

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

WRIT PETITION NO. 3883 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:

Ali Hossain and another

.....Petitioners

-VERSUS-

The Judge of Artha Rin Adalat No.1, Dhaka and
others

..... Respondents

Mr. A. K. M. Asiful Haque, Advocate

..... For the Petitioners

Mr. Lutfor Rahman, Advocate

.....For the Respondent No. 3

Heard on 05.11.2025 and Judgment on 06.11.2025

Present:

Justice Md. Rezaul Hasan

&

Justice Urmee Rahman

Urmee Rahman, J:

In the instant matter a Rule Nisi was issued on an application under article 102 of the Constitution of the People's Republic of Bangladesh calling upon the respondent Nos.1-3 to show cause as to why the exparte adjudication Order No. 31 dated 14.06.2012 passed in Artha Rin Suit No.

83 of 2009 by respondent No.1, as evidenced by Annexure A(2) and Order No. 11 dated 03.03.2022, passed by respondent No.1 in Artha Jari Case No. 135 of 2012 issuing certificate under section 33(5) of the Artha Rin Adalat Ain, 2003 in respect of mortgaged properties mentioned in Schedule “Kha” and Schedule ‘Ga’ of the application of Artha Jari Case, as evidenced by Annexure D(1), shall not be declared to be without lawful authority and to be of no legal effect and/or pass such other of further order or orders as to this Court may seem fit and proper.

The facts relevant for disposal of this Rule, in brief, are that the respondent n. 3 bank as plaintiff filed Artha Rin Suit No 83 of 2009 before Artha Rin Adalat No. 1, Dhaka for realization of an amount of Tk. 18,97,39,673,00/- (eighteen crores ninety seven lacs thirty nine thousands six hundred and seventy three taka) as outstanding on 31.08.2009 from the defendants along with interest at the rate of 12% per year till realization. Defendant no. 2 and 7 contested the suit by filing written statement. By the impugned order no. 31 dated 14.06.2012 the learned judge of the Artha Rin Adalat decreed the suit ex parte in favour of the plaintiff bank. Thereafter the plaintiff bank filed Artha Jari Case No. 135 of 2012 before the 3rdArthaRinAdalat at Dhaka on 16.09.2012. In the said Artha Jari Case the court published auction notice under section 33(1) and 33(4) of the Artha Rin Adalat Ain, 2003 vide order dated 07.09.2021 and 15.12.2021 respectively but no bidder participated in those auction process. Thereafter on an application of the decree holder bank the court

on 03.03.2022 vide order no. 11, which is also impugned herein, issued a certificate under Section 33(5) of the Artha Rin Adalat Ain in favour of the decree holder bank and disposed of the Artha Jari Case under Section 33(9) of the said Act.

Mr. A.K.M. Asiful Haque, learned Advocate appeared on behalf of the petitioners submitted that the learned Judge of the Artha Rin Adalat failed to adjudicate the real controversy of the dispute between the parties and the impugned ex parte judgment and decree is not lawful because the defendants contested the suit by filing written statements and they were examined and the court marked some document as exhibits in support of their cases as well.

Mr. A.K.M. Asiful Haque, further submitted that, the defendant no. 3 died before filing of the Artha Rin Suit No. 83 of 2009 and defendant no. 6 died during continuance of the Artha Jari Case No. 135 of 2012, hence the ex parte decree in the name of a dead person is a nullity and the certificate issued in the execution case against a dead person is also without lawful authority. Further contention of Mr. Haque is that the impugned judgment and decree was passed in violation of Section 26 of the Artha Rin Ain 2003 inasmuch as from the prayer portion of the plaint of Artha Rin Suit it appears that this is simply a money suit and the provision of Code of Civil Procedure ought to be followed in the instant case, but the learned judge of the Artha Rin Adalat acted beyond lawful authority by inserting the mortgaged property in the schedule to the

decree in violation of the provision of Code of Civil Procedure. The learned Advocate then submitted that the provisions of Section 33 as well as Order 20 Rule 7 of the Code of Civil Procedure were not followed by the learned judge of the Artha Rin Adalat while delivering the impugned judgment and order. He finally submits that the impugned judgment and decree and the subsequent order issuing certificate under Section 33(5) not being lawful, the same are liable to be declared without any lawful authority and therefore need to be set aside. In support of his submission Mr. Haque referred decisions of the Appellate Division in the case of *Mir Motiur Rahman Zihadi versus Artha Rin Adalat, Tangail and another* reported in **15 BLT (AD) 2007 page 267**, *Md. Sekandar and another versus Janata Bank Ltd. and others* reported in **9 ALR (AD) 2017 page 81**, and another unreported case decision passed by the High Court Division in **Writ Petition No. 9904 of 2016** between *Nilufar Mahruk Hossain versus Judge, Artha Rin Adalat, Bogura and others*.

Mr. Lutfor Rahman, learned Advocate appeared on behalf of the respondent no.3 and submitted that this writ petition is not maintainable as there remain an alternative remedy against the impugned judgment and order passed by the Artha Rin Adalat; without availing that alternative forum the petitioners have come before the High Court Division in writ jurisdiction in order to evade the remedy either under section 19 for setting aside an ex parte decree by depositing ten percent of the decretal amount or, alternatively, by preferring appeal under Section 41 of the

Artha Rin Adalat Ain by depositing 50% of the decretal amount. Mr. Rahman brought to the notice of the court the fact that the writ petitioners have filed several writ petitions before the High Court Division regarding the same Artha Rin Case with an ill intention to frustrate the decree passed by the Artha Rin Adalat. He finally submitted that the issues raised in this writ petition ought to have brought before the appellate forum, hence the grounds taken in the writ petition do not deserve any consideration by this court. In support of his submission Mr. Rahman put reliance on decisions of the Appellate Division in *Dudu Mia and others versus Ekram Miah Chowdhury and others* reported in **54 DLR (AD) 6**, *Agrani Bank versus Mrs. Hosne Ara Begum* reported in **1LM (AD) 334**.

We have heard the learned Advocates for both the parties and perused the application and impugned orders as well as annexures annexed thereto.

From the record it appears that the impugned judgment and order was passed on 14.06.2012 by the Artha Rin Adalat, Dhaka and the instant writ petition has been filed after long 12 (twelve) years on 21.03.2024. From the record of the application for discharging the Rule filed by the Respondent No. 3 dated 19.08.2025 it transpires that, before filing this writ petition another judgment debtor of the selfsame Artha Rin Case filed another Writ Petition No. 11391 of 2023 challenging a subsequent auction notice dated 17.08.2023 and a Division Bench of the High Court Division by the order dated 31.08.2023 (Annexure X-2) was pleased to

stay the auction for a period of three months subject to the condition that the petitioner shall deposit 50% of the total decretal amount to the concerned bank within three months from date and shall pay off the remaining loan amount by three equal installments within nine months and in case of default the order of stay shall stand vacated. Ultimately the Rule was discharged by an appropriate Bench of this Division. Having been failed therein, the present petitioners have filed the instant writ petition suppressing the aforesaid fact and obtained an order of status quo.

Artha Rin Adalat Ain is a special law and special provisions have been provided in the Act. From the content of Section 19 of the Artha Rin Ain, 2003 it is very much clear that there is a provision for filing an application for setting aside the ex parte decree within 30(thirty) days of passing the order upon payment of 10% of the decretal amount. Furthermore, as per Section 41 of the Artha Rin Adalat Ain, 2003, there is also a provision of appeal against the judgment passed by the Artha Rin Adalat. For proper appreciation, the provision of Section 19(2), 19(3) and section 41 of the Artha Rin Adalat Ain, 2003 are reproduced herein under:

ধারা ১৯। (২) কোন মামলা একতরফা সূত্রে ডিক্রী হলে, বিবাদী উক্ত একতরফা ডিক্রীর তারিখের অথবা উক্ত একতরফা ডিক্রী সম্পর্কে অবগত হবার ৩০ (ত্রিশ) দিবসের মধ্যে, উপ-ধারা (৩) এর বিধান সাপেক্ষে, উক্ত একতরফা ডিক্রী রদেব জন্য দরখাস্ত কর-ত পার-বন।

(৩) উপ-ধারা (২) এর বিধান অনুযায়ী দরখাস্ত দাখিলের ক্ষেত্রে বিবাদী-ক উক্ত দরখাস্ত দাখি-লর তারি-খর পরবর্তী ১৫ (প-নর) দিব-সর মধ্যে ডিক্রীকৃত অর্থের ১০% এর সমপরিমাণ টাকা বাদীর দাবীর সেই পরিমা-ণর জন্য স্বীকৃতিস্বরূপ নগদ সংশ্লিষ্ট আর্থিক প্রতিষ্ঠা-ন, অথবা জামানত-স্বরূপ ব্যাংক ড্রাফট, -প-অর্ডার বা অন্য কোন প্রকার

নগদায়ন-যোগ্য বিনি-ময় দলিল (Negotiable Instrument) আকা-র জামানত হি-স-ব আদাল-ত জমাদান কর-ত হ-ব।

Section 41(1) and (2) of the Act of 2003 is as follows:

ধারা-৪১। (১) মামলার কোন পক্ষ, কোন অর্থক্ষণ আদাল-তর আদেশ বা ডিক্রী দ্বারা সংক্ষুদ্ব হলে, যদি ডিক্রীকৃত টাকার পরিমাণ ৫০ (পঞ্চাশ) লক্ষ টাকা অধিক হয়, তা হলে উপ-ধারা (২) এর বিধান সা-প-ক্ষ, পরবর্তী ৬০ (ষাট) দিব-সর ম-ধ্য হাই-কোর্ট বিভাগে, এবং যদি ডিক্রীকৃত টাকার পরিমাণ ৫০(পঞ্চাশ) লক্ষ টাকা অথবা তদঅপেক্ষা কম হয়, তা হলে ৩০(ত্রিশ) দি-নর ম-ধ্য জেলাজজ আদাল-ত আপীল কর-ত পার-বন।

(২) আপীলকারী, ডিক্রীকৃত টাকার পরিমাণের ৫০% এর সমপরিমাণ টাকা বাদীর দাবীর আংশিক স্বীকৃতিস্বরূপ নগদ ডিক্রীদার আর্থিক প্রতিষ্ঠা-ন, অথবা বাদীর দাবী স্বীকার না কর-ল, জামানতস্বরূপ ডিক্রী প্রদানকারী আদালতে জমা করে উক্তরূপ জমার প্রমাণ দরখাস্ত বা আপী-লর মে-মার সহিত আদাল-ত দাখিল না কর-ল, উপ-ধারা (১) এর অধীন কোন আপীল কার্যা-র্থ গৃহীত হ-ব না।

In the instant case, the petitioners without availing these alternative efficacious and available remedies have come before the High Court Division in writ jurisdiction.

Law is now well settled that since specific alternative remedy is available in the Act of 2003 against a judgment and decree passed by the Artha Rin Adalat, no application under Article 102 shall lie against such judgment and decree. Moreover, this writ petition has been filed after long 12 (twelve years) of passing the impugned order and there is no explanation whatsoever regarding the inordinate delay in filing the writ petition.

We have taken into consideration the reported judgment referred by the learned Advocate for the petitioners and it is our finding that those have no manner of application in the instant matter since the instant

impugned judgment is neither without jurisdiction nor it is *quorum non judice*; it is also not an outcome of fraud either.

In view of the facts and circumstances stated hereinabove, we do not find any substance in the submissions made by the learned Advocate for the petitioners.

Accordingly we find no merit in this Rule.

In the result, the Rule is discharged for not being maintainable.

The order of status-quo granted earlier by this Court is hereby vacated.

However, no order as to cost.

Communicate this judgment and order at once.

Md. Rezaul Hasan, J:

I agree.

