

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

First Miscellaneous Appeal No. 144 of 2024
With
(Civil Rule No. 113 (FM) of 2024)

In the matter of:

LEADS Corporation Limited of LEADS Tower,
M/20, Main Road-01, Section-14, Mirpur,
Dhaka-1206 represented by its Deputy Manager.

... Appellant

-Versus-

Khan Akhter Alam, son of Nur Mohammad Khan
and Mokbelur Nessa of Holding No. 374/E,
village- Free School Street, Hatirpul, Post Office-
New Market-1205, Police Station- Dhanmondi,
Dhaka North City Corporation Previously, At
66/2, West Raja Bazar, Police Station-Tejgaon,
Dhaka and others.

...Respondents.

Ms. Nazmus Saliheen, Advocate

...For the appellant-petitioner

Mr. Imtiaz Moinul Islam, Advocate

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

Heard and Judgment on
09.06.2024.

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

Md. Mozibur Rahman Miah, J.

At the instance of the judgment-debtor no. 3 in Title Execution Case No. 07 of 2018, this appeal has been preferred against the judgment and order bearing no. 68 dated 18.02.2024 passed by the learned Joint District Judge, 1st Court, Dhaka in the said execution case allowing three applications so filed by the decree-holder one, for attaching the bank account stands in the name of the judgment-debtor no. 3 of LEADS Corporation Limited as has been scheduled as schedule nos. 'A' to 'L' and to transfer all the balance stands in the said account to the account maintained by the decree-holder, namely, Khan Akhter Alam bearing Account No. 1051010016951, second application was filed for attaching the movable property, namely, Bankultimus, a software and to sell the same on auction and third for attaching the immovable property namely, "LEADS Tower" so held by the judgment-debtor no. 3 and to sell the same through auction. The learned counsel appearing for the respondent-opposite-party no. 1 informed us that, against all those three applications, the judgment-debtor no. 3 filed written objection denying the averments so made in those three applications and the learned Judge of the executing court after hearing the applications allowed those applications on contest by attaching the account stand in the name of the judgment-debtor no. 3 and to transfer the same to the accounts of the decree-holder and that of attach the software of the judgment-debtor no. 3, namely, 'Bankultimus' and ordered to sell the same through auction by publishing in two daily newspapers, namely, 'The Daily Deshrupantor' and "The Daily Amader Barta" fixing the date for holding auction on 27.03.2024 and the auction of the "LEADS Tower" through auction sale by publishing auction notice in

two same national dailies fixing the date of auction on 23.04.2024. It is at that stage, the judgment-debtor no. 3 came before this court and preferred this appeal.

After preferring the appeal, the judgment-debtor no. 3 as petitioner also filed an application for injunction and this court vide order dated 25.03.2024 issued rule and stayed operation of the impugned order dated 18.02.2024 as well as directed the parties to maintain status quo in respect of the subject matter of the said application.

Mentionable, challenging the said order so passed in the Civil Rule No. 113(FM) of 2024, the decree-holder went to the Appellate Division by preferring civil petition for leave to appeal no. 1286 of 2024 and initially, the learned Judge-in-Chamber stayed the operation of the said interim order passed in the civil rule dated 25.03.2024 and ultimately, vide judgment and order of the full bench of the Appellate Division dated 07.05.2024, the said appeal was disposed of on contest and this court was directed to dispose of the rule within a period of three months and hence, we take up the appeal as well as the rule.

Since the point of law and facts so figured in the appeal and that of the rule are intertwined, they have heard together and are being disposed of by this common judgment.

The salient facts in preferring this appeal as well as issuance of the rule are:

The present respondent no. 1 as plaintiff originally filed a suit being Title Suit No. 476 of 1981 against the present appellant-petitioner and others for accounts and that very suit was ultimately decreed by the

appellate court (this court) vide judgment and decree dated 12.08.2010. As the defendants of the said suit herein the judgment-debtors did not come forward to pay the decretal amount, the plaintiff as decree-holder then filed a Title Execution Case No. 07 of 2013 which was subsequently on transfer to the court of learned Joint District Judge, 1st Court, Dhaka renumbered as Title Execution Case No. 07 of 2018 claiming an amount of US\$ 7,275,538.78 as on 31.12.2009 or its equivalent local currency at usual exchange rate **on the date of payment**. However, during pendency of the said execution case, the decree-holder filed those three applications as has been stated hereinabove for execute the decree by selling the movable and immovable properties of the judgment-debtors as described hereinabove.

Ms. Nazmus Saliheen, the learned counsel appearing for the appellant-petitioner at the very outset submits that, before determining the value of the movable property “Bankultimus”, the learned Judge cannot accept the offer made by the auction purchaser at taka five crore and hence, to selling the property through auction dated 27.03.2024 is totally illegal and it cannot be sustained in law.

The learned counsel further contends that, since it has not yet be determined the claim amount of the decree-holder towards the judgment-debtor-petitioner so if the properties are sold in auction it will be appellant-petitioner who will be highly prejudiced if those sold out in a throwaway price, the petitioner would suffer irreparable loss and injury and therefore, none of the auctions so far as regards to the movable and immovable properties can be held without determining the actual claim of the decree-holder.

The learned counsel also contends that, she tried her best to resolve the dispute by an amicable settlement among the parties in order to save the valuable properties of the judgment-debtors which is why she time and again took adjournment of the hearing of the matter from this Hon'ble court and submits that, if further time is given she could take initiative to resolve the dispute out of the court.

The learned counsel however wrapped up her submission repeating that, since it has not been determined the actual claim of the petitioner so under no circumstances, can the movable and immovable properties be sold in auction and finally prays for allowing the appeal by setting aside the impugned order and make the rule absolute.

In contrast, Mr. Imtiaz Moinul Islam, the learned counsel appearing for the respondent-opposite-party no. 1 vehemently opposes the contention taken by the learned counsel for the appellant-petitioner and contends that, since the order of stay and status quo so granted by this Hon'ble court in Civil Rule No. 113(FM) of 2024 has ultimately been stayed which construe that there has been no material substance in the impugned order having no reason to sustain the instant appeal as well as the rule.

When we pose a question to the learned counsel for the respondent under what provision of law, the accounts of a judgment-debtor can be attached and be transferred to the accounts of the decree-holder, the learned counsel then readily takes us to order XXI, rule 46 of the Code of Civil Procedure and by reading clause (a) of rule 46 of order XXI contends that, under that very provision, the decree-holder in order to secure the repayment of the decretal amount can attach the account of the judgment-

debtor and therefore, there has been no illegality in the impugned order so passed as regards to attaching the accounts of the judgment-debtor-petitioner.

The learned counsel by referring to clause (c) of that rule 46 further contends that, even a movable property of the judgment-debtor can also be attached for satisfying the decretal amount so claimed in execution case and therefore, the second part of the order attaching the movable property that is, the software “Bankultimus” and put on auction sell also bears no illegality.

Insofar as regards to put on auction sell of the immovable property held by the judgment-debtor no. 3 that is, “LEADS Tower” though the said property is found to have earlier mortgaged with Southeast Bank PLC the learned counsel then submits that, attaching the said property and then put on auction sell will also cause no illegality under the provision of order XXI, rule 62 of the Code of Civil Procedure because if it is found that the Southeast Bank has got first *pari passu* charge in that case, after satisfying the claim of the Southeast Bank PLC, the balance amount will be given to the decree-holder having no illegality in it.

However, in regard to those legal propositions placed by the learned counsel for the respondent as enshrined in the rules, the learned counsel for the appellant-petitioner cannot oppose by giving any plausible reply.

We have considered the submission so placed by the learned counsels for the contending parties and perused the memorandum of appeal, the application for injunction as well as the counter-affidavit so filed thereagainst by the decree-holder-respondent no. 1.

There has been no gainsaying the fact that, the present respondent got a decree and it was challenged up to the Appellate Division and the judgment and decree obtained by the present respondent remains valid, so there has been no other option opened to the decree-holder but to realize the decretal dues shown in the execution case and to execute the decree, the decree-holder filed the applications which have been stated hereinabove to realize the decretal amount. Since the provision so have been enunciated in order XXI, rule 46 and 62 of the Code of Civil Procedure clearly mandates the executing court to go for auction sell of both movable and immovable properties of the judgment-debtors so we don't find any illegality in the impugned order.

Furthermore, by subsequent order of the executing court following the impugned order so supplied by the learned counsel for the respondent, we find that, even the judgment-debtor no. 3 was given opportunity to bring any auction purchaser who could give higher value of the movable property "Bankultimus" as undertaken by the judgment-debtor no. 3 but ultimately, he failed to bring any auction purchaser resulting in the price so quoted by the auction purchaser in respect of "Bankultimus" has been confirmed so in a sense, the impugned order dated 18.02.2024 has already been executed.

Over all, since the order of stay and status quo so passed by this court while issuing rule has been stayed by the Appellate Division so it alternatively proves that, the Appellate Division has not found any illegality in the impugned order.

Given the above discussion and observation which is based on legal point as well as the materials on record, we don't find any illegality in the impugned 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. 113 (FM) of 2024 is hereby discharged.

In any case, the order of stay and status quo granted at time of issuance of the rule stands recalled and vacated.

Let a copy of this judgment be communicated to the learned Joint District Judge, 1st Court, Dhaka forthwith.

Md. Bashir Ullah, J.

I agree.