

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

WRIT PETITION NO. 12915 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:

Nahid Akthar

... Petitioner

-Versus-

The Judge, Artha Rin Adalat, 1st Court,
Dhaka and others.

... Respondents

Mr. A.K.M. Asiful Haque, with
Ms. Rehana Sultana, Advocates

...For the petitioner

Ms. Shairin Sultana, Advocate

...For the respondent No. 3

Heard on: 20.08.2026

Judgment on: 02.09.2026.

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Rezaul Karim

Rezaul Karim, J.

On an application under Article 102(2)(a)(ii) of the Constitution of the People's Republic of Bangladesh, a Rule Nisi was issued calling upon the respondent nos. 1-3 to show cause as to why the judgment and decree dated 23.09.2019 (decree drawn on 23.09.2019) passed in Artha Rin Suit No. 114 of 2017 by the learned Judge, Artha Rin Adalat No. 1, Dhaka (respondent No. 1), decreeing the suit, vide Annexure-B and B(1) to the writ petition, should not be declared to have been made

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.

The salient facts leading to issuance of the instant rule are that the respondent no. 2, Basic Bank Ltd., through its branch, respondent No. 3, filed Artha Rin Suit No. 114 of 2017 before the 1st Artha Rin Adalat, Dhaka on 28.02.2017 against the petitioner along with two other defendants, for realisation of outstanding dues amounting to Taka 18,63,77,156.74 as on 07.02.2017 by selling the mortgaged property as described to the schedule of the plaint. The case of the plaintiff bank, in short, was that upon an application of the defendant No. 2 of the suit, the plaintiff bank sanctioned a credit limit of Taka 8.00 crore as secured overdraft, by mortgaging the property, together with term loan facilities of Taka 7.00 crore, in favour of the defendant No. 1 of the suit, vide sanction advice dated 07.06.2010. The defendant Nos. 1 and 2 availed the said credit facilities by execution of a mortgage deed along with an irrevocable power of attorney executed by the said defendants, the present petitioner being the defendant No. 3 therein. Upon an application of the defendant No. 2, the said credit facilities were subsequently renewed vide sanction advice dated 28.06.2012, allowing time for adjustment of the outstanding dues within 15.06.2013, but the defendants failed to adjust their liability. The plaintiff bank thereafter attempted to sell the mortgaged property through an auction notice published under section 12(3) of the Artha Rin Adalat Ain, 2003, and upon failure to sell the mortgaged property through auction, it then

filed the said Artha Rin Suit for realisation of the outstanding amount as mentioned above.

The defendant nos. 1 and 2 of the said suit contested the same by filing written statements, denying the allegations made in the plaint as well as the amount claimed. The suit, however, proceeded ex parte against the present petitioner, who was defendant No. 3 therein. As the mediation failed the trial Court then framed issues under section 13 of the Artha Rin Adalat Ain, 2003, recorded evidence of the parties, and, upon conclusion of trial, decreed the suit on contest against the defendant No. 1 and 2 and ex parte against the other vide judgment and decree dated 23.09.2019 and the decree was drawn on the same date.

It is stated that the respondent No. 3, for execution of the said decree, filed an Artha Execution Case before the 1st Artha Rin Adalat, Dhaka, on 27.11.2019 being Artha Execution Case No. 693 of 2019 for realisation of the decretal amount. Upon failure to sell the mortgaged property in auction, the decree-holder bank applied for issuing certificate under Section 33(5) of the Artha Rin Adalat Ain, 2003, for vesting the property in its favour, pursuant to which the execution case was finally disposed of under section 33(9) of the said Ain on 08.09.2022.

The petitioner did not prefer any appeal against the judgment and decree dated 23.09.2019 under section 41 of the Artha Rin Adalat Ain, 2003, nor did she, at any stage, file any application under section 19(2)

of the said Ain for setting aside the ex parte decree passed against her. Instead, being aggrieved by the said judgment and decree, the petitioner moved the instant writ petition on 30.10.2024 and obtained Rule as stated hereinabove.

During pendency of the Rule, the respondent No. 3 entered appeared and filed an application for discharging the Rule.

Mr. A.K.M. Asiful Hoque along with Mrs. Rehana Sultana, learned Advocates appearing for the petitioner, upon taking us through the writ petition and the documents annexed thereto, submits that the Artha Rin Suit was adjudicated as a simple money suit under section 5(1) of the Artha Rin Adalat Ain, 2003, read with section 34 of the Code of Civil Procedure, 1908, but the trial Court, by including the mortgaged property in the schedule of the decree, travelled beyond the scope as contemplated under Appendix-D, Form-2, of the First Schedule to the said Code, and thus the impugned judgment and decree on this count, is without lawful authority.

The learned Advocate further submits that the learned Judge of the Artha Rin Adalat, while adjudicating the suit, did not frame any issue on the point of limitation as required under Section 46 of the Limitation Act, 1908, and such omission renders the impugned judgment and decree without lawful authority.

The learned Advocate further submits that as per Section 47 of the Artha Rin Adalat Ain, 2003 a bank cannot claim interest more than

200% (two hundred percent) of the principal loan amount and accordingly, the total claim in a suit, comprising principal and interest together, cannot exceed three times the principal amount.

The learned Advocate lastly submits that there is no limitation or waiver in respect of redressing any wrong within the scheme of judicial review under Article 102(2)(a)(ii) of the Constitution, being the highest law of the land, and that the instant writ petition is, therefore, maintainable and bona fide, and finally prays for making the rule absolute.

Ms. Shairin Sultana, learned Advocate appearing for the respondent No. 3, by filing an application for discharging the Rule, opposes the contention raised by the learned Advocate for the petitioner and submits that the Artha Rin Adalat Ain, 2003 is a special law which itself provides a complete and specific mechanism of redress, namely, an appeal under Section 41 of the Ain, 2003 against a judgment and decree of the Artha Rin Adalat, and a further specific remedy under section 19(2) of the said Ain for setting aside an ex parte decree yet neither of which was resorted to by the petitioner, although she had knowledge of the impugned judgment and decree.

The learned Advocate further submits that the Artha Jari Case initiated for execution of the impugned decree which was finally disposed of under section 33(9) of the Ain on 08.09.2022, and that the petitioner never raised any objection in the said execution proceeding under section 32 of the Ain.

The learned Advocate lastly submits that the instant writ petition, having been filed nearly five years after passing of the impugned judgment and decree, without availing of the specific alternative remedies provided under the special statute, and without any explanation on record for such inordinate delay, is not maintainable, and finally prays for discharging the rule.

We have considered the submissions advanced by the learned Advocate for the petitioner as well as the learned Advocate for the respondent No. 3. We have also gone through the writ petition, the application for discharging the Rule and the documents annexed therewith.

In the instant writ petition, the petitioner literally challenged the propriety of judgment and decree passed *ex parte* in Artha Rin Suit against the present petitioner taking ground that the decree so passed in the Artha Rin Suit cannot be sustained on the count that since the decree passed as of money decree so the interest upon that decree will be imposed under section 34 of the Code of Civil Procedure. But on going through the provision provided in section 5(2)(3)(8) and (11) of the Artha Rin Adalat Ain, we find explicitly that the application of the Code of Civil Procedure has been given for a limited purpose and if there has been any inconsistency in the application of the Code of Civil Procedure while proceeding with Artha Rin Suit, the provision of Artha Rin Adalat Ain will prevail and that very proposition has clearly been set out in the last part of sub-section (2) of section 5 of the Artha Rin Adalat Ain which runs as “উক্ত মামলাও এই আইনের অধীন প্রতিষ্ঠিত অর্থ ঋণ আদালতেই

দায়ের করিতে হইবে; এবং এইরূপ ক্ষেত্রে The Code of Civil Procedure, 1908 এর বিধানসমূহ এই আইনের বিধানসমূহের সহিত, যতদূর সম্ভব, সমন্বয়ের মাধ্যমে প্রযোজ্য হইবে।”.

Then if we take a glance of section 5(8) of the Ain, we also find that a suit which has to be filed by a bank or financial institution under Artha Rin Adalat Ain, 2003 that suit will be registered as Artha Rin Suit when section 5(11) of the Ain has also very explicitly jotted down the power and jurisdiction of an Artha Rin Adalat and how the Code of Civil Procedure will be applicable in the proceeding of an Artha Rin Suit vis-à-vis the modes of drawing up decree in such a suit so, the ground taken by the petitioner in ground No. 1 has got no manner of application in the facts and circumstances as well as the clear provision as set out in section 5(2)(3)(8) and (11) of the Artha Rin Adalat Ain. It is the next contention of the learned counsel for the petitioners that the property mortgaged with the bank cannot be included in the execution case but the answer to it has clearly been laid down in section 8(2)(kha) of the Ain where it has been asserted “একটি তফসিল, যাহাতে, ঐ সকল স্থাবর ও অস্থাবর সম্পত্তি যাহা বন্ধক বা জামানত রাখিয়া বিবাদী কর্তৃক ঋণ গ্রহীত হইয়াছে, উহাদের এবং সংশ্লিষ্ট বন্ধকী বা জামানতী দলিলের বিস্তারিত পরিচয়, বিবরণ, এবং আর্থিক মূল্যায়ন যদি হইয়া থাকে, প্রদর্শিত হইবে।”.

So under such clear provision, the decree-holder bank has got no other option but to include the property in the schedule of an execution case which was mortgaged with the bank. So here also the submission placed by the learned counsel for the petitioners has got no leg to stand.

It is not disputed that the impugned judgment and decree dated 23.09.2019 was passed ex parte against the present petitioner, she being the defendant no. 3 in Artha Rin Suit No. 114 of 2017. Section 19 of

the Artha Rin Adalat Ain, 2003 makes specific provision for a defendant, against whom an *ex parte* decree has been passed, requiring such defendant to apply, within thirty days of the decree or of acquiring knowledge of it, for setting aside such decree upon depositing 10% (ten percent) of the decretal amount. It is admitted position based on record that the petitioner never used the remedy nor did she prefer an appeal under section 41 of the Ain against the judgment and decree.

Section 20 of the Ain further provides that, save as provided in the Ain itself, no court or authority shall entertain any question touching any proceeding, order, judgment or decree of an Artha Rin Adalat, and that any application for relief made in disregard of the provisions of the Ain shall not be entertained by any court or authority. The Artha Rin Adalat Ain, 2003 is a special law made for the specific purpose of speedy realisation of dues owed to banks and financial institutions. In the facts of the instant case, where the petitioner has not availed of either of the remedy under section 19(2) against the *ex parte* decree or remedy of appeal under section 41, we find that the writ petition is not maintainable.

We are, however, mindful that this bar is not absolute. Notwithstanding Section 20 of the Ain, a writ may lie where the impugned judgment or decree is shown to be *coram non judice*, that is, passed by a Court having no jurisdiction at all, or passed wholly without or in excess of jurisdiction, or is the outcome of fraud practised on the court. No such case has been made out in the instant writ petition. The grounds urged on behalf of the petitioner, namely, that the

decree improperly included the mortgaged property in its schedule, and that no issue was framed on the point of limitation, are all the issues to be adjudicated in the proper forum as discussed above.

Having availed of neither remedy, the petitioner cannot be permitted to invoke the extraordinary writ jurisdiction of this court in substitution thereof.

We are unable to accept the submission that judicial review under Article 102(2)(a)(ii) of the Constitution admits of no limitation or waiver, and that this alone makes the writ petition maintainable. This may be true as a general proposition, but it does not, by itself, answer the question before us, namely, whether the petitioner should be allowed to invoke the writ jurisdiction of this court without ever having taken the specific remedy that the Ain itself gave her for the very wrong of which she now complains.

We are of the view that, if the petitioner has any grievance regarding the alleged misapplication of Section 47 of the Ain, the same cannot be agitated in the writ jurisdiction. Rather, the petitioner ought to have availed the appropriate statutory remedy by way of an appeal in the form of a miscellaneous case under section 41 and 19 of the Ain.

For the reason stated above, we do not find any substance in the submission and the same is rejected.

Regard being had to the above facts and circumstances, we do not find any merit in the instant writ petition which is also not maintainable.

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

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

Md. Mozibur Raman Miah, J.

I agree.