

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

WRIT PETITION NO.12564 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. Shah Alam

- Petitioner

-vs-

***The Government of Bangladesh Ministry of
Finance, represented by the Secretary,
Bangladesh Secretariat, Ramna, Dhaka and
others.***

..... For the Respondents.

And

None appears

.... For the Petitioner.

Mr. Touhidul Hasan, Advocate

... For the respondent No.3

Mr. Samarendra Nath Biswas, D.A.G. with

Mr. Md. Abul Kalam Khan (Daud), A.A.G. and

Mr. Md. Modersher Ali Khan (Dipu), A.A.G.

....For the Respondents-government.

Heard and judgment on: 30.01.2024

Present:

Mrs. Justice Farah Mahbub.

And

Mr. Justice Muhammad Mahbub Ul Islam

Farah Mahbub, J:

Today, this matter has appeared in the list for order.

At the instance of the petitioner, present writ petition has been filed
challenging the impugned auction notice dated 21.09.2023 (Annexure-B)
issued by the respondent No.3 bank under Section 12(3) of the Artha Rin

Adalat Ain, 2003 published in the “Daily Bhorer Kagoj” inviting tender for sell of the mortgaged properties scheduled to be held on 16.10.2023.

Having found *prima-facie* substance to the contentions so made therein, this Court issued Rule on 16.10.2023 and at the same time stayed the operation of the impugned auction notice dated 21.09.2023 for a prescribed period subject to the condition that the petitioner would deposit 50% of the total amount as mentioned of the impugned auction notice to the respondent bank within 3(three) months from the date of passing the said order. The petitioner was further directed to pay of the remaining loan amount in 3(three) equal installments within a period of 9(nine) months from the respective date, in default, the petitioner would be liable to pay a fine of Tk.2,00,000/-. In default, the Rule would stand discharged. Moreso, while issuing the said order, this Court also directed the petitioner to put in requisites for service of notice upon the respondents by registered post as well as through usual process within 3(three) working days, failing which this Rule would stand discharged.

At this juncture, Mr. Touhidul Hasan, the learned Advocate appearing for the respondent No.3 bank by filing power submits that in compliance of the direction so given by this Hon’ble Court at the time of issuance of the Rule, the petitioner did not deposit 50% of the defaulted loan amount within the prescribed period as stipulated in the Rule issuing order dated 16.10.2023, nor the petitioner has put in required requisites for service of notice upon the respondent-bank. In this regard, he goes to submit that the respondent bank came to learn about issuance of the said Rule along with ad-interim direction on receipt of the copy of the lawyer’s certificate issued by Mr. Muhammad Masud-ul-Haque, the learned Advocate, who on behalf of the petitioner moved the instant writ petition and obtained the instant Rule and stay along

with necessary direction. However, in view of the ad-interim order so had been passed by this Hon'ble Court the respondent bank did not proceed within the process of auction by publishing notice in the respective news paper, towards realisation of the defaulted loan amount.

In view of the present context, he submits that since the petitioner has measurable failed to deposit the required defaulted loan amount as well as did not deposit required requisites this Rule stood discharged on the expiry of the respective period. Under the stated circumstances, he prays for passing necessary order for proper dispensation of justice.

The learned Counsel for the petitioner is found absent when the matter has been taken up for hearing.

In view of the submission of the learned Advocate appearing for the respondent-bank and also, in view of the default order passed by this Court at the time of issuance of the Rule, there is no doubt to find that on the expiry of the respective period this Rule stood discharged. Consequently, the order of stay as well as direction given by this Court at the time of issuance of this Rule stood vacated.

The respondent bank is at liberty to proceed with the process of auction towards selling the mortgaged property in question for realization of the defaulted loan amount, in accordance with law.

There will be no order as to costs.

Communicate the judgment and order to the respondents concerned at once.

Muhammad Mahbub Ul Islam, J:

I agree.