IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Zubayer Rahman Chowdhury,
Chief Justice
Mr. Justice Md. Rezaul Haque.
Mr. Justice S.M. Emdadul Hoque.
Mrs. Justice Farah Mahbub.

CIVIL APPEAL NO.46 OF 2025.

(From the judgment and order dated 09.06.2024 passed by the High Court Division in First Miscellaneous Appeal No.144 of 2024 with Civil Rule No. 113(F.M.) of 2024).

LEADS Corporation Limited, LEADS Tower, M/20, Main Road-01, Section-14, Mirpur, Dhaka-1216 represented by it's Managing Director. : ...Appellant.

-Versus-

Khan Akhter Alam and others. : ....Respondents.

For the Appellant. : Mr. Mohammad Arshadur Rouf, Senior Advocate with Mr. Mustafizur Rahman Khan, Senior Advocate, and Mr. Imtiaz Mainul Islam, Advocate instructed by Mr. Khorshed Alam, Advocate-on-Record.

For the Respondent No.1. : Mr. A.B.M. Altaf Hossain, Senior Advocate instructed by Mr. Mohammad Abdul Hai, Advocate-on-Record.

For the Respondent No.4. : Mr. Md. Mizan Sayeed, Senior Advocate instructed by Mr. A.B.M. Shamsul Alam, Advocate-on-Record.

For the Respondent No.5. : Mr. Aneek R. Haque, Senior Advocate with Mr. Ashfaqur Rahman, Advocate instructed by Mr. Mohammad Abdul Hai, Advocate-on-Record.

For the Respondent Nos.2-3. : Not represented.

Date of Hearing. : 16.07.2026 and 20.07.2026.

Date of Judgment. : 27.07.2026.

J U D G M E N T

Farah Mahbub, J:

This Civil Appeal arises out of leave granted on 11.03.2025 in Civil Petition for Leave to Appeal No.2676 of 2024 directed against the judgment and order dated 09.06.2024 passed by the High Court Division in First Miscellaneous Appeal No.144 of 2024 with Civil Rule No.113(F.M.) of 2024 dismissing the appeal and discharging the Rule, and thereby affirming Order no.68 dated 18.02.2024 passed by the Court of the learned Joint District Judge, 1st Court, Dhaka in Title Decree Execution Case No.07 of 2018.

Facts relevant for disposal of the instant appeal, in brief, are that, the respondent no.1 herein, Mr. Khan Akhter Alam as plaintiff, instituted Title Suit No.476 of 1981 before the learned Subordinate Judge, 3rd Court, Dhaka impleading the appellant, i.e., Leads Corporation Ltd., (in short, Leads Corp.) as defendant no.3 along with others seeking a preliminary decree directing the defendants to render full and true accounts of the sales and installation commission claimed to have been earned by the plaintiff from 1976 to June 1981, appointment of a competent Commissioner to examine the books of accounts and other relevant papers and documents of the defendants and ascertain the amount of commission due to the plaintiff up to June 1981, and, thereafter, a final decree in terms of the report of the Commissioner. The suit was initially dismissed by the trial court, on 22.12.1986; however, on appeal, the High Court Division, vide judgment and order dated 25.10.2003, decreed the suit preliminarily and directed assessment of accounts. Accordingly, an

Audit Report and Statement of Accounts were submitted by the Court-appointed Chartered Accountants pursuant to Order no.38 dated 28.01.2010, whereupon the trial court passed the final decree on 08.08.2010, (decree signed on 12.08.2010).

As the judgment debtors failed to satisfy the decretal liability, the plaintiff-decree holder initiated Title Execution Case No.07 of 2013, subsequently renumbered as Title Execution Case No.07 of 2018, before the learned Joint District Judge, 1st Court, Dhaka for realization of USD 7,275,538.78 (USD seven million two hundred seventy five thousand five hundred thirty eight and seventy eight cents only) only as on 31.12.2009, or its equivalent in Bangladeshi currency at the prevailing exchange rate.

In execution of the decree, alleging 3(three) separate applications filed by the decree-holder on 18.02.2024, the executing court vide Order no.68 dated 18.02.2024, i.e., on the same day, attached the bank accounts listed in Schedules ‘A’ to ‘L’, maintained in the name of Leads Corp., the judgment-debtor no.3, and directed that the balances lying therein be transferred to the account of the decree-holder. By the same order, the court further attached the movable property known as “BankUltimus” software owned by the judgment debtor, i.e., Leads Corp. and directed its sale by public auction, comprising the intellectual property rights and source code thereof, together with the assignment of all service contracts based on the said software. The court also directed the attachment and sale by auction of the immovable property known as “LEADS Tower.” Pursuant thereto, the auction notice to

sell the “BankUltimaus” software was published in the *‘Daily Desh Rupantor’* and ‘*Daily Amader Barta’* respectively on 28.02.2024.

Being aggrieved, the judgment debtor no.3 challenged the Order no.68 dated 18.02.2024 by filing First Miscellaneous Appeal No.144 of 2024 before the High Court Division along with a prayer for injunction to stay the operation of the impugned order and subsequent auction sale announced on 27.03.2024 by the learned Joint District Judge, 1st Court, Dhaka. On 25.03.2024, the High Court Division issued Rule and at the same time stayed the operation of the impugned order dated 18.02.2024, with direction upon the parties to maintain *status quo*. Challenging the said interim order dated 25.03.2024 so passed in Civil Rule No.113(FM) of 2024, the decree holder, Mr.Khan Akhter Alam preferred Civil Miscellaneous Petition No.306 of 2024 before this Division. Upon hearing, the learned Judge-in-Chamber of the Appellate Division stayed the operation of the said order dated 25.03.2024 passed in FMA No.144 of 2024 vide order dated 27.03.2024.

Consequently, the executing court proceeded with the auction of “BankUltimus” software. Flora Telecom Ltd. (in short, FTL) participated in the auction process with an offer of Tk.5,00,00,000/-(Taka five crore) and deposited Tk.1,00,00,000/-(Taka one crore) only as earnest money vide Pay Order no.1956818 dated 25.03.2024. On 27.03.2024, the Southeast Bank PLC(in short, SBP) as third party claimant filed application before the executing court under Order XXI Rules 58 and 60 read with Section 151 of the Code of Civil Procedure, 1908 (in short, the Code) raising objection to and for releasing the “BankUltimus” software which had been attached vide

Order no.68 dated 18.02.2024.On the face of the said objection, the executing court on the same day vide Order no.71 dated 27.03.2024 accepted the pay order submitted by FTL, the bidder and fixed the matter for further order on 03.04.2024. Upon hearing the parties, the executing court, vide Order no.73 dated 03.04.2024, rejected the applications dated 27.03.2024 filed by SBP as well as the application filed by the judgment debtor no.3 seeking cancellation of the bid proposal submitted on 27.03.2024. However, by the same order, the court afforded the judgment debtor no.3 an opportunity to produce another purchaser willing to offer a price higher than Tk.5 crore for the BankUltimus software, by the next date of hearing, for consideration of the court in accordance with law. On the subsequent date of hearing, i.e., 23.04.2024, judgment-debtor no.3 failed to produce any such buyer. Accordingly, vide Order no.79 dated 14.05.2024, the executing court accepted the bid submitted by FTL and directed the auction purchaser to deposit, by 20.05.2024, the remaining bid amount of Tk. 4,00,00,000/- (Taka four crore) only by way of a pay order in favour of the decree holder. FTL, thereafter, deposited the remaining bid amount by way of a pay order before the court. Upon acceptance of the said amount, the court, vide Order no.81 dated 20.05.2024, made the sale absolute under Order XXI, Rule 77(2) of the Code and thereby vesting title of the BankUltimus software, along with all its variants, in the auction purchaser in terms of Order XXI, Rule 81 of the Code.

In the meantime, the decree holder filed Civil Petition for Leave to Appeal No.1286 of 2024 arising out of CMP No.306 of 2024 in connection to FMA No.144 of 2024. Later, upon hearing the parties, this Division disposed

of the civil petition on contest vide order dated 07.05.2024 affirming the order of stay dated 27.03.2024 passed by the learned Judge-in-Chamber to continue and directed the High Court Division to dispose of the Rule within a prescribed period.

Accordingly, upon hearing the parties the High Court Division dismissed FMA No.144 of 2024 and also discharged Civil Rule No.113(FM) of 2024 and thereby affirmed the impugned Order no.68 dated 19.02.2024 passed by the learned Joint District judge, 1st Court, Dhaka vide judgment and order dated 09.06.2024 with the following observation, *inter alia*:

> *"Since the provision so have been enunciated in order XXI, rule 46 and 62 of the Code of Civil Procedure clearly mandates the executing court to go for auction sell of both movable and immovable properties of the judgment-debtors so we don't find any illegality in the impugned order."*

Upon consideration of the subsequent orders passed by the executing court, the High Court Division further observed that, the judgment debtor no. 3 had been afforded an opportunity to produce an auction purchaser willing to offer a higher price for the movable property, namely, the "BankUltimus" software, pursuant to his undertaking to that effect. However, despite such opportunity, he ultimately failed to produce any such purchaser. Consequently, the bid offered by the auction purchaser for the said software was accepted and confirmed by the executing court. In the circumstances, the impugned Order no.68 dated 18.02.2024 has, in effect, already been acted upon and given effect to.

To fortify the above findings, the High Court Division further observed, *inter alia*, that:

> *"since the order of stay and status quo so passed by this court while issuing rule has been stayed by the Appellate Division so it alternatively proves that, the Appellate Division has not found any illegality in the impugned order."*

Being aggrieved thereby, the appellant-judgment debtor no.3, i.e., Leads Corp. as petitioner filed Civil Petition for Leave to Appeal No. 2676 of 2024 before this Division under Article 103 of the Constitution along with an application for stay of the impugned judgment and order passed by the High Court Division.

Upon hearing the said application for stay, the learned Judge-in-Chamber, vide order dated 13.08.2024, directed the parties to maintain *status quo* with regard to the copyright and trademark of "BankUltimus" software.

Being informed about the said order of *status quo* passed in CPLA No.2676 of 2024, the auction purchaser of the software, i.e., FTL filed an application for addition of party as respondent no.4 on 04.09.2024 which was allowed by this Division vide order dated 01.10.2024. Later, another application was filed by the appellant on 18.11.2024 for adding SBP as respondent no.5 in the said Civil Petition for Leave to Appeal claiming as necessary and proper party, which was also allowed by this Division vide order dated 25.11.2024.

On 12.01.2025, the added respondent no.4, FTL filed an application for dismissing CPLA No.2676 of 2024 contending, *inter alia*, that, upon payment in full of the bid price of Tk.5,00,00,000/- (Taka five crore) and by virtue of Order no.81 dated 20.05.2024, the auction sale had become absolute

and the ownership of "BankUltimus," software together with all its variants and the associated service contracts, had vested in FTL under Order XXI, Rules 77(2) and 81 of the Code. It is asserted that, the judgment-debtor no.3 had been afforded sufficient, indeed repeated, opportunities to produce a higher bidder but had failed to do so. Consequently, it is, barred by the principles of waiver, acquiescence and estoppel from subsequently challenging the auction price as inadequate. Moreso, the valuation requirements applicable to the sale of immovable property has no manner of application to the auction of the movable property in question. Resultantly, Order no.68 dated 18.02.2024 is not appealable under Order XLIII of the Code. It is further asserted that, the subsequent attempt to rely upon a prospective purchaser offering a higher amount could not retrospectively invalidate an auction sale that had already become absolute. Also, following the auction, FTL had acquired substantial commercial and proprietary interests in the software, having made significant investments and preparations for its acquisition and transition. FTL, being an established provider of core banking software services in Bangladesh, contends that the acquisition would enable it to continue serving the banks using "BankUltimus" software across numerous branches. It further rejected the contention of the appellant that a change in ownership of the software would jeopardise the banking sector or the interests of the existing users, maintaining that ownership of software could change without affecting its functionality or continuity of service.

SBP, the added respondent no.5, on the other hand, stated, *inter alia*, that, it had extended investment facilities amounting to Tk.43.50 crore (Taka

fourty three crore fifty lac) only to the appellant pursuant to a sanction letter dated 07.06.2017 and, as collateral security, the appellant had executed a Letter of Hypothecation by way of fixed and floating charge on 19.09.2017, covering its fixed and floating assets, including the software. SBP further stated that the charge was registered with the Registrar of Joint Stock Companies and Firms under Section 165 of the Companies Act, 1994, and a corresponding certificate of registration of mortgage/charge was issued on 10.10.2017. The appellant had also executed a Power of Attorney authorising SBP to sell the hypothecated assets, including the software in question.

It is asserted that, as of 22.01.2025, the outstanding liability of the appellant to SBP stood at approximately Tk.87,07,44,219.91/- crore (Taka eighty seven crore seven lac forty four thousand two hundred nineteen and paisa ninety one) only, and “BankUltimus” software constituted one of the valuable securities securing that liability. In addition, under a Software Service Level Agreement dated 01.01.2015, the appellant had been providing SBP with its core banking system and integrated delivery channels through the software; also, the agreement conferred upon them a perpetual and unlimited right to use the software, even after termination of the agreement, as the relevant licence had already been granted in its favour.

Further assertion of SBP is that, following attachment of “BankUltimus” software vide Order no.68 dated 18.02.2024, they filed an application as third party before the executing court on 27.03.2024 seeking release of the software from attachment on the ground, *inter alia*, that the interest of SBP and the security of its deposits could be placed in uncertainty

if the software were sold in auction to other party. However, without proceeding to investigate their claim or objection, the executing court rejected their prayer vide Order no.73 dated 03.04.2024 wherein, FTL emerged as the highest bidder with an offer of Tk.5,00,00,000/-(Taka five crore) only. Challenging the said order, SBP subsequently filed Civil Revision No.2248 of 2024 before the High Court Division and obtained a Rule thereby. Later, FTL was added as a party to the proceeding upon leave of the court vide order dated 02.06.2024. In the meantime, a part of the Rule so far it related to the software in question became infructuous considering the fact that, meanwhile it had already been sold in auction in the execution proceeding vide Order no.81 dated 20.05.2024. Hence, SBP didn't press the Rule so far it related to the propriety of the order of attachment and sale of the "BankUltimus" software. Ultimately, upon hearing all the parties, the High Court Division made the Rule absolute in part vide judgment and order dated 07.07.2024.

In this regard, the categorical assertion of SBP is that, having intended to pursue appropriate remedies against the auction sale before the competent forum, the decision for not pressing a part of the Rule could not, in any manner, be construed as a waiver or relinquishment of their rights and interests in the software.

Finally, upon hearing the parties, this Division granted leave vide order dated 11.03.2025 in CPLA No.2676 of 2024.

Hence, the instant civil appeal.

Mr. Md. Arshadur Rouf, with Mr. Mustafizur Rahman Khan, learned Senior Advocates and Mr. Imtiaz Mainul Islam, learned Advocate appearing on behalf of the appellant submits that, the executing court acted illegally in proceeding with the attachment and auction of the "BankUltimus" software without first disposing of the objections raised by the appellant and SBP, vide application dated 27.03.2024, asserting a prior charge over the software as security for a loan of approximately Tk.87 crore and consequently sought its release from attachment and stay of the proposed auction. Therefore, he submits, the sale was conducted without first adjudicating upon a subsisting claim over the attached property.

He draws our attention to the fact that**,** the auction of the "BankUltimus" software for only Tk. 5 crore was grossly disproportionate to its value of approximately Tk.45 crore, as reflected in the report of the court-appointed auditor, and thereby caused serious prejudice to the appellant. Relying upon the decision reported in *Fariduddin Chowdhury vs. M/S Sylhet Glass works Ltd. and others*, *3BLT(AD)168*, he goes to submit that, the appellant had consistently objected to the impugned order no.68 dated 18.02.2024 and the subsequent auction proceeding as being in violation of Order XXI, Rule 62 of the Code. He further submits that, in the facts and circumstances of the case, the subsequent finality of the sale or the failure of the appellant to outbid the offer of FTL for Tk. 5 crore only cannot, by itself, preclude the recovery of the auctioned movable property, namely the "BankUltimus" Software under the Code.

In this regard, he submits that the appellant, being a going concern with substantial outstanding liabilities, including approximately Tk.87 crore in

bank loans and Tk.43 crore in employee salaries, is ready and willing to refund the auction purchaser the bid amount together with such compensation or solatium as deemed appropriate by this Hon'ble Court in exercise of its constitutional power as embedded under Article 104 of the Constitution to do complete justice.

Accordingly, he submits that, the impugned judgment and order passed by the High Court Division affirming Order no.68 dated 18.02.2024 passed by the learned Joint District Judge, 1st Court, Dhaka are liable to be dismissed and the appeal be allowed for the cause of justice.

Mr. Md. Mizan Sayeed, learned Senior Advocate appearing for the respondent no.4, FTL, submits that, the sale of "BankUltimus," being movable property, is governed by the specific provisions of Order XXI, Rules 74-81 of the Code, and the safeguards applicable to the sale of immovable property cannot be imported into such sale. In particular, Rule 78 expressly provides that no irregularity in publishing or conducting the sale of movable property shall, by itself, vitiate the sale.

In this regard, he goes to submit that the auction was not concluded abruptly or without providing opportunity to the appellant. Regarding the allegation of auction sale of the "BankUltimus" software at an inadequate price, he argues that mere assertion that the software was worth more than Tk.5 crore does not, by itself, invalidate a completed auction sale. The auction was open and the executing court afforded the appellant repeated opportunities to produce a higher bidder, however, the appellant failed to do so. The subsequent offer of Tk.6 crore by BSIT Solutions was also not

supported by any pay order and did not mature into a completed bid. In those circumstances, the acceptance of bid of Tk.5 crore of FTL cannot be characterised as an unlawful sale merely because a higher offer was subsequently suggested.

He further submits that FTL acting as a *bona fide* auction-purchaser, paid the entire purchase money, which was received through court and the sale thereafter became absolute under Order XXI, Rule 77(2) of the Code. Consequently, ownership of BankUltimus vested in respondent no.4 under Rule 81 of Order XXI. He, therefore, argues that, once such statutory vesting took place, the appellant could not, by subsequently challenging the manner of the auction, seek to defeat the right already vested in FTL by operation of law.

Regarding the objection of the appellant as to the non publication of the auction notice in well circulated newspaper, he submits that it is equally misconceived, for, the Code does not prescribe publication in a widely circulated newspaper as a mandatory precondition for the sale of movable property. The requirements of publication applicable to particular proceedings under the Artha Rin Adalat Ain, 2003 cannot be imported into an execution proceeding governed by the general provisions of the Code. Also, the allegation that the auction proceedings were conducted with undue haste also has no substance. Order XXI, Rule 45 itself contemplates an expeditious sale of movable property where the property is subject to speedy and natural decay or the cost of keeping it in custody is likely to exceed its value. BankUltimus, being a software, is inherently susceptible to technological depreciation and loss of commercial value.

In this connection, he draws our attention to the acquisition agreement dated 13.07.2024 and the connected tripartite agreement/deed dated 29.07.2024 with Impero Properties Limited, by which the appellant purported to deal with the very property that had already vested in FTL. Accordingly, he goes to submit that, after the sale had become absolute and the property had vested in FTL, the appellant had no subsisting right or authority to enter into any subsequent arrangement purporting to deal with BankUltimus. Any compromise or arrangement concerning the subject matter of an execution proceeding is required to be brought before and recorded by the court in accordance with Order XXIII, Rule 3 of the Code, 1908 which was not done in the present case. Relying upon Section 23 of the Contract Act, 1872, he contends that an arrangement having an unlawful object or consideration cannot confer a valid right upon the parties to the agreement. Hence, the subsequent acquisition agreement and connected tripartite agreement cannot be relied upon to defeat or dilute the title already acquired by FTL through the judicial sale.

Relying upon the consistent line of authorities delivered by this Division on the scope and ambit of Article 104 of the Constitution, he submits that the power to do complete justice under Article 104 is an extraordinary power to be exercised sparingly and only in exceptional circumstances; this power and cannot be exercised in conflict with specific provisions of law. Also, complete justice cannot be granted to one party by depriving another of a vested right lawfully obtained under law. Since the sale became absolute under Rule 77(2) and ownership vested under Rule 81, and the executing court is now *functus officio* in respect of that property. In

that view of the matter, he submits that Article 104 cannot be invoked in the present case to reopen or cancel a completed sale of movable property or to provide a remedy the statute itself withholds.

As regards the alleged charge of SBP, he submits that said claim cannot be permitted to unsettle the completed auction at this stage, for, the charge-based objection was not properly raised before the executing court or in the earlier proceedings and was introduced at a later stage. He further submits that the documents relied upon do not specifically identify BankUltimus as the property subject to the alleged charge. Therefore, such a belated claim cannot defeat the title already vested in the *bona fide* auction-purchaser.

Relying upon the decision in *Fariduddin Chowdhury vs. M/S Sylhet Glass works Ltd. and others* reported in *3 BLT (AD) 168*, he submits that once the bid is accepted and the entire bid money is deposited duly, the sale becomes absolute and cannot be set aside. Here, FTL has not merely deposited the auction money; it has acted upon the completed sale for a considerable period, incurred financial obligations, developed infrastructure and built its business around BankUltimus. To reopen the sale at this stage would cause serious prejudice to a purchaser who acquired the property through a court-conducted auction and acted upon the vesting order in good faith.

In the given context, he prays for dismissal of the instant Civil Appeal considering the position of law and facts of the instant case.

Mr. Aneek R. Hoque, learned Senior Advocate, on behalf of respondent no.5, SBL submits that the “BankUltimus” software was subject to duly

registered charge created in favour of SBP as security for the outstanding liability of the appellant. Therefore, any sale of the software at auction to a third party would defeat and frustrate SBP's existing charge over the said asset. He further submits that, vide Order no.73 dated 03.04.2024, the executing court itself acknowledged that the 1st charge in favour of SBL was to be satisfied from the proceeds of the auction sale; yet, in apparent contradiction thereto, vide Order no.79 dated 14.05.2024, it directed FTL to pay Tk.5 crore directly to the decree-holder without first satisfying the said charge.

Accordingly, adopting the submissions made on behalf of the appellant he prays that the appeal be allowed upon setting aside the judgment and order dated 09.06.2024 passed by the High Court Division in FMA No.144 of 2024.

Mr. A.B.M. Altaf Hossain, learned Senior Advocate appearing for respondent no.1, supports the appellant and adopts the submissions made on its behalf.

The controversy before us does not revolve around the propriety of the subsequent auction proceedings or the rights claimed by the auction purchaser in isolation. Rather, the cardinal issue which falls for determination is whether the executing court passed the impugned Order no.68 dated 18.02.2024 in due compliance of law directing attachment and sale of "BankUltimus" Software in the facts and circumstances of the present case. Unless the legality of that foundational order is first sustained, every consequential proceeding founded thereon must necessarily stand or fall with it.

The preliminary objection being raised by the respondent no.4 is that the present appeal has become infructuous because the sale has subsequently become absolute under Order XXI Rule 77(2) and the title of the movable property in question has been vested under Rule 81 or Order XXI of the Code.

The doctrine of statutory vesting presupposes a sale conducted pursuant to a valid judicial order. It cannot operate to validate an order which is otherwise found to be without lawful authority or passed in violation of law.

The records unmistakably demonstrate that, in execution of the decree, upon an application filed by the decree holder on 18.02.2024 for attachment of the property described in the schedule thereto, the executing court, on the very same day, admitted the application and passed Order no.68 whereby the "BankUltimus" software of the judgment-debtor no.3, Leads Corp. was not only attached, but was also directed to be sold by public auction. Subsequently, SBP appeared before the executing court raising its objection by filing applications dated 27.03.2024 under Order XXI Rules 58 and 60 read with Section 151 of the Code, 1908 to the attachment of the "BankUltimus" software vide impugned Order no.68 dated 18.02.2024 asserting specifically its prior registered charge over the said software created under Section 165 of the Act, 1994 as security for lending facilities amounting to approximately Tk.87 crore. SBP also prayed for release of the software in question from attachment and sought halt of the proposed auction.

Under Order XXI, Rule 58 of the Code, 1908 the executing court is required to investigate a claim or objection made to an attachment of any property in execution of decree, unless the claim or objection made is

deliberately or unnecessarily delayed. Rule 59 further requires the claimant or objector to adduce evidence showing that, at the time of attachment; he had an interest in, or was in possession of, the property. For ready reference, Order XXI Rules 58 and 59 of the Code are quoted below:

> *"Rule 58. (1) Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court, shall proceed to investigate the claim or objection with the like power as regards the examination of the claimant or objector, and in all other respects, as if he was a party to the suit:*
>
> *Provided that no such investigation shall be made where the Court considers that the claim or objection was designedly or unnecessarily delayed.*
>
> *(2) Where the property to which the claim or objection applies has been advertised for sale, the Court ordering the sale may postpone it pending the investigation of the claim or objection.*
>
> *59. The claimant or objector must adduce evidence to show that at the date of the attachment he had some interest in, or was possessed of, the property attached."*

The executing court, however, disposed of the applications dated 27.03.2024 filed by SBP in objection to the impugned order of attachment, vide Order no. 73 dated 03.04.2024 without undertaking the required procedure of investigation or affording SBP an opportunity to adduce evidence in support of its claim, as contemplated under Order XXI Rules 58 and 59 of the Code, 1908. No reason or ground whatsoever was also stated in the said order for not following the prescribed procedure.

What is more significant is that, Order no.73 dated 03.04.2024 itself reflects that the executing court accepted the existence of the prior secured interest of the bank and proceeded upon the basis that the claim of the first charge holder would have to be satisfied from the sale proceeds. Relevant portion of the said order is reproduced below:

> *"নথি পেশ করা হলো। শুনিলাম। নথি পর্যালোচনা করিলাম। নিলাম করে ব্যাংক লোন পরিশোধ করার পরই কেবল কোন টাকা অবশিষ্ট থাকলে তাহা ডিক্রীদার পাবে বিধায় সাউথ ইষ্ট ব্যাংকের ক্ষতিগ্রস্থ হওয়ার কোন সুযোগ নাই বিধায় সাউথ ইষ্ট ব্যাংকের দাখিলকৃত দরখাস্তটি না-মঞ্জুর করা হইল।"*

Despite accepting the superior security interest in favour of the bank as first chargee, the court nevertheless refused to release the software from attachment and proceeded with the auction in favour of respondent no.4. Subsequently, in apparent contradiction to its own earlier position, vide Order no.79 dated 14.05.2024, the court directed FTL to pay the bid money directly to the decree holder without first satisfying the said charge. Such mutually inconsistent findings expose a manifest jurisdictional error. A court cannot, on the one hand, recognise the subsisting priority of a registered charge and, on the other, permit alienation of the very secured asset without first determining the legal consequences flowing from such admitted encumbrance.

In this connection, another issue of material significance is that, although the interim order of stay granted by the High Court Division had subsequently been stayed by the learned Judge-in-Chamber, the issue of attachment of the "BankUltimus" software nevertheless remained *sub judice* before the superior Courts throughout the relevant period. Despite this, the

executing court in an extraneous manner proceeded with the auction and ultimately confirmed the sale in favour of FTL while the matter was still *sub judice* before the High Court Division. The sequence of events, viewed as a whole, therefore demonstrates that the exercise of jurisdiction by the executing court was manifestly arbitrary and is vitiated by *mala fide.*

Unfortunately the High Court Division failed to address this jurisdictional infirmity. It confined its consideration merely to the proposition that Order XXI permits sale of movable property in execution and, therefore, found no illegality in Order no.68. Such reasoning overlooks the elementary principle that the power of sale is merely consequential to a lawful attachment. If the attachment itself is under challenge, the executing court is under a legal obligation under Order XXI Rule 58 to adjudicate that objection before directing sale. The High Court Division thus failed to examine the legality of the very jurisdiction exercised by the executing court.

Equally misconceived is the reasoning adopted by the High Court Division that because the interim order passed by the said Division had been stayed by the learned Judge-in-Chamber of this Division, the legality of Order No.68 stood impliedly affirmed. An interlocutory order passed for regulating the rights of parties pending disposal of the *lis* neither determines the legality of the impugned order nor constitutes a declaration on merits. The High Court Division clearly fell into error in treating the interim order of the learned Judge-in-Chamber as a judicial approval of the execution proceedings.

The record further reveals that the court-appointed Special Auditor, after examining the commercial viability, technological condition and market standards relating to “BankUltimus” and associated software products, assessed their market value at approximately Tk.45 crore vide report dated 05.03.2024. Nevertheless, the software ultimately stood sold for a sum of merely Tk.5 crore, representing barely one-ninth of the value assessed by the own independent auditor appointed by the executing court.

In this regard, the respondent no.4 goes to contend that, under Order XXI Rule 78 “No irregularity in publishing or conducting the sale of movable property shall vitiate the sale”.

It is true that inadequacy of price, by itself, may not furnish a ground to annul every judicial sale. However, judicial process is intended to secure fairness and transparency and not to facilitate transfer of valuable commercial assets at manifestly unconscionable consideration.Therefore, where gross undervaluation is accompanied by disregard of a subsisting registered charge, the cumulative effect of such circumstances cannot be treated as a mere irregularity curable under the said Rule rather amounts to illegality. Order 21 Rule 78 bars an application for setting aside a sale of moveable property for any irregularity. But it cannot bar such an application if the sale is illegal and consequently a nullity: *Prafulla Chandra Bezbaruah Vs. Calcutta Credit Corporation and Ors* reported in *AIR,1965Assam21*. Also, there is no provision in the Code that sale of a movable property shall in no case be set aside: *Framji v. Hormasji*, *ILR 2 Bom 258*. Proceeding with the auction sale without adjudicating upon the objections is a material irregularity which

vitiates the sale: *Seth Banarsi Dass (Dead) by LRs vs. District Magistrate and Collector, Meerut and others* reported in *AIR 1996 SC2311*.

The contention raised by the respondent no.4 that the appellant failed to produce a higher bidder pursuant to the opportunity granted by the executing court also does not advance its case. Jurisdiction cannot be created by acquiescence, nor can the legality of a judicial order depend upon the ability of a judgment-debtor to procure another purchaser. It is not the question before us as to whether the appellant succeeded in producing a better offer. The question is whether the executing court lawfully assumed jurisdiction to direct the auction at all. Since that jurisdiction is found to have been exercised contrary to law, the subsequent conduct of the appellant becomes wholly immaterial.

In the present case, the challenge before this Division is consistently remained directed against the legality of Order no.68 itself. Respondent no.4, FTL entered the scenario vide Order no.71 dated 27.03.2024 only because of the subsequent auction proceeding conducted pursuant to that impugned order. Consequently, respondent no.4 lacks *locus standi* in the present case, as it cannot claim an independent title detached from the legality of Order no.68. Its rights, if any, are wholly derived from that order and must stand or fall with it.

The argument that respondent no.4 has meanwhile invested money and acquired commercial interests in the software in question cannot improve its legal position. Respondent no.4 undoubtedly participated in the auction under orders of the court and is entitled to restitution. However, it cannot claim an

indefeasible title founded upon an order which is itself legally unsustainable. The doctrine protecting a *bona fide* auction purchaser presupposes a valid judicial sale. It cannot operate to validate a transaction which originates from an order suffering from jurisdictional illegality.

Reliance of the respondent no.4 upon the decision held in *Fariduddin Chowdhury vs. M/s. Sylhet Glass Works Ltd.*, reported in *3 BLT (AD) 168*, is equally misplaced. The principle laid down therein proceeded upon the assumption of an auction sale otherwise conducted in accordance with law. That decision cannot be extended to a case where the very order directing attachment and sale is found to be illegal and without lawful authority. In other words, confirmation of sale under Order XXI Rules 77 and 81 does not validate an order which was void *ab initio*.

At this juncture, we find that, this is one of those exceptional cases where interference under Article 104 of the Constitution becomes imperative to prevent manifest injustice. Complete justice does not mean defeating a lawful right acquired in accordance with law; equally, it does not permit this Court to perpetuate an illegality merely because subsequent procedural steps have been completed. If a substantial justice under the law and on undisputed facts can be made so that the parties may not be pushed to further litigation, a recourse to the provision of Article 104 may be justified: *Bangladesh vs. Shamirunnissa, 2005 BLD (AD) 225*.

> *"Sometimes, it may be justice according to law, sometimes it may be justice according to fairness, equity and good conscience, sometimes it may be justice tempered with mercy, sometimes it may be pure commonsense, sometimes*

> *it may be the inference of an ordinary reasonable man and so on: National Boad of Revenue v. Nasrin Banu, (1996) 48 DLR (AD) 171, 178."*

In *Bharat Sewa Sansthan v. U.P Electronics Corpn. Ltd. (2007) 7 SCC 737,* the Supreme Court of India observed that in exercise of its jurisdiction, the court can grant appropriate relief where there is some manifest illegality, or where there is manifest want of jurisdiction or where same palpable injustice is shown to have resulted to the parties, will not ordinarily bypass any provision of law.

In the present case in hand, where the foundation of the auction sale is itself without lawful authority, complete justice demands restoration of the parties, as far as practicable, to the position in which they stood prior to the illegal exercise of jurisdiction.

Having regard to the entirety of the facts and circumstances, we are constrained to hold that the impugned Order no.68 dated 18.02.2024 was passed in disregard of the pending objections questioning the attachment of "BankUltimus" software, in disregard of the admitted prior charge of SBP, and without proper consideration of the independent valuation placed before the executing court. The subsequent auction conducted pursuant thereto and all consequential orders confirming the sale thereof are, therefore, inseparably tainted by the same illegality and cannot be permitted to stand.

Accordingly, the appeal is allowed.

The judgment and order dated 09.06.2024 passed by the High Court Division affirming the impugned Order no.68 dated 18.02.2024 [so far it relates of "Bankultimus"] software, are hereby set aside.

Consequently, Order no.68 dated 18.02.2024 passed by the Joint District Judge, 1st Court, Dhaka so far it relates to attaching "Bankultimus" software together with all consequential orders passed pursuant thereto, including the orders confirming the auction sale of "BankUltimus" software in favour of respondent no.4, are hereby set aside.

The learned Joint District Judge, 1st Court, Dhaka is directed to dispose of Title Execution Case No.7 of 2018 in accordance with law, within 60(sixty) days from the date of receipt of this order.

Since respondent no.4 as auction purchaser participated in the auction pursuant to the orders of the court and paid the consideration *bona fide*, the appellant, Leads Corporation Ltd. shall refund the auction consideration of Tk.5,00,00,000/- (Taka five crore) together with a sum of Tk.2,00,00,000/- (Taka two crore) as solatium, totaling Tk.7,00,00,000/-(Taka seven crore) to the respondent no.4 within 60 (sixty) days from the date of receipt of this judgment. In default, the respondent no.4 shall be at liberty to take necessary steps in accordance with law.

There will be no order as to costs.

C.J.

J.

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27.07.2026.
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