

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

Writ Petition No. 6241 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. Mostafa Amzad alias Md. Mostafa Amzad
Hossain

... Petitioner

-Versus-

The Artha Rin Adalat No. 2, Dhaka and others
... Respondents

Sk. Zulfiqur Bulbul Chowdhury, Senior Advocate

... For the petitioner

Mr. Md. Mahabubur Rahman Kishore, Advocate
with

Mr. Najmul Karim, Advocate

...For the respondent No. 2

Heard and Judgment on:

27.01.2026

Present:

Justice Sardar Md. Rashed Jahangir

and

Justice Kazi Waliul Islam

Sardar Md. Rashed Jahangir, J:

On an application under article 102 of the Constitution of the
People's Republic of Bangladesh the Rule Nisi was issued in the
following terms:

“Let a Rule Nisi calling upon the respondents to show cause as to why the judgment and decree dated 11.04.2022 (decree signed on 18.05.2022) passed by the respondent No. 1, the Judge, Artha Rin Adalat-2, Dhaka in Artha Rin Suit No. 528 of 2019, should not be struck down and as to why a direction should not be given to decide the Artha Rin Suit No. 528 of 2019 to the Judge, Artha Rin Adalat-2, Dhaka on merit in accordance with law and/or pass such other or further order or orders as to this Court may seem fit and proper.”

Relevant facts necessary for disposal of the Rule are that the respondent No. 2 being plaintiff instituted Artha Rin Suit No. 528 of 2019 in the Court of Artha Rin Adalat No. 2, Dhaka for realization of a total outstanding dues of Tk. 9,14,15,469.00 as stands on 30.05.2019 with applicable interest. Upon consideration of an application for loan dated 30.06.2015 the respondent No. 2 sanctioned term loan facilities under SME Finance(Astha) Scheme vide sanction letter Reference No. 21/08495/2015 dated 29.10.2015 for an amount of Tk. 15,00,00,000.00 for a period of 60(sixty) months in order to facilitate to meet up petitioner's regular business capital. It is further stated that the defendant-petitioner enjoyed the financial facilities in full and thereafter the loan facilities was rescheduled on 25.10.2018. The petitioner failed to repay the loan within the stipulated period and as such the plaintiff financial institution issued legal notice upon the petitioner and other defendants on 03.06.2019 demanding payment of loan but the defendants failed to make payment thereof and hence, the plaintiff filed the suit. The defendant No. 1 entered appearance in the said suit

and filed a written statement on 07.10.2020 admitting some of the averments of the plaint. At the same time denied the demand as well as the total claim made in the plaint of the Artha Rin Suit. After swearing affidavit the plaintiff filed an application on 14.02.2022 purporting to section 13(1-4) of the Artha Rin Adalat Ain, 2003 sought for a judgment and decree in accordance with the provision of section 13 of the Artha Rin Adalat Ain on the basis of admission made by the defendant No. 1 in his written statement. Learned Judge of the Artha Rin Adalat No. 2 on the basis of the application of plaintiff and upon consideration of the plaint together with the written statement by his judgment and order dated 11.04.2022 decreed the suit under section 13(3) of the Artha Rin Adalat Ain, 2003.

On being aggrieved by the aforesaid judgment and decree purportedly passed under section 13(3) of the Artha Rin Adalat Ain, 2003 dated 11.04.2022, the defendant No. 1 moved before this Court and obtained the Rule.

Mr. Sk. Zulfiquar Bulbul Chowdhury, learned Senior Advocate appearing for the petitioner submits that under section 13(3) of the Artha Rin Adalat Ain, 2003 the Artha Rin Adalat is authorized to pass a decree on the basis of admission, specifically made by the defendant in the written statement or otherwise. He continues to submit that the Artha Rin Adalat cannot pass a decree on the basis of

the claim which is not being specifically admitted by the defendant in the written statement or otherwise. He further submits that in the instant case, the defendant No. 1 in his written statement dated 07.10.2020 under paragraph 15(A) and (B) categorically admitted that on the basis of an application of the defendant No. 1 the plaintiff initially sanctioned a loan facilities for an amount of Tk.15,00,00,000/- and the defendant after receiving the said facilities used to pay the installments in regular basis and thereafter applied for rescheduling the loan and the plaintiff vide sanction letter dated 25.10.2018 rescheduled the loan for an amount of Tk. 8,22,13,200.92.

He next submits that the defendant No. 1 neither admitted the total claim of the plaintiff nor admitted the claimed interest and other charges, but the Artha Rin Adalat failing to consider the purports of section 13(3) of the Artha Rin Adalat Ain illegally decreed the suit without providing the defendant to defend himself against the claim of the plaintiff and as such, the impugned order is liable to be set aside.

In support of the submission he cited the case of Md. Arfan Uddin Akand Vs. Joint District Judge and Artha Rin Adalat No. 1, Gazipur and another reported in 15 BLT 343 and 2(two) unreported judgment of this Court passed in Writ Petition No. 4877 of 2016 and 9933 of 2011.

On the other hand Mr. Md. Mahabubur Rahman Kishore appearing Mr. with Najmul Karim, learned Advocates submits that the Artha Rin Adalat has been authorized under section 13 of the Artha Rin Adalat Ain, 2003 to pass judgment on the basis of admission and in the instant case since the defendant admitted the fact of taking loan and showed willingness to repay his liabilities of loan, learned Judge of the Artha Rin Adalat considering the aforesaid aspect together with the application filed by the plaintiff-respondent No. 2 under section 13 of the Artha Rin Adalat Ain, 2003 justly and legally passed the judgment.

He further submits that under the Artha Rin Adalat Ain there is a specific provision of filing appeal against the judgment passed by the Artha Rin Adalat and the instant writ petition is not maintainable without filing the statutory appeal.

We have heard learned Advocates of both the parties, perused the writ petition together with the annexures, affidavit-in-opposition; we have gone through the provision of law and the cited judgments.

It appears that the suit has been filed by the respondent No. 2 for realization of an outstanding dues of Tk. 9,14,15,469.00. The defendant No. 1 made appearance and thereafter filed written statement on 07.10.2020. Thereafter the plaintiff-respondent No. 2 filed an application under section 13(1)-(4) read with section 57 of the Artha Rin Adalat Ain, 2003 sought for a decree on the basis of

the admission of defendant No. 1. Learned Judge of the Artha Rin Adalat No. 2, Dhaka on 11.05.2022 after consideration of the application and the provision of section 13(3) of the Artha Rin Adalat Ain, 2003 together with the averments of the plaintiff to the effect that defendant No. 1 has admitted the fact of taking loan and also showed his willingness to repay the aforesaid loan decreed the suit in favour of the plaintiff-respondent No. 2.

In the given facts, the pertinent question arises whether the judgment and decree dated 11.05.2022 (decree signed on 18.05.2022) conforms with the contemplation of the provision of section 13(3) of the Artha Rin Adalat Ain, 2003. For better understanding let us see the provisions of section 13 of the Artha Rin Adalat Ain, 2003, which states as follows:

“১৩। (১) বিবাদী কর্তৃক লিখিত জবাব দাখিল হওয়ার পরবর্তীতে ধার্য একটি নির্ধারিত তারিখে আদালত উভয় পক্ষকে, যদি উপস্থিত থাকে, শুনানী করিয়া এবং আরজি ও লিখিত বর্ণনা পর্যালোচনা করিয়া মামলার বিচার্য বিষয়, যদি থাকে, গঠন করিবে; এবং যদি বিচার্য বিষয় না থাকে, আদালত অবিলম্বে রায় বা আদেশ প্রদান করিবে।

(২) উপ-ধারা (১) এ নির্ধারিত তারিখে, কোন বা উভয় পক্ষ যদি অনুপস্থিত থাকে, তাহা হইলে আদালত, আরজি ও লিখিত বর্ণনা পর্যালোচনা করিয়া মামলার বিচার্য বিষয়, যদি থাকে, গঠন করিবে; এবং যদি বিচার্য বিষয় না থাকে, আদালত অবিলম্বে রায় বা আদেশ প্রদান করিবে।

(৩) মামলার যে কোন পর্যায়ে, লিখিত বর্ণনায় কিংবা অন্য কোনভাবে বিবাদী কর্তৃক বাদীর আরজির বক্তব্য স্বীকৃত হইয়া থাকিলে, এবং উক্তরূপ স্বীকৃতির ভিত্তিতে যে রূপ রায় বা আদেশ পাইতে বাদী অধিকারী, সে রূপ রায় বা আদেশ প্রার্থনা করিয়া বাদী আদালতের নিকট দরখাস্ত করিলে, আদালত, বাদী ও বিবাদীর মধ্যে বিদ্যমান অপরাপর বিচার্য বিষয় নিষ্পত্তির জন্য অপেক্ষা না করিয়া, উপযুক্ত রায় বা আদেশ প্রদান করিবে।

(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।”

On a bare reading of section 13 of the Artha Rin Adalat Ain 2003, it appears that on a day fixed after filing of the written statement, the Adalat after hearing both the parties, if they are present and considering the statements of plaintiff as well as the averments of written statement shall frame issues, if any to be adjudicated and if there be no issue or conflict between the parties then the Court may deliver the judgment and order.

On further consideration of the aforesaid provision of sub-section (2), it appears that if on the day fixed, one or both of the parties failed to appear before the Court; the Court shall on perusal of the plaint and written statement frame issue, if any and if there be no issue then the Court or Adalat shall pass its judgment and order forthwith.

Under sub-section (3), it is provided that if the plaintiff filed an application seeking judgment on the basis of the admission of defendant, the Artha Rin Adalat concerned upon consideration of the application together with the plaint and written statement, is of the opinion that the defendant in his written statement or otherwise admitted the claim of the plaintiff, then the Adalat is authorized to pass such judgment or order as the plaintiff may be entitled on the basis of the admission without going into detail discussion to determine the other issues. Meaning thereby, on perusal of the written statement, if it appears to the Adalat that the defendant

admitted the claim of the plaintiff, then the Court shall not go into for any further determination and shall pass judgment and order on the basis of such admission.

Under the case in hand, the plaintiff filed the Artha Rin Suit for recovery of loan money. In the first part of the plaint the plaintiff has categorically stated that the fact of sanctioning a term loan of Tk.15,00,00,000/- under the sanction letter dated 29.10.2015 for a period of 60(sixty) months. The defendant enjoyed the financial facilities in full and thereafter the loan was rescheduled on 25.10.2018.

It is further stated that defendants are irregular in making installments from the very beginning and failed to adjust loan liabilities as per repayment schedule as contained in the sanction letter and accordingly, after serving legal notice the plaintiff filed the suit for realization of an outstanding dues of Tk.9,14,15,469/-.

The defendant No. 1 on 07.10.2020 filed a written statement, in which at paragraph 15, under the caption 'actual facts' it has been categorically stated that:

*“The defendant No. 1 of suit applied for and requested the plaintiff to sanction a term loan and on the basis of his request, plaintiff sanctioned a term loan facility under SME Finance (Astha) Scheme vide its sanction letter Reference No. 21/08495/2015 dated 29.10.2015 for an amount of Tk. 15,00,00,000.00 only for a period of 60(sixty) months.
The defendant No. 1 accepted the sanction letters against the said loan facilities along with all the*

terms and conditions contained therein and was paying the installments in regular basis and later for the betterment of the business the defendant No. 1 applied for rescheduling of the loan and the plaintiff sanctioned the reschedule of the loan on 25th October, 2018 vide memo No. 021/010365/2018 upon receiving BDT9,134,700.00 of down payment from the defendant No. 1 and the rescheduled amount stand for BDT 82,213,200.92.”

On a combined reading of the plaint and written statement, it appears that the defendant categorically admitted the facts, so far it relates to the sanction of loan of Tk. 15,00,00,000/- and thereafter the fact of rescheduling of the loan on 25.10.2018 and on the said date the rescheduled liabilities stands at Tk. 8,22,13,200.92.

In the written statement although the defendant admitted the fact of sanctioning loan of Tk. 15,00,00,000/- vide sanction letter dated 29.10.2015 and thereafter the fact of rescheduling of loan on 25.10.2018 under which the liabilities stands at of Tk. 8,22,13,200.92, but nothing more, there is no admission expressly or impliedly regarding the outstanding final claim of the plaint.

Meaning thereby on perusal of the written statement, no where it can be found that the defendant expressly admits the claim of the plaintiff.

For the purpose of passing a final judgment and decree under section 13(3) of the Artha Rin Adalat Ain, 2003, the admission of the defendant is to be of the effect that it must be the admission of the total liabilities and the claimed amount as stated on the date of

filing of the suit and the Artha Rin Adalat for the purpose of passing judgment and decree under section 13(3) is to consider and thereby be confined within the scope of the admission. The judgment and decree under section 13(3) of the Ain cannot be passed as a whole, on the basis of an admission of partial fact.

Our aforesaid view is supported by the judgment of Md. Arfan Uddin Akand Vs. Joint District Judge and Artha Rin Adalat No. 1, Gazipur reported in 15 BLT 343 and by the unreported judgment of Writ Petition No. 4877 of 2016.

In the premise above, we find merit in the Rule.

Accordingly, the Rule is made absolute.

The judgment and decree dated 11.04.2022 passed under section 13(3) of the Artha Rin Adalat Ain, 2003 by the Artha Rin Adalat No. 2, Dhaka in Artha Rin Suit No. 428 of 2019 is hereby set aside.

The suit is sent back to the Court concerned with a direction that the Artha Rin Adalat shall frame proper issues, on perusal of the plaint and written statement, if the issues have not been framed yet and to decide the suit on merit after providing both the parties necessary opportunity to place their cases in accordance with law.

Communicate the judgment and order at once.

Kazi Waliul Islam, J:

I agree.

