

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

**First Miscellaneous Appeal No. 242 of 2023
with
(Civil Rule No. 460(FM) of 2022)**

In the matter of:

Rajdhani Unnayan Kartipakkha (RAJUK)
represented by its Chairman, RAJUK Bhaban,
RAJUK Avenue, Motijheel, Dhaka-1000.

... Appellant-petitioner

-Versus-

Social Islami Bank Limited, Principal Branch,
15, Dilkusha Commercial Area, Police Station-
Motijheel, Dhaka-1000 and another

... Respondents-opposite parties

Mr. Md. Imam Hasan, Advocate

... For the appellant-petitioner

Mr. Mohammad Ali, Advocate

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

**Heard on 12.01.2025 and 14.01.2025.
Judgment on 14.01.2025.**

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 heard together and are being disposed of with this common judgment.

At the instance of the 3rd party namely, Rajdhani Unnayan Kartipakkha (shortly, RAJUK) in Miscellaneous Case No. 05 of 2017

initiated under section 32 of the Artha Rin Adala Ain, 2003 read with order XXI, rule 58-60 of the Code of Civil Procedure, this appeal is directed against the judgment and order dated 25.04.2019 passed by the learned Judge of the Artha Rin Adalat No. 4, Dhaka in the said Miscellaneous Case dismissed the same.

The short facts leading to preferring this appeal are:

The present respondent no. 1, Social Islami Bank Limited originally filed a suit being Artha Rin Suit No. 120 of 2012 against its borrow, the present respondent no. 2 claiming a defaulted loan amounting to taka 10,70,74,477/03 as on 31.08.2012. Ultimately, the said suit was decreed *ex parte* against the respondent-opposite-party no. 2. Since the said opposite-party did not come forward to pay the decretal amount, the respondent no. 1 then filed an Execution Case being Artha Execution Case No. 70 of 2013 against the respondent no. 2 impleading him as judgment-debtor claiming an amount of taka 11,79,42,099/21. During the course of the said execution case, the appellant-petitioner as third party to the case, filed an application under sections 32(2) and 57 of the Artha Rin Adalat Ain, 2003 read with order XXI, rule 57, 58, 59 and 60 of the Code of Civil Procedure for releasing the property measuring an area of 24 decimals of land as has been mentioned in the schedule to the said application from the execution case stating that the property was acquired in the name of the appellant-petitioner, RAJUK through L. A. Case No. 8/64-65 which was originally belonged to one, Md. Abul Hossain (Mukul) who subsequently sold out the same to the respondent-opposite-party no. 2 and the said property was attached by

the respondent no. 1 vide order dated 25.01.2015 under order XXI, rule 54 of the Code of Civil Procedure. However, the said application gave rise to Miscellaneous Case No. 5 of 2017. Against the said application, respondent no. 1, Bank filed written objection and ultimately prayed for dismissing the case. Initially a show cause notice was issued upon the respondent-opposite party no. 1 to explain as to why the said property will not be released from the order of attachment.

Anyway, the learned Judge of the executing court took up the said Miscellaneous Case initiated under section 32(2) of the Artha Rin Adalat Ain, 2003 read with order XXI, rule 58-60 of the Code of Civil Procedure and vide impugned order dated 25.04.2019 dismissed the case holding that the appellant-petitioner ought to have presented its claim in the execution case. However, the learned Judge elaborately discussed the case of the parties in regard to claiming ownership over the scheduled land by the appellant-petitioner, RAJUK and respondent nos. 1 and 2 and arrived at a decision that the property is not liable to be released in favour of the appellant. It is against that order, the petitioner of the Miscellaneous Case as appellant preferred this appeal.

After preferring the appeal, the appellant as petitioner also filed an application for injunction on which a rule was issued by this court on 21.07.2022 but no interim order was passed which gave rise to Civil Rule No. 460(FM) of 2022.

Mr. Md. Imam Hasan, the learned counsel appearing for the appellant-petitioner upon taking us to the memorandum of appeal including the impugned order and all the documents annexed therewith

in the application for injunction, at the very outset submits that the learned Judge of the executing court erred in law in dismissing the case without considering the facts and circumstances of the case of the appellant-petitioner who rightly got the property acquired by the government in its favour and since the property belonged to RAJUK, so that property was not liable to be purchased by the respondent no. 2 vis-à-vis attach the same by the respondent no. 1.

When we pose a question to the learned counsel for the appellant-petitioner if the appeal is maintainable, the learned counsel then placed his reliance in a slew of decisions reported in 65 DLR (AD) 101; 54 DLR (HCD) 123; 20 BLC (HCD) 185 and 73 DLR (HCD) 237. By placing the decision reported in 65 DLR (AD) 101, the learned counsel then contends that, similar point involved in the instant case has also been raised in the cited decision as to maintaining an appeal as well as revision stemmed from an order passed by an Artha Rin Adalat disposing of a Miscellaneous Case under section 32 of the Ain, 2003 and it was ultimately held by their Lordships that against any order passed by an Artha Rin Adalat disposing of a Miscellaneous Case filed under section 32 of the Artha Rin Adalat Ain read with order XXI, rule 58 of the Code of Civil Procedure, an appeal as well as revision will lie, so there has been no illegality in filing the instant appeal filed under order XLIII, rule 1(iii) of the Code of Civil Procedure.

When we pose another question to the learned counsel about the scope of exonerating the appellant-petitioner from depositing 10% of the decretal amount while filing the Miscellaneous Case under section 32 of

the Ain as well as order XXI, rule 58 of the Code of Civil Procedure, the learned counsel then contends that the said exoneration has been made basing on a decision passed by this court reported in 57 DLR (HCD) 164 and the learned Judge of the executing court while exonerating the petitioner from depositing 10% of the decretal amount vide impugned order dated 24.05.2017 also placed his reliance on that decision as well as an order passed in Civil Petition For Leave To Appeal No. 155 of 2013 and then submits that there has been no illegality ever committed by the learned Judge of the executing court in that regard yet erred in law in dismissing the Miscellaneous Case eventually. On those counts, the learned counsel finally prays for allowing the appeal and making the rule absolute.

Conversely, Mr. Mohammad Ali, the learned counsel appearing for the respondent-opposite party no. 1 very robustly opposes the contention taken by the learned counsel for the appellant-petitioner and submits that the learned Judge of the executing court has perfectly dismissed the Miscellaneous Case calling for no interference by this Hon'ble court.

To supplement the said submission, the learned counsel then contends that since there has been statutory provision to deposit certain amount of money while filing a Miscellaneous Case under section 32 of the Artha Rin Adalat Ain and that very deposit since has not been made by the appellant so the Miscellaneous Case from its very inception was not maintainable though that legal point has clearly been sidetracked by the learned Judge of the executing court but since he ultimately

dismissed the case so it occasioned no failure of justice. On those legal aspects, the learned counsel finally prays for dismissing the appeal as well as discharging the rule.

Be that as it may, we have considered the submission so placed by the learned counsel for the appellant-petitioner and that of the respondent-opposite party no. 1.

At the very outset, we would like to confine our discussion and observation keeping ourselves within the ambit of the provision of law especially, compliance of the provision of section 32 of the Artha Rin Adalat Ain, 2003 by the appellant. Since the executing court who adjudicated the Miscellaneous Case is an Artha Rin Adalat where an application was filed by the appellant-petitioner under section 32(2) of the Ain read with order XXI, rule 58 of the Code of Civil Procedure so the appellant-petitioner must comply substantive provision of law over supplementary provision provided in order XXI, rule 58 of the Code of Civil Procedure. Though in section 32 of the Ain, there has been no straightjacket rule to register a Miscellaneous Case but it is a long running practice followed by an Artha Rin Adalat to initiate a Miscellaneous Case when a 3rd party to the Artha Execution Case files a petition under the provision of section 32 of the Ain read with order XXI, rule 58 of the Code of Civil Procedure. Anyway, from the order dated 24.05.2017 (annexed with the memorandum of appeal), we find that on the basis of an application filed by the appellant-petitioner for exonerating it from depositing 10% of the decretal amount, the learned Judge allowed the same and the a Miscellaneous Case was then initiated.

But we are of the considered view that such order is downright illegal having no scope to waive such statutory deposit since it is a mandatory statutory provision of law enacted by a special statute. Even, this court can under no circumstances go beyond the said statutory provision of law whatever the status of the petitioner might be, be it a statutory organization or an individual. Because, until and unless, law itself is amended exempting such deposit no court of law reserves any authority to give such premium to any third party. In that regard, Mr. Imam has very frankly asserted that very legal proposition.

Another point which has been decided in the decision reported in 65 DLR (AD) 101 as relied upon by the learned counsel for the appellant-petitioner, we find the facts and point of law so involved and discussed therein is not applicable here rather order passed in a Miscellaneous Case whether would be regarded as a substantive order or an interim order has already been settled in the decision reported in 9 ADC 335. On top of that, since the instant appeal has been preferred by the appellant under order XLIII, rule 1(iii) of the Code of Civil Procedure so it construe, the impugned order is an “interim order” within the meaning of section 44(2) of the Artha Rin Adalat Ain which debars any parties to challenge any ‘interim order’ by way of appeal or revision.

Then again, on going through the impugned order, we find that though the learned Judge of the executing court has given much emphasis deciding title and ownership of the scheduled property but since the Miscellaneous Case itself was not maintainable so there has been no reason to discuss such factual aspect of the parties. However, as

the learned Judge of the executing court ultimately dismissed the case, we thus don't find any illegality or impropriety in the order under challenge here.

Regard being had to the above facts, circumstances and the decisions referred hereinabove, we don't find any illegality or impropriety in the impugned judgment and order which is liable to be sustained.

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

Since the appeal is dismissed, the connected rule being Civil Rule No. 460(FM) of 2022 is hereby discharged.

The learned Judge of the executing court is hereby directed to dispose of the Artha Execution Case No. 70 of 2013 as expeditiously as possible preferably within a period of 3(three) months from the date of receipt of the copy of this judgment.

Let a copy of this judgment be communicated to the court concerned forthwith.

Md. Bashir Ullah, J.

I agree.