

District: Rangpur

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)

Present

Mr. Justice Sardar Md. Rashed Jahangir

Civil Revision No. 2092 of 2024

In the matter of :

Md. Abu Taleb

... Petitioner

-Versus-

Manager, Dutch Bangla Bank Limited,
Rangpur Branch, Rangpur and others

...Opposite parties

Mr. Md. Bokhtiar Hossain, Advocate

...For the petitioner.

Mr. Md. Touhidul Hasan, Advocate

...For the opposite parties

Heard on: 06.11.2024 and 14.11.2024

Judgment on: 12.12.2024

Rule was issued on an application under section 115(1) of the Code of Civil Procedure calling upon the opposite party No. 1 to show cause as to why the judgment and order dated 08.01.2024 passed by the Additional District Judge, Second Court, Rangpur in Artha Rin Appeal No. 02 of 2022, allowing the appeal setting aside the order dated 18.07.2022 passed by the Artha Rin Adalat, First Court, Rangpur in Artha Execution Case No. 32 of 2020, rejecting an application of review filed under section 57 of the

Artha Rin Adalat Ain, 2003 for reconsideration of the order dated 18.11.2021 passed by the same Court.

The decree holder-bank obtained a judgment and decree for an amount of Tk.11,57,875.70 against the judgment debtor-petitioner. Thereafter, the decree-holder-bank filed Artha Execution Case No. 32 of 2020 before the Artha Rin Adalat, First Court, Rangpur for realization of the decretal amount. During pendency of the execution case, there was an amicable settlement between the decree-holder-bank and judgment-debtor. As per the settlement the judgment-debtor / decree-holder was to pay in total an amount of Tk.10,00,000/- after getting waved the bank interest and other amount. In the compromise, there was a stipulation that the judgment-debtor shall pay the entire amount of the aforesaid Tk.10,00,000/- within 31.03.2022. The judgment-debtor made payment up to 12.01.2020 in total Tk.5,00,000/-. On 07.10.2021, the judgment-debtor filed an application together with a Bank Statement before the executing Court to allow him to pay the entire outstanding amount through 12 installments, from the said bank statement it transpired that the outstanding dues was Tk.2,90,066.22. It was further contention of the judgment-debtor that while he was dealing with his business in due course on 16.03.2011 he had a road accident, as a result, he is to lead a crippled life and as such, he could not run his business properly

and failed to repay the outstanding loan. It was also stated that the judgment-debtor in total received an amount of Tk.6,00,000/- as loan.

Learned Judge of the Artha Rin Adalat, First Court, Rangpur upon hearing the said application filed by the judgment-debtor purportedly under section 49 of the Artha Rin Adalat Ain, 2003 and the decree-holder-bank on 18.11.2021 allowed the same on finding that the decree-holder-bank had no objection against the application for allowing the judgment-debtor to make payment the outstanding dues in installments and accordingly, ordered that the outstanding dues of Tk.2,90,066.22 would be paid through 12 installments within 2(two) years.

The decree-holder-bank on 20.03.2022 filed an application under section 57 of the Artha Rin Adalat Ain, 2003 sought for review of the order dated 18.11.2021, allowing the judgment-debtor to make payment the outstanding dues of Tk.2,90,066.22 by 12(twelve) installments within a period of 2(two) years. The averments of the said application was that the decree-holder-bank filed the execution case for realization of outstanding dues of Tk.15,52,176.48 from the judgment-debtor-petitioner. During pendency of the execution case, a settlement took place between the decree-holder-bank and judgment-debtor. According to the terms and conditions of the settlement, the judgment-debtor was to

pay an amount of Tk.10,00,000/- in total within 31.03.2021 after getting waiver the interest and other amount. The judgment-debtor after making part payment of the said amount failed to repay the remaining within the stipulated period i.e. within 31.03.2021 and thus, the execution case was revived and the waived interest and other amount was imposed again under the default clause and as such, on the date of allowing the installments by the executing Court i.e. on 18.11.2021, the outstanding claim of the bank stands at Tk.10,52,176.48. It was further contention of the decree-holder that the bank statement submitted by the judgment-debtor was not an actual bank statement of the loan account and as such, taking into consideration the inaccurate bank statement, the executing Court fell into an error allowing the judgment-debtor to pay only Tk.2,90,566.22 through 12 installments, although on the said date, the outstanding dues was Tk.10,52,176.48.

Learned Judge of the Artha Rin Adalat on 18.07.2022 rejected the application for review filed under section 57 of the Ain, 2003 holding that the order of installments was passed in presence of both the parties and the judgment-debtor is continuing to deposit the installments in due course. Thus, the Court found no necessity to interfere to its earlier order.

Having been aggrieved by the aforesaid order dated 18.07.2022, the decree-holder-bank filed Artha Rin Appeal No. 02

of 2022 before the District Judge, Rangpur. On transfer the said appeal was heard by the Additional District Judge, Second Court, Rangpur and learned Additional District Judge by her judgment and order dated 08.01.2024 allowed the appeal setting aside the order dated 18.07.2022, with a direction upon the executing Court to take necessary steps to realize the outstanding decretal amount of Tk.10,52,176.48 from the judgment-debtor with a further observation that the executing Court has the authority to allow the installments under section 49 of the Ain.

On being aggrieved by and dissatisfied with the aforesaid judgment and order of learned Additional District Judge, Second Court, Rangpur dated 08.01.2024 the judgment-debtor filed this revisional application and obtained the Rule.

Mr. Bakhtiar Hossain, learned Advocate for the petitioner submits that under section 44 of the Artha Rin Adalat Ain, 2003, no appeal shall lie against any interlocutory order of Artha Rin Adalat, despite the Court of appeal below committed an error of law in entertaining the Artha Rin Appeal No. 02 of 2022 against the interlocutory order dated 18.07.2022 and 18.11.2021 passed by the Artha Rin Adalat, First Court, Rangpur in Artha Rin Execution Case No. 32 of 2020. He next submits that from the order dated 18.11.2021 passed by the Judge, Artha Rin Adalat, First Court, Rangpur in Artha Rin Execution Case No. 32 of 2020,

it transpires that the order of installments was passed with the consent of decree-holder-bank and as such the Court of appeal below ought to have decided that the decree-holder-bank is barred by estoppel in challenging the order of installments passed under section 49 of the Artha Rin Adalat Ain, 2003 on a later occasion.

In support of his submission, he cited the case of Awlad Hossain Vs Bangladesh Shilpa Bank and others reported in 30 BLD(HD)314, the case of Monjur Morshed Vs Agrani Bank reported in 14 BLC(HD) 50, the case of Bulbul Electric Market & others Vs Rupali Bank Ltd. & another reported in 11 MLR(AD) 409, the case of Sardar Jan-e-alam Vs AB Bank Ltd. Reported in 4 BLC(HD) 179, the case of Sultana Jute Mills Ltd. Vs Agrani Bank reported in 46 DLR(AD) 174, the case of Harun-or- Rashid Vs Pubali Bank Ltd. reported in 60 DLR(AD) 19, the case of Hosne Ara Begum & another Vs Islami Bank Bangladesh reported in 5 MLR(AD) 290 and the case of Hannan Traders Vs Janata Bank Ltd. reported in 76 DLR(HD) 153.

On the other hand, Mr. Touhidul Hasan, learned Advocate for the decree-holder-opposite party submits that the instant civil revisional application filed under section 115(1) of the Code of Civil Procedure without depositing 75% of the decretal amount, and as such is not maintainable as much as the Artha Rin Adalat is a special Court having special jurisdiction and special procedure

for filing appeal/revision provided by Artha Rin Adalat Ain, 2003 and in section 42 of the Artha Rin Adalat Ain, 2003, there is a statutory mandate to deposit 75% of the decretal amount at the time of filing revisional application and therefore, as per section 4(1) of the Code of Civil Procedure read with sections 3, 40, 42 of the Ain, 2003, the instant revision is not maintainable without depositing of 75% of the decretal amount.

He next submits that the appeal filed by the decree-holder-bank, against the order dated 28.07.2022 rejecting its review application filed against the order dated 18.11.2021 re-scheduling the amount, which is evidently not the decretal amount under the execution case in question in as much as the order dated 18.11.2022 is a final order, because, if the said order is allowed to operate, it will cause to replace the decree and if the said order is carried over, there will be nothing left for the Executing Court to proceed with for execution and ultimately, said execution proceeding will be ended causing serious prejudice to the decree-holder-bank depriving it from the benefit of the decree. And the subsequent order dated 18.07.2022, which confirmed the earlier final order and therefore, against the said final order of Artha Execution Court, the preferred appeal by the decree-holder-bank is very much maintainable.

He further submits that section 41 read with section 44 of the Ain, 2003 for the first time the appellate opens a forum against the non-interlocutory order and accordingly, by interpreting the Ain, 2003, the Supreme Court of Bangladesh has moved a little for from its traditional view as was taken earlier on Ain, 1990 and introducing new interpretation in recent case that though the appeal against "interlocutory order" is barred but appeal against "Final order" is maintainable and in the case of Sonali Bank Vs. Asha Tex International 20 BLC 185, High Court Division moved a step further with the view that all orders whether interlocutory or final, passed at post- decree stage is appealable.

He next submits that it is settled principle of law that an executing Court while executing the decree, cannot go beyond the decree and in the case in hand by re-scheduling the amount which is not the decretal amount, the Executing Court has violated section 49(1) of the Artha Rin Adalat Ain, 2003 and thereby has committed substantial illegality and travelled beyond the legal jurisdiction and as such the Rule is liable to be discharged;

He finally submits that by order dated 18.11.2021, the Executing Court in fact has impliedly remitted/waived the interest of the decree-holder-bank which is barred by section 50 of the Ain, 2003 and therefore, the said order dated 18.11.2021 is not tenable in law.

Heard learned Advocates of both the parties, perused the revisional application together with the annexures appended thereto, having gone through the relevant provisions of law and the cited judgments.

It is an admitted fact that the judgment-debtor-petitioner took loan of Tk.6,00,000/- from the decree-holder-bank and thereafter due to failure of the petitioner to repay the outstanding dues, bank filed Artha Rin Suit No. 27 of 2018 which was decreed on contest for an amount of Tk.11,57,875.70. The decree-holder-bank filed Artha Rin Execution Case No. 32 of 2020 for realizing an amount of Tk.15,52,176.48 as outstanding dues including interest as stands on 21.07.2020.

During pendency of the execution case both the parties made a settlement. According to the terms of the settlement the judgment-debtor was to pay in total Tk.10,00,000/- within 31.03.2021 and it was also stipulated that the bank waived its interest and other related claim over the said amount of Tk.10,00,000/-.

From the record, it appears that by 12.01.2020 the judgment-debtor made payment of in total Tk.5,00,000/- from the aforesaid settled amount.

It was also stipulated in the settlement that if the judgment-debtor failed to pay the entire Tk.10,00,000/- within 31.03.2021, then the settlement shall stand cancelled and the execution case shall restore and the bank will be entitled to claim entire outstanding dues including the waived amount.

On 07.10.2021, the judgment-debtor filed an application before the executing Court to allow him to pay the outstanding dues by 12 installments purportedly invoking the authority of section 49 of the Artha Rin Adalat Ain, 2003. It is to be mentioned here that judgment-debtor along with the aforesaid application has produced a bank statement, which shows that the outstanding dues up to 21.09.2021 was stood at Tk.2,90,066.22, and upon consideration the aforesaid bank statement the executing Court on 18.11.2021 directed the judgment-debtor to pay the outstanding dues i.e. the amount of Tk.2,90,066.22 through 12(twelve) equal installments within 2(two) years. The decree-holder-bank although receipt the copy of the application with objection, but at the time of passing the order on 18.11.2021 learned Judge of the Artha Executing Court observed that the decree-holder bank gave it's consent to the order of installments of the outstanding dues i.e. Tk.2,90,066.22. Later on, i.e. on 20.03.2022 decree-holder-bank filed an application under section 57 of the Artha Rin Adalat Ain, 2003 for review of the order dated

18.11.2021 passed by the Executing Court on the earlier occasion allowing installments in paying the total outstanding dues of Tk.2,90,066.22, although after deducting the paid amount, the outstanding dues stands on 21.09.2021 at Tk.10,52,176.48, contending further that the judgment-debtor by filing a part statement of the loan amount misleded the Court and thereby obtained the order dated 18.11.2021. The executing Court by its order dated 18.07.2022 rejected the application of review holding that the order dated 18.11.2021 was a consensus order and the decree-holder-bank cannot deny its earlier consent. Against which the decree-holder-bank filed Artha Rin Appeal No. 02 of 2022 before the District Judge and in the said appeal the rejection order dated 18.07.2022 of the executing Court has been set aside, against which the revisional application has been preferred.

Although some questions of law has been raised from learned Advocates of both the sides, such as whether the revisional application is maintainable without depositing 75% of the decretal amount and from the side of judgment debtor a pertinent question also has been raised as to the maintainability of the Artha Rin Appeal No. 02 of 2022 filed before the District Judge, Rangpur contending, *inter alia* that no appeal shall lie against any interlocutory order passed by the Artha Rin Adalat.

This Court has gone through the entire record, the relevant provisions of law and the cited judgments.

From the record it transpires that admittedly a judgment and decree has been passed on 03.02.2020 by the Artha Rin Adalat in Artha Rin Suit No. 27 of 2018 in favour of the bank-opposite party for an amount of Tk.11,57,875.70. Thereafter, bank filed Artha Rin Execution Case No. 32 of 2020 for realization of an outstanding dues of Tk.15,52,176.48 including interest and other claims as stands on 21.07.2020.

It is also admitted that during pendency of the execution case an amicable settlement was took place between the parties with a stipulation that the judgment-debtor was to pay in total Tk.10,00,000/- within 31.03.2021, with further stipulation that the bank has agreed to waive the interest and other amount over the aforesaid amount of Tk.10,00,000/-. It was the further stipulation that if the judgment-debtor failed to pay the total amount of Tk.10,00,000/- within the aforesaid date 31.03.2021, then the settlement shall stand cancelled and the execution case shall revive and the judgment-debtor was to liable for the entire amount including the waived interest.

Regarding the aforesaid facts there was no dispute between the parties, but the dispute arose from an order dated 18.11.2021

passed by the executing Court, when the executing Court held that the bank's outstanding due is Tk.2,90,566.22, although evidently the judgment-debtor paid in total Tk.5,00,000/- up to 12.01.2020 and the execution case was filed for an amount of Tk.15,52,176.48. Thus, the decree-holder-bank was entitled to get the remaining amount of Tk.10,52,176.48 after cancellation of the settlement. But the executing Court on 18.11.2021 at the time of passing the order of installments failed to take into notice the aforesaid fact. It is true, the Artha Rin Adalat, herein the executing Court, has the authority to allow up to 12(twelve) installments within 3(three) years with consent of the decree-holder-bank. And the executing Court passed an order on 18.11.2021 with a modified direction to pay the outstanding dues by 12 equal installments within a period of 2(two) years upon miscalculating the outstanding dues, taking into consideration a wrong bank statement allegedly produced by the judgment-debtor. Under section 50 of the Artha Rin Adalat Ain, the Artha Rin Adalat has no authority to waive interest or any outstanding dues. Taking into consideration the aforesaid facts together with the facts of the case in hand, it appears that the executing Court upon a wrong notion held that the outstanding dues was Tk.2,90,066.22, although the actual outstanding dues was Tk.10,52,176.48. From the record it

also transpires that the appellate Court below by its order held that the executing Court has the authority to allow installments.

Learned Advocates of both the parties through their rival contentions raised many legal questions regarding maintainability of the revisional application as well as the authority of the appellate Court's below to entertain the Artha Rin Appeal No. 02 of 2022. In such scenario, this Court is of the opinion that without entering into those academic discussion the case in hand can be decided satisfactorily and its is settled by the Apex Court through consistent view that when the case can be decided otherwise, without further going into academic discussion, then the academic discussion is quite unnecessary.

In the facts and circumstances stated in above, this Court is of the view that the justice would be best served for now, if this revision is disposed of with necessary direction. The judgment-debtor is bound to pay the outstanding dues of the bank in accordance with the execution case filed in pursuant to the judgment and decree dated 03.02.2020 passed in Artha Rin Suit No. 27 of 2018. Thus, the order of the executing Court dated 18.11.2021 hereby modified to the effect that the decree-holder-bank is entitled to get Tk.10,52,176.48 as stands on 21.09.2021, after deducting the judgment-debtors paid amount of Tk.5,00,000/- and the executing Court is hereby directed to allow

the petitioner to pay the aforesaid outstanding dues through 12(twelve) equal installments within 3(three) years as per stipulation of section 49 of the Artha Rin Adalat Ain, 2003 and the said installment shall start from the date on which the Artha Rin Adalat, First Court, Rangpur shall receipt of this judgment and order and in default of such payment the law will take it own course.

With the aforesaid direction and observation, the Rule is disposed of.

No order as to cost.

Communicate the judgment and order at once.