learned counsel further contends that, as per Order 43 rule 1(f) of the Code of Civil Procedure as the impugned order is an appealable order so the writ itself is not maintainable. The learned counsel

by referring to the provision of section 3 of the Artha Rin Adalat Ain, 2003 also contends that, since that very provision has an overriding effect, then the application filed by the petitioner under Order 11 rule 21 of the Code of Civil Procedure cannot be maintained before the Artha Rin Adalat and therefore the rule cannot be sustained.

The learned counsel by referring to various annexure annexed with the writ petition also contends that since the receipt (ট্রাক গ্রহনের রশিদপত্র) has also been described in the written statement even photocopy of the same has also been filed by the petitioner and annexed as of Annexure-‘C’ to the writ petition, so it construe, that very document is lying with the petitioner and he can easily produce the same at the time of giving evidence having no reason to produce that document by the plaintiff in the suit.

The learned counsel by referring to Annexure-‘G’ and ‘G-1’ and ‘G-2’ to the writ petition also submits that, the insurance company issued those letters where the amount of payment has clearly been mentioned so those documents have also been lying with the petitioner having no reason to file the same by the respondent no. 2. In regard to the submission about the statement of accounts against the sanction letters, the learned counsel further contends that, though the petitioner has produced that very document as of Annexure-‘D’ to the writ petition as well as Annexure-4’ to the supplementary-affidavit filed by it, where it has clearly been asserted about the amount of disbursement and payment which has also been asserted in paragraph nos. 7 and 9 to the plaint when the loan of the petitioner was reschedule on 18.11.2016 so there has been no need for the

plaintiff, to supply any other statement of account before that date, as after reschedulement of any loan, the repayment usually restarts afresh and from that very date and up to filing of the suit, the claim has clearly been described as has been reflected in Annexure-‘4’ to the supplementary-affidavit having no reason to produce any other document against the two sanction letters.

The learned counsel also contends that since the claim of the petitioner is being opposed by the respondent no. 2 leaving the said issue as disputed question of fact which cannot be amenable in writ jurisdiction and in support of his such submission, the learned counsel then placed his reliance in the decision reported in 57 DLR (AD) 58. With those submissions, the learned counsel finally prays for discharging the rule.

Be that as it may, we have considered the submission so advanced by the learned senior counsel for the petitioner and that of the learned counsel for the respondent no. 2. Together, we have also very meticulously gone through the writ petition, all the documents annexed, as well as the supplementary-affidavit, affidavit-in-opposition and application for discharging the rule filed by the respondent no. 2. At the same time, we have also very carefully gone through the impugned judgment and order through which the application filed by the petitioner under Order 11 rule 21 of the Code of Civil Procedure was rejected and that of the application filed by the respondent no. 2 was allowed seeking exemption from producing three sort of documents. It is true that earlier the learned judge of the Artha Rin Adalat vide order dated 26.07.2022 allowed the application filed by the petitioner directing the respondent no.

2 to produce documents sought in the said application even in presence of the respondent no. 2 though no written objection was filed by the plaintiff against the application filed under Order 11 rule 14 of the Code of Civil Procedure. Subsequently, when that direction for production of documents had not been complied with by the respondent no. 2, it compelled the petitioner to file the application for dismissing the suit under Order 11 rule 21 of the Code of Civil Procedure. Now a very pertinent question has been raised by the learned counsel for the respondent no. 2 that there has been no consequence effect in Order 11 rule 21 of the Code of Civil Procedure for non production of any document sought under Order 11 rule 14 of the Code of Civil Procedure. For that obvious reason, we feel it expedient to reproduce Order 11 rule 21 of the Code of Civil Procedure which runs as follows:

“Where any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and, if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended, and the party interrogating or seeking discovery or inspection may apply to the Court for an order to that effect, and an order may be made accordingly.”

By reading out the said rule, Mr. Ziaul Haque Sarker, the learned counsel contends that in that rule 21, there have been 03(three) different sorts of consequence that can be passed by a trial court if any party to the suit fails to comply with the direction which are interrogatives, discovery

and inspection of documents which encompasses in rule 11, rule 12 and rule 18 of Order 11 of the Code of Civil Procedure. So there has been no scope for the trial court to dismiss any suit merely for non production of any document even if such kind of order is passed by the trial court on earlier occasion. To counter the said contention, the learned counsel for the petitioner then takes us to the decision reported in 7 ADC 935 and brought our attention to paragraph no. 8. But facts remains, that very order was passed in a Title Suit not in an Artha Rin Suit. Furthermore, on examining the observation and findings made in paragraph no. 8 of the said cited decision, we don't find that for non production of documents the suit was dismissed. The learned counsel for the respondent no. 2 has rightly pointed out the provision provided in section 3 of the Artha Rin Adalat Ain, 2003 where the said provision of the Ain has been given preference over any other law. In that respect we have also gone through the provision provided in section 6 of the Artha Rin Adalat Ain, 2003 where it has clearly been asserted that:

“৬. (১) এই আইনের অধীন অর্থ ঋণ আদালতে দায়েরকৃত কোন মামলার বিচার বা নিষ্পত্তি সম্পর্কিত কার্যক্রমে, এই আইনের বিধানাবলীর সহিত অসংগতিপূর্ণ না হওয়া সাপেক্ষে, The Code of Civil Procedure, 1908 এর সংশ্লিষ্ট বিধানাবলী প্রযোজ্য হইবে।”

In section 8(3) of the Ain provision has also been made as regards to what documents has to be produced by a plaintiff, bank or financial institution at the time of filing of an Artha Rin Suit. Essentially, when the plaintiff, respondent no. 2 has filed the Artha Rin Suit, it has complied with the provision of section 8 (3) of the Artha Rin Adalat Ain, 2003 and

upon perusing the plaint, the defendant petitioner filed his written statement where no claim has ever been made therein in the written statement that the documents so sought subsequently has not been annexed with the plaint rather the claim has been made when the suit reached at the stage of examination of PWs. On top of that, there has been nothing in the four corner of Ain, that if a plaintiff bank or a financial institution or any defendant of an Artha Rin Suit ever fails to produce any document then what consequence will follow. So, in that case the provision of section 3 and 6 of the Ain will certainly come into play having no scope to apply the provision of Order 11 rule 21 of eh Code of Civil Procedure in dismissing any Artha Rin Suit. So, the legal point is very clear here because though the petitioner invoked the provision of section 57 of the Artha Rin Adalat Ain while filing the application under Order 11 rule 21 of the Code of Civil Procedure yet in absence of any consequence in Artha Rin Adalat Ain, 2003, then for non production of any document, the learned judge reserves no authority to dismiss an Artha Rin Suit the suit. Though that very legal provision has not been discussed and observed in the impugned judgment evn then the learned judge has committed no error of law in rejecting the application so filed by the petitioner under Order 11 rule 21 of the Code of Civil Procedure. For that obvious reason, the decisions cited by the learned counsel for the petitioner in regard to the consequence of non production of documents has got no nexus with the facts and circumstances of the case in hand. Furthermore, since statement of account in relation to the sanction letters has been filed by the respondent no. 2, then if the petitioner has got any

objection there against, he can easily avail the opportunity to cross examine the witness of respondent no. 2 to prove his defense case and we find substance to the submission of the learned counsel for the respondent no. 2, that once a loan is rescheduled there has been no reason to claim statement of account from the beginning of disbursement of the loan when it is admitted position that, the loan was subsequently rescheduled. However, we totally at one with the ratio settled in the decision cited by the learned counsel for the respondent no. 2 with regards to the consequence of disputed question of fact as reported in 57 DLR (AD) 58.

Regard being had to the above facts, circumstances, the submission and observation made hereinabove, we don't find any illegality or impropriety in the impugned judgment and order which is liable to be sustained.

Accordingly, the rule is discharged however without any order as to costs.

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

Let a copy of this judgment and order be communicated to the respondents forthwith.

Rezaul Karim, J.

I agree.