

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

Present

Mr. Justice Md. Iqbal Kabir

And

Mr. Justice Md. Akhtaruzzaman

WRIT PETITION NO. 12268 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:

Sheikh Mohammad Danialpetitioner.

-Vs-

Judge, Artha Rin Adalat, Chattogram and others.

.....respondents.

Mr. A.B.M. Altaf Hossain with

Mr. Md. Masud Alam, Advocates

.....for the petitioner.

Mr. Md. Asraful Hasan Siddique, Advocate.

..... for respondent No.2.

Heard on 08.05.2024 and 27.05.2024.

Judgment on 02.06.2024.

Md. Akhtaruzzaman, J.

In this Rule Nisi, the petitioner called upon the question of legality of Order No. 29 dated 31.08.2023 directing the petitioner to pay Tk. 5(five) crore and Order No. 30 dated 10.09.2023 keeping the petitioner's application for acceptance of written statement and withdrawing the suit from the stage of pronouncement of judgment and fix the case for taking steps for mediation on record tantamount to rejection and directing the petitioner to pay Tk. 5(five) crore within 01.10.2023 failing which judgment would be pronounced passed by the respondent No. 1. in Artha Rin Suit No. 321 of 2021 (Annexure-L) should not be declared to be without lawful authority and is of no legal effect and why a direction

should not be given upon the respondent No.1 to dispose of the said suit in accordance with law.

Pending hearing of the Rule, all further proceedings of Artha Rin Suit No. 321 of 2021 pending before the Court of the respondent No.1 be stayed for a period of 6(six) months which was later on extended for a further period of 2(two) months from date.

The facts of the case as narrated in the writ petition, in brief, are as follows:

Respondent No.2, Padma Bank Ltd. as plaintiff instituted Artha Rin Suit No. 321 of 2021 before the Artha Rin Adalat, Chattogram praying for a decree for recovery of Tk. 37,76,88,832.25 against the defendants contending *inter alia* that the plaintiff Bank (former Farmer's Bank) approved credit facility for an amount of Tk. 20,00,00,000/- in the form of cash credit (Hypo) limit by its sanction letter dated 05.03.2015 in favour of the defendants and the said credit facility was duly accepted and availed by them on the basis of terms and conditions mentioned therein. Against the above mentioned credit facility, the defendant No.3 provided collateral security vide a registered deed of mortgage and registered power of attorney. Subsequently, the defendant No.1 made a representation to the plaintiff Bank for renewing the credit limit and it was approved vide sanction letter dated 28.06.2016 and 31.05.2018. Thereafter, on the basis of representation of defendant No.2 the plaintiff Bank approved renewal of existing cash credit (Hypo) limit amounting to Tk. 20 (twenty) crore and also approved term loan of Tk 5,75,00,000/- totaling an amount of Tk. 25,75,00,000/- vide sanction letter dated

20.09.2018. The plaintiff Bank requested the borrower to repay the loan amount but the defendants failed to adjust the liability. As such, the plaintiff filed the suit.

On 17.02.2022 the defendant No.3 filed a written statement denying all material allegations made in the plaint. During pendency of the suit, the defendants made an application for settlement of disputes between the parties. While the suit was fixed for taking steps for mediation, the Adalat below vide order dated 11.04.2022 kept the application pending and fixed 19.05.2022 for submission of solenama. The plaintiff bank on 13.04.2023 filed an application under section 13(3) of the Ain, 2003 for pronouncement of judgment on the basis of admission of liability of the loan. The Adalat below vide order dated 13.04.2023 fixed 01.06.2023 for application hearing. On the date fixed for hearing, the defendant No.3 filed an application for adjournment of the suit and the Adalat adjourned the case untill 18.06.2023 for passing order. On this day, the defendant No. 3 again filed an application for seeking adjournment and upon considering the same the Adalat fixed 25.06.2023 for taking further steps and passing necessary orders. On this day, the defendant No. 3 filed an application seeking adjournment of the suit along with another petition for part deposit of 5% down payment amounting to Tk. 60 lacs and a cheque amounting Tk. 40 lacs. Upon hearing, the Adalat allowed the application but directed the defendant to deposit Tk. 5 crore within 03.08.2023. The defendant No. 3 sought adjournment to comply with the Court's order but the Adalats below vide order dated 16.08.2023 directed the defendant to deposit the said

amount within 29.08.2023 failing which with a further observation of pronouncement of judgment. This day, the defendant No. 2 filed written statement and also filed an application for acceptance of the written statement and withdrawing the suit from the stage of pronouncement of judgment as well as fixing the case for mediation hearing but the Adalat below kept the said application and written statement in the record for hearing.

Feeling aggrieved thereby the petitioner begs to move before this Court. The respondent No. 2 by filing an application prayed for discharging the Rule.

Mr. A.B.M. Altaf Hossain with Mr. Md. Masud Alam, the learned Advocates appearing for the petitioner submits that the Adalat below most illegally passed the impugned order keeping the application for acceptance of the written statement and taking steps for mediation hearing upon withdrawing the suit from the stage of pronouncement of judgment. Mr. Altaf Hossain, the learned Senior Advocate next submits that the Adalat below without considering the provisions of section 22 of the Ain has illegally directed the petitioner to deposit Tk. 5 crore within 29.08.2023 and fixed the case for pronouncement of judgment without completing all necessary steps in the suit. The learned Advocate finally submits that the Adalat below with a malafide intention as well as without applying judicial mind most illegally passed the impugned order which is liable to be set-aside. In support of his submission, the learned Advocate put reliance on the decisions reported in 19 BLC (2014) 356 and 76 DLR (2024) 30.

On the other hand, Mr. Md. Asraful Hasan Siddique, the learned Advocate appearing for the respondent No.2 Bank submits that the Adalat below did not commit any illegality in passing the impugned order as well as in directing the petitioner to deposit Tk. 5(five) crore as required as down payment of the loan, in default, pronouncement of judgment. He further submits that the petitioner admittedly applied for rescheduling of the loan liabilities and on the basis of admission of the loan by the defendant the Court fixed the suit for pronouncement of judgment and as such, no illegality has been committed by the Adalat in passing the impugned order. The learned Advocate also submits that the applications for accepting written statement and as well as withdrawing the suit from the stage of pronouncement of judgment and fixing it for mediation were not rejected but those were kept in record for further consideration. The learned Advocate finally submits that the Adalat fixed several dates for mediation hearing under section 22 of the Ain but the petitioner being misconceived most illegally filed the instant writ petition which is liable to be discharged.

Heard the learned Advocates appearing for both the sides and perused the petition as well as the materials on record including the impugned order as well. It is on record that on 29.08.2021 the respondent Bank filed Artha Rin Suit No. 321 of 2021 for realization of Tk. 37,76,88,832.25 against the writ petitioner. After appearing in the suit, defendant No. 2 filed written statement on 29.08.2023 whereas defendant No.3 filed the same on 17.02.2022. It appears that on 17.09.2023 the defendant No.2 filed an application for accepting the

written statement and further to fix the suit for mediation hearing. It further appears that after accepting the written statement filed by defendant No.3 the Adalat vide order No.10 dated 17.02.2022 fixed the suit on 11.04.2022 for taking steps for mediation hearing and on this day both the plaintiff and defendant filed separate petitions for appointing mediator but the Adalat kept those petitions in record and without appointment of any mediators fixed the suit on 19.05.2022 for filing solenama. The Adalat further fixed 21.06.2022, 18.07.2022, 28.08.2022, 29.09.2022, 30.10.2022, 01.12.2022, 09.02.2023, 05.03.2023 and 13.04.2023 for submitting solenama but the parties did not file it. All on a sudden, the plaintiff Bank on 13.04.2023 under section 13(3) of the Ain filed an application for fixing the suit for pronouncement of judgment. No copy of the said petition was served the defendants. The petition was heard on 10.09.2023 and the Adalat kept it in record fixing 01.10.2023 for pronouncement of judgment. On perusal of the order sheet of the suit, it appears that the Adalat below vide Order No. 29 dated 31.08.2023 allowed the defendant No. 2 for filing written statement but at the same time directed the defendants to deposit Tk. 5(five) crore fixing 10.09.2023 for filing written statement and also for hearing the application. It is evident from Order No.30 dated 10.09.2023 that the Adalat kept the petition filed by the defendant with record and further directed the defendants to deposit Tk. 5(five) crore, in default, fixed the suit for pronouncement of judgment. It transpires from the record that on 29.08.2023 defendant No.2 and on 17.02.2022 defendant No. 3 filed the respective written statement. But the Adalat vide order

Nos. 29 and 30 directed the defendants to deposit Tk. 5(five) crore, in default, fixed the suit for pronouncement of judgment.

We have scrutinized the order sheet of the suit, materials on record as well as the applicable laws. It is an established principle of law that after filing written statement, the Adalat should fix the suit for mediation hearing.

In the case of *Mohammad Ali v. Judge, Artha Rin Adalat and others* (19 BLC 356) it has been observed by this Court:

“The Adalat should remember that after amendment of section 22 in the year 2010 mediation has been made mandatory on the part of the Adalat itself. Moreover when amended section 22 be read together with section 24 of the Ain it makes the proposition more clear. Now the law stands that right after filing of the written statement, the duty is incumbent upon the Court to initiate mediation. Regardless of any application whatsoever from the parties.”

In the instant case, on the face of the record, it transpires that though the defendant Nos. 2/3 appeared before the Court and filed separate written statements, in spite of that the trial Court without appointing any mediators for adjudicating the suit through mediation, a mandatory provision of settling Artha Rin Suit, most illegally fixed the suit for submitting solenama and later on fixed the same for pronouncement of judgment. In the meantime, the Court also directed the relevant defendant(s) to deposit Tk. 5 crore as down payment against the loan facilities. We have noticed that the trial Court below passed the impugned order in violation of the mandatory procedure as laid down in section 22 of the Ain which is absolutely nullity in the eye of law.

Therefore, considering the facts and circumstances as well as law and relevant case laws we find substance in this Rule.

As a result, the Rule is made absolute.

The impugned Order No. 29 dated 31.08.2023 and Order No. 30 dated 10.09.2023 passed by the learned Judge of the Artha Rin Adalat, Chattogram in Artha Rin Suit No. 321 of 2021 is declared illegal and passed without lawful authority and has no legal effect and thereby set-aside the same.

The Adalat below is hereby directed to hear the matter afresh and dispose of the aforesaid suit within 03(three) months from the date of receipt of this order in accordance with law.

The order of stay granted earlier is hereby vacated.

Communicate this judgment and order at once.

Md. Iqbal Kabir, J.

I agree.