

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Special Original Jurisdiction)**

WRIT PETITION NO. 8859 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:

M/S. Ashik Textile Mills Limited represented by the Managing Director Md. Kamrul Islam of Plot No. 27, Ward No. 69, Dailla, Noraibagh, Demra Staff Quarter, Police Station- Demra, District- Dhaka and others.

... Petitioners

-Versus-

Government of the People's Republic of Bangladesh represented by the Secretary, Ministry of Law, Justice and Parliamentary Affairs, Bangladesh Secretariat, Dhaka and others

... Respondents

Mr. Muhammad Rafiul Islam with
Mr. Mohammad Mostafa Kamal, Advocates

...For the petitioners

Mr. Md. Kabir Iqbal Hossain, Advocate

...For the respondent no. 5

Mr. Ahsanul Karim, Senior Advocate with

Mr. Alamin Sarker, Advocate

...For the respondent no. 6

Heard on 05.03.2026 and 29.04.2026.

Judgment on 29.04.2026.

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Rezaul Karim

Md. Mozibur Rahman Miah, J.

On an application under Article 102 of the Constitution of the People's Republic of Bangladesh, a Rule Nisi was issued calling upon the respondents to show cause as to why the auction notice published in the daily "Bhorer Kagoj" dated 28.03.2024 inviting tender to sale mortgaged property of the petitioner as described in the schedule to the auction notice under section 33(4) of the Artha Rin Adalat Ain, 2003 (Annexure-'E' to the writ petition) should not be declared to have been issued without lawful authority and is of no legal effect and/or such other or further order or orders passed as to this Court may seem fit and proper.

At the time of issuance of the rule dated 03.10.2024, the parties were directed to maintain status quo in respect of possession and position of the land mentioned in the tender notice for a period of 6(six) months on condition that the petitioner would pay all the outstanding dues within a period of 6(six) months.

Record shows, the petitioner on 21.04.2025 came up with an application for extension of the order of status quo by making partial payment and this court vide order dated 21.04.2025 extended the order of status quo for another 6(six) months directing the petitioner to comply with the order dated 03.10.2024 for another 6(six) months. Subsequent orders also show, the petitioner took extension of the order of status quo from time to time.

The salient facts leading to issuance of the instant rule are:

The present respondent no. 5 as plaintiff filed a suit being Artha Rin Suit No. 371 of 2022 against the present petitioners claiming an amount of

taka 2,43,28,324/71. Since the defendants of the said suit herein the petitioners did not come forward to contest the suit, the learned Judge of the Artha Rin Adalat vide judgment and decree dated 22.05.2023 decreed the suit *ex parte* for the amount claimed in the suit directing the defendants to pay the decretal amount within a period of 60(sixty) days with interest as contemplated in section 50(2) of the Artha Rin Adalat Ain, 2003. Even after passing the decree as the defendants of the said suit did not pay the decretal amount, the respondent no. 5 then filed an execution case under Order 21, Rule 11 of the Code of Civil Procedure being Artha Execution Case No. 960 of 2023 claiming an amount of taka 2,68,84,541/23. To realize the said decretal amount, the respondent no. 5 then published auction notice under section 33(1) of the Artha Rin Adalat Ain, 2003. As no bidder came forward to purchase the mortgaged property, the learned Judge of the Artha Rin Adalat then fixed on 14.03.2024 for taking step and ultimately the decree-holder-bank took initiative to sell the property through auction in compliance with section 33(4) of the Ain and accordingly, the auction notice was published on 28.03.2024 settling the date for holding auction on 14.05.2024. Challenging the propriety of the said auction notice, the defendants-judgment-debtors as petitioners filed the instant writ petition and obtained rule as well as the conditional order of status quo as has been stated hereinabove.

Mr. Muhammad Rafiul Islam along with Mr. Mohammad Mostafa Kamal, learned counsels appearing for the petitioners upon taking us to the writ petition at the very outset submits that since at the time of issuing rule, the petitioners were given opportunity to pay the outstanding dues by

affording certain period of time and the petitioners have ultimately paid back all the outstanding dues mentioned in the impugned auction notice so the rule is liable to be made absolute by setting aside the auction so confirmed in favour of the respondent no. 6.

The learned counsel by referring to the application for issuance of the supplementary rule also contends that in spite of having order of status quo from this Hon'ble court, the executing court proceeded with confirming sale of the property in favour of the auction purchaser-respondent no. 6 and went on to hand over possession of the property in his favour (respondent no. 6) which is clear violation of the order of status quo passed at the time of issuance of the rule.

The learned counsel further contends that since the petitioners are willing to pay all outstanding dues even after making payment of the dues claimed in the auction notice, so considering such good intention a direction may kindly be given to the petitioners to pay the balance amount apart from the claim amount so mentioned in the auction notice.

The learned counsel lastly contends that since by this time the petitioners have repaid all the outstanding dues claimed in the auction notice and ready to pay the balance amount if any, by the respondent no. 5-bank, so under no circumstances, can the rule be discharged as submitted by the learned counsels for the respondent nos. 5 and 6. On those counts, the learned counsel finally prays for make the rule absolute.

On the contrary, Mr. Md. Kabir Iqbal Hossain, learned counsel appearing for the respondent no. 5-bank by taking us to the affidavit-in-opposition very vehemently opposes the contention taken by the learned

counsel for the petitioners and contends that though the petitioners claimed to have repaid all the outstanding dues but it is not in terms of the direction so made by this Hon'ble court at the time of issuance of the rule so the alleged amount paid by the petitioners cannot be taken into consideration in making the rule absolute.

The learned counsel further contends that since as per the operative portion of the impugned judgment and decree passed by the Artha Rin Adalat following which the Artha Execution Case has been filed, then the interest will be counted till realization of the decretal amount as per the provision of section 50(2) of the Ain so the alleged claim of the petitioners that they have already paid back the outstanding dues cannot sustain in law.

The learned counsel lastly contends that since in the four corners of the writ petition, there has been not a single ground ever couched by the petitioner about any illegality in publishing the impugned auction notice, so the rule should be discharged.

By contrast, Mr. Ahsanul Karim, learned senior counsel along with Mr. Alamin Sarker, learned counsel appearing for the respondent no. 6-auction purchaser by taking us to the application for discharging the rule at the very outset submits that the petitioners have got no *locus standi* to file the instant writ petition since before filing of the writ petition, right has been accrued of the auction purchaser by purchasing the property from the respondent-bank through executing and registering sale deed.

The learned counsel further contends that since no legal ground has been taken by the petitioner about the illegality of the impugned auction notice so the rule is liable to be discharged.

The learned counsel by taking us to various orders annexed with the application for discharging the rule also contends that it is only on 29.10.2024, it has been brought to the notice of the executing court, about pendency of the rule issued in the instant writ petition but beforehand all the procedure in regard to selling the property in favour of the respondent no. 6 though auction has been completed so there has been no scope for the petitioner to challenge the propriety of the auction sale.

The learned counsel wrapped up his submission contending that, there has been no provision ever provided either in section 33 (1) or section (4) of the Ain stating that before publishing auction notice, prior notice has to be served upon the borrower-judgment-debtor so the grounds taken by the petitioners in the writ petition can never be sustained.

However, in support of his submission, the learned senior counsel referred a host of decisions and finally prays for discharging the rule.

Be that as it may, we have considered the submission so placed by the learned counsel for the petitioners and that of the learned counsel for the respondent no. 5 and that of the learned senior counsel for the respondent no. 6 at length. Together, we have also examined the writ petition in particular, the auction notice which has called in question in the instant writ petition. The application for discharging the rule and affidavit-in-opposition filed by the respondent nos. 5 and 6. However, the application for issuing supplementary rule filed by the petitioner and that of the discharging the rule was kept with the record vide earlier order.

Since in the instant writ petition, the petitioners have only challenged the propriety of the auction notice published in the execution case as

annexed as of Annexure-‘E’ to the writ petition, we only confine our discussion and observation keeping ourselves within the purview of the said auction notice to examine its propriety. For that obvious reason, at our query, the learned counsel for the respondent no. 5 read out the grounds so couched in the instant writ petition. On going through the grounds however we don’t find any grounds ever taken showing any patent illegality in publishing that auction notice.

Furthermore, on going through the order sheet so have been submitted by the respondent no. 6 which has been annexed with the application for discharging the rule, we find that after exhausting all the procedure so have been provided in section 33(1) of the Ain, the respondent no. 5 went on to publish auction notice and in that auction, bidders participated and the respondent no. 6 was found the highest bidder and since there has been no objection on the part of the respondent no. 5-bank, with regard to the value so proposed, the respondent-bank accepted the said bid when the present petitioner did not raise any objection. But subsequently when the auction was about to complete by registering sale deed in favour of respondent no. 6, they came before this court and obtained rule and order of status quo which we find to have been done as of afterthought manner. Because, if the petitioners had ever thought that the price quoted by the respondent no. 6 was shockingly low, they could have raised objection but without doing so, they kept on allowing the process in completing auction sale in favour of respondent no. 6 and then came before this court challenging the propriety of auction notice even then, no allegation of fraud has been alleged in the entire writ petition about holding of auction or low price offered by respondent no.

6. So, under no circumstances, the petitioner can challenge the propriety of auction after completion of selling of the property to respondent no. 6. So the application for issuance of supplementary rule filed by the petitioner alleging irregularity committed by the Artha Rin Adalat cannot be taken into consideration now. Because there has been no nexus in regard to challenging the propriety of the auction sale with the subsequent event as in the foregoing discussion, we clearly find that the petitioner had every scope to challenge the auction but knowing everything, they filed the instant writ petition only to halt the realization of outstanding dues of the respondent no. 5 even from the auction purchaser. The submission so placed by the learned counsel for the petitioners that they are ready to pay the balance amount even after paying the outstanding dues so have been mentioned in the auction notice but that very submission can no leg to stand because at this very point of time, the interest on the decretal dues has been compounded with the passages of time to be calculated under section 50(2) of the Artha Rin Adalat Ain. However, that very point cannot be taken into consideration in view of the fact that the property has already been sold out to the respondent no. 6 and his right has been accrued over the schedule property when admittedly the respondent no. 5-bank already registered a sale deed in favour of the respondent no. 6 but for having an order of status quo from this court possession has not been handed over.

Regard being had to the above facts and circumstances and from the foregoing discussions and observations, we don't find any iota of substance in the submission placed by the learned counsel for the petitioners to assail

the propriety of impugned auction sale made under section 33(4) of the Artha Rin Adalat Ain, 2003.

Accordingly, the rule is discharged however without any order as to costs.

At any rate, the order of status quo granted at the time of issuance of the rule stands recalled and vacated.

Let a copy of this judgment and order be communicated to the respondents forthwith.

Rezaul Karim, J.

I agree.