

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

**Writ Petition No. 6785 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:**

Md. Akkas Ali alias Mohammad Ali  
... Petitioner

-Versus-

The Artha Rin Adalat No. 2, Dhaka and  
another

... Respondents

Mr. Mohammad Ali, Advocate with  
Mr. Md. Abdul Alim, Advocate

... For the petitioner

Mr. Md. Nasir Shikder, Advocate

... For the respondent No. 2

**Heard and Judgment on: 22.05.2025**

**Present:**

**Justice Sardar Md. Rashed Jahangir  
and  
Justice Kazi Waliul Islam**

**Sardar Md. Rashed Jahangir, J:**

The Rule Nisi was issued on an application under article 102 of  
the Constitution of the People's Republic of Bangladesh calling upon  
the respondents to show cause as to why order No. 15 dated 28.03.2024  
passed by the Judge, Artha Rin Adalat No. 2, Dhaka in Artha Jari  
Case No. 435 of 2020, allowing the respondent's application awarding  
civil confinement for a period of 6(six) months against the petitioner

(Annexure-‘E’) should not be declared to have been passed without lawful authority and to be of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper.

In pursuant to a judgment and decree dated 10.02.2020 passed in Artha Rin Suit No. 454 of 2018, the decree-holder-respondent filed Artha Jari Case No. 435 of 2020 before the respondent No. 1 for realization of the decreetal amount with interest. From the application under Order XXI, rule 11 for execution of decree (Annexure-‘B’), it appears that the loan was unsecured and no property was mortgaged on behalf of the judgment-debtor and as such, on 03.02.2021, respondent No. 2 filed an application under section 34(1) of the Artha Rin Adalat Ain, 2003 and the Adalat after consideration of the application and upon hearing the decree-holder passed an order awarding civil imprisonment to the judgment-debtor No. 1, Jalal for a period of 6(six) months. Despite passing the civil imprisonment order neither the borrower nor the guarantors came forward to make payment of the outstanding dues of decree-holder. Thus, on 05.09.2023, the respondent No. 2 filed another application sought for an order of civil imprisonment upon the judgment-debtor Nos. 2 and 3, who are guarantors of the unsecured loan and on the same day, the Adalat-respondent No. 1 allowed the application awarding the civil confinement for 6(six) months upon the petitioner, Md. Akkas Ali alias

Mohammad Ali along with Mohammad Ferdous Hossain under section 34(1) of the Artha Rin Adalat Ain, 2003. On 02.10.2023, the judgment-debtor No. 2, Md. Akkas Ali alias Mohammad Ali was produced before the Court after securing arrest and on the said date, the judgment-debtor (petitioner herein) by depositing 25% of the outstanding dues i.e. Tk.1,89,385/- sought for releasing from the civil confinement and thereafter, upon the order of the Court and upon furnishing bond he was released, with a stipulation that he shall make payment of the remaining outstanding dues within 90(ninety) days from the date as per mandate of section 34(6) of the Artha Rin Adalat Ain, 2003. Thereafter, on 09.10.2023, the judgment-debtor No. 3, Mohammed Ferdous Hossain also arrested and produced before the Court and thereafter, also released upon depositing Tk.1,89,385/- (25% of the total outstanding dues). On 28.03.2024, respondent No. 2 filed an application purportedly under sub-section (7) of section 34 of the Artha Rin Adalat Ain, 2003 sought for an order of civil imprisonment afresh upon the judgment-debtor No. 2-petitioner, on the averment that the judgment-debtor No. 2 on 02.10.2023 got release from the Court upon depositing 25% of the total outstanding dues with a statutory condition that within 90(ninety) days he would make payment of the remaining dues, but more than 90(ninety) days time has been elapsed but the judgment-debtor No. 2 did not make such payment.

Upon consideration of the said application the respondent No. 1 passed an order of civil confinement afresh under 34(7) of the Artha Rin Adalat Ain, 2003.

Challenging the aforesaid order the judgment-debtor No. 2 filed this writ petition and obtained the Rule.

Mr. Md. Abdul Alim, learned Advocate appearing on behalf of Mr. Mohammad Ali, learned Advocate for the petitioner submits that the petitioner on 02.10.2023 deposited in the Court an amount of Tk.1,89,385/- and he further submits that although the order of civil confinement has been passed against the borrower-judgment-debtor No. 1 but he was not arrested till date. He next submits that under the proviso to sub-section (5) of section 6, it is stipulated that in realizing the dues through decree execution case, firstly the property of the borrower is to be disposed of thereafter, the property of third party mortgagor and thereafter the property of third party guarantor can be taken into consideration.

Meaning thereby, the realization process should be proceeded firstly against borrower and thereafter the guarantor. Since, the respondent-bank did not take any initiative to secure the arrest of borrower-judgment-debtor No. 1 thus, the civil confinement order of the petitioner upon it's application cannot be sustainable. He further submits that the judgment-debtor No. 3 is the full-brother of borrower,

and according to learned Advocate for the petitioner, his responsibility is sometimes greater than the petitioner and in view of above, he prayed for setting aside the order of civil imprisonment dated 28.03.2024.

On the other hand, Mr. Md. Nasir Shikder, learned Advocate for the respondent No. 2 submits that having regard to the application of execution, it transpires that no property has been mortgaged on behalf of the judgment-debtors and as such, the respondent-bank has no alternative but to file the application for getting the order of civil confinement to compel the judgment-debtors to make payment of the outstanding dues of decree-holder-respondent and the Court after considering the provision of section 34 of the Artha Rin Adalat Ain, 2003 duly passed the order of civil confinement and in view of above, he prayed for discharging the Rule.

Heard learned Advocate of both the parties, perused the writ petition together with the annexures.

It appears that, on 05.09.2023 an order of civil confinement was passed against the petitioner-judgment-debtor No. 2, who is the guarantor of an unsecured loan and thereafter, on 02.10.2023, while he was produced before the Court after securing arrest, he got release upon depositing 25% of the outstanding dues.

Sub-section (6) of section 34 of the Artha Rin Adalat Ain, 2003 provides that if the judgment-debtor upon depositing 25% of the

outstanding dues furnished a bond in the Court that he shall make payment of the remaining amount within 90(ninety) days then the Court may release him from the civil confinement and after expiry of the aforesaid 90(ninety) days, if the aforesaid judgment-debtor failed to make payment the remaining dues, then the Court has no option but to invoke the authority of sub-section (7) of the section 34 passing an order of civil confinement afresh and in the instant case since the judgment-debtor No. 2 failed to make payment of the remaining amount within the stipulated 90(ninety) days from his earlier release on 02.10.2023, thus, the Artha Rin Adalat did not make any illegality in passing a further order of civil confinement afresh on 28.03.2024 against the judgment-debtor-petitioner.

So far the contention of learned Advocate for the petitioner that in view of sub-section (5) of section 6 of the Artha Rin Adalat Ain, 2003, the Artha Rin Adalat or the respondent ought to have proceeded firstly against the borrower and thereafter the mortgagor and thereafter against the guarantor.

We have examined the aforesaid provision of sub-section (5) of section 6 of the Ain, 2003, we do not find any legal substance in the submission of learned Advocate for the petitioner, because, the aforesaid provision only provides that in the process of realization of decreetal amount in decree execution case, the property of the

judgment-debtor-borrower is to be disposed of firstly and consequentially thereafter the property of third party mortgagor and thereafter the third party guarantor. Admittedly, no property has been mortgaged and the loan is an unsecured one thus, the provision of sub-section (5) of section 6 of the Ain, 2003 has no relevancy in the instant writ petition at all.

In the premise above, we find no substance in the Rule.

Accordingly, the Rule is discharged without any order as to cost.

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

Communicate the judgment and order at once.

**Kazi Waliul Islam, J:**

I agree.