

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)

Present:

Mr. Justice Md. Badruzzaman.

And

Mr. Justice Sashanka Shekhar Sarkar

CIVIL REVISION No. 488 OF 2024.

Mohammad Mahmudur Rahman Khan

...Petitioner.

-Versus-

Sonali Bank Limited .

....Opposite party.

Ms. Nurun Nahar, Advocate

... For the petitioner.

Mr. Sheikh Mohammad Zakir Hossain, Advocate

... For the opposite party.

Heard on: 05.03.2024.

Judgment on: 06.03.2024,

Md. Badruzzaman, J:

This Rule was issued calling upon the opposite party to show cause as to why order dated 22.11.2023 passed by learned District Judge, Dhaka in Transfer Miscellaneous Case No. 603 of 2023 should not be set aside and as to why Artha Rin Suit No. 87 of 2012, now pending in Artha Rin Adalat, 1st Court, Dhaka should not be transferred for trial to any other Artha Rin Adalat having competent jurisdiction.

Facts relevant, for the purpose of disposal of this Rule, are that the opposite party as plaintiff instituted Artha Rin Suit No. 87 of 2012 before Artha Rin Adalat, 1st Court, Dhaka against the petitioner and two others for recovery of outstanding dues amounting to Tk. 66,88,73,330/- as on 01.10.2009 contending, *inter alia*, that the defendants including the petitioner availed loan facilities from the

plaintiff Sonali Bank Limited and thereafter, defaulted in payment of the outstanding dues.

When the suit was fixed for argument hearing, the defendant-petitioner (who is defendant No. 2 and Managing Director of defendant No. 1) filed an application for recording his deposition on commission by appointing Advocate Commissioner and the Adalat allowed the prayer on 7.03.2023 and appointed Shamsun Nahar, learned Advocate, as Advocate Commissioner vide order dated 15.7.2023 fixing the next date on 16.4.2023 for submitting the report but the Advocate Commissioner could not submit report till 24.9.2023 for which the Adalat cancelled her appointment. On the same day the petitioner filed another application for recording deposition of his attorney Md. Saiful Islam on commission by appointing another Advocate Commissioner and the Adalat, after hearing, rejected the application and fixed on 01.11.2023 for recording evidence of the attorney, in default, for pronouncement of judgment. Apprehending that the defendant-petitioner would not get fair justice from the Adalat, filed Transfer Miscellaneous Case No. 603 of 2023 before the learned District Judge, Dhaka under section 5(10) of the Artha Rin Adalat Ain, 2003 praying for transferring the suit to any other Artha Rin Adalat but the learned District Judge, after hearing, vide order dated 22.11.2023 dismissed the miscellaneous case with a direction to the Adalat to dispose of the suit after giving the defendant an opportunity to adduce evidence. After receiving the order of the learned District Judge dated 22.11.2023, the Artha Rin Adalat fixed next date on 04.02.2024 for recording deposition of D.W, in default for pronouncement of judgment.

In the above premises the petitioner has come up with this application under section 115(1) read with section 24 of the Code of

Civil Procedure challenging the order of the learned District Judge as well as praying for transferring the suit to any other Court and obtained the instant Rule.

Opposite party, Sonali Bank Limited entered appearance and filed counter-affidavit to oppose the Rule contending, *inter alia*, the suit was filed back in 2012 but the defendants did not file written statement till 2022 only for delaying the disposal of the suit and after filing the written statement the defendants failed to adduce evidence and the Adalat after recording evidence of the plaintiff fixed the date for argument hearing. At that stage, the petitioner filed application on 7.3.2023 for recording his deposition on commission by appointing Advocate Commissioner and the Adalat, after hearing, allowed the prayer on the same day and then vide order dated 15.03.2023 appointed an Advocate Commissioner for recording evidence of the defendant-petitioner fixing the next on 16.4.2023 for submitting report but the defendant petitioner did not depose before the Advocate Commissioner and ultimately the Adalat cancelled the appointment of the Advocate Commissioner on 24.09.2023. On the same day the defendant filed another application for recording evidence of his Attorney Mr. Saiful Islam as D.W.1 on commission by appointing another Advocate Commissioner and the Adalat, after hearing, vide order dated 24.09.2023 rejected the application and fixed on 01.11.2023 for recording evidence of the Attorney of the defendant in default, for pronouncement of judgment. The defendant petitioner instead of challenging said order dated 24.09.2023 filed Transfer Miscellaneous Case No. 603 of 2023 before the learned District Judge, Dhaka with some false grounds which, after hearing, was dismissed by the learned District Judge on 22.11.2023 with a direction to the Adalat

to dispose of the suit after giving the defendant to adduce evidence. After receiving the order of the learned District Judge, the Adalat vide order dated 9.1.2024 fixed the next date on 4.2.2024 for recording the evidence of the defendant or his attorney, in default for pronouncement of judgment.

It has been further contended that when the suit reached at the stage of preemptory, the present petitioner and others on 25.4.2022 filed an application under section 24 of the Code of Civil Procedure being Transfer Miscellaneous Case No. 172 of 2022 before the learned District Judge, Dhaka seeking to transfer the suit to any other court having competent jurisdiction. The learned District Judge, after hearing, dismissed the Miscellaneous Case vide order dated 22.06.2022 with a fine of Tk. 10,000/- and directed the defendants to pay the amount within 30 (thirty) days. Challenging said order the petitioner and another filed Civil Revision No. 3035 of 2022 before the High Court Division and a Division Bench of this Court vide order dated 31.07.2022 issued Rule and stayed further proceeding of Artha Rin Suit No. 87 of 2012. The petitioner challenged the *ad interim* order of the High Court Division in Civil Petition for Leave to Appeal No. 2850 of 2022 before the Appellate Division and the Hon'ble Judge-in-Chamber vide order dated 24.10.2022 stayed the *ad interim* order of the High Court Division for a period of 8(eight) weeks. Thereafter, the Rule was heard by another Division Bench of this Court who, after hearing, vide judgment dated 10.01.2023 discharged the Rule with a direction to the Artha Rin Adalat to dispose of the suit within two months from the date of receipt of the copy of the judgment. By suppression of the facts of filing another revision and that of the result of said revision, the petitioner filed present transfer miscellaneous case before the learned District

Judge as well as before this Court only to delay the disposal of the suit and as such, this Rule should be discharged with exemplary cost.

Ms. Nurun Nahar, learned Advocate appearing for the petitioner though tried to assail to support the Rule contending that the learned District Judge committed illegality in dismissing the transfer miscellaneous case but could not show any reasonable cause that the Adalat was biased in favour of the plaintiff bank in disposing of the suit.

On the other hand, Mr. Sheikh Mohammad Zakir Hossain, learned Advocate appearing for the opposite party submits that the suit has been filed in 2012 for recovery of outstanding dues amounting to Tk. 66,88,73,330/- as on 1.10.2009 against the defendant petitioner and two others but due to their dilatory tactics the suit could not be disposed of within the stipulated period provided by the Artha Rin Adalat Ain. Learned Advocate further submits that this revision has also filed by suppression of facts of filing another civil revision before this Division on the self same ground and that of the result of said revision. Learned Advocate further submits that on the prayer of the defendant an Advocate Commissioner was appointed for recording his deposition on commission considering his so called illness but he did not depose before the Advocate Commissioner for a long period and as such, the Adalat rightly cancelled the appointment of the Advocate Commissioner and the petitioner did not challenge the said order before any higher forum. Rather, he filed another application for recording evidence of his attorney on commission by appointing another Advocate Commissioner without any valid reason which is another device to delay the disposal of the suit and the application was rejected by the Adalat but the defendant-petitioner without challenging said order before any higher forum filed transfer miscellaneous case

before the learned District Judge as well as before this Court only to delay the disposal of the suit and accordingly, this Rule should be discharged with cost.

We have heard the learned Advocates, perused the revisional application, other relevant documents as well as the judgment dated 10.01.2023 passed Civil Revision No. 3035 of 2022 by another Division Bench of this Court.

It is not denial of the fact that the opposite party as plaintiff filed the Title Suit No. 87 of 2012 in 2012 against the petitioner and two others for recovery of outstanding dues of Tk. 66,88,73,330/- as on 1.10.2009. The present petitioner though entered appearance in the suit but did not file written statement till 2022 i.e within about ten years. When the suit was reached at the stage of peremptory hearing the petitioner and others on 25.04.2022 filed an application under section 24 of the Code of Civil Procedure seeking to transfer the suit to any other Court having competent jurisdiction assailing no confidence upon the Adalat which was rejected by the learned District Judge vide order dated 30.06.2022 with a cost of Tk. 10,000/-. In his order, the learned District Judge specifically observed that the miscellaneous case was filed only to delay the disposal of the suit and accordingly, dismissed the case with cost which was upheld by the High Court Division in Civil Revision No. 3035 of 2022 without any modification of the order of the learned District Judge. While discharging the Rule vide judgment dated 10.01.2023 passed in Civil Revision No. 3035 of 2022 another Bench of this Court directed the Adalat to dispose of the suit preferably within two months from the date of receipt of the copy of the judgment. From the Order Book of Civil Revision No. 3035 of 2022 it reveals that the judgment of the civil revision was communicated to the

Adalat under Memo Nos. 11032-11033 dated 04.06.2023. But it appears from the record that the learned Judge of the Adalat has failed to comply with the direction passed in Civil Revision No. 3035 of 2022.

On the other hand, after filing of written statement and on the prayer of the petitioner Advocate Commissioner was appointed on 15.3.2023 for recording his deposition but he failed to depose before the Advocate Commissioner for a long period and the Adalat vide order dated 24.09.2023 cancelled the appointment and also refused to appoint another Advocate Commissioner for recording deposition of the attorney of the petitioner namely Saiful Islam. The petitioner neither challenged the cancellation of the appointment of Advocate Commissioner nor rejection of the prayer of appointment of another Advocate Commissioner rather, filed Transfer Miscellaneous Case No. 603 of 2023 before the learned District Judge, Dhaka under section 10(4) of the Artha Rin Adalat Ain on the ground of biasness of the learned presiding Judge of the Adalat which, upon hearing, was dismissed by the learned District Judge vide impugned order. While dismissing the Transfer Miscellaneous Case vide the impugned order, the learned District Judge observed that the petitioner could not show any sufficient and reasonable cause of biasness of the learned presiding Judge of the Adalat but directed the Adalat to give the petitioner an opportunity to adduce evidence. The Adalat then fixed date on 4.2.2024 for adducing the attorney of the petitioner or himself as evidence. But the petitioner, without availing such opportunity, has filed this application challenging the order of the learned District Judge. The learned Advocate for the petitioner also failed to substantiate that the learned Judge of the Adalat became biased in favour of the plaintiff in disposing of the suit. The materials on record suggest that the

petitioner filed the transfer miscellaneous case before the learned District Judge only for the purpose of delaying the disposal of the suit.

It is to be noted that in this revisional application the petitioner did not state anything about filing of earlier Civil Revision No. 3035 of 2022 as well as the result of the Rule issued therein which is a clear suppression of facts.

It will not out of context to mention here that before enactment of Artha Rin Adalat Ain, 2003 the financial institutions were suffering from early non-realization of loans through money suits, suits for foreclosure etc. by instituting the same before civil courts. The Ain, 2003, a special law, is specifically framed and confines itself to recovery of loans by financial institutions. Section 10 of the Ain, 2003 allows the defendant to file written statement within 20 (twenty) days after appearing in the suit with a grace period of 20 (twenty) days with the leave of the court on payment of cost of Tk. 2000/- to 5000/- and on failure of the defendant in filing the written statement within said period, the Court shall decide the suit *ex-parte*.

Section 6(4) of the Ain is very significant which mandates the Adalat to dispose of an Artha Rin suit *ex-parte* or instantly by simply considering the plaint (prepared under affidavit) or written statement (made with affidavit) and the documents filed herewith, upon treating all of them as substantive evidence and, thus, pleadings with affidavits is the focal-point of this provision and any formal examination of witness has got less emphasis in the Ain, 2003. (Ref: Osman Gazi Chowdhury vs. Artha Rin Adalat 21 BLC 322).

Section 17 of the Artha Rin Adalat Ain, 2003 stipulates that the trial of the suit shall be concluded within the period of 90 (ninety) days and further extended period of 30 (thirty) days from the date of filing of

written statement or from the date of service of summons if the defendant does not appear in spite of service of summons upon him.

It is to be borne in mind by all concerned including the presiding Judges of Artha Rin Adalats of Bangladesh that the Artha Rin Adalat Ain, 2003 has been promulgated by the Parliament incorporating different provisions including stipulated period of disposal of the suit. The only purpose is for speedy disposal of the suit, otherwise the defaulting borrowers of the financial institutions with their best efforts will cause delay in the process of the trial.

In the instant case, the defendants are lingering the disposal of the suit for about 12 years on various pretexts and though, in the meantime, submitted written statement, but at a belated stage, and failed to adduce any evidence even after getting ample opportunity. In the meantime, the evidence of the plaintiff has closed and the suit is fixed on 20.3.2024 for recording evidence of the defendants, in default for pronouncement of judgment.

The Adalat, as per provision of section 6(4) of the Ain, is empowered to dispose of the suit instantly by simply considering the plaint and written statement and the documents filed therewith, upon treating all of them as substantive evidence. It appears that the successive presiding Judges of the Adalat failed to understand the true spirit of Artha Rin Adalat Ain, 2003 in conducting and concluding the trial of the present suit in compliance with the relevant provisions of law because of the fact that they failed to conclude the trial of the suit even after lapse of about 12 years from the date of filing of the suit which is far beyond as stipulated by the Ain. This is a clear example of negligence on the part of learned Judges of the Adalat.

It is our considered view that the suit should be disposed of in view of the provisions under section 6(4) of the Artha Rin Adalat Ain, 2003 without giving any opportunity to the defendants to adduce any formal oral witness in the suit because of the fact that the defendant including the present petitioner have failed to adduce any evidence after getting ample opportunity. Though vide impugned order dated 22.11.2023 the learned District Judge directed the Adalat to give the petitioner an opportunity to adduce D.W. 1 before disposal of the suit and the Adalat fixed date on 4.2.2024 for recording evidence of the attorney of the petitioner but without availing such opportunity, the petitioner has challenged said order before this Court by filing this application only for delaying the disposal of the suit and as such, he does not deserve such opportunity. We are of the view that the learned District Judge committed no illegality in dismissing the miscellaneous case. But considering the relevant provision of the Attha Rin Adalat Ain the direction passed therein by the learned District Judge “giving the petitioner an opportunity to adduce evidence before disposal of the suit” is not tenable under law and accordingly, the same should be expunged from the impugned order.

It further appears that earlier learned District Judge vide order dated 30.06.2022 dismissed another transfer miscellaneous case with a cost of Tk. 10,000/-. In his order, the learned District Judge specifically observed that the miscellaneous case was filed only to delay the disposal of the suit and accordingly, dismissed the case with cost which was upheld by the High Court Division in Civil Revision No. 3035 of 2022 without any modification. There is no material on record showing that the petitioner deposited the said amount. Moreover, this transfer miscellaneous case has been filed for the self-same cause and by

suppression of fact of filing earlier revisional application. From the materials on record, it appears that the present transfer miscellaneous case has been filed before the learned District Judge with some vague and unreasonable cause but only for the purpose of delaying the disposal of the suit. Accordingly, the defendant is liable to pay exemplary cost.

In that view of the matter, the Rule is discharged with a cost of Tk. 1,00,000/- (Taka one lac) only to be deposited by the petitioner to the trial Court within 30 (thirty) days from date. The impugned order dated 22.11.2023 is upheld with expunction of direction passed therein.

Artha Rin Adalat, No. 1, Dhaka is directed to dispose of Artha Rin Suit No. 87 of 2012 in view of the provision under section 6(4) of the Artha Rin Adalat Ain, 2003 within 1 (one) month from the date of receipt of the copy of this judgment positively.

Communicate a copy of this judgment to the concerned Adalat through Special Messenger of this Court at once.

(Justice Md. Badruzzaman)

I agree.

(Mr. Justice Sashanka Shekhar Sarkar)