

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 People's Republic of Bangladesh.
And

IN THE MATTER OF :

Mujibur Rahman and others
.....Petitioners in WP No. 6234 of 2024
Jewel Khan and others
.....Petitioners in WP No. 6083 of 2024

-VS-

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 WP No. 6083 of 2024

Mr. Probir Neogi, Senior Advocate with
Mr. Muntasir Uddin Ahmed, Advocate
...for the petitioners in WP No. 6234 of 2024

Mr. Shah Monjurul Hoque, Senior Advocate with
Mr. Muhammad Harunur Rashid, Advocate
..... for the respondent No. 4 in WP No. 6083 of 2024.

Present :

Mr. Justice Zafar Ahmed

And

Mr. Justice Sardar Md. Rashed Jahangir

The 16th July, 2024

Reference under Rule 1C of Chapter II of the Supreme Court of
Bangladesh (High Court Division) Rules, 1973 for constitution of a Special
Bench.

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

In Writ Petition (WP) 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 WP 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 Nos. 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 no legal effect.

The common question of law is whether the Artha Rin Adalat can impose an embargo upon the defendant(s) from travelling abroad in exercise of its inherent power under Section 57 of the Artha Rin Adalat Ain, 2003 (in short, the 'Ain'). In both Artha Rin cases, the concerned

Artha Rin Adalat passed the travel restriction order before final disposal of the respective cases.

Mr. Mustafizur Rahman Khan, learned Senior Advocate appearing for the petitioners of WP No. 6083 of 2024 submits that by virtue of Section 6(1) of the Ain, 2003, the relevant provisions of the Code of Civil Procedure (CPC) apply to the proceedings of Artha Rin Suit subject to the condition that those provisions of the CPC are not inconsistent with those of the Ain. He draws our attention to Order XXXVIII rules 1-4 of the CPC, which deal with matters relating to arrest before judgment, and submits that in order to give effect to the relevant provisions of the CPC, in particular, execution of warrant to arrest contained in rule 1, the Adalat can pass travel restriction order in exercise of its inherent power under Section 57 of the Ain, 2003 which allows the Adalat to pass supplementary order (পরিপূরক আদেশ) required for the ends of justice intended under the Ain or to prevent misuse of the Court proceedings.

Mr. Probir Neogi, learned Senior Advocate appearing for the petitioners of WP No. 6234 of 2024, on the other hand, refers to Article 36 of the Constitution (freedom of movement including leaving and re-entering Bangladesh subject to any reasonable restrictions imposed by law in the public interest), observation Nos. 2-4 and 7 laid down in *Durnity Daman Commission vs. G.B. Hossain and ors.*, 74 DLR (AD) 1 and submits that the observations given in the reported case are laws as per provisions of Article 111 of the Constitution and as such, without any express provision contained in the Ain, 2003, the Artha Rin Adalat has no

power, whatsoever, to pass travel restriction order under the inherent power under Section 57 of the Ain.

Mr. Shah Monjurul Hoque, learned Senior Advocate appearing for the respondent No. 4 Eastern Bank Plc refers to the case of *Ali Imam vs. Judge, Artha Rin Adalat, Chattogram and others*, 19 SCOB [2024] HCD 76 (decided by a Division Bench of this Division on 04.08.2022) and submits that the question of law has been settled in the affirmative in the reported case and as such, the same cannot be re-opened in the instant Rule(s).

In the case reported in 19 SCOB [2024] HCD 78, the Artha Rin Adalat, while passing travel restriction order, directed the defendant to surrender his passport. The High Court Division referred to, *inter alia*, 74 DLR (AD) 1, Article 36 of the Constitution and Section 57 of the Ain, 2003. Order XXXVIII of the CPC was not referred to in the judgment. It was held:

Section 57 of the Act, 2003, in addition, authorizes the Adalat to pass any supplementary order to secure ends of justice, on consideration of the facts and circumstances under the proceedings. Therefore, we are of the view that section 57 is the appropriate provision incorporated in the statute (Act, 2003) authorizing the Adalat to pass the necessary order in order to ensure realization of the decretal dues. As such, in the public interest to ensure realization of public money, the Artha Rin Adalat exercised the statutory authority under section 57 of the Act, 2003 and by the impugned order directed the petitioner to deposit his passport. Hence, Article 36 of

the Constitution has not been violated in passing the impugned order by the Adalat.

Further, analysing the Article 36 of the Constitution, in 74 DLR (AD) 1, our apex Court held that by the Court process, in other words, under the supervision of the Court, any order curtailing the movement of the citizen can be passed because it is not the absolute right of citizen to free movement.

Observation Nos. 2-4 and 7 given in 74 DLR (AD) 1 are quoted below:

“2. Article 36 of the Constitution permits imposition of restrictions. However, such restrictions must be by way of the law enacted and must be reasonably needed in the public interest.

3. Without backing of law imposition of restriction on the freedom of movement by an executive order will be unconstitutional.

4. The legislative view of what constitute reasonable restriction shall not be conclusive and final and that it shall be subjected to supervision by the Court.

7. The right to leave the country and to possess a passport may be restricted, most notably if the person’s presence is required due to their having been charged with a *criminal offence*. However, merely because a person is involved in a criminal case, he is not denude of his fundamental rights.”

Mr. Neogi submits that the observations given in 74 DLR (AD) 1 were wrongly interpreted in 19 SCOB [2024] HCD 78 in that the focus in 74 DLR (AD) 1 is on criminal Court’s exercise of power which limits the fundamental right of a citizen guaranteed under Article 36 and the

observations have set out a clear threshold as to when and under what circumstances such power can be exercised.

We take judicial notice that by the Bank Companies (Amendment) Act, 2023, Section 27B of the Bank Companies Act, 1991 has been substituted with effect from 23.06.2023. Section 27B(6), as it stands now, authorises Bangladesh Bank to impose an embargo on travelling abroad upon a wilful defaulter borrower.

The judgment reported in 19 SCOB [2024] 76 was challenged before the Appellate Division in Civil Petition For Leave To Appeal No. 3416 of 2022 which was dismissed for default on 07.05.2024. In *Khondker Delwar Hossain vs. Italian Marble Works Ltd.*, (2016) 62 DLR (AD) 298 (para 106), it was held that in order to apply Article 111 of the Constitution an issue must be raised, deliberated upon and decided before it can operate as a binding precedent.

To sum up, the point of law is whether before and/or after passing the final judgment, the Artha Rin Adalat can pass an order restraining the defendant(s) from travelling abroad in exercise of its inherent power under Section 57 of the Ain, 2003. The answer was given in the affirmative in 19 SCOB [2024] HCD 76 (decided on 04.08.2022). CPLA No. 3416 of 2022 challenging the judgment was dismissed for default on 07.05.2024. Article 36 of the Constitution and 74 DLR (AD) 1 were referred to and relied in 19 SCOB [2024] HCD 76. Order XXXVIII, rules 1-4 were not referred to in the judgment.

We have already noted that Mr. Mustafizur Rahman Khan, learned Senior Advocate has submitted that the Artha Rin Adalat can pass travel

restriction order after taking recourse to Order XXXVIII rules 1-4 of the CPC for the ends of justice or to prevent misuse of the Court proceeding.

Under Article 36 of the Constitution, the right to leave and re-enter Bangladesh is subject to any reasonable restrictions imposed by law in the public interest. The term 'law' in the context means 'law enacted'[observation No. 2 given in 74 DLR (AD) 1]. Under Section 3(17) of the General Clauses Act, 1897, 'enactment' includes a Regulation and also includes any provision contained in any Act or in any such Regulation. Example of 'law enacted' on travel restriction can be found in Section 27B(6) of the Bank Companies Act, 1991. But the Ain, 2003 does not contain any such 'enacted law', which Mr. Neogi, learned Senior Advocate submits, must be by way of 'express law' in consonant with Article 36 as elucidated in 74 DLR (AD) 1. Mr. Neogi concluded his argument by submitting that the Adalat cannot pass travel restriction order under Section 57 of the Ain, 2003.

This Bench is of the view that the above-mentioned point of law, which is of public importance, is required to be settled by the Special Bench of this Division to be constituted by the Hon'ble Chief Justice.

Accordingly, both the writ petitions are referred to the Hon'ble Chief Justice under Rule 1C of Chapter II of the Supreme Court of Bangladesh (High Court Division) Rules, 1973. Rule 1C provides, *inter alia*, that on the requisition of any Division Bench, the Hon'ble Chief Justice may appoint a Special Bench consisting of three Judges for hearing of any particular question of law arising in an appeal or in any other matter.