

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Civil Appellate Jurisdiction)**

First Miscellaneous Appeal No. 30 of 2023

with

(Civil Rule No. 574 (FM) of 2022)

In the matter of:

Md. Kaium Khan

... Appellant-petitioner

-Versus-

Janata Bank Limited and others

... Respondents-opposite party

Mr. Rusho Mostofa, Advocate

... For the appellant-petitioner

Mr. Md. Nazmul Hoque, Advocate

.... For the respondent-opposite party no. 1

Heard on 17.02.2025

and Judgment on 19.02.2025

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

Md. Mozibur Rahman Miah, J.

Since the point of law and facts so figured in the appeal as well as rule are intertwined they have been heard together and are being disposed of with this common judgment.

This appeal is directed against the judgment and order dated 12.04.2022 passed by the learned judge, Artha Rin Adalat No. 1, Dhaka in Artha Rin Review Case No. 07 of 2022 rejecting an application of the petitioner for restoration of the review to its original file and number.

The short facts leading to preferring this appeal are:

The present respondent as plaintiff originally filed a suit being Artha Rin Suit No. 08 of 2020 before the Artha Rin Adalat No. 1, Dhaka against the petitioner who was made as defendant no. 3 and 4 others claiming an amount of taka 13,98,39,575/- as of defaulted loan making following reliefs :

(ক) বিবাদীর বিরুদ্ধে বাদী ব্যাংক-র পিাও.যা ০৪.০২.২০২০ইং পর্যন্ত সুদসহ ১৩,৯৮,৩৯,৫৭৫/- (তের কোটি আটানব্বই লক্ষ উনচল্লিশ হাজার পাঁচশত পচাত্তর) টাকার জন্য বিবাদীগণের বিরুদ্ধে বাদীর অনুকূলে ডিক্রি দিতে এবং

(খ) বাদী ব্যাংক-র পাওনা টাকা আদায় না হওয়া পর্যন্ত মামলার খরচ ও নির্ধারিত হা-র সুদ আদা-য়র আ-দশ দি-ত এবং

(গ) বিবাদীগ-নর স্হাবর/অস্হাবর সম্পত্তি বিক্রয় করিয়া বাদী ব্যাংকের প্রাপ্ত টাকা আদায়ের আদেশ দান ও ডিক্রি প্রদান করিতে,

(ঘ) বাদী ব্যাংক-র অনুকূ-ল ও বিবাদীগ-ণর বিরুদ্ধে পার্সোনাল ডিক্রি প্রদানের আদেশ এবং পাওনা আদারে ব্যর্থ হই-ল বিবাদীগন-ক সিভিল জে-ল আটক রাখার আ-দশ এবং

(ঙ) আইন ও ইকুটি মূ-ল বাদী ব্যাংক আর যে যে প্রতিকার পাইতে হকদার হইবে তাহার ও বিহিত ডিক্রি দিতে আজ্ঞা হয় ।

Out of the 5 defendants of the said suit, the present petitioner who was defendant no. 3 entered appearance and filed a written statement denying all the material averment so made in the plaint contending *inter alia* that he is neither a borrower nor a mortgager nor a guarantor and therefore the claim made against him cannot be sustained and prayed for dismissal of the suit. On the basis of the pleadings, the learned judge of the Artha Rin Adalat framed as many as 5 different issues and in support

of the case the plaintiff examined 2 witnesses and the defendant no. 3-petitioner examined himself as defendant witness no. 1 (DW-1). Both the plaintiff and defendant no. 1 also produced several document which were also marked as exhibit nos. 1-17-C series at the instance of the plaintiff while those of exhibit nos. A-F by the defendant no. 3. After taking into account of the evidence and materials on record, the learned judge of the Artha Rin Adalat vide judgment and decree dated 13.12.2021 decreed the suit on contest against the defendant 3-petitioner for an amount of taka 13,98,39,575/- and directed the said defendant to pay the said decretal amount within a period of 60 days with interest as per provision so stipulated in section 50(2) of the said Artha Rin Adalat, 2003.

However, feeling aggrieved by and dissatisfied with the said judgment and decree passed on contest, the defendant no. 3 as petitioner then filed an application under order 47 rule 1 of the Code of Civil Procedure read with section 57 of the Artha Rin adalat Ain, 2003 for review of the said judgment and decree. The learned judge of the Artha Rin Adalat vide order no. 36 dated 09.03.2022 fixed it on 14.03.2022 for admission hearing though finding the review petition out of time and registered it Artha Rin Review Case No. 07 of 2022. On the following occasion that is on 14.03.2022, the learned judge however admitted the said review petition for the time being (আপাততঃ) and fixed on 29.03.2022 for taking evidence for the review petitioner. On 29.03.2022 the said review case though fixed for taking evidence of the petitioner but since the review petitioner remained absent it was then dismissed for default.

Subsequently, the petitioner on 07.04.2022 filed an application under section 57 of the Artha Rin Adalat Ain, 2003 for restoration of the said review petition to its original file and number and ultimately the said application for restoration was taken up for hearing by the learned judge of the Artha Rin Adalat and vide impugned order dated 12.04.2022 rejected the same. It is at that stage, the petitioner preferred this appeal before this court.

After preferring the appeal, the appellant as petitioner then filed an application for stay of the operation of the judgment and decree dated 13.12.2001 passed in Artha Rin Suit No. 08 of 2020 and this court vide order dated 25.08.2022 issued rule on the validity of the order dated 12.04.2022 passed in Review Miscellaneous Case No. 07 of 2022 however stayed operation of the judgment and decree dated 13.12.2021 passed in Artha Rin Suit No. 08 of 2020 for a period of 06 (six) months which gave rise to civil rule no. 574(FM) of 2022. The said order of stay so granted at the time of issuance of the rule was lastly extended on 10.07.2024 for a period of 01(one) year.

Mr. Rusho Mostofa, the learned counsel appearing for the appellant-petitioner upon taking us to the memo of appeal and that of the impugned judgment and order annexed therewith and all the documents appended with the application for stay, at the very outset submits that, since the petitioner is neither a borrower nor a guarantor nor a mortgager rather he merely signed in the work order placed before him by the original borrower, so he is not liable to pay the loan given by the bank to the borrower and for that obvious reason, the judgment and decree so

passed against him cannot sustained in law since the Artha Rin Adalat has not taken into consideration of the said material point which compelled him to file the review petition instead of preferring appeal.

The learned counsel by referring to the provision of section 6 of the Artha Rin Adalat Ain contends that, since by that provision, Code of Civil Procedure has been made applicable in the proceedings of the Artha Rin Suit so review application filed under order 47 rule 1 of the Code of Civil Procedure is maintainable having no scope to say that the review application is not entertainable.

To supplement the said submission the learned counsel also contends that, since the learned judge of the Artha Rin Adalat ultimately vide order no. 37 admitted the review application fixing the next date for taking evidence of the petitioner, so it construe that the review is well maintainable having no scope not to entertain and proceed with the same.

The learned counsel by referring to the order no. 37 passed by the learned judge of the Artha Rin Adalat dated 14.03.2022, fixing the matter on 29.03.2020 for taking evidence of the review Miscellaneous Case, the learned counsel contends that, petitioner was under impression that the next date was fixed for serving summons upon the opposite parties to the review petition not for taking evidence of the witness and for that obvious reason, the learned Advocate conducted the case before the trial court could not appear for which the review application was dismissed for default, but the learned judge of the Artha Rin Adalat has misappriated that sole ground for restoration of the review, and misconceivly rejected the application for restoration without assigning

any reason whatsoever and therefore the impugned judgment and order cannot be sustained in law. With those assertion, the learned counsel finally prays for allowing the appeal as well as making the rule absolute.

On the contrary, Mr. Md. Nazmul Hoque, the learned counsel appearing for the respondent-opposite party no. 1 vehemently opposes the contention so taken by the learned counsel for the appellant-petitioner and at the very outset submits that, the review itself was not maintainable having no scope to proceed with the said review any further.

The learned counsel by taking us to the provision of section 5(11) of the Artha Rin Adalat Ain, 2003 contends that, the Code of Civil Procedure will be made applicable in adjudicating Artha Rin Suit so far it (CPC) is not inconsistent with any provision of Artha Rin Adalat Ain, 2003 and then submits that, since there has been no provision of “review” in the Artah Rin Adalat Ain, 2003 so filing of review petition is explicitly inconsistent with the Artha Rin Adalat Ain and therefore the review can never be maintained.

The learned counsel further contends that, though the judgment and decreed of Artha Rin Suit No. 08 of 2020 was passed on 13.12.2021 but due to filing of the review application, the decree holder respondent-opposite party no. 1 could not file the execution case to realize the decretal amount for having an order of stay by this Hon’ble court in Civil Rule No. 574(FM) of 2022. However, in support of his submission the learned counsel has placed his reliance in the decision reported in 14 BLD (HC) 297 and take us through paragraph no. 4 and 6 thereof and

contends that, though that very decision is made under erstwhile Artha Rin Adalat Ain, 1990 but the *ratio* so have been settled in that decision is squarely applicable in the facts and circumstances of the instant case though impugned order was passed under Artha Rin Adalat Ain, 2003 in as much as entertaining a review application is totally inconsistent under the provision of section 5(11) of the Artha Rin Adalat Ain, 2003 corresponding to section 4, 5 of Artha Rin Adalat Ain. 1990 and finally prays for dismissing the appeal and discharging the rule.

We have considered the submission so advanced by the learned counsel for the appellant-petitioner and that of the respondent opposite party no. 1. We have also very meticulously gone through the provision so provided in section 5(11), section 6 and section 6(5) of the Artha Rin Adalat Ain, 2003 vis-à-vis the decision cited at the instance of the respondent-opposite party no. 1. Together, we have also perused the document so have been annexed with the application for stay on which the rule was obtained by the appellant-petitioner.

It is admitted position in section 41 and 42 of Artha Rin Adalat Ain, 2003 provides for preferring appeal and revision against the judgment and decree passed by an Artha Rin Adalat having no provision of any “review” therein. Furthermore, section 6 of the Ain clearly stipulates that, the provision of the Code of Civil procedure will be applicable in adjudicating Artha Rin Suit by the Artha Rin Adalat if the former is not inconsistent with Artha Rin Adalat Ain, 2003 whereas section 5(11) of the Artha Rin Adalat Ain provides that the power and function (সমস্ব ক্ষমতা ও এখতিয়ার) of the Code of Civil Procedure will be

applied in adjudicating Artha Rin Suit so far it does not go inconsistent with the provision of the Artha Rin Adalat Ain. So if we read those two provisions together, it will be palpably clear that, there has been no scope to entertain any review petition under order 47 rule 1 of the Code of Civil Procedure. So in view of clear provision of law, as discussed above, there has been no scope for the Artha Rin Adalat to entertain review against the judgment and decree passed by it. Furthermore, though in the application for review, the petitioner has inserted the provision of section 57 of the Artha Rin Adalat Ain but section 57 mandates the Artha Rin Adalat with an inherent power but that section has never authorized the Adalat to fill up the void which statute itself does not legislate setting any forum. Now, let us revert to examine the validity of the impugned order. From the orders passed in review Miscellaneous Case No. 7 of 2022 we find that, after filing of the review application dated 09.03.2022, as many as 38 orders were passed and from order No. 36, we find that the review petition was registered though same was out of time for which an application under section 5 of the Limitation Act was also filed with the said review application yet vide subsequent order No. 37 dated 14.03.2022, the learned judge of the Artha Rin Adalat admitted the review application fixing the next date on 29.03.2022 for taking evidence of the witness of the petitioner. By those Acts, the learned judge of the Artha Rin Adalat has clearly infringed the provision of Artha Rin Adalat Ain, 2003 in not taking into account that the review is not maintainable which exemplifies his lack of legal acumen. We wonder if such kinds of judge is entrusted with adjudicating

Artha Rin Suit, then volume of defaulted loan will be skyrocketed and the creditor will never realize the decretal amount through court of law. Curiously enough, though the appellant-petitioner has challenged the order dated 12.04.2022 passed in Review Miscellaneous Case No. 07 of 2022 but in a mischievous manner, he obtained an order of stay of the operation of the judgment and decree dated 13.12.2021 passed in Artha Rin Suit No. 08 of 2020 which was contesting one by filing an application for stay on which Civil Rule was registered serving his principal purpose.

Since with the above observation and discussion, we clearly find that, there has been no scope to entertain any review application under Artha Rin Adalat Ain, 2003 so from the very initiation of the review application till passing of the impugned order, rejecting the application for restoration-all have been done illegally and beyond the jurisdiction of the Artha Rin Adalat.

Regard being had to the above discussion, observation and the legal point so outlined, we don't find any merit and iota of substance to proceed with the review Miscellaneous Case.

Accordingly, the appeal is dismissed however without any order as to cost.

Since the appeal is dismissed, the connected rule being Civil Rule No. Civil Rule No. 574 (FM) of 2022 is hereby discharged.

The order of stay granted at the time of issuance of the rule stands recalled and vacated.

Let a copy of this order be communicated to the learned Judge of Artha Rin Adalat No. 1, Dhaka at once.

Md. Bashir Ullah, J.

I agree.