

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

CIVIL REVISION NO. 774 OF 2024

In the matter of:

An application under Section 115(1) of the Code of Civil Procedure, 1908.

AND

In the matter of:

Marina Park & Resort Limited represented by its Managing Director Syed A. K Anowaruzzaman of House No. SE-04, Road No. 134, Gulshan 01, Dhaka 1212.

.... Petitioner

-Versus-

Dhaka Fisheries Ltd. represented by its Managing Director Shah Mukbulul Haque, Plot No. 80(5th Floor), Gulshan Avenue Road, Dhaka 1212 and others.

....Opposite parties

Mr. Md. Asaduzzaman, Senior Advocate with
Mr. Margub Kabir and
Mr. Taisir Mahmud, Advocates

... For the petitioner

Mr. Subrata Saha, Senior Advocate with
Ms. Sagorica, Advocate

....For the opposite party no. 1

Heard and Judgment on 04.03.2025.

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

Md. Mozibur Rahman Miah, J:

At the instance of the defendant no. 1 in Title Suit No. 58 of 2020, this rule was issued calling upon the opposite parties to show cause as to why the judgment and order no. 76 dated 04.02.2024 passed by the learned Joint District Judge, Additional Court, Gazipur in the said suit rejecting an application filed under order VII, rule 11(a) and (d) read with section 151 of the Code of Civil Procedure, 1908 for rejection of plaint should not be set aside and/or such other or further order or orders be passed as to this court may seem fit and proper.

At the time of issuance of the rule, all further proceedings of Title Suit No. 58 of 2020 was stayed for a period of 3(three) months which was lastly extended on 23.02.2025 for another 2(two) months.

The short facts leading to issuance of the rule are:

The present opposite party no. 1 as plaintiff originally filed the aforesaid suit for declaration that the sale deed nos. 24654, 24656, 24657, 24658 and 24659 are illegal, invalid and without any legal effect. In the said suit, it has been briefly stated that the plaintiff took loan from the present opposite party no. 2 and as a collateral security to repay the said loan, he mortgaged the property to the said bank which has been scheduled in the schedule to the plaint. As the plaintiff defaulted in repaying the said loan, the property mortgaged with the bank was put on auction and the present petitioner who was the defendant no. 1 in the suit purchased the said property vide registered sale deed which has been challenged in the said suit. The present petitioner as defendant no. 1 entered appearance in the suit and in order to contest the same filed

written statement denying all the material averments so made in the plaint and finally prayed for dismissing the suit. However, in the midst of taking evidence of P.W-1, the defendant no. 1 filed an application under order VII, rule 11 (a) and (d) read with section 151 of the Code of Civil Procedure for rejecting the said plaint contending *inter alia* that the said suit cannot be proceeded under the provision of section 12(8), section 5(4) as well as section 20 of the Artha Rin Adalat Ain, 2003 by citing decisions of the Appellate Division to that effect. However, the learned Judge of the trial court took up the said application for hearing and vide impugn order rejected the same holding that since the application has been filed at the stage of peremptory hearing when the suit was being proceeded on framing 4 (four) different issues so the application cannot be entertained.

It is at that stage, the defendant no. 1 as petitioner came before this court and obtained the rule and order of stay.

Mr. Md. Asaduzzaman, the learned senior counsel along with Mr. Margub Kabir, the learned counsel appearing for the petitioner upon taking us to the application at the very outset submits that from the prayer so have been made in the plaint, it shows that the sale deeds through which the present petitioner got the property through auction purchase has been challenged but it cannot be challenged under the provision of section 12(8) of the Artha Rin Adalat Ain, 2003.

The learned counsel further contends that though that very legal proposition has clearly been canvassed in the application for rejection of plaint but the learned Judge of the trial court did not take into

consideration of the same and therefore, the impugned judgment and order cannot be sustained in law.

The learned counsel next contends that since the plaintiff has got alternative remedy to file a suit claiming compensation against the bank officials if the said official is found to have made any irregularity in the process of auction sale and therefore, on that score as well, the suit cannot be continued.

When we pose a question to the learned senior counsel why that very application has been filed at a very belated stage when the suit was at the stage of peremptory hearing, the learned counsel then retorted that, at any stage of the proceedings of a suit, an application under order VII, rule 11 of the Code of Civil Procedure can be filed and in support his submission, the learned counsel then placed his reliance in the decision reported in 45 DLR (AD) 31. Aside from that, the learned senior counsel also placed his reliance in the decision reported in 63 DLR (AD) 160 where *ratio* has been settled on the provision of section 12(8) of the Artha Rin Adalat Ain. Basin on those submissions and relying on the decisions, the learned senior counsel finally prays for making the rule absolute by dismissing the suit allowing the application for rejection of plaint.

On the contrary, Mr. Subrata Saha, learned senior counsel appearing for the opposite party no. 1 opposes the contention taken by the learned senior counsel for the petitioner and then submits that though there has been decision with regard to entertaining an application for rejection of plaint at any stage of the suit but in the decision so have

been reported in 7 MLR (AD) 135, it has also been settled that such kind of application should be filed at an earliest opportunity and since the defendants had earlier travelled up to the Appellate Division challenging different orders of the trial court, and since a specific issue on the point of maintainability has also been framed in the suit so at the belated stage, the plaint cannot be rejected because whether the suit can be maintained or not that can be adjudicated upon by taking evidence from the parties when the suit will be disposed of on merit and on contest. On that very legal assertion, the learned counsel finally prays for discharging the rule.

Be that as it may, we have considered the submissions so advanced by the learned senior counsels for the petitioner and that of the opposite party no. 1 and perused the impugned judgment and order and the application so filed under order VII, rule 11(a) and (d) of the Code of Civil Procedure. We have also very meticulously gone through the provision so provided in section 12(8) of the Artha Rin Adalat Ain, 2003. On going through the said provision we find that section bears a non-obstante clause as the section starts with the sentence “আপাততঃ বলবৎ অন্য কোন আইনে ভিন্নরূপ যাহা কিছুই থাকুক না কেন”. Furthermore, the proviso to sub-section also provides that an aggrieved party can seek remedy if any officer of a creditor bank commits any illegality in the process of auction sale. So that very proviso in conjunction with the sub-section clearly exemplifies that, the suit so filed by the plaintiff-opposite party is barred under section 12(8) of the Artha Rin Adalat Ain, 2003 which thus attracts order VII, rule 11(d) of the Code of Civil Procedure.

Moreover, since it has already been settled by our Appellate Division reported in 63 DLR (AD) 160 that if any party feel aggrieved with the auction sale held under section 12(3) of the Ain, then his/her remedy lies in section 12(8) of the Ain. Further, in the decision so reported in 45 DLR (AD) 31, it has also been settled that at any stage of a suit an application can be filed for rejection of plaint even though in the decision reported in 7 MLR (AD) 135, it has also been settled that such kind of application should be filed at an earlier stage but that does not *ipso facto* defeat the right of the defendants to file such application if on the face of the plaint, it shows the suit is barred by any law.

Then again, though trial court rejected the application so filed by the defendant-petitioner vide impugned order but the legal assertion so couched in the application filed under order VII, rule 11 of the Code of Civil Procedure by the defendant no. 1 has not at all been taken into consideration.

Against the above backdrop, we don't find any merit and substance in the impugned order which is liable to be set aside.

In the result, the rule is made absolute however without any order as to costs.

The impugned judgment and order dated 04.02.2024 passed by the learned Joint District Judge, Additional Court, Gazipur in Title Suit No. 58 of 2020 is thus set aside and consequently, the suit is dismissed.

The order of stay granted at the time of issuance of the rule stands recalled and vacated.

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

Md. Bashir Ullah, J:

I agree.