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

WRIT PETITION NO. 3218 OF 2025

In the matter of:

An Application under article 102 of the Constitution of the People's Republic of Bangladesh.

And

In the matter of:

Eastern Bank PLC

… Petitioner

-Versus-

The Judge, Artha Rin Adalat, Chattogram and others .

… Respondents

Mr. Md. Aminul Islam, Advocate

..For the petitioner

Mr. Md. Ziaul Hoque with
Mr. Abdullah Al Noman and
Ms. Monera Haque Mone, Advocate

…For the respondent Nos. 6-12

Heard and Judgment on 10.06.2026

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 impugned Order No. 18 dated 24.06.2024 passed by the learned Judge of the Artha Rin Adalat,

Chattogram in Artha Rin Suit No. 853 of 2022 vacating interim order of attachment granted earlier vide order No. 11 dated 23.10.2023 on an application for attachment before judgment by the plaintiff, petitioner dted 23.10.2023 in respect of schedule properties as mentioned in the application for attachment and that of requesting Head of Bangladesh Bank's Financial Intelligence Unit (BFIU) to investigate and submit report regarding money laundering by the respondent no. 4 of outstanding amount of credit facility taken from the petitioner, bank in the name of respondent no. 2 and 3 i.e, M/S M.M. Enterprise and M/S Zuma Enterprise respectively shall not be declared to have been passed 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.

At the time of issuance of the rule, the operation of the judgment and order dated 24.06.2024 passed by the learned judge, Artha Rin Adalat, Chattogram in the said Artha Rin Suit was stayed for a period of 02(two) months. It is to be mentioned here that challenging the said interim order respondent nos. 6-12 went to the Appellate Division but it has not interfered with the said order rather directed an appropriate bench of this court to dispose of the rule as expeditiously as possible by its order dated 09.03.2026 and hence we fixed the matter on 27.04.2026 and take up the same for hearing

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

The present petitioner as plaintiff originally filed a suit being Artha Rin Suit No. 853 of 2022 claiming an amount of taka 227,26,87,271.17 against the present respondent nos. 2-12 impleading them as defendant

nos. 1-11 as of default loan. Soon after filing of the suit, the plaintiff, bank on 23.10.2023 filed an application under Order 38 rule 5 of the Code of Civil Procedure read with section 57 of the Artha Rin Adalat Ain, 2003 for attaching the property mentioned in the schedule of the application belonged to the defendant nos. 3 and 5-11 claiming that the market value of the property so have been mentioned in the schedule to the plaint is less that taka 4,50,00000/- whereas, the property belonged to the defendant nos. 5-11 as mentioned in the application is taka 9,45,00000/- and the plaintiff bank came to learn that the said defendants nos. 5-11 were trying to dispose of the said property and if the property belonged to the defendant nos. 5-11 is sold out and if any decree was passed in favour of the plaintiff, the decretal amount could not be realized through execution case. Out of that apprehension, the application was filed. However, the said application was taken up for hearing by the learned judge and on the date of filing of the application, that is on 23.10.2023, the learned judge of the Artha Rin Adalat passed an order directing the said defendants not to dispose of the property till filing of written objection by the defendants. Subsequently, the defendant nos. 8, 9 and 10 entered appearance in the suit and filed written objection against the application filed by the plaintiff under Order 38 rule 5 of the Code of Civil Procedure. Eventually, the application for attachment before judgment filed by the plaintiff on 23.10.2023 was taken up for hearing and vide impugned judgment and order dated 24.06.2024 the learned judge rejected the same holding that the defendant nos. 5-11 are not the guarantors of the loan taken for defendant nos. 1-2 and the property they (defendant nos. 5-11) got by

virtue of heba deed dated 08.07.2019 from one, Meher Banu not inherited from their father, Musa Badsha and on that sole count, the application was rejected.

It is at that stage, the plaintiff as petitioner came before this court and obtained instant rule and order of stay as has been stated herein above.

Mr. Md. Aminul Islam, learned counsel appearing for the petitioner upon taking us to the writ petition in particular, the impugned judgment and order at the very outset submits that the reason in rejecting the application by the learned judge of the Artha Rin Adalat cannot be sustained in law because the learned judge has failed to comprehend the apprehension of the plaintiff, bank in not to realizing the decreetal dues if the properties belonged to defendant nos. 5-11 is disposed of during pendency of the suit and before passing of the decree.

The learned counsel with reference to the provision of section 6(5) of the Artha Rin Adalat Ain also contends that who will be made as defendant in an Artha Rin Suit and how the decreetal amount will be realized has clearly been set out in sub section 5 and the defendant nos. 5-11 were made parties in place of their predecessor, Md. Musa Badsha so they will also be severely and jointly liable for satisfying the decree but if the property belonged to defendant nos. 5-11 is sold out before passing the decree in that case, the plaintiff, bank can not realize the decreetal dues but that very legal proposition has not been taken into consideration by the learned judge while passing the impugned order. The learned counsel by referring to the application filed under Order 38 rule 5 of the Code of Civil Procedure in particular, paragraph nos. 5 and 6 thereof also

contends that in those two paragraphs clear apprehension for transfer of the property by the defendant nos. 5-11 and assertion in not getting the decreetal dues has been asserted yet the learned judge has clearly sidetracked that very legal point provided in Order 38 rule 5 of the Code of Civil Procedure and therefore the impugned order cannot be sustained in law. With those contentions the learned counsel finally prays for making the rule absolute.

On the contrary, Mr. Md. Ziaul Haque along with Ms. Monera Haque Mone, learned counsels appearing for the respondent nos. 6-12 very robustly oppose the contention taken by the learned counsel for the petitioner and at the very outset submits that the provision of Order 38 rule 5 of the Code of Civil Procedure has clearly been flouted while passing the initial order of attachment dated 23.10.2023 because until and unless a show cause notice is issued asking the defendants to furnish security, no direct order of attachment before judgment can be passed. The learned counsel however by asserting the impugned order of the learned judge of the Artha Rin Adalat also contends that since the property belonged to the defendant nos. 5-11 herein respondent nos. 6-12 in not inherited oroperty so under no circumstances can that very private owned property be attached. In support of his such submission, the learned counsel has placed his reliance in the decision of Indian Supreme Court passed in Civil Appeal Nos. 7768-7769 of 2023 and takes us through paragraph no. 20 thereof and contends that though the facts described in the said decision is different from that of the present one, but the analogy established in that judgment is equally applicable in the facts

and circumstances of the instant case. The learned counsel also placed his reliance in the decision reported in 24 BLC (2019) HCD 44 and takes us through a certain paragraph where it has been propounded that, *"This provision of law is applicable for the exclusive property of the borrower. Admittedly, the lands which are the self acquired property of the petitioner were not mortgaged to the bank for recovery of the loan amount of the borrower and the petitioner is neither loanee or mortgagor or guarantor for the loan of her husband and admittedly she has not inherited any property from her husband, the borrower. So the provision of section 8(7) of the Artha Rin Adalat Ain has got no manner of application for recovery of the loan of the borrower Amjad Hossain now dead by selling out the self-acquired property of the petitioner. Furthermore, it appears from the order No. 83 dated 09.08.2003, it is found that the Artha Rin Execution Case No. 250 of 1992 was disposed of with the full satisfaction without any objection of the decree holder bank."* and submits that the said analogy is also relevant in the facts and circumstances of the instant case and therefore the observation so made by the learned judge asserting of obtaining property by the defendant nos. 5-11 through heba cannot be attached before passing a judgment which is justified one.

The learned counsel further contends that, though the plaintiff-petitioner in their application for attachment before judgment in particular, in paragraph no. 6 made their apprehension but that very application is totally evasive one which must be specific but mere informing the manager by some people about disposing of the property by the defendant

nos. 5-11 is not sufficient to obtain an order of attachment before judgment. In support of his such submission, the learned counsel has then placed his reliance in two decisions reported in 27 DLR (HC) 256 and another, 21 BLC (HC) 1 where similar assertion with regard to gravity of apprehension has been set and those very decision are squarely applicable in the facts and circumstances of the instant case. With those legal submission, the learned counsel finally prays for making the rule absolute. Before taking into account of the submission and counter-submission so placed by the learned counsels for the petitioner and that of the respondents, we pose a question to the learned counsel for the petitioner about the present position of the suit when the learned counsel informed us that meantime the suit was decreed against the defendants when Mr. Md. Ziaul Haque the learned counsel for the respondent nos. 6-12 contends that under Order 38 rule 11 of the Code of Civil Procedure even if a decree is passed, but in view of not interfering with the interim order passed by this court by the Appellate Division, the order of attachment will remain in place till the execution of the decree is made and for that obvious reason, we take up this matter for hearing and going to pass the judgment.

We have considered the submission so placed by the learned counsel for the petitioner and that of the respondent nos. 6-12.

Together, we have also very meticulously gone through the impugned judgment and order. On going through the impugned judgment, we find,citing sole reason, the learned judge of the Artha Rin Adalat ultimately rejected the application of the plaintiff-petitioner holding that

since the defendant nos. 5-11 obtained the property described in the application for attachment before judgment, through a deed of heba from a third person which was not inherited one from their father, so that property can not be attached. Furthermore, the legal requirement before attaching any property before judgment has clearly been enshrined in Order 38 rule 5 of the Code of Civil Procedure which has not been properly followed by the learned judge while passing initial order of attachment on 23.10.2023. Because, there has been no scope for the trial court to pass any order of attachment at the very outset until and unless the defendant is given an opportunity to show cause as to why he/she will not furnish security so, in the instant case initial order was passed flouting the said legal requirement. But eventually as the application for attachment before judgment was rejected so that initial order is not so relevant in disposing of the instant rule. However, from the averment of the application filed under Order 38 rule 5 of the Code of Civil Procedure we clearly find that the petitioners have made a very evasive assertion with regard to apprehension of disposing of the property by the defendant nos. 5-11 which can not be said any clear assertion on apprehension a *sinaqua non* in granting application under Order 38 rule 5 of the Code of Civil Procedure. Further, since it is admitted position that, the property acquired by the defendant nos. 5-11 are not their inherited property rather the property they obtained from a third party so that property is not liable to be attached under Order 38 rule 5 of the Code of Civil Procedure and the decision relied upon by the learned counsel for the respondent nos. 6-12 with that regard has got material substance.

Regard being had to the above facts, the submission placed by the learned counsel for the respondent nos. 6-12 merit consideration and certainly we don’t find any illegality or impropriety in the impugned judgment and order which is liable to be sustained.

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

At any rate, the order of stay 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.

*Kawsar/**A.B.O.***