

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

Writ Petition No. 10059 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:

Md. Sarwar Hossain Bayezid.

..... Petitioner

-Versus-

Judge, Artha Rin Adalat, Narayangonj and
another.

Mr. Md. Tajul Islam Asad, Advocate

. . . For both the petitioner.

Mr. Touhidul Hasan, Advocate

. . . For the respondent No.2.

Present:

Mr. Justice J. B. M. Hassan

and

Mr. Justice Razik Al Jalil

Heard and Judgment on 15.11.2023.

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 to show cause as to why the impugned order No.12 dated 19.06.2023 passed by Joint District Judge and Artha Rin Adalat, Narayangonj, the respondent No.1 in Artha Rin Decree Execution Case No. 147 of 2022 rejecting the application of the petitioner for giving permission to purchase the mortgaged property put in auction upon payment of the amount proposed by highest bidder of auction (Annexure-D), shall 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 decree holder Bank, namely, The City Bank Limited (respondent No.2) obtained a decree and filed execution Case No. 147 of 2022 for realization of decretal dues. In the execution case the mortgaged property was put in auction and the highest offerer made part payment. At this stage, the petitioner as legal heir of the Principal borrower filed an application to purchase the said mortgaged property at the proposed price. The Adalat by the impugned order rejected the said application.

Mr. Md. Tajul Islam Asad, learned Advocate for the petitioner has placed the impugned order and submits that it is the petitioner's homestead and on humanitarian ground the petitioner may be allowed to purchase the said property at the offered price.

On the other hand, Mr. Touhidul Hasan, learned Advocate for the respondent No.2-Bank contends that there is no scope under the law to purchase the said property except seeking relief under Order XXI Rule 89 of the Code of Civil Procedure (the Code).

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

It appears that the execution case has been filed for realization of decretal dues amounting to Tk. 52,40,58,311.42. There is no legal provision to sell the mortgaged property at the offered price and that to sett aside the auction sale, it is the only provision under Order XXI Rule 89 of the Code of civil Procedure under which the petitioner can file application by depositing decretal dues along with 5% compensation. But no such prayer has been made by the judgment debtor and as such, the Adalat rightly rejected the application.

In view of above, we do not find any merit in this Rule Nisi.

Hence, the Rule Nisi is discharged without any order as to costs.

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

Razik Al Jalil, J

I agree.