

Present:
Mr. Justice Mohammad Bazlur Rahman
and
Justice Md. Ruhul Quddus

Writ Petition No.564 of 2010

Mamtaj Begum and others
...Petitioners

-Versus-
Janata Bank and others
...Respondents

Mr. Zahangir Kabir, Advocate
... for the petitioner

Mr. Masud Ahmed Sayeed, Advocate
... for respondent 1

Judgment on 12.06.2013

Md. Ruhul Quddus, J:

This *rule nisi* at the instance of the third party-petitioners was issued challenging the legality of judgment and order dated 12.06.2005 passed by the District Judge, Khulna in Civil Revision No.121 of 2004 allowing the same reversing the order dated 28.09.2004 passed by the Judge, Artha Rin Adalat, Khulna allowing Miscellaneous Case No.2 of 2003. The said miscellaneous case was filed under Order XXI rule 58 of the Code of Civil Procedure for releasing the petitioners' property in Execution Case No.163 of 1999 (arising out of decree dated 14.06.1998 passed in Title Suit No.17 of 1997).

Respondent 1 Janata Bank sanctioned loan of Taka 4 (four) lac in favour of respondent 2. Respondents 3-8 were the guarantors and mortgagors to secure the loan. As respondent 2 failed to repay the loan, respondent 1-bank instituted Title Suit No. 17 of 1997 in the Court of

Subordinate Judge and Artha Rin Adalat, Khulna for realization of the loan.

Defendants 6-7 contested the suit by filing two separate written statements stating, *inter alia*, that the business of the defendant-borrower (herein respondent 2) was under direct supervision of the plaintiff-bank. The bank could have easily realized the loan by selling fishes from the fisheries of the defendant-borrower, against which he took the loan. The officials of the plaintiff-bank in collusion with the defendant-borrower misappropriated the loan money.

The suit was ultimately decreed on 14.06.1998 and the decree holder-bank put the decree in execution by filing Execution Case No.163 of 1999 before the Subordinate Judge and Artha Rin Adalat, Khulna. The petitioners came to know for the first time on 10.11.2002 that their property would be put on auction in the said execution case. In that event they filed Miscellaneous Case No.2 of 2003 before the executing Court under Order XXI rule 58 of the Code of Civil Procedure for release of the property. The executing Court on taking evidence both oral and documentary, allowed the miscellaneous case by order dated 28.09.2004, challenging which the decree holder-bank filed Civil Revision No.121 of 2004 before the District Judge, Khulna. Learned District Judge by judgment and order dated 28.09.2004 rejected the same on the ground that the petitioners had not deposited 25% of the decretal amount as provided in section 32 (2) of the Artha Rin Ain, 2003 (hereinafter called the Act, 2003).

Being aggrieved thereby, the petitioners moved in this Court and obtained Rule in Civil Revision No.2594 of 2005. A Division Bench ultimately discharged the Rule by judgment and order dated 17.08.2009 holding, *inter alia*, that the Artha Rin Adalat Ain (meaning the Artha Rin Adalat Ain, 1990) gave no authority to file application under Order XXI rule 58 of the Code of Civil Procedure. The High Court Division, however, observed that the petitioners had remedy in writ jurisdiction. Thereafter, the petitioners under misconception of the said judgment and order of the High Court Division moved with the instant writ petition against the same parties challenging the same judgment and order dated 12.06.2005 of the District Judge and obtained the Rule.

The respondent-bank contests the Rule by filing an affidavit-in-opposition supported by a supplementary affidavit thereto on the facts stated therein.

Mr. Md. Jahangir Kabir, learned Advocate for the petitioners concedes that they ought to have gone to the Appellate Division against the judgment of the High Court Division passed in Civil Revision No.2594 of 2005 or filed the writ petition challenging the decree dated 14.06.1998 passed in Title Suit No. 17 of 1997 so far it relates to the petitioners' property.

Mr. Masud Ahmed Sayeed, learned Advocate for the respondent-bank submits that the petitioners did challenge neither the judgment of the High Court Division before the Appellate Division nor the decree of the

Artha Rin Adalat in writ jurisdiction and as such the instant Rule is hit by the principle of res judicata and not maintainable.

During pendency of the execution case the Artha Rin Adalat Ain, 1990 (hereinafter called the Act, 1990) had been repealed and the Act, 2003 came into force on 01.05.2003. By operation of section 60 (3) the execution case was to be treated as a proceeding under the Act, 2003 and the provisions thereof were made applicable in such proceeding as far as it practicable. Section 57 of the Act, 2003 confers authority on the Arha Rin Adalat to pass necessary order to secure the ends of justice or to prevent the abuse of the process of the Adalat, while section 32 (1) (2) provides that on depositing 10% of the decretal amount a third party can raise his/her claim against a decree of Artha Rin Adalat under the provisions of the Code of Civil Procedure in an execution proceeding.

In the miscellaneous case the writ petitioners claimed the scheduled property as their dwelling houses; that they did not mortgage the property in favour of the creditor-bank nor did they borrow the loan; that they were not connected with the sanction of loan in any manner; that the defendant-borrower collusively mortgaged the property, which did not belong to him or to the guarantors; that they came to know about the collusive inclusion of their property in the alleged mortgage for the first time on 10.11.2002 when the auction notice was published.

The petitioners proved the above contention by exhibiting as many as twenty-eight documents, which the executing Court relied on (vide annex-A to the writ petition). In such a case, the petitioners are not

supposed to bear the extra burden of depositing 10% of the decretal amount. If the petitioners' property as alleged was mortgaged and subsequently included in the decree of the Artha Rin Adalat by abusing the process of the Court, they may have remedy under section 57 of the Act, 2003 for securing the ends of justice.

However, since another Division Bench of this Court sitting in revisional jurisdiction already discharged the Rule in Civil Revision No.2594 of 2005 by judgment and order dated 17.08.2009, wherein the same impugned judgment and order dated 12.06.2005 of the District Judge, Barisal passed in Civil Revision No.121 of 2004 was under challenge (vide annex-C to the writ petition), the present Rule between the same parties challenging the same judgment and order, though in writ jurisdiction, is not maintainable.

The Rule is thus discharged with the above observations.

Mohammad Bazlur Rahman, J:

I agree.