

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

**WRIT PETITION NO. 8175 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:**

Meskat Zahan and another  
... Petitioners

-VS-

Artha Rin Adalat, 2<sup>nd</sup> Court, Dhaka  
and others

.....Respondents

Mr. Khaled Mahmudur Rahman,  
with

Mr. Md. Sirajul Islam, Advocates

.....For the Petitioner

Mr. Sikder Mahmudur Razi,  
Advocate

... For the respondent No. 2

**Present:**

**Mr. Justice Zafar Ahmed**

**And**

**Mr. Justice Sardar Md. Rashed Jahangir**

**Heard and Judgment on : 10.07.2024**

**Zafar Ahmed, J.**

In the instant writ petition, this Court issued a Rule  
Nisi on 25.06.2023 calling upon the respondents to show  
cause as to why the auction notice published by the Artha

Rin Adalat, 2<sup>nd</sup> Court, Dhaka in Artha Jari Case No. 891 of 2018 arising out of Artha Rin Suit No. 917 of 2016 in the 'Daily Sangbad' on 12.06.2023 under Section 33(1) of the Artha Rin Adalat Ain, 2003 (Annexure-C) so far as it relates to the respective flats of the petitioners should not be declared to have been passed without lawful authority and is of no legal effect.

At the time of issuance of the Rule Nisi, this Court passed an interim order staying operation of the auction notice of the petitioner No.1's flat No. C-4 (4<sup>th</sup> floor) including the car parking space measuring total 1325 square feet (Naba Garden, House No. 130/3 Baganbari, Bashabo, Sobujbagh, Dhaka).

The respondent No. 2 Bank Asia Ltd. filed an application for discharging the Rule on the grounds stated therein.

The petitioner No. 1 is the 3<sup>rd</sup> party purchaser of the flat in question. The seller is Naba Holdings Ltd. through its constituted attorney. The petitioner No. 2 is also a 3<sup>rd</sup> party in whose favour a letter of allotment was executed by the developer Naba Holdings Ltd. on 15.11.2016 and he has already deposited almost the entire price of the flat.

The respondent No. 2 bank filed Artha Rin Suit No. 917 of 2016 in the Court of Artha Rin Adalat No. 2, Dhaka for realisation of outstanding loan amount together with interest accrued thereon to the tune total Tk. 6,06,53,448.77/-. The loan in question was unsecured *i.e.* no property was kept in the mortgage against the loan. Naba Apparels Ltd. and members of its Board of directors were impleaded as defendants in the suit. The suit was decreed *ex parte* on 21.03.2018. The bank filed Execution Case No. 891 of 2018 for the amount of Tk. 7,64,10,895.92/-. None of the judgment-debtors entered appearance in the execution case.

The bank filed an application before the executing Court for attachment of property consisting of entire 2<sup>nd</sup> floor, 4<sup>th</sup> floor and 6<sup>th</sup> floor of a 9 storied residential building situated at Sabujbagh, Dhaka. The properties sought to be attached were owned by Naba Holdings Ltd. It is stated in the said application for the attachment that almost same set of persons were the members of board of directors of both the judgment-debtor Naba Apparels Ltd. and Naba Holdings Ltd. and for all practical purposes the same set of persons owned both the companies. The application for attachment was allowed by the executing Court on

20.02.2023. Meanwhile, back in 2017, the present petitioners and others purchased apartments in the said building which were subsequently attached on 20.02.2023. Challenging the attachment order, other purchasers filed separate miscellaneous cases before the executing Court under Order XXI rule 58 of the Court of Civil Procedure (CPC) read with Section 32 of the Artha Rin Adalat Ain, 2003.

The present petitioner No. 1 purchased the flat through a sale deed and petitioner No. 2's flat is yet to be registered. Those flats are also subject matter of the order of attachment. The petitioner No. 1 filed a miscellaneous case being No. 50 of 2023 and the petitioner No. 2 filed a miscellaneous case being No. 42 of 2023 under Order XXI rule 58 in respect of the flats which are now pending for disposal. However, presumably being ill advised, the petitioners also filed the instant writ petition which is also subject matter of the miscellaneous cases.

The learned Advocate appearing for the petitioners frankly and candidly submits that the instant writ petition is misconceived and the proper course of action is to pursue the miscellaneous case.

In view of the candid submission of the learned Advocate appearing for the petitioners which is based on correct proposition of law, nothing is left to adjudicate the instant Rule on merit. Therefore, the Rule is liable to be discharged. Accordingly, the application for discharging the Rule is allowed.

In the result, the Rule is discharged. The interim order stands vacated. The concerned Adalat is directed to dispose of the miscellaneous cases expeditiously in accordance with law. We make it clear that the instant misconceived writ petition shall have no bearing upon the merit of the miscellaneous cases which shall be decided in accordance with law in the attending facts and circumstances of the case.

**Sardar Md. Rashed Jahangir, J.**

I agree.