

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)

Present

Mr. Justice Sikder Mahmudur Razi
And
Mr. Justice Raziuddin Ahmed

Writ Petition No. 3733 of 2024

Mohammad Fokrul Islam
.....Petitioner.

-Versus-

Bangladesh Islami Bank Bangladesh Limited and
others.

.....Respondents.

Mr. Garib Newaz, Advocate with
Ms. Maksuda Akhter, Advocate

.....For the petitioner.

Mr. Md. Hafizur Rahman Khan, Advocate
.....For the respondent No.1.

The 09th December, 2025

This is an application for discharging Rule.

Mr. Md. Hafizur Rahman Khan, learned Advocate for the respondent No. 1-applicant bank submits that the instant writ petition has been filed challenging the Order No. 28 dated 11.01.2024, passed in Money Execution Case No. 189 of 2019, by the Judge, Artha Rin Adalat No. 4, Dhaka rejecting the petitioner's application under Section 57 of the Artha Rin Adalat Ain, 2003 read with section 151 of the Code of Civil Procedure praying for allowing the judgment-debtor to sell the mortgage property for paying the dues of the decree holder bank. The learned advocate submits that the question whether the petitioner is entitled to get an order of the Court to sell the mortgaged property in his private capacity has been dealt in Rule 83(1)(2) and (3) of Order XXI of the Code of Civil Procedure. He next submits that although sub-rule 1 and 2 of Rule 83 of Order XXI allow for private sale of property by

judgment-debtor to raise decretal amount, they are subject to the provisions of sub-Rule 3 and as per sub-rule 3, the provisions of rule 83(1) and (2) will not apply in case of execution of a decree for sale in enforcement of a mortgage or of charge on such property. The learned Advocate in support of his submissions relies on the case of *Khorshed Alam Vs. Artha Rin Adalat*, reported in 54 DLR (2002) page 239 wherein, it has been held that in case of execution of a decree for enforcement of mortgage, there is no scope for private sale, it must be sold by public auction. The learned advocate next submits that since the Money Execution Case No. 189 of 2019 was filed by the respondent No.1 in execution of decree for enforcement of mortgage, the petitioner has no entitlement to sell the mortgaged property in private capacity, therefore, the Adalat committed no illegality by rejecting the petitioner's application for private sale. With these submissions the learned advocate prays for discharging the Rule.

The learned Advocate for the petitioner opposes the application.

We have heard the learned Advocate for the respondent No.1-applicant bank. We have also gone through the application and the materials on record.

On going through the provision as contained in Order XXI Rule 83 of the Code of Civil Procedure, it appears to us that Order XXI Rule 83(1) provided for postponement of the sale for enabling the judgment - debtor to raise money for payment of the total amount by way of mortgage or lease or private sale of the property with the permission of the Court. This provision has to be read subject to the provision of sub-

rule 3 which is a non-obstante clause, which provides that “Nothing in this rule shall be deemed to apply to a sale of property directed to be sold in execution of decree for sale in enforcement of a mortgage of, or charge on, such property”. Apart from the decision so cited by the learned advocate for the respondent-bank we also find support of this view/contention in the case of *Agrani Bank vs Anwarul Bashir*, reported in *X ADC (2013) page 258*.

Accordingly, we find substance in the application for discharging the Rule and hence, the same is allowed and the Rule issued in the instant matter is hereby discharged. The interim order if there be any, is hereby recalled and vacated.

Communicate the judgment at once.

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(Sikder Mahmudur Razi, J.)

I agree

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(Raziuddin Ahmed, J.)