

**IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION**

**(SPECIAL ORIGINAL JURISDICTION)**

**WRIT PETITION NO. 14313 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. Abul Kalam

.... Petitioner

- Versus -

Government of the Republic of Bangladesh,  
represented by the Secretary, Ministry of Finance,  
Bangladesh Secretariat, Dhaka and others.

..... Respondents

No one appears.

.....For the Petitioner

Mr. Mohammad Mosfequs Salehin, Advocate

.....For the Respondent No.4

Mr. Mohammad Waliul Islam Oli, D. A. G. with

Ms. Shahida Afrin Shapla, D. A. G. with

Ms. Nilufar Yesmin, A.A.G. with

Mr. Md. Moshiur Rahman, A.A.G. with

Mr. Md. Motasim Billah Parvez, A.A.G. with

Mr. Md. Faridul Islam, A.A.G.

.....For the Respondents Government

**Heard on 24.11.2025**

**Judgment delivered on 01.12.2025**

**Present :**

Mr. Justice Yousuf Abdullah Suman

And

Mr. Justice Dihider Masum Kabir

**Dihider Masum Kabir, J**

On an application filed under Article 102 of the Constitution of the People's Republic of Bangladesh, the Rule was issued and an order of stay of the proceedings was granted with direction on 03.12.2024 as under:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the inaction of the respondent No.4 to dispose of the petitioner's representation dated 20.11.2024 as contained in Annexure-B and the auction notice published in "Daily Jai Jai Din" by the respondents (Annexure-A) shall not be declared to have been made without any 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.

Pending hearing of the Rule, let the operation of further proceedings of the auction notice published in "Daily Jai Jai Din" (Annexure-A) be stayed for a period of 03 (three) months from date.

Meanwhile, the petitioner is willing/proposing to pay Tk.5,00,000/- (Five Lac) within a period of 01 (One) month. Hence, the petitioner is directed to pay Tk.5,00,000/- (Five Lac) within a period of 01 (One) month from date.

The petitioner is further directed to file an affidavit of compliance evidencing the payment of Tk.5,00,000/- (Five Lac) within a period of 01 (One) month, in default the instant Rule and the order of stay shall stand discharged and vacated.”

The facts relevant for the disposal of the instant Rule as made out in the writ petition, in short, are that the petitioner Md. Abul Kalam availed loan facility of Taka 10 (Ten) Lac on 24.12.2009 and his father Md. Fazlur Rahman was the mortgagor of the said loan mortgaging his landed property. Lastly upon an application from the petitioner loan limit was extended on 29.09.2019 and extended period was fixed for 31.05.2020. But the petitioner failed to pay the loan amount, and upon further application, the respondent No. 4, Janata Bank PLC re-scheduled the ledger balance of Tk.12,62,834.81 (Twelve Lac sixty two thousand eight hundred thirty four and eighty one paisa) fixing installment of Tk.87,594/= (Eighty seven thousand five hundred and ninety four) per month from May/2023 as principal and interest. But the petitioner failed to pay the installment as per conditions laid down in the loan re-scheduled letter. For recovery of the loan, after completing all the formalities, the respondent No. 4, Janata Bank PLC proceeded for auction sale under section 12(3) of Artha Rin Adalat Ain, 2003 and the advertisement for auction sale of the mortgaged property was published on 05.11.2024 at “The Daily Jai Jai Din” and for an amount of Tk.14,96,764.15 (Fourteen Lac ninety six thousand seven

hundred sixty four and fifteen paisa) as principle and interest up to 03.11.2024, and the petitioner moved before this Division filing writ petition and this Division was pleased to issue Rule Nisi and stay of the operation of further proceedings of the auction notice subject to payment of Taka 5,00,000/= (Five lac) within a period of 1 (one) month from date.

Respondent No. 4, Manager, Janata Bank PLC, Shibganj Branch, Shibganj, Chapainawabganj filed affidavit in opposition stating that since the petitioner failed to adjust the loan and became loan defaulter, the respondent published sale notice in the "Daily Jai Jai Din" for auction of scheduled/mortgaged property under section 12(3) of Artha Rin Adalat Ain, 2003. The petitioner submitted representation dated 20.11.2024 which was also disposed of. The petitioner deposited Tk.4,000/- (Four thousand) on 01.01.2025 although this Division had directed to the petitioner to deposit of Tk.5,00,000/= (Five lac) within 1(one) month, failing which the instant Rule and order of stay shall stand discharged and be vacated. Liabilities of the petitioner stands at Tk.13,29,180.15 (Thirteen lac twenty nine thousand one hundred eighty and fifteen paisa) on 29.04.2025, after payment of Tk.4,000 (Four thousand) on 01.01.2025; hence the instant writ petition is liable to be discharged in accordance with the order of this Division.

No one appears on behalf of the petitioner though the instant case was fixed for hearing for four consecutive days in the daily cause list. The petitioner neither paid the amount as per direction of this Division nor filed any affidavit in compliance.

On the other hand, the learned counsel Mr. Mohammad Mosfequs Salehin appearing on behalf of the respondent No.4, Janata Bank PLC, submits that the submissions of the writ petitioner in this instant writ petition are misconceived, erroneous, illogical, illegal and not tenable in the eye of law. The petitioner paid only 4,000/- in place of 5,00,000/- and didn't file any affidavit in compliance. The petitioner violated the order and direction of this Hon'ble Division. The respondent No.4 already disposed of the representation of the petitioner. The respondent No.4 legally published auction notice, they had no malafide and arbitrary intension, did everything within the jurisdiction contained in the provisions of law. He also submits that the auction procedure initiated under section 12(3) of Artha Rin Adalat Ain, 2003 has already been expired, and therefore, the Rule issued in this instant writ petition is liable to be discharged as it has become infructuous.

We have considered the submissions of the learned counsel and perused the writ petition, affidavit in opposition as well as other materials on records.

On perusal of the writ petition and affidavit in opposition, it is revealed that the petitioner challenged the inaction of the respondent No.4, Janata Bank PLC to dispose of the petitioner's representation dated 20.11.2024 as contained in Annexure-B and the auction notice published in "Daily Jai Jai Din" by the respondents (Annexure-A). This Division issued Rule and stayed the operation of auction procedure and also directed the petitioner to pay Tk.5,00,000 (Taka five lac) within one month and to file affidavit in compliance. But the petitioner violated the order and direction of this Division. On the other hand the respondent No.4, already disposed of the representation of the petitioner. In the instant case notice has been issued under the special legislation that is Artha Rin Adalat Ain, 2003 (Act VIII of 2003) which was enacted as a special measure for speedy realization of the loan money from the borrower and the Ain came into force on 1<sup>st</sup> of May, 2003. In section 3 of the Ain it has been provided that 'আপাততঃ বলবৎ অন্য কোন আইনে ভিন্নতর যাহা কিছুই থাকুক না কেন, এই আইনের বিধানাবলীই কার্যকর হইবে।' Although the power to sell the property with the permission of the court was there under section 69 of the Transfer of Property Act, 1882, since the provision of section 12 will prevail upon any other law, the bank has no other alternative but to invoke section 12 of the Ain and accordingly, the bank issued the impugned sale notice which was published in the daily newspaper. Relevant provision of section 12 the Artha Rin Adalat Ain, 2003 is as under:

**অর্থ ঋণ আদালত আইন, ২০০৩**

**১২। আর্থিক প্রতিষ্ঠান কর্তৃক কতিপয় জামানত বিক্রয়**

- (১) উপ-ধারা (২) এর বিধান সাপেক্ষে, কোন আর্থিক প্রতিষ্ঠান, উহার নিজ দখল বা নিয়ন্ত্রণে থাকা বিবাহীর কোন সম্পত্তি যাহা পণ বা বন্ধক (Lien or pledge) রাখিয়া ঋণ প্রদান করা হইয়াছে, এবং যাহা বিক্রয় করিবার আইনগত অধিকার বাদীর রহিয়াছে বা বাদীকে অর্পণ করা হইয়াছে, উহা বিক্রয় না করিয়া এবং বিক্রয়লব্ধ অর্থ ঋণ পরিশোধ বাবদ সমন্বয় না করিয়া, অর্থ ঋণ আদালতে কোন মামলা দায়ের করিবে না।
- (২) উপ-ধারা (১) এর বিধান সত্ত্বেও, কোন আর্থিক প্রতিষ্ঠান নিজ দখল বা নিয়ন্ত্রণে থাকা পণ বা বন্ধকী সম্পত্তি বিক্রয় না করিয়া মামলা দায়ের করিলে অনতিবিলম্বে উক্ত

সম্পত্তি পূর্ব-বর্ণিত মতে বিক্রয় করিয়া বিক্রয়লব্ধ অর্থ ঋণের সহিত সমন্বয় করিবে এবং বিষয়টি আদালতে লিখিতভাবে অবহিত করিবে।

(৩)কোন আর্থিক প্রতিষ্ঠান, বিবাদীর নিকট হইতে কোন স্থাবর সম্পত্তি (Immovable Property) বন্ধক (Mortgage) রাখিয়া অথবা অস্থাবর সম্পত্তি (Movable Property) দায়বদ্ধ রাখিয়া (Hypothecated) ঋণ প্রদান করিলে এবং বন্ধক প্রদান বা দায়বদ্ধ রাখার সময় বন্ধকী বা দায়বদ্ধ সম্পত্তি বিক্রয়ের ক্ষমতা আর্থিক প্রতিষ্ঠানকে প্রদান করা হইয়া থাকিলে, উহা বিক্রয় না করিয়া এবং বিক্রয়লব্ধ অর্থ ঋণ পরিশোধ বাবদ সমন্বয় না করিয়া, অথবা বিক্রয়ের চেষ্টা করিয়া ব্যর্থ না হইয়া, অর্থ ঋণ আদালতে কোন মামলা দায়ের করিবে না।

On a plain reading of the above provisions of law, we have found no illegality in publishing the advertisement of sale of mortgaged property by auction under section 12(3) of Artha Rin Adalat Ain, 2003.

Admittedly, the property as mentioned in the impugned sale notice was mortgaged by registered mortgage deed and the petitioner failed to repay the loan money. In such a case, invoking section 12(3) of the Artha Rin Adalat Ain 2003, is not contrary to the provision of our Constitution. The case of Overseas Garments Industries (Pvt.) and others Vs. Bangladesh and others reported in 57 DLR 168 and many other cases support the above observation. The core purpose of the writ petitioner has already been served out by staying operation of auction procedure. In the case of Md. Tariqul Islam Taraque Vs. Islamic Finance and Investment Ltd. and others reported in 2012 (XX) BLT (AD) 64 held that “Section 12 of the Artha Rin Adalat Ain, 2003 authorizes any lending bank to sell the mortgaged property without any intervention of any Court for adjustment of its due money from the borrower and then to proceed, in accordance with law, for the realization of the balance amount, if any.

In view of the above observations as well as the facts and circumstances of the case, we find no merit in the instant Rule Nisi and accordingly, the Rule is discharged and the ad-interim order of stay and direction is hereby re-called and vacated.

However, there is no order as to costs.

Communicate the judgment and order at once.

Yousuf Abdullah Suman, J:

I agree.

