

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

Writ Petition No. 12118 of 2023.

In the matter of:

An application under article 102 (2) of the
Constitution of the People's Republic of
Bangladesh.

-And-

In the matter of:

Enamul Haque.

..... Petitioner

-Versus-

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

Mr. Muhammad Sazzad Hossain, Advocate
. . . For the petitioner.

Mr. Abdul Halim Shikder, Advocate
. . . For the respondent No. 2.

Present:

Mr. Justice J. B. M. Hassan
and

Mr. Justice Razik Al Jalil

Heard and Judgment on 06.12.2023.

J. B. M. Hassan, J.

The petitioner obtained the Rule Nisi in the following terms:

“Let a Rule Nisi be issued calling upon the respondents No. 1-2 to show cause as to why the order No. 57 dated 21.09.2023 passed by the Artha Rin Adalat, Court No. 2, Dhaka (respondent No. 1) in Artha Rin Suit No. 2912 of 2015 so far as it relates to rejection of application filed by the petitioner for recalling the PW1 (Annexure-H to the supplementary affidavit) 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 financial institution, namely, Phoenix Finance and Investments Limited (respondent No.2) instituted Artha Rin Suit No. 2912 of 2015 against the petitioner and others for realization of loan amounting to Tk. 2,04,90,129/-. Subsequently, when the suit was at the stage of argument, on the basis of an application the petitioner filed written statement as defendant No.8 and it was accepted by order dated 22.09.2022. Thereafter, the petitioner filed an application for recalling P.W.1 but it was rejected by the impugned order.

Mr. Muhammad Sazzad Hossain, learned Advocate for the petitioner submits that since the petitioner was allowed to file written statement, for ends of justice he may be allowed to cross examine the witness by recalling the P.W.1.

On the other hand, Mr. Abdul Halim Shikder, learned Advocate for the respondent No.2 contends that the petitioner along with other defendants are filing applications one after another in order to prolong disposal of the suit. Considering this aspect, the Adalat rightly rejected the petitioner's application to recall P.W.1.

We have gone through the writ petition and other materials on record.

Since the petitioner's written statement has been accepted, he should be allowed to cross examine the P.W. 1. Hence, the writ petition finds merit.

In the result, the Rule Nisi is made absolute. The order No. 57 dated 21.09.2023 passed by the Artha Rin Adalat, Court No. 2, Dhaka (respondent No. 1) in Artha Rin Suit No. 2912 of 2015 so far as it relates to rejection of application filed by the petitioner for recalling the PW1 (Annexure-H to the

supplementary affidavit) is hereby declared to have been passed without lawful authority and is of no legal effect.

The Adalat is directed to allow the petitioner to cross examine the P.W.1 on the next date without giving any adjournment in the suit.

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

Razik Al Jalil, J

I agree.