

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

WRIT PETITION NO. 6234 OF 2024

With

WRIT PETITION NO. 6083 OF 2024

IN THE MATTER OF:

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

IN THE MATTER OF:

Mujibur Rahman and others

.... Petitioners (in W.P. No. 6234 of 2024)

Jewel Khan and others

... Petitioners in W.P. No. 6083 of 2024

-Versus-

Judge, Artha Rin Adalat, Chattogram and
others

.... Respondents in both writ petitions

Mr. Mustafizur Rahman Khan, Senior
Advocate with

Mr. Mohammad Masud Mia, Advocate

... For the Petitioners

(in W.P. No. 6083 of 2024)

Mr. Probir Neogi, Senior Advocate with

Mr. Muntasir Uddin Ahmed, Advocate

... For the Petitioners

(in W.P. No. 6234 of 2024)

Mr. Shah Monjurul Hoque, Senior Advocate
with

Mr. Mohammad Hurunur Rashid, Advocate

... For the Respondent No. 4

(in W.P. No. 6083 of 2024)

Judgment on 16.01.2025

Present:

Mr. Justice Md. Ashraful Kamal
and

Mr. Justice Mahmudul Hoque
and

Mr. Justice Md. Zakir Hossain

Mahmudul Hoque, J:

Both the Rules involve a common question of law. This Bench decided to hear the Rules analogously.

In Writ Petition No. 6234 of 2024, Rule Nisi was issued on 02.06.2024 calling upon the respondents to show cause as to why order No. 08 dated 12.05.2024 passed by the respondent No. 1 Artha Rin Adalat, Chattogram in Artha Rin Suit No. 652 of 2023 imposing restriction upon the petitioners from travelling abroad and further, communication of the same to the Special Police Super (Immigration), Special Police, respondent No. 2 as contained in Annexure - B should not be declared to have been passed without lawful authority and is of no legal effect and as to why an order should not be passed upon the respondents to refrain them from harassing the petitioners from travelling abroad and return.

In W .P. No. 6083 of 2024, Rule Nisi was issued on 20.05.2024 calling upon the respondents to show cause as to why order No. 6 dated 27.02.2024 (Annexure-E) passed by the Artha Rin Adalat, Chattogram (respondent No. 2) in Artha Rin Suit No. 568 of 2023 restraining the defendant-petitioners from travelling abroad without permission of the

court and also directing the petitioner Nos. 1 and 4 (defendant No. 2 and 5) to surrender their passport to the court should not be declared to have been passed without any lawful authority and is of legal effect.

These two Rules Nisi issued by a Division Bench presided over by Mr. Justice Zafar Ahmed, J.

Both the Rules Nisi was fixed for hearing before the same Bench and in course of hearing the Court observed that common question of law involve is whether the Artha Rin Adalat can impose an embargo upon the defendants from travelling abroad in exercise of its inherent power under Section 57 of the Artha Rin Adalat Ain, 2003 (in short, the ‘Ain’).

The Court also observed that another Bench headed by Mr. J.B.M. Hassan, J. in the case of *Ali Imam vs. Judge, Artha Rin Adalat, Chattogram and others* (reported in *19 SCOB (2024) HCD 76* decided the question raised in this petitions affirmatively relying on the case of *Durnity Daman Commission vs. G.B. Hossain and others* reported in *74 DLR (AD) 1*, Article 36 of the Constitution and Section 57 of the Act, 2003.

Since an important question of law which is of public importance, has been raised in the said Writ Petitions, upon hearing, the said Bench

felt it necessary that the said point is required to be settled by a larger Bench of this Division. Accordingly, both the writ petitions were referred to the Hon'ble Chief Justice under Rule 1C of Chapter II of the Supreme Court of Bangladesh (High Court Division) Rules 1973. Accordingly, this Bench was constituted for hearing of these Rules Nisi.

In view of the above, the key issue to be addressed by this larger bench is whether the Artha Rin Adalat can impose travel restrictions under section 57 of the Artha Rin Adalat Act 2003, and if so, under what circumstances. To determine an answer, it is necessary to understand the true scope and purpose of section 57 of the Artha Rin Adalat Ain, 2003. Additionally, it is important to balance the right to free movement with the rights of financial institutions when applying the power under section 57 to impose travel restrictions. The Artha Rin Adalat, as the statutorily designated court, should give beneficial interpretation to the provisions of statutes with due diligence and care while considering "public interest". This approach aims to reduce any harshness toward judgment debtors by referring to the core objective of the Ain (debt recovery) and evaluating the necessity of imposing travel restrictions upon loan defaulters.

Both the Writ Petitions being Nos. 6083/2024 and 6234 of 2024 at hand involves the petitioners challenging the order passed by the Artha Rin Adalat, which restrained them from travelling abroad and directed them to surrender their passports. Respondent Banks, as plaintiffs, filed

Artha Rin Suits against the petitioners in both the petitions along with Pro-forma respondents for recovery of Tk. 72,67,53,063.69/- in Artha Rin Suit No. 568 of 2023 and recovery of Tk. 30,53,50,449.39/- in Artha Rin Suit No. 652 of 2023. The borrowers failed to pay the loan, resultantly, the respondent banks filed suits before the Artha Rin Adalat for recovery of loan money. In Artha Rin Suit No. 568 of 2023, the plaintiff bank on 31.01.2024 and in Artha Rin Suit No. 652 of 2023 on 12.05.2024 filed applications under Section 57 of the Artha Rin Adalat Ain praying for necessary order restraining the defendant borrowers and guarantors from leaving the country without permission of the court. After hearing, the Adalat, issued show cause notices to the defendants as to why an order restraining their travel abroad shall not be passed and directed the immigration authorities to restrain their travel abroad in the meantime. Subsequently, upon contested hearing, the Adalat was pleased to pass Orders restraining the petitioners in both the petitions from travelling abroad and directed them to surrender thier passports before the Court. Challenging the said Orders, the petitioners filed the aforesaid two Writ Petitions prompting the High Court Divisions to issue a *rule nisi* in both cases questioning the legality of the orders.

By virtue of the principle laid down in *Durnity Daman Commission Vs. GB Hossain and another* reported in 74 DLR (AD) 1, it has already become trite law that the right to free movement under Article 36 of the Constitution of Bangladesh can be restricted by law in the public interest. The Supreme Court has held that "law" in this context refers to enacted law. Thus, the key issue before us is whether the Artha Rin Adalat Ain 2003 permits travel restrictions and under what circumstances.

Mr. Mustafizur Rahman Khan, learned Senior Advocate with Mr. Mohammad Masud Mia, learned Advocates appearing for the petitioners in both the *Rules Nisi* challenging the validity of the Order submitted that section 57 of the Artha Rin Adalat Act, 2003 preserves the inherent power to make any order which is supplementary for the ends of justice and in order to prevent abuse of any process of the Court, it cannot be regarded as a "stand-alone" provision empowering the Court to impose a travel restriction solely taking into account the fact that the defendants are alleged to be wilful defaulters and likely to leave the Country; rather for there to be a lawful exercise of the power under section 57 of the Act, it must be shown that such exercise is supplemental to the ends of justice or required to prevent any abuse of the process of the court. In the present

case, the Court has failed to point out how initiation of proceedings to impose a travel restriction upon the petitioners, which would thereby restrict their fundamental right of movement as guaranteed under Article 36 of the Constitution, is supplemental to the ends of justice under the 2003 Act or prevents the abuse of the process of the learned Adalat.

It was argued that a travel restriction on a defendant in an Artha Rin Suit is only permissible during civil imprisonment, as per Section 34 of the Act. This occurs at the post-decretal stage during execution, after exhausting recourse against the principal borrowers and mortgagors, and subject to the first proviso to Section 6(5). Imposing travel restrictions at the pre-decretal stage is unauthorized. Article 36 permits restrictions, but they must be enacted by law, as stated in *74 DLR (AD) 1*. No parliamentary law authorizes the Artha Rin Adalat to impose travel restrictions.

Mr. Rahman argued that Parliament, through the amendment of the Bank Companies Act in 2023, introduced Section 27Kha, effective from June 26, 2023, which distinguishes between "defaulter" and "wilful defaulter." Section 27Kha (1) provides for maintenance of a list of wilful defaulters; Section 27Kha(2) provides sending list of defaulting borrowers

to Bangladesh Bank; Section 27Kha(3) empowers Bangladesh Bank to give directives for identifying and finalizing wilful defaulters; Section 27Kha (6) empowers Bangladesh Bank to send list of wilful defaulters to relevant authorities to impose restriction on foreign travel. In exercise of power under section 27Kha(3) of the Bank Companies Act, Bangladesh Bank has issued necessary directives for identification and finalization of wilful defaulters and for measures to be taken against them vide BRPD circular No. 6 dated 12.03.2024 which provides a process for identifying wilful defaulters under Clause 5(1), the defaulter has a right to be given an opportunity to give a statement to the concerned bank and under clause 5(4), the defaulter has a right to appeal to Bangladesh Bank against a decision of the concerned bank to identify him as a defaulter.

He continued arguing that in imposing such restriction, the legislator has made a distinction between “defaulter” and “wilful defaulter”, hence, mere fact that one is a defendant in an Artha Rin suit does not, of itself make one a wilful defaulter. Moreover, it has been left to Bangladesh Bank to issue directives for the purpose of identification of a wilful defaulter which in fact has; the legislature has not left it to the Artha Rin Adalat to make the distinction, Artha Rin Adalat Ain contain

no provision which permits the Adalat to make such distinction. As such, imposition of travel restriction in derogation of Article 36 of the constitution is without lawful authority. The Artha Rin Adalat usurped the jurisdiction of Bangladesh Bank and deprived the petitioners' right under clause 5(1) and (3) of BRPD circular No. 6 dated 12.03.2024. It is submitted that imposition of travel restriction is not recognized as a mode of recovery under the Artha Rin Adalat Ain, hence, the application of the scheme as contemplated in section 27Kha of the Bank Company Act cannot be excluded by reason of section 3 of the Artha Rin Adalat Act 2003.

Moreover, he added that, a substantive right as guaranteed by the constitution cannot be trampled by exercise of a procedural power of a special court not otherwise given such power explicitly. There is no precedent of travel restriction being imposed on a defendant in a pending suit in exercise of the power under section 57 of the Act or Section 151 of the Code of Civil Procedure. Any exercise of power must be to prevent abuse of the process of the court, hence, there must be nexus between the order and the prevention of abuse of the process of the court; no such nexus exists here; Section 57 of the Ain cannot be used as a means of

imposing a sanction against defendant without a trial of the suit. To treat and identify a borrower or a person to be a wilful defaulter, the bank is to make application to Bangladesh Bank and without making such application the bank cannot take recourse to section 57 of the Act 2003 to achieve a collateral objective for which procedure is laid down elsewhere; indeed, such recourse itself is an abuse of process, inasmuch that it deprives the defendant of a protection afforded by law, i.e. the ability to make representation for the satisfaction of Bangladesh Bank that he is not a wilful defaulter.

In opposition to the aforesaid arguments, Mr. Md. Kayser Kamal with Mr. Muntasir Uddin Ahmed, learned Advocates appearing for respondents in both the rules submitted that the purpose of enactment of the Artha Rin Adalat Ain is to recover loan from the defaulting borrowers. Section 57 of the Act empowers the Adalat to pass any order for securing the ends of justice and to prevent abuse of process of law. Therefore, there is no question of exercising powers outside the scope of the Act; the impugned order has been passed to ensure realization of dues of the Bank. He argued that Article 36 of the Constitution permits imposition of restrictions for public interest by way of law enacted and must be

reasonably needed. The impugned order is not an executive order rather is a judicial order passed by the Adalat in a case pending before the court restraining the writ petitioners to leave the country without permission of the court. The petitioners have scope for obtaining permission from the Court to leave the country assigning sufficient reason, if there be any, and this restriction against the foreign travel is reasonable as they are not like other ordinary citizen of the country rather they are bank loan defaulter, as such, the impugned order has not breached any fundamental right of the writ petitioners guaranteed under the constitution.

Mr. Kamal added that in the instant case there is no mortgage property as security of loan liability and the loan has been granted and disbursed relying on the personal guarantees of the writ petitioners. Therefore, they are personally liable and responsible for loan of the plaintiff bank, as such, their personal presence is necessary to ensure realization of dues in both the writ petitions. The defendants have huge loan liabilities. Recently, huge number of bank loan defaulters left the country siphoning public money from different bank/financial institutions and those stories have regularly published in the daily newspapers. The writ petitioners, as defendant, did not appear in the suit physically, as

such, there is reasonable apprehension that the writ petitioners are trying to leave the country to escape from the responsibility and liability to the plaintiff bank, as such, to prevent the abuse of process of law and to save the probable decree from frustration, Artha Rin Adalat has rightly passed the order exercising its inherent power restraining the petitioners from travelling abroad without permission of the Court as empowered under section 57 of the Artha Rin Adalat Ain. Another Bench of this Division presided over by Mr. Justice J.B.M. Hassan in the case of *Ali Imam vs. Artha Rin Adalat* (Writ Petition No. 2191 of 2022) by judgment dated 04.08.2022 in a similar fact and question of law discharged the rule finding the order passed by the Artha Rin Adalat lawful. Both the parties referred the said judgment and interpreted the same differently.

We have considered the submissions made by both the parties, have gone through the provisions of law in this regard and the judgment referred by them. In the case of *Ali Imam* as well as in these present cases loan sanctioned and granted by the bank to the petitioners as borrowers and guarantors are not secured by collateral security by way of mortgage of any immovable property. The loan granted by the bank considering business standing and good will of the borrower company on furnishing

personal guarantee of the Directors and shareholders. The facilities granted by the bank was solely based on trust and bank-client relationship, which was periodically renewed from time to time, but present situation of the country in banking sector has become very alarming because of siphoning huge amount of money from the country by corrupt businessmen and political leaders having affiliation with the party in power. Because of this situation, in the meantime, huge number of political leaders, activists and businessmen left the country leaving huge outstanding dues with the Bank. In both the present cases involvement of taka is more than hundred crores without any security. Had the borrower and guarantors not restrained by an order of restriction from travelling abroad in interim form, the probable decree that may be passed against them might be frustrated since no collateral security against the loan has been provided by the petitioners.

But question arises whether there is any provision in Artha Rin Adalat Ain 2003 permitting the Artha Rin Adalat to impose travel restriction or not? Upon close examination it seems that the Artha Rin Adalat Ain 2003 (which is a special legislation for recovery of loan) allows the Adalat to impose civil imprisonment for decretal amounts

under section 34. Section 35 gives it magisterial powers for arrest warrants. Section 57 lets the Adalat issue supplementary orders to ensure justice and prevent the abuse of process of the Court. In consideration of the above, we are of the opinion that these sections collectively imply that travel restrictions can be imposed on loan defaulters to prevent them from fleeing jurisdiction, as supported by *Ali Imam vs. The Artha Rin Adalat, Chattogram case*.

Banks act as custodians for deposited money, which becomes public when lent. The Supreme Courts of Bangladesh and India have ruled that depositors' money is public money. Among the long line of judicial pronouncements in this regard, some examples are, *Human Rights and Peace for Bangladesh vs. Bangladesh*, reported in 72 DLR (HCD) 157, *Bangladesh and Others vs. Md. Osman Gani and others* reported in 29 BLC (AD) 315, *Mardia Chemicals Ltd and others vs. Union of India and others* reported in (2004) 4 SCC 311, *United Bank of India vs. Satyawati Tondon and others* reported in AIR 2010 SC 3413, *Ram Kishun and others vs. State of U.P. and others* reported in (2012) 11 SCC 511. In view of the aforesaid cases decided by the Appellate Division of Supreme

Court of Bangladesh and Indian Supreme Court it is no more *res integra* that the money deposited with banks is public money.

However, the Petitioners argued that the contractual relationship between Bank and borrower, being independent of the contractual relationship between Bank and depositors, the depositors' money does not attract public interest. In this regard, the case reported in (2004) 4 SCC 311 confirms that private lending uses public funds, hence involves public interest, with which we also agree. Thus, the argument of the petitioners in this regard merit no consideration.

We have noted that Bangladesh Bank has the authority and power to declare a borrower "wilful defaulter borrower" and to impose travel restriction by virtue of section 27kha of the Bank Companies Act, 1991. Given this, the petitioners argued that the Adalat has acted without lawful authority by declaring the respondents as "wilful defaulter borrower" while passing the impugned order of travel restriction vide order 27.02.20247. It appears that Bangladesh Bank was empowered to impose travel restrictions on wilful defaulter borrowers through amendments to the Bank Companies Act, 1991, which came into effect on June 26, 2023. These amendments introduced the definition of "wilful defaulter

borrower" and associated provisions under Sections 5 (Kakakaka) and 27kha. Subsequently, on March 12, 2024, Bangladesh Bank issued BRPD Circular No. 6, which laid out the process for identifying and finalizing wilful defaulter borrowers, along with the measures to be taken against them. The directives of this Circular were set to take effect in July 2024.

Despite this timeline, the Adalat passed an Order of travel restriction on February 27, 2024, terming the petitioners as wilful defaulters due to their habitual failure to repay loans and their lack of mortgage security for the borrowed amounts. In our view, the term "wilful defaulter borrower" used by the Adalat coincides with the language of the amended Act, but the Adalat acted independently within the framework of the Ain 2003. The Ain 2003, which governs the recovery of defaulted loans, provides the Adalat with authority to address borrowers' conduct, especially in cases involving persistent defaults and rescheduling failures.

In this case, the Adalat's use of the term "wilful defaulter borrower" does not conflict with the Bank Companies Act, nor does it imply that the Adalat exceeded its jurisdiction. Instead, the travel restriction order was based on the borrowers' behaviour and was consistent with the Ain 2003, which allows the Adalat to take necessary actions to ensure accountability

and recovery of debts. Therefore, our considered view is that the Adalat acted within its authority in imposing the travel restriction in the present cases, since the impugned Orders of restriction in both cases were passed before the said BRPD Circular had come into effect from July 2024.

It is true that the Artha Rin Adalat as execution Court can award civil imprisonment against the judgment debtor up to six months, issue warrant of arrest to execute such imprisonment towards forcing the judgment debtor to pay the decretal dues and pursuant to section 35 of the Ain 2003, the Adalat will be treated as First Class Magistrate and the Code of Criminal Procedure 1898 will be applicable until rule in this regard is framed. The Artha Rin Adalat as execution court exercise its power of First-Class Magistrate at the post decretal stage which pre-supposes the defendant to appearing court, defend the suit by filing written statement and adducing evidence and after passing decree, the Court can take recourse to other provisions of law under the Act like awarding civil imprisonment, but situation of these cases is different and cannot be blindly generalized.

In the instant case, after following all the provisions in the Ain and passing a decree against the borrowers and the guarantors except putting

them in civil imprisonment, no other alternative was available for the bank to recover money. Therefore, in the absence of any security against loan in the form of mortgage of immovable property and in the event of fleeing away the judgment debtors, the Bank will have no other way to recover the money by putting the decree in execution either by selling any property or by putting the judgment debtors in civil imprisonment. In view of the above discussion, we find no illegality in these two cases and in the orders passed by the Artha Rin Adalat restraining the petitioners from travelling abroad without permission of the Court.

However, the power and authority under section 57 of the Artha Rin Adalat Ain to impose travel restriction on defendants must not be generalized and exercised indiscriminately, rather the Adalat should exercise the power with due care and caution. While disposing of any application filed by the plaintiff bank under section 57 of the Ain for imposing travel restriction upon the defendants in Artha Rin Suit, at the predecretal stage, the Artha Rin Adalat should exercise the power carefully, discreetly and reasonably for public interest in consideration of the facts and circumstances of each case keeping in mind the provisions in Sections 6(5), 33 and 34 of the Ain. With this observation, the Artha Rin

Adalat is directed to examine and consider whether the situations delineated below corresponds to the case of the defendants and the bank has been able to show to the satisfaction of the Adalat with necessary proof (if any) that:

- (a) The loan enjoyed by the borrower(s) is not sufficiently secured by collateral, such as, the mortgage of landed property, hypothecation of fixed or floating assets, etc. Moreover, in proportion to the total outstanding amount of the loan, the recovered amount is quite insignificant.
- (b) Considering the social, economic, and other positions of the defendants, it appears to the Court that it is highly likely that the defendants are not able to repay the loan immediately and might not return to the country (once they are allowed to leave) so that the consequence of potential judgment could be avoided.
- (c) The defendants are already identified as the “wilful defaulters” as defined in S.5(kakakaka) and enlisted as per S.27Kha of the Banking Companies Act 1991.

- (d) The borrower(s) have shown no genuine attempts to engage in negotiations or resolve the outstanding dues despite multiple opportunities provided by the lender. Rather there is evidence or reasonable suspicion that the defendant(s) have engaged in fraudulent activities, such as, providing false information, fabricating documents, or misappropriating loan funds.
- (e) It is evident that the loan amount was not utilized for the stated purpose but diverted to other ventures or personal gains, affecting the repayment capacity.
- (f) The defendant has a history of filing unnecessary or frivolous litigation to delay or evade repayment obligations. Moreover, the actions of the defendant(s) have the potential to erode public confidence in financial institutions and negatively impact the overall banking and financial sector of the country.
- (g) The guarantors of the loan have failed to fulfil their obligations despite being financially capable of doing so.
- (h) The defendant(s) possess other significant assets that can reasonably be liquidated to satisfy the outstanding loan amount, but they have failed to disclose or utilize them.

- (i) The borrower(s) failed to provide transparent and accurate information about their financial status, including assets and liabilities despite repeated request.
- (j) There is evidence or suspicion that the borrower(s) are attempting to transfer significant assets abroad, potentially hindering loan recovery efforts.
- (k) When the borrower(s) have a consistent history of non-compliance with Court orders or instructions related to loan repayment.
- (l) When the travel restriction is necessary due to an emergency or urgent circumstances (to be explained by Bank) that could jeopardize the recovery of the loan. Provided, however, the Adalat shall be at liberty to withdraw travel restriction or allow the defendants to go abroad at any time later if they pay substantial amount of outstanding loan either in cash or in the form of bank guarantee or provide sufficient security to the satisfaction of the Court.

In conclusion, I must emphasize the profound implications that travel restrictions can have on individual rights, particularly when they intersect with fundamental freedoms. While such measures may

sometimes be justified to uphold justice or safeguard the public interest, it is vital to ensure that they are balanced with a steadfast commitment to protecting humiliations and individual liberties. A transparent legal framework, rigorous judicial oversight, and the proportional application of such restrictions are indispensable for minimizing their impact and preserving the rights of those affected.

In light of the foregoing considerations and judicial pronouncements, I do not find any merit in both the *Rules Nisi*.

In the result, the *Rules Nisi* issued in both the Writ Petitions being Nos. 6083 of 2024 and 6234 of 2024 are hereby discharged without any order as to costs. However, while imposing travel restrictions, the Artha Rin Adalat must exercise its power under section 57 of the Artha Rin Adalat Ain 2003 with due caution and care, adhering to the guidelines provided hereinabove.

Passports submitted by the petitioners concerned be returned to them providing photocopies of the same.

Communicate a copy of this judgment to the court concerned.

Mr. Justice Md. Ashraful Kamal

I agree.

Mr. Justice Md. Zakir Hossain

I agree.