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

WRIT PETITION NO. 10032 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:

Md. Mahmudul Karim

… Petitioners

-Versus-

The Government of Bangladesh and others

… Respondents

Mr. Md. Nur Alam, Advocate

…For the petitioner

Mr. Ahmed Mahbubul H. Khan, with
Mr. Mainul Hoque Howlader, Advocates

…For the respondent No. 7

Heard on: 15.07.2026
Judgment on: 16.07.2026.

Present:
Mr. Justice Md. Mozibur Rahman Miah
And
Mr. Justice Rezaul Karim

Rezaul Karim, J.

This Rule Nisi was issued at the instance of the petitioners on 14.08.2023 calling upon the respondents to show cause as to why the Memo No. শাখা/৪৮২১/স্টাফ হাউজ বিল্ডিং লোন/চূড়ান্ত তাগাদা/১৩২/২০২৩ তারিখঃ ১৬/০৭/২০২৩ইং issued under the signature of respondent No. 7 asking the petitioner to pay the outstanding loan amount failing which the respondent bank will take step to sale the land of the petitioner without any interference of the Court of law (Annexure-H) should not be declared to be issued without lawful authority and is of no legal effect and why the inaction of the respondents to dispose of the application dated 27.07.2023 submitted by the petitioner (Annexure-I) should not be declared without lawful authority and is of no legal effect and why the respondents should not be directed to dispose of the application dated 27.07.2023 submitted by the petitioner or to allow the petitioner to pay the outstanding loan amount in 60(sixty) equal installments 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 passed an interim order directing respondent No. 7 to dispose of the petitioner's application dated 27.07.2023 (Annexure-I) within 60 (sixty) days from receipt of the order, in accordance with law.

The facts leading to the issuance of the instant Rule, briefly stated, are as follows:

The petitioner was appointed as 'Officer (Cash)' in Agrani Bank Limited on 27.01.2011. During his service, he availed a house-building loan of Tk. 21,20,000/- sanctioned on 30.08.2016 for purchase of land, and a further loan of Tk. 45,00,000/- sanctioned on 29.11.2017 for construction of a house thereon. With the loan money the petitioner purchased land and constructed a multi-storied building.

On 24.09.2018 an FIR was lodged against the petitioner and four others under sections 409, 418 and 34 of the Penal Code, 1860, alleging criminal breach of trust and cheating in relation to the affairs of the Bank, however, the investigation of the said case is stated to be pending.

This being a scheduled offence under the Anti-Corruption Commission Act, 2004, the Anti-Corruption Commission moved an application before the learned Senior Special Judge, Meherpur, under section 14 of the Money Laundering Prevention Act, 2012 read with Rule 18 of the Anti-Corruption Commission Rules, 2007, for freezing the petitioner's bank accounts and attachment of his property. Then by order dated 13.01.2019, the learned Senior Special Judge allowed the application, and the petitioner's accounts were frozen and the property (the very property purchased and built a multi-storied building with the loan money) attached. But record does not show the said order of attachment has ever been vacated, varied or recalled. Ultimately on 18.01.2021, the petitioner was dismissed from the service of Agrani Bank Limited.

By Memo dated 16.07.2023 (Annexure-H), Respondent No. 7 asked the petitioner to pay the outstanding loan with a caution that contrary to that, Bank would sell the mortgaged land without interference of any Court of Law. The petitioner, by application dated 27.07.2023 (Annexure-I), brought the matter of attachment order to the notice of the Bank and requested to allow him to repay the loan by installments with waiver of interest for having financial hardship for freezing and attachment of his assets. Receiving no response, and apprehending imminent sale of the attached property, the petitioner moved this Court, resulting in the Rule and the interim order was passed as noted above.

Mr. Md. Nur Alam, the learned Advocate appearing for the petitioner submits that there is specific provision in the Money Laundering Protirodh Ain, 2012 as well as Anti-corruption Commission

Act, 2004 that once a property was attached by a Court of law in connection with any criminal offence the same cannot be transferred without further order of the same Court but the respondents are trying to sell the property of the petitioner by violating the said provision of law.

The learned Advocate finally submits that the petitioner has already paid some amount of loan and he is also willing to pay the outstanding loan amount despite his economical hardship but the respondent are trying to sell the land of the petitioner violating the principle of natural justice and hence he prays to make the Rule absolute.

Mr. Mainul Hoque Hawlader, the learned Advocate appearing for the respondent No. 7-bank, opposes the Rule and submits that in compliance with the Court's interim order dated 14.08.2023 (Annexure-I), the petitioner's application dated 27.07.2023 was disposed of by letter dated 12.10.2023 (Annexure-X), by rejecting his request for waiver of interest and repay the loan in installments, so the Rule has become infructuous and is liable to be discharged.

Learned Advocate also submits that under condition No. 9.5 of the sanction letter dated 30.08.2016, upon termination/dismissal of the borrower from service, the entire outstanding loan with interest has fallen due immediately, and the Bank reserves the right to sell the property without any intervention of the Court and as the petitioner having been dismissed, the Bank is contractually entitled to proceed in realizing the default loan.

The learned Advocate further submits that in any event, under the Artha Rin Adalat Ain, 2003, the Bank has statutory recourse to sell the mortgaged property by auction if the loan became default one and the writ petition, seeking restrain of recovery of such default loan, is not maintainable in writ jurisdiction.

He finally submits that, in fact, the Bank has not initiated any proceeding, auction or otherwise, for sale of the property, so the apprehension expressed in the writ petition is, wholly premature.

We have heard the learned Advocates for both sides and perused the writ petition, the affidavit-in-opposition, application for discharging the Rule and the annexure appended thereto:

Two questions fall for determination: (a) whether the interim direction of this Court dated 14.08.2023 stands complied with, and its effect on the Rule; and (b) whether, on the facts as presently stand, the writ petition discloses any cause of action warranting interference by this Court with the Memo dated 16.07.2023.

As to the first question, it is not disputed that Respondent No. 7, by letter dated 12.10.2023 (Annexure-X), has disposed of the petitioner's application dated 27.07.2023, rejecting the prayer for waiver of interest and make repayment of the loan by installments. The interim order of this Court required, the application be disposed of in accordance with law within 60 (sixty) days. However, the direction has, therefore, been fully complied with.

As to the second and more substantial question, it is significant, and indeed conceded by the learned Advocate for the petitioner, that Respondent No. 7 has not, at any stage- either before filing of this writ petition or till now initiated any auction or other proceeding for sale of the attached property. The Memo dated 16.07.2023 was, on its face, a demand for repayment coupled with a statement of the Bank's understanding of its contractual entitlement in the event of default; it was not itself an act of sale, nor the commencement of any process of sale. No notice of auction, valuation, or steps preparatory to sale has been shown to exist. The apprehension on which the writ petition proceeds- that the Bank would, imminently and without recourse to a Court of law, sell the attached property- has not, even after the passage of a substantial period since the impugned Memo, materialised into any concrete step. The Rule, is thus completely premature.

The petitioner executed a registered deed of mortgage coupled with a power of attorney over the property so the bank is authorised to sell the property by auction of the petitioner if the petitioner ever fails to pay the loan money even though such situation has not arisen yet and as such the writ petition is not maintainable.

In the result, the Rule is discharged, without any order as to costs.

Communicate the judgment and order to the respondents at once.

Md. Mozibur Raman Miah, J.

I agree.

Mazhar, BO