

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

Writ Petition No. 13106 of 2023

IN THE MATTER OF:

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

AND

IN THE MATTER OF:

A.N. Md. Khabiruddin Mollah

....Petitioner

Versus

Artha Rin Adalat, 4<sup>th</sup> Court, Dhaka of Judges'  
Court Building, Dhaka and another

....Respondents

Mr. M. Sayed Ahmed, Senior Advocate with  
Mr. Md. Tazul Islam, Advocate,  
Mr. Ferdous Al Mahmud, Advocate,  
Mr. Abdullah Al Mamun, Advocate and  
Mr. Naimul Islam Chowdhury, Advocate

....For the Petitioner

Mr. K.S. Salah Uddin Ahmed, Advocate with  
Mr. Hasibul Huq, Advocate

....For the Respondent No. 2

Present:

Mr. Justice Md. Iqbal Kabir

And

Mr. Justice Md. Riaz Uddin Khan

Judgment on 19.02.2025.

Md. Iqbal Kabir, J:

On an application under Article 102 of the Constitution of the People's Republic of Bangladesh, this Rule Nisi was issued in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the order No. 52 dated 19.09.2023 (Annexure-G) passed by the Artha Rin Adalat, 4<sup>th</sup> Court, Dhaka in Artha Execution Case No. 14 of 2012 should not be declared to have been passed 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.”

At the time of issuance of the Rule, this Court also stayed the operation of the order No. 52 dated 19.09.2023 (Annexure-G) passed by

the learned Artha Rin Adalat, 4<sup>th</sup> Court, Dhaka in Artha Execution Case No. 14 of 2012, for a period of 3 (three) months from date.

Background leading to the Rule, in short, is that the petitioner is the third-party guarantor for the loan availed by the principal borrower company, R.M. Enterprise Ltd. Respondent No. 2 as plaintiff on 14.07.2010 instituted a suit before the Artha Rin Adalat, 4<sup>th</sup> Court, Dhaka against R.M. Enterprise Ltd. and others for recovery of the aforesaid loan money. Respondent No. 2 sought execution of the decree dated 30-10-2010 by filing an application dated 19.01.2012 under Order XXI Rule 11 of the CPC. At one stage respondent No. 2 filed an application dated 11.04.2012 under Section 34(1) of the Ain, 2003 thereby praying for the issuance of the warrant of arrest against the petitioner. The application was allowed vide Order No. 04 dated 11.04.2012, wherein the concerned Court passed civil imprisonment. Knowing such, the petitioner by challenging Order No. 04 dated 11.04.2012 filed Civil Revision No. 1604 of 2012, in which the High Court Division issued Rule and passed an interim order of stay. Ultimately, the Rule was discharged with directions. However, according to the judgment and order of direction petitioner appeared before the Adalat and furnished particulars of immovable property belonging to the petitioner by way of inheritance owned by his father, judgment debtor No. 2 for the satisfaction of the decreetal dues. Instead of taking steps on the property based on the documents, respondent No. 2 filed an application under Section 34(1) of the Ain, 2003 for issuance of the warrant of arrest against the judgment-debtors. The Court allowed such prayer and issued the warrant of arrest without awarding civil imprisonment.

Against this backdrop, the petitioner being aggrieved brought this application before this Court and obtained the present Rule Nisi.

It is at this juncture, that Respondent No. 2, Bank by challenging the legality of the interim order passed by the High Court Division filed a Civil Petition for Leave to Appeal No. 07 of 2024. Upon hearing the same, Judge-in-Chamber by its order dated 14.01.2024, ordered to pay 20% of the demand money of the Bank within 3(three) months. However, in such a situation petitioner by filing an application sought direction to accept 20% of the decreetal amount, and the application was allowed by the Judge-in-Chamber. Subsequently, said Civil Petition for Leave to Appeal was placed for hearing wherein Apex Court by its order dated 29.07.2024

directed to dispose of the Rule on merit and send the writ petition for hearing before this Division Bench.

Mr. M. Sayed Ahmed, the learned Senior Advocate along with Mr. Md. Tazul Islam, the learned Advocate appearing for the petitioner submits that the petitioner and other judgment-debtors submitted all particulars of the immovable property owned by them before the Adalat as per direction of the High Court Division passed in Civil Revision No. 1604 of 2012. According to him, the Adalat under misconception of law held that the petitioner did not deposit documents following the order of the Court. He submits civil imprisonment was not awarded, he claims before awarding civil imprisonment the issuance of the warrant of arrest was issued means putting the cart before the horse, which offends the right to free movement of the petitioner as enshrined under Article 36 of the Constitution. According to him the impugned order of warrant of arrest without awarding civil imprisonment cannot be sustained in the eye of law.

He further submits that the impugned order of issuance of the warrant of arrest was passed in violation of the specific provision of Section 34 of the Ain, 2003. According to him, bypassing the alleged provision of law Adalat has no jurisdiction to issue warrant of arrest without awarding civil imprisonment against the judgment-debtor and therefore, the impugned order is liable to be declared to have been passed without lawful authority and is of no legal effect.

He submits that the petitioner is a third-party guarantor in the loan transaction and under compelling circumstances the petitioner provided guarantee against the loan advanced by respondent No. 2 in favour of the principal borrower and as such, the impugned order is illegal and beyond the law.

Be it mentioned that this writ petition has been vehemently objected to by the respondent by filing an affidavit-in-opposition.

Mr. K.S. Salah Uddin Ahmed, the learned Advocate appearing for the respondent No. 2 submits that R.M. Enterprise Ltd. availed loan from respondent No. 2, Bank wherein the writ petitioner as Director of the Company stood as guarantor along with others. The respondent bank gave a facility for payment of the said loan even though the writ petitioner failed to pay the said loan amount. The suit related to the loan was decreed, therefore, on 19.01.2012 Artha Execution Case No. 14 of 2012 was started for an amount of Tk. 3,88,90,519.36. In this case, all the

judgment debtors including the grantors are equally responsible under the law for repaying the loan amount.

According to him the claims of the petitioner before awarding civil imprisonment by the executing Court, the warrant of arrest has been issued, are not true and baseless. By showing the document he claims the executing court passed the order of civil imprisonment on 11.04.2012, suppressing such fact petitioner obtained the Rule and ad-interim order of stay. He further submits that much earlier before the issuance of the warrant of arrest Artha Rin Adalat has passed the order of imprisonment, Thus the claim of the petitioner for passing the order of imprisonment afresh is preposterous, beyond the provision of Artha Rin Adalat Ain, 2003 and also against the direction passed in Civil Revision No. 1604 of 2012.

He brings notice to this Court that following section 34 of the Artha Rin Adalat Ain, 2003 the writ petitioner must pay the rest of the dues of the Bank within 90 (ninety) days but the said 90 (ninety) days has elapsed long before, though, the petitioner did not pay that dues.

We have heard the learned counsel appearing for the petitioner and the respondent at length and considered their respective submissions carefully.

It is pertinent to note that no property was mortgaged against the loan, thus, it is admitted that for the realization of loan money, no property was mortgaged. Loan money was enjoyed, but said loan money was not repaid. Thus, in due course the respondent bank filed an application for civil imprisonment and warrant of arrest under Section 34 of the Artha Rin Adalat Ain, 2003, and the same was allowed by the said executing Court vide its order dated 11.04.2012. Challenging the said order of warrant of arrest, the petitioner party (borrower) filed Civil Revision being No. 1604 of 2012, and after hearing the same the Court below discharged the Rule with 3 (three) directions and those directions are reproduced herein below:

“(a) The petitioners shall appear before the Artha Rin Adalat No. 4, Dhaka in connection with Artha Execution Case No. 14 of 2012 within 60 (sixty) days from the date of receipt of the copy of this judgment and they may pray for recalling the warrant of arrests earlier issued against them.

b) If the petitioners fail to appear as directed at sub-para (a) above, the Adalat shall be at liberty to take necessary steps for the execution of the warrants of arrest.

(c) At the time of their appearance before the Adalat, the petitioners are at liberty to furnish the particulars of their property for the purpose of satisfying the decree and if such particulars are furnished the Adalat shall pass necessary order in accordance with law, particularly keeping in view of Order 21 Rule 83 CPC. The stay order stands vacated.”

However, it is pertinent to note that from the Judgment passed in Civil Revision it appears that the petitioners have filed the alleged Civil Revision mainly on the ground for satisfying the decree, they have sufficient property in Dhaka City and the neighboring districts. They have mentioned, among others, the particulars of their property located in the Purana Paltan Area of Dhaka City comprising 10 (ten) khata land and a building standing thereon. They claim that the value of this property is about Tk. 40 (forty) crore which is much higher than the amount, claimed in the Execution Case.

It is pertinent to note that the above directions along with particular documents of their property required to produce the Adalat for satisfying the decree were issued following Order 2, Rule 83 of the Code of Civil Procedure.

It has claimed following the order of this Court, the petitioner along with other judgment debtors appeared before the Adalat and furnished particulars of a valuable immovable property belonging to the petitioner by way of inheritance owned by his father, judgment-debtor No. 2 for the satisfaction of the decretal dues. It has claimed that all those documents were submitted before the Adalat and those documents are sufficient to prove the genuineness of the ownership of petitioners over the property.

However, the respondent claims in light of the direction dated 24.10.2017 passed in Civil Revision No. 1604 of 2012, the writ petitioner was supposed to furnish the particulars of their property at the time of appearance before the Adalat, but to date, they have not submitted their original deeds and other documents related with their property. In support of his submission, he produced orders No. 40 to 48 passed in the Artha Execution Case No. 14 of 2012 (Annexure-VI). Upon plain reading, it is clear to us that the matter was adjourned on several occasions, and several dates were fixed for submitting the documents i.e., copies of original deeds, mutation, rent receipt showing payment of rent by them, and also did not submit non-encumbrance certificate along with other two deeds. By this time more than one year has elapsed, but proper

documents as required were not deposited, thereby it is clear to us that the order of the Court has not been complied with by the petitioner.

It is pertinent to note that the petitioner has filed an application to get an exemption to produce the relevant documents. The Court below rejected such application by its order dated 28-08-2022. However, for our better understanding, it is required to reproduce herein below:

“অদ্য দায়িক পক্ষ কর্তৃক অবশিষ্ট কাগজপত্র দাখিলের শেষ সময় ব্যর্থতায় মাননীয় হাইকোর্ট বিভাগের সিভিল রিভিশন ১৬০৪/২০১২ এর আদেশ মোতাবেক আইনানুগ আদেশ এর জন্য দিন ধার্য আছে। ডিক্রীদার পক্ষ হাজিরা দাখিল করেছেন। দায়িক পক্ষ ফিরিস্তিযোগে ভূমি উন্নয়ন কর পরিশোধের রশিদ দাখিল করেছেন। দায়িকপক্ষ সত্য পাঠযুক্ত এক দরখাস্ত দাখিলক্রমে অবশিষ্ট কাগজপত্র দাখিলের দায় হতে অব্যাহতি দানের প্রার্থনা করেছেন। নথি শুনানীর জন্য উপস্থাপন করা হল।

শুনলাম। অত্র দরখাস্ত সহ নথি পর্যালোচনায় দেখা যায় দায়িক পক্ষ বিগত ০১/১১/১৯৭১ ইং তারিখের দানপত্র দলিলের মূলকপি এবং আপডেটেড NEC (Non Encumbrance Certificate) অদ্যাবধি আদালতে দাখিল করেননি। দায়িক পক্ষের বিজ্ঞ কৌশলী শুনানী কালে মৌখিক ভাবে উপস্থাপন করেন যে উক্ত দানপত্র দলিল খুঁজে পাওয়া যাচ্ছে না। কিন্তু উক্ত বিষয়ে জি.ডি. এর কপি পত্রিকা বিজ্ঞপ্তির কপি দাখিল করেননি। এছাড়াও উক্ত দলিলের কোন সার্টিফিকেট কপি বা ফটোকপিও আদালতে দাখিল করেননি। অধিকন্তু NEC (Non Encumbrance Certificate) ও আদালতে দাখিল করেননি। এমতাবস্থায় প্রয়োজনীয় কাগজাত দলিল দাখিল না করায় দায়িকের অদ্যকার বাকী কাগজ দাখিলের দায় হতে অব্যাহতির প্রার্থনা সম্বলিত দরখাস্ত শুনানী অন্তে নামঞ্জুর করা হল।

মাননীয় হাইকোর্ট বিভাগের ১৬০৪/২০১২ নং সিভিল রিভিশন মামলার নির্দেশ মোতাবেক সম্পত্তির সকল পার্টিকুলার্স (Particulars) দায়িক পক্ষ অদ্যাবধি দাখিল করেন নাই মর্মে প্রতীয়মান হয়।

এমতাবস্থায় মাননীয় উচ্চাঙ্গালতের নির্দেশ মোতাবেক দায়িক পক্ষ সম্পত্তির সকল পার্টিকুলার্স আদালতে দাখিল না করায় আগামী ২২/১১/২০২২ ইং তারিখ ডিক্রীদার পক্ষের দাখিলী গত ০৮/০২/২১ ইং তারিখের ৩৪(১) ধারার দরখাস্ত শুনানী।

আমার কথিত মতে কম্পোজকৃত ও সংশোধিত।

...

It is at this juncture, it appears that Adalat considered the application filed by the respondent Bank, and thereby, vide it order issued warrant of arrest, which was challenged by the petitioner alleging *inter-*

*alia* that Adalat has no jurisdiction to issue warrant of arrest without awarding civil imprisonment against the judgment-debtors.

It appears that the executing court by its order dated 11-04-2012 awarded civil imprisonment and consequent to such imprisonment warrant of arrest was issued. The alleged warrant of arrest was stayed in a Civil Revision being No. 1604 of 2012, and consequently, the petitioner was not arrested. However, the Rule issued in the civil revision by which the warrant of arrest was challenged is being discharged with three directions. The record as well as the discussion made herein above shows that the directions passed in Civil Revision was not complied with. However, under the compelled circumstance Adalat upon hearing an application filed under section 34(1) of the Artha Rin Adalat Ain, 2003 issued the warrant of arrest vide order No. 52 dated 19.09.2023 (Annexure-G). This petitioner challenged its legality and claimed that the order was not legal as Adalat did not issue an imprisonment order before the order related to the warrant of arrest was passed. In this context, it was argued petitioner did not want to settle the issue, by showing the record respondent submits petitioner has filed several cases one after another based on various excuses and it is a device to make it delay. However, though the learned Advocate for the petitioner claims that the order is not legal, but did not produce any law or authority in support of his submission.

Be that as it may, the executing Court, long before by its order dated 11-04-2012 awarded civil imprisonment, which remained as it was, thus, it is not required under the law to issue afresh civil imprisonment before or at the time of issuance of the warrant of arrest.

Given the above, we are of the view, that there is no substance in the submissions made by the petitioner, consequently no merits.

Accordingly, Rule Nisi is discharged.

The order of stay granted at the time of issuance of the Rule is hereby recalled and vacated.

There will be no order as to cost.

Communicate the order.

Md. Riaz Uddin Khan, J:  
I agree.