

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

Writ Petition No. 1275 of 2024

In the matter of:

An application under article 102 of the Constitution
of the People's Republic of Bangladesh.

AND

In the matter of:

Abdul Monaf Khandakar and another
... Petitioners

-Versus-

Government of Bangladesh and others
... Respondents

Mr. Rowshan Ali, Advocate
... For the petitioners

Mr. Md. Sameer Sattar, Advocate with
Mr. Mahbub Hasan, Advocate
... For the respondent No. 3

Heard 24.04.2025, 22.05.2025 and
Judgment on: 29.05.2025

Present:

Justice Sardar Md. Rashed Jahangir
and
Justice Kazi Waliul Islam

Sardar Md. Rashed Jahangir, J:

The Rule Nisi was issued on an application under article 102

of the Constitution of the People's Republic of Bangladesh calling

upon the respondents to show cause as to why the proceedings of the

Artha Rin Jari Case No. 151 of 2005 (arising out of Artha Rin Case No. 255 of 2003) pending before the Artha Rin Adalat, Chattogram should not be declared to be of without lawful authority and is of no legal effect and as to why the failure of the respondents to exclude petitioners' land measuring an area of 40(forty) decimals under R.S. Khatian No. 834/1, corresponding to R.S. Dag No. 4027 from the Deed of Mortgage No. 6426 dated 12.11.1994 shall not be declared to be of without lawful authority and is of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper.

Brief facts for disposal of the Rule are that the petitioners claimed themselves having interest in some property on the basis of their own. It is further stated that the respondent Nos. 3 and 4 being emboldened by the judgment and decree dated 01.04.2004 passed by the respondent No. 2 in Artha Rin Suit No. 255 of 2003 and in

pursuant to Artha Rin Jari Case No. 151 of 2005 threatened the petitioners to evict from their own property measuring an area of 40(forty) decimals described in the Deed of Mortgage No. 6426 dated 12.11.1994. The further fact is that the respondent No. 3-the City Bank Limited filed Artha Rin Suit No. 255 of 2003 before the Artha Rin Adalat, Chattogram for recovery of outstanding dues of an amount of Tk.88,79,209/- against the present respondent Nos. 5-7; ultimately, the suit was decreed. The bank filed Artha Jari Case No. 151 of 2005 for executing the decree passed in Artha Rin Suit No. 255 of 2003.

Ultimately, in the execution case, upon an application of the decree-holder-bank, a certificate under section 33(7) was issued on 30.08.2018 and thereafter under section 33(7Ka) writ of possession was issued to handover the actually possession in favour of the decree-holder-bank on 29.09.2022. Thereafter, on 30.10.2022, third-

party present petitioners filed an application before the Artha Rin Adalat, Chattogram in Artha Jari Case No. 151 of 2005 under section 57 of the Artha Rin Adalat Ain, 2003 stating inter-alia that the petitioners are the owners of 40(forty) decimals of land. Neither they mortgaged the said property nor there was any reason to mortgage the property in favour of the bank, thus, the property cannot be attached/sold/ transferred in pursuant to Artha Jari Case No. 151 of 2005 and thereby sought for setting aside the order dated 30.08.2018, issuance of certificate under section 33(7) and order dated 29.09.2022, the order of handing over possession under section 33(7Ka) of the Artha Rin Adalat Ain, 2003. The Artha Rin Adalat, Chattogram upon hearing the parties on 19.01.2023 passed a conditional order keeping the hearing of the application pending directing that the application shall be heard further subject to furnishing bond by the petitioners under section 32 of the Artha Rin

Adalat Ain, 2003. Therefore, from 19.01.2023 to 05.11.2023 the petitioners did not furnish the directed bond of section 32 of the Artha Rin Adalat Ain, 2003. On 31.01.2024 the petitioners filed this writ petition challenging the entire proceeding of Artha Jari Case No. 151 of 2005.

It is to be mentioned here that earlier the petitioners filed another writ petition being No. 4929 of 2023 (see order No. 26 dated 21.05.2023, page 63 of the writ petition), but nowhere of the writ petition the petitioners made any statement regarding the aforesaid writ petition.

Mr. Rowshan Ali, learned Advocate for the petitioners submits that the petitioners did not mortgage their property measuring an area of 40 decimals to the bank as collateral security against the sanctioned loan to the respondent Nos. 4-7 and there was no reason to include the petitioners' property in the schedule of the

decree execution case. He further submits that since there is a fraud upon the petitioners thus, they are not required to deposit the security or bond under sub-section (2) of section 32 of the Artha Rin Adalat Ain, 2003. In support of the submission, he cited the judgment of Mollah Shahidul Islam Vs. Md. Monsur Rahman and others, reported in 57 DLR 164.

In course of argument, learned Advocate Mr. Rowshan Ali for the petitioners by filing a voluminous supplementary affidavit containing various deeds and other documents, together with an application for issuance of Supplementary Rule.

On the other hand, Mr. Sameer Sattar, learned Advocate appearing with Mr. Mahbub Hasan, learned Advocate submits that under the Artha Rin Adalat Ain, 2003 there is no scope for the third party to invoke the Court's jurisdiction other than under the provision of section 32 of the Ain, 2003 and under section 32(2) of

the Ain, 2003, it is a mandatory requirement that the third party ought to deposit equivalent to 10% of the outstanding dues or an equivalent bond together with the application purportedly filed invoking the aforementioned provision; in support of his submission, he relied upon the judgment of the Md. Humayun Kabir Vs. Sonali Bank Limited and others reported in 9ADC 335 (Civil Petition For Leave To Appeal No. 1700 of 2009) and thereby submits that there is no scope for the Artha Rin Adalat to entertain any of the objection of the thirty party without depositing 10% of the decretal amount or equivalent bond and the Artha Rin Adalat, Chattogram did not commit any illegality in directing the petitioner to deposit 10% of the decretal amount or to furnish a equivalent bond and as such, he prayed for discharging the Rule.

Heard learned Advocates of both the parties, perused the writ petition together with the annexures, supplementary affidavit and the

application for issuance of the Supplementary Rule and the application for discharging the Rule filed on behalf of the respondent No. 3-bank.

It appears that the petitioners being third party, i.e. neither the borrower nor mortgagor/guarantor of the sanctioned loan, subject matter of the Artha Execution Case No. 151 of 2005 (arising out of Artha Rin Suit No. 255 of 2003) of the Court of the Artha Rin Adalat, Chattogram moved before this Court challenging the proceeding of Artha Rin Execution Case No. 151 of 2005 of the Artha Rin Adalat, Chattogram stating, inter alia that they are not borrowers or guarantors or mortgagors of the loan-in-question and thus, their property cannot be included into the schedule of the aforesaid artharin suit or artharin execution case and as such, cannot be the subject matter of any certificate issued under section 33(7) of the Artha Rin Adalat Ain, 2003.

The petitioners by filing the application under section 57 of the Artha Rin Ain, 2003 in the Artha Rin Adalat, Chattogram challenged in particular, the order of issuance of certificate under section 33(7) of the Artha Rin Adalat Ain, 2003 together with an order of issuance of writ of possession under section 33(7Ka) of the Artha Rin Adalat Ain, 2003 in favour of decree-debtor-bank and now are contending that they are not liable to deposit 10% of the decreetal amount or equivalent bond as per stipulation of section 32(2) of the Artha Rin Adalat Ain, 2003.

In the context of above, keeping the submission of learned Advocate in mind, we have examined the various provisions of the Artha Rin Adalat Ain, 2003.

In the preamble of the Ain it is stated that “আর্থিক প্রতিষ্ঠান কর্তৃক

ঋণ আদায়ের জন্য প্রচলিত আইনের অধিকতর সংশোধন ও সংহতকরণকল্পে প্রণীত আইন।

যেহেতু আর্থিক প্রতিষ্ঠান কর্তৃক প্রদত্ত ঋণ আদায়ের জন্য প্রচলিত আইনের অধিকতর

সংশোধন ও সংহতকরণ প্রয়োজনীয়; সেহেতু এতদ্বারা নিম্নরূপ আইন করা হইল:-”

(emphasis has been given in the underlined). The preamble indicates that the Artha Rin Adalat Ain, 2003 is an amended and consolidated provisions for realization of the loan given by the financial institution. Section 3 of the Artha Rin Adalat Ain provides that notwithstanding anything contained in any other law, the provisions of this Ain shall prevail. By giving an overriding effect, it is provided that the suit for realization of given loan shall be instituted before the special Court established under section 4 of the Artha Rin Adalat Ain, 2003 through Gazette Notification and section 5 of the Ain it is also stipulated that the all disputes relating to realization of loan shall be decided and disposed of exclusively in the Court established under section 4 of the Ain. All this provisions contemplates, Artha Rin Adalat Ain is a special law through which

special Courts are established and the Courts are to follow special provisions within the contemplation and permission of the Ain itself.

Under section 6(5) of the Artha Rin Adalat Ain, 2003, it is further stipulated that the artha rin suit can be filed impleading the specified defendants namely, the principal debtor, the third party mortgagor, and the third party guarantor, no other persons except the aforementioned can be a party to an Artha Rin Adalat Suit. There is no scope in the Artha Rin Adalat Ain, to implead persons other than the aforesaid categories, in other words, no other persons can invoke the jurisdiction of the Artha Rin Adalat Ain other than the aforesaid, save and except within the scope of specific provision of section 32 of the Artha Rin Adalat Ain, 2003.

Meaning thereby, the aggrieved persons other than the specified persons of aforesaid 3(three) categories can seek any

remedy before the Artha Rin Adalat under the provision of section 32 of Artha Rin Adalat Ain, 2003.

Under section 41 of the Artha Rin Adalat Ain, 2003 the parties to the suit on being aggrieved by any order or decree of the Artha Rin Adalat Ain may prefer an appeal before the competent Court by depositing 50% of the decretal amount. This provision for the appeal is not available to any third party. In case of an ex-parte decree, the defendants of the suit of the aforesaid 3(three) categories may file an application for setting aside the ex-parte decree under section 19(2) within 30(thirty) days of passing of the decree by depositing 10% of the decretal amount. From the provision aforementioned, it further transpires that the third party is not entitled to seek remedy under section 19 of the Artha Rin Adalat Ain, 2003.

Section 32 of the Artha Rin Adalat Ain provides that a third party claiming interest may file/submit his objection/claim against the decree within 30(thirty) days in an execution proceeding arising out of a judgment and decree of the Artha Rin Adalat in accordance with the provisions of the Code of Civil Procedure upon depositing a security equivalent to 10% of the decretal amount or any equivalent bond into the Court. Section 26 of the Artha Rin Adalat Ain, 2003 provides that the procedure and provisions for execution of money decree provided in the Code of Civil Procedure, 1908 shall be applicable in the execution proceeding under the Artha Rin Adalat Ain, provided further that the provisions of the Code of Civil Procedure shall not be inconsistent with the provisions of the Artha Rin Adalat Ain, 2003.

Meaning thereby, section 26 of the Artha Rin Adalat Ain, has given mandate to invoke the provisions of the Code of Civil

Procedure in the proceeding of execution case filed to execute the decree of the Artha Rin Adalat. From a combined bare reading of the provisions of sections 26 and 32, it further appears that when there is specific provision under the Artha Rin Adalat providing remedy under section 32 of the Ain in an execution proceeding of Artha Rin Adalat, no provisions of the Code of Civil Procedure inconsistent with the provisions of the Artha Rin Adalat Ain, 2003 can be adopted in the proceeding of any Artha Rin Jari Case.

Under the Code of Civil Procedure read with sections 26 and 32 of the Artha Rin Adalat Ain, 2003, the third party may invoke the provisions of Order XXI, rule 58, 89, 90, 100 and 101; and even the provision of rule 103 of Order XXI of the Code, but all those remedies provided in the aforesaid provisions can be sought for through the gate way of section 32 of the Artha Rin Adalat Ain, 2003.

In the case of Md. Humayun Kabir Vs. Sonali Bank Limited and others, reported in 9 ADC 335, the Apex Court categorically held that:

“Artha Rin Adalat Ain, 2003 is a special law and section 32 of this Ain has provided special procedure for raising any claim as per provisions of the Code of Civil Procedure. According to section 32 of the Artha Rin Adalat Ain, 2003 a third party claimant can raise any claim as to any mortgaged or attached property in any execution case as per provision of the Code of Civil Procedure on depositing security equivalent to 10% of the decretal amount. So any application under Order 21, Rule 58 of the Code of Civil Procedure also is to be filed in any Artha Execution Case in accordance with this section 32 of the Artha Rin Adalat Ain, 2003. Admittedly this petitioner did not deposit the security as per section 32(2) of the Artha Rin Adalat Ain, 2003 for consideration of his application under Order 21, Rule 58 of the Code of Civil Procedure. The executing Artha Rin Adalat, therefore, by the impugned order rightly rejected the said application on the ground that no security as per section 32(2) of the Artha Rin Adalat Ain, 2003 was deposited.”

Although learned Advocate for the petitioner cited a judgment reported in 57 DLR 164, wherein it has been held that no deposit is required under section 32 when the question of fraud has been alleged, but in view of the judgment of the Apex Court reported in 9 ADC 335, we are enable to accept the view expressed in 57 DLR.

Moreover, in the case of Shamsuddin Ahmed Vs. City Bank Limited and others, reported in 18 BLC 30, it is categorically held that the provision of section 57 of the Ain is not an enabling provision for setting aside the sale or issuance of certificate under section 33(7), as the case may be (because under the certificate of section 33(7) ownership has been transferred), in our considered view the aforesaid proposition settled in the case of Shamsuddin Ahmed is solely applicable in the instant case, because the petitioners tried to invoke the jurisdiction of the Artha Rin Adalat for

setting aside the certificate issued under section 33(7) of the Artha Rin Adalat Ain, 2003 by filing an application.

As we already found that whatever the claim is under an application of any third party, that must come within the gateway of section 32 of the Artha Rin Adalat Ain, 2003 thus, without complying with the stipulation of section 32 of the Ain, 2003, no application of a third party's claim can be entertained.

Under the case in hand, the Artha Rin Adalat, Chattogram did not commit any illegality in directing the petitioners to deposit the security amount or equivalent bond within the stipulation of section 32, of the Ain, 2003.

In the premise above, we do not find any substance in the Rule.

Accordingly, the Rule is discharged without any order as to cost.

In the premise above, we find no reason to issue any Supplementary Rule to interfere unwarrantedly into the proceeding of the Artha Rin Execution Case filed to execute a decree of the Artha Rin Adalat.

Accordingly, the said application is rejected.

However, the petitioners may proceed to claim hearing against the proceeding of decree execution upon depositing a security equivalent to 10% of the decreetal amount or any equivalent bond in the Artha Rin Adalat as per it's direction, if they are so advised.

Communicate the judgment and order at once.

Kazi Waliul Islam, J:

I agree.