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

WRIT PETITION NO. 8149 OF 2025

In the matter of:

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

And

In the matter of:

Bank Asia PLC, Principal Office Branch, Dhaka situated at 111-113, Motijheel C/A, Dhaka-1000, Bangladesh.

… Petitioner

-Versus-

The Court of Artha Rin Adalat, Court No. 02, Dhaka and others.

… Respondents

Mr. Ahsanul Karim, Senior Advocate with
Mr. Tanveer Hossain Khan and
Ms. Muntaka Nusrat Khan, Advocate

…For the petitioner

Mr. Saqeb Mahbub with
Mr. Abdullah Al Mamun and
Mr. A.K.A. Mamun, Advocates

…For the respondent no. 4

Heard on 14.01.2026 and 22.01.2026.
Judgment on 22.01.2026.

Present:

Mr. Justice Md. Mozibur Rahman Miah
And
Mr. Justice Shathika Hossain

Md. Mozibur Rahman Miah, J.

On an application under article 102 of the Constitution of the People's Republic of Bangladesh, this Rule Nisi was issued calling upon the respondents to show cause as to why the order no. 11 dated 16.03.2025 passed by the respondent no. 1 in Artha Rin Suit No. 2029 of 2024 rejecting an application imposing travel ban upon the defendant nos. 3-6 (Annexure-'D' to the writ petition) should not be declared to have been passed without lawful authority and is of no legal effect and/or pass 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 respondent nos. 3-6 were directed not to leave country for a period of 6(six) months. Subsequently, the said interim order was extended time to time and it was lastly extended on 16.11.2025 for another 6(six) months.

The salient facts so figured in the instant writ petition are:

The present petitioner as plaintiff filed a suit being Artha Rin Suit No. 2029 of 2024 before the learned Judge of the Artha Rin Adalat No. 2, Dhaka claiming an amount of taka 115,52,51,766/97 alleging *inter alia* that the respondent no. 2, company as defendant no. 1 approached the petitioner-bank for loan facility and in pursuant to that the Bank approved credit facilities vide Sanction Letter No. BA/PO/CR/2005/4287 dated 26.09.2005 which was duly accepted by the respondent no. 2, company on certain terms and conditions. Then it (respondent no. 2, company) by accepting the above credit facilities executed all usual charge documents as per the sanction letter. Then a total amount of BDT 34,450.00 million under different credit facilities were disbursed which was enjoyed by the

respondent no. 2. The respondent nos. 3 and 4 also executed personal guarantees against the said credit facilities. The above credit facilities were renewed time to time in pursuant to the respondent no. 2's request. The respondent no. 2, company was allowed to open a DP L/C being No. 2082-1202-0042 for USD 5,812,500.00 on 16.07.2012 for importing raw sugar. But the respondent no. 2 failed to build up deposit L/C value within the maturity period. Consequently, the petitioner bank was compelled to create a One Time Forced Demand Loan (A/C# 003DL000588) for payment of accepted L/C obligation against the account of the respondent no. 2, company. Subsequently, the respondent no. 2, company again failed to adjust the demand loan and the Demand Loan (Forced) (A/C# 003DL000588) liability of Tk. 111.80 million and then it was rescheduled by converting the same into a Term Loan (A/C# 00335013349) vide sanction advice no. BA-PO/Credit-DSML/2013/3184 dated 03.07.2013. The respondent No. 2 accepted the same credit facilities by executing all usual charge documents as per above sanction including personal guarantees of the defendant nos. 5 and 6. The credit facilities were again renewed and further term loans were created in favour of the respondent no. 2, company. Lastly, petitioner-bank issued sanction letter No. BA/POB/CR-DSML-Restr/2019/3370 dated 14.07.2019 rescheduled for 4th time of 3nos. of Term Loan (A/C# 00335016909, 00335019490 & 00335019527) liabilities by converting the same into single Term Loan (A/C# 00335020826) for a period of 8 years subject to obtaining No Objection Certificate (NOC) from Bangladesh Bank. The Bangladesh Bank issued NOC for rescheduling of the said loans for a period of 7

years instead of 8 years. Accordingly, revised Sanction Advice No. BA/POB/CR-DSML-Restr/2019/3938 dated 20.08.2019 was issued in favour of the respondent no. 2. The respondent no. 2 accepted the same credit facilities by executing all usual charge documents as per above sanction letter. The petitioner-bank on multiple occasions requested the respondent no. 2, company to repay the outstanding loan liabilities since the petitioner-bank was not in a position to reschedule the loan liabilities again. The respondent nos. 3-6 as board members of the Board of Directors of the respondent no. 2, company were responsible for all the decision making process of the respondent no. 2, company and well aware of the outstanding loan liabilities with the petitioner-bank. The respondent nos. 3-6 have also stood as guarantors against the credit facilities enjoyed by the respondent no. 2, company by executing personal guarantee in favour of the petitioner-bank. The petitioner-bank requested the respondent no. 2 to repay the outstanding liabilities with the petitioner-bank when total outstanding loan of the respondent no. 2 with the petitioner stood at TK. 1,120,805,579/98 as on 31.08.2024. Then the petitioner-bank after following due process of law filed Artha Rin Suit being Artha Rin Suit No. 2029 of 2024 against the respondent nos. 2-7 before the learned Judge of the Artha Rin Adalat No. 2, Dhaka on 01.12.2024.

On the very date of filing of the suit dated 01.12.2024, the bank also filed an application for direction upon the defendants to submit their passport before respondent no. 1 and to impose travel restriction upon the defendant nos. 2-5 from leaving the country under section 7(2)(c) and (e)

of the Bangladesh Passport Order, 1973 read with section 57 of the Artha Rin Adalat Ain, 2003 stating *inter alia* that the plaintiff apart from filing of the Artha Rin Suit also filed C. R. Case against the defendants under section 138 of the Negotiable Instruments Act, 1881 which is pending before the Metropolitan Magistrate, Court No. 9, Dhaka for having liability to pay off huge amount of loan in favour of the petitioner and that liabilities may not be realized by way of selling the mortgage properties. It has also been asserted in the application that the plaintiff-bank also initiated a process for declaring the defendants as "willful defaulters" under BRPD circular No. 4 dated 03.04.2024 issued by the Bangladesh Bank under section 27 kha of Bank Companies Act, 1991 (as amended in 2023) and if the said defendants become willful defaulter, then they will face stringent consequences including imposition of ban from travelling abroad. In the said case, the defendant nos. 1-3 entered appearance and filed application for striking out the name of the defendant nos. 4-5 and also sought time and those applications filed by the defendants and that of the plaintiff was taken up for hearing by the learned Judge of the Artha Rin Adalat and vide order being no. 11 dated 16.03.2025, the application filed by the plaintiff-bank was rejected holding that there has been properties mortgaged with the petitioner-bank accompanied by power of attorney giving it the authority to sell the same to realize the outstanding dues when the valuation of the properties is much higher than that of the claim so made in the plaint.

It is at that stage, the plaintiff-bank as petitioner came before this court and obtained rule and direction as has been stated hereinabove.

Mr. Ahsanul Karim, learned senior counsel along with Ms. Muntaka Nusrat Khan, learned counsel appearing for the petitioner upon taking us to the writ petition and all the Annexure appended therewith and by filing a supplementary-affidavit and the affidavit-in-reply against the affidavit-in-opposition filed by the respondent no. 4, at the very outset submits that since the valuation of the property mortgaged with the bank is so inadequate that if the decree is passed the claim of the bank will not be realized by selling those properties and there has been a genuine apprehension that to evade the liability to repay the claim of the bank or any stringent action if taken by the court, the defendants-respondents may leave the country and therefore, the learned Judge of the Artha Rin Adalat should have allowed the application but the reason so assigned by the learned Judge in negating the application cannot be sustained in law.

The learned counsel further contends that out of 4(four) defendants, the defendant no. 2 has already left the country to evade the huge liability of loan which has also amplified the apprehension of the bank that other defendants can also flee the country so restriction is very much necessary upon the defendants-respondents from leaving the country.

When we pose a question to the learned senior counsel for the petitioner with reference to the application about the rationale of the assertion that, if the defendants-respondents are declared “willful defaulter” under section 27kha of Bank Companies Act, 2023 then they will face restriction from going abroad and considering so the learned Judge could have put embargo upon the defendants-respondents from leaving the country though the court has neither discussed that point nor

considered it in the impugned order- the learned counsel then contends that at that point of time though the defendants had not been declared as "willful defaulter" as contemplated in section 27kha (1) of the Act but taking into consideration of huge liability of the defendants-respondents and since criminal case has also been initiated against them, which is still pending, so it was presumed that the defendants may flee the country to evade the huge liability of the bank. In support of his such submission, the learned counsel then placed his reliance in the decision reported in 19 SCOB (HCD) 76 and takes us through the paragraphs where basing on section 57 of the Artha Rin Adalat Ain, such restriction has been imposed.

The learned counsel further contends that against that decision the borrower also preferred appeal being Civil Petition For Leave To Appeal No. 3416 of 2024 but ultimately the said appeal was dismissed for default.

The learned counsel then by referring to an unreported decision passed by a larger bench comprising Mr. Justice Md. Ashraful Kamal, Mr. Justice Mahmudul Hoque and Mr. Justice Md. Zakir Hossain dated 16.01.2025 and by referring to different paragraphs of the said decision in particular, the observation laid down in serial nos. (a), (c), (d), (e) and (f) also submits that all these observations are squarely applicable in the facts and circumstances of the case in hand.

To supplement the said submission, the learned senior counsel by referring to rule 7 of Chapter VII of the Supreme Court of Bangladesh (High Court Division) Rules, 1973 also contends that the decision so passed by a larger bench is binding upon this bench as well.

Insofar as regards to factual aspect of the case and by controverting the impugned decision passed by the learned Judge, Ms. Muntaka Nusrat Khan, the learned counsel then takes us to the schedule of the plaint in particular, the approximate valuation of the properties described in schedule- 'I'-'III' contends that the maximum value of those three schedule properties will not go beyond taka 25 (twenty-five) crore whereas the claim of the plaintiff-petitioner against the defendants so made in the plaint is 115,52,51,766/97 which is much higher than the valuation of the properties yet the learned Judge without taking into consideration of that vital and important aspect rejected the application making some perfunctory observation. With those submissions, and relying on two decisions, the learned counsel finally prays for making the rule absolute.

On the flipside, Mr. Saqeb Mahbub, the learned counsel appearing for the respondent no. 4 by filing an affidavit-in-opposition very robustly opposes the contention taken by the learned counsel for the petitioner and at the very outset submits that the learned Judge of the Artha Rin Adalat has assumed no authority to impose any embargo upon the defendants of the Artha Rin Suit from going abroad as Article 36 of our Constitution has clearly put a bar to that effect and since the Constitution is the supreme law of our country, so the Artha Rin Adalat has got no authority to put such kind of restriction basing on section 57 of the Ain going beyond the constitutional provision.

To fortify his such submission, the learned counsel then cited a decision reported in 74 DLR (AD) 1 and takes us through paragraph nos.

24 and 25 and submits basing on Article 36 of the Constitution, the Hon'ble Appellate Division held that no restriction can be put upon any person in absence of any "enacted law" and then submits that for that obvious reason, the legislature felt it emboldened to insert section 27kha in Bank Companies Act, 2023 though fact remains, at the time of filing of the Artha Rin Suit, the petitioner was not declared any "willful defaulter" "ইচ্ছাকৃত খেলাপী ঋণ গ্রহীতা" and there is no occasion arose at that point of time to impose any restriction upon the defendants from going abroad.

When we pose a question to the learned counsel for the respondent no. 4 about the consequence of a judgment of a larger bench upon the court, the learned counsel then readily contends that if there has been a clear provision in the Constitution fortified by the decision of our Appellate Division on the point, a larger bench dwell on, it can never take precedence over the constitutional provision vis-à-vis the decision of our Appellate Division.

The learned counsel then by referring to section 27kha(1) and (6) (as enacted in 2023) of the Bank Companies Act also contends that section 27kha empowers a creditor-bank to refer the name of "willful defaulter" to Bangladesh Bank and sub-section (6) gives the authority only to Bangladesh Bank to send the name of such "willful defaulter" to the respective authority (সংশ্লিষ্ট সংস্থা) but under no circumstances, can that very power of putting embargo upon such borrower from going abroad be exercised by any court herein the Artha Rin Adalat and submits that the learned Judge of the Artha Rin Adalat has thus rightly passed the

impugned order by rejecting the application filed by the plaintiff-petitioner.

The learned counsel by taking us to Annexure-'D' to the affidavit-in-opposition also contends that, though subsequent to filing of the Artha Rin Suit, the defendant-respondent's name was enlisted as willful defaulter but by preferring appeal to Bangladesh Bank under section 27kha(5) of the Act, 2023, he was exonerated from being willful defaulter on allowing appeal, so on that legal count as well, there has been no scope even by the respective authority to impose travel ban on the defendant-respondent, let alone any court of law, the learned counsel concludes. On those legal counts, the learned counsel finally prays for discharging the rule.

Be that as it may, we have considered the submission so advanced by the learned senior counsel for the petitioner and that of the learned counsel for the respondent no. 4. Together, we have very meticulously gone through the provisions set out in Article 36 of the Constitution, section 57 of the Artha Rin Adalat Ain, 2003, section 27kha of the Bank Companies Act, 2023 vis-à-vis rule 7, Chapter VII of the Supreme Court of Bangladesh (High Court Division) Rules, 1973.

At the very outset of submission, the learned senior counsel for the petitioner takes us through the implication of rule (7) of Chapter VII asserting that the decision passed by any larger bench is binding upon us. For that obvious reason, we feel it expedient to reproduce rule (7) of Chapter VII of the Supreme Court of Bangladesh (High Court Division) Rules, 1973 which runs as follows:

> *"7.* ***Binding effect of Full Bench decision:-*** *Every decision of a Full Bench shall be treated as binding on all Division Benches, and Judges sitting singly, upon the point of law determined by the Full Bench, unless it be subsequently reversed by a larger Bench, specially constituted, consisting of such number of Judges as in each case fixed by the Chief Justice, or* ***Unless a contrary rule be laid down by the Appellate Division.****"*

On going that rule, we find at the fag-end of that rule, the following phrase "unless a contrary rule be laid down by the Appellate Division". So rule 7 does not essentially make it obligatory to abide by decision passed by a larger bench because before us, we have a decision of the Appellate Division reported in 74 DLR (AD) 1 where it has clearly been asserted that:

> *"**Constitution of Bangladesh, 1972***
> ***Article 36***
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> *Under Article 36 freedom of movement is one of the fundamental rights guaranteed to every citizen of the country which cannot be abridged or denied arbitrarily on mere liking disliking without any specific law authorizing lawful justification for this purpose. The reasonableness is to be determined by an objective standard and not subjective one.*
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> ***Constitution of Bangladesh, 1972***
> ***Article 36***

No one can be deprived of his right to go abroad unless there is a law made by the State for so depriving him and the deprivation is effected strictly in accordance with law. In the exercise of h is rights and freedom, everyone shall be subject only to such limitations as are determined by law."

*"**25**. With the discussion made above, it is observed:-*

1. The fundamental right guaranteed under Article 36 of the Constitution is non-absolute right. The right to leave one's country has therefore never been considered an absolute right. The right may be restricted in certain circumstances.

2. Article 36 of the Constitution permits imposition of restrictions. However, such restrictions must be by way of the law enacted and must be reasonably needed in the public interest.

3. Without backing of law imposition of restriction on the freedom of movement by an executive order will be unconstitutional.

4. The legislative view of what constitute reasonable restriction shall not be conclusive and final and that it shall be subjected to supervision by the Court.

5. A restriction in order to be referred to as reasonable shall not be arbitrary and shall not be beyond what is required in the interest of the public. The restriction imposed shall have a direct or

proximate nexus with the object sought to be achieved by the law.

6. Freedoms if absolute would always be detrimental to smooth functioning of the society. Reasonableness demands proper balancing.

7. The right to leave the country and to possess a passport may be restricted, most notably if the person's presence is required due to their having been charged with a criminal offence. However, merely because a person is involved in a criminal case, he is not denude of his fundamental rights.

8. Restriction may be imposed on travel in order to prevent exit from the country by persons who leave quickly to avoid due process of law. However, this would be subject to confirmation by the appropriate Court within a period of 3 working days."

Now if we take a glance of section 57 of the Ain of 2003, we find that section 57 gives the inherent power to pass any appropriate order to the Adalat to prevent misuse of its functionaries just like section 151 of the Code of Civil Procedure but it does never authorize to impose any restriction upon any borrower to seize his/her passport and to go abroad.

Let us now reproduce section 57 of the Ain for our ready reference:

"৫৭। এই আইনের অধীন অভিপ্রেত ন্যায় বিচারের উদ্দেশ্য সাধনকল্পে অথবা আদালতের কার্যক্রমের অপব্যবহার রোধকল্পে

প্রয়োজনীয় যে কোন পরিপূরক আদেশ প্রদানে আদালতের সহজাত ক্ষমতা কোন কিছু দ্বারা সীমিত করা হইয়াছে বলিয়া গণ্য হইবে না।”

Furthermore, on going through the provision so have been laid down in section 27kha(1) and (6) of the Bank Companies Act, 2023, we further find that a borrower can be restricted from going abroad if he/she ever classified as ‘willful defaulter’ and his/her name is referred by its creditor-bank to Bangladesh Bank and then Bangladesh Bank can refer his/her name to the “respective authority” and on its request only that authority then can impose restriction. So the power of imposing embargo since has not been given to any court so it cannot be exercised. However, in the instant case, the petitioner wanted to assert that the court has got every authority to impose that restriction but we don’t find any shred of merit in the said submission in view of Article 36 of the Constitution as well as the decision so have been reported in 74 DLR (AD) 1. We also feel it expedient to reproduce section 27kha of Bank Companies Act, 2023:

> “[২৭খ। ইচ্ছাকৃত খেলাপী ঋণ গ্রহীতার তালিকা, ইত্যাদি।- (১) প্রত্যেক ব্যাংক-কোম্পানী বা আর্থিক প্রতিষ্ঠান ইচ্ছাকৃত খেলাপী ঋণ গ্রহীতা তালিকাভুক্ত করিবে এবং Bangladesh Bank Order, 1972 (PO No. 127 of 1972) এর article 43 ও 44 এর বিধান অনুসারে বাংলাদেশ ব্যাংকের নির্দেশনা অনুযায়ী উক্ত ইচ্ছাকৃত খেলাপী ঋণ গ্রহীতার তালিকা বাংলাদেশ ব্যাংকে প্রেরণ করিবে।
> (২) বাংলাদেশ ব্যাংক উপ-ধারা (১) এর অধীন প্রাপ্ত তালিকা, উপ-ধারা (৫) এর বিধান সাপেক্ষে Bangladesh Bank Order, 1972 (PO No. 127 of 1972) এর article 45 এর বিধান অনুসারে দেশের সকল ব্যাংক-কোম্পানী ও আর্থিক প্রতিষ্ঠানে প্রেরণ করিবে।
> (৩) ইচ্ছাকৃত খেলাপী ঋণ গ্রহীতা শনাক্তকরণ এবং চূড়ান্তকরণ বিষয়ে বাংলাদেশ ব্যাংক, সময় সময়, নির্দেশনা জারী করিবে।
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> (৪) ইচ্ছাকৃত খেলাপী ঋণ গ্রহীতার নাম চূড়ান্তকরণের পূর্বে সংশ্লিষ্ট ঋণ গ্রহীতাকে তাহার বক্তব্য উপস্থাপনের সুযোগ প্রদান করিতে হইবে, এবং অনুরূপ ঋণ গ্রহীতার নাম চুড়ান্তকরণের পর প্রত্যেক ব্যাংক-কোম্পানী ও আর্থিক প্রতিষ্ঠান ৭ (সাত) কার্যদিবসের মধ্যে সংশ্লিষ্ট ঋণ গ্রহীতাকে সেই মর্মে অবহিত করিবে।
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> (৫) উপ-ধারা (৪) এর বিধান অনুযায়ী ইচ্ছাকৃত খেলাপী ঋণ গ্রহীতা হিসাবে চিহ্নিত হইবার ফলে সংক্ষুব্ধ ব্যক্তি বা প্রতিষ্ঠান ৩০ (ত্রিশ) দিনের মধ্যে

বাংলাদেশ ব্যাংকের নিকট আপীল করিতে পারিবে এবং এই বিষয়ে বাংলাদেশ ব্যাংকের সিদ্ধান্তই চূড়ান্ত বলিয়া গণ্য হইবে।

(৬) বাংলাদেশ ব্যাংক সংশ্লিষ্ট সংস্থার নিকট ইচ্ছাকৃত খেলাপী ঋণ গ্রহীতার তালিকা প্রেরণ করিতে পারিবে এবং তাহাদের বিদেশ ভ্রমণে নিষেধাজ্ঞা, ট্রে□ লাইসেন্স ইস্যুতে নিষেধাজ্ঞা এবং বাংলাদেশ সিকিউরিটিজ অ্যান্ড এক্সচেঞ্জ কমিশন ও রেজিষ্ট্রার অব জয়েন্ট স্টক কোম্পানীজ অ্যান্ড ফার্মস (RJSC) এর নিকট কোম্পানী নিবন্ধনে নিষেধাজ্ঞা আরোপের প্রয়োজনীয় ব্যবস্থা গ্রহণের জন্য অনুরোধ করিলে সরকারের সংশ্লিষ্ট সংস্থা এই আইনের উদ্দেশ্য পূরণকল্পে প্রয়োজনীয় ব্যবস্থা গ্রহণ করিবে।

(৭) ইচ্ছাকৃত খেলাপী ঋণ গ্রহীতা হিসাবে তালিকাভুক্ত ব্যক্তি বা প্রতিষ্ঠান উক্ত তালিকা হইতে অব্যাহতি প্রাপ্তির পর বাংলাদেশ ব্যাংক কর্তৃক নির্ধারিত সময়, যাহা ৫ (পাঁচ) বৎসরের অধিক হইবে না, অতিবাহিত না হওয়া পর্যন্ত কোন ব্যাংক-কোম্পানী বা আর্থিক প্রতিষ্ঠানের পরিচালক হইবার যোগ্য হইবেন না।

(৮) কোন ব্যাংক-কোম্পানী বা আর্থিক প্রতিষ্ঠানের পরিচালক ইচ্ছাকৃত খেলাপী ঋণ গ্রহীতা হিসাবে তালিকাভুক্ত হইলে, উপ-ধারা (৫) এর বিধান সাপেক্ষে, বাংলাদেশ ব্যাংক তাহার পরিচালক পদ শূন্য ঘোষণা করিতে পারিবে।

(৯) উপ-ধারা (১) ও (২) এর অধীন কোন ব্যক্তি বা প্রতিষ্ঠান ইচ্ছাকৃত খেলাপী ঋণ গ্রহীতা হিসাবে তালিকাভুক্ত হইলে, এবং উপ-ধারা (৫) এর অধীন উক্ত তালিকাভুক্তির বিরুদ্ধে আপীল করা না হইলে অথবা উপ-ধারা (৫) এর অধীন আপীল মঞ্জুর না হইলে, সংশ্লিষ্ট ব্যাংক-কোম্পানী বা আর্থিক প্রতিষ্ঠান উক্ত ঋণ গ্রহীতাকে ২ (দুই) মাস সময় প্রদান করিয়া তাহার নিকট হইতে প্রাপ্য সম্পূর্ণ অর্থ ফেরত চাহিয়া নোটিশ প্রদান করিবে।

(১০) এই আইনের অন্যান্য বিধান বা অন্য কোন আইনে যাহা কিছুই থাকুক না কেন, উপ-ধারা (৯) এর বিধান অনুযায়ী নোটিশ প্রাপ্তির ২ (দুই) মাসের মধ্যে ইচ্ছাকৃত খেলাপী ঋণ গ্রহীতা তাহার নিকট প্রাপ্য টাকা পরিশোধ করিতে ব্যর্থ হইলে, সংশ্লিষ্ট ব্যাংক-কোম্পানী বা আর্থিক প্রতিষ্ঠান, ক্ষেত্রমত, উহার পরিচালনা পর্ষদের অনুমোদনক্রমে তাহার বিরুদ্ধে ফৌজদারী মোকদ্দমা দায়ের করিবে, এবং এইরূপ মোকদ্দমা সংশ্লিষ্ট ঋণ, অগ্রিম বা পাওনা আদায়ের ক্ষেত্রে অর্থ ঋণ আদালতের কার্যক্রম বাধাগ্রস্ত করিবে না।

(১১) যদি কোন ব্যাংক-কোম্পানী বা আর্থিক প্রতিষ্ঠান এই ধারার বিধান লঙ্ঘন করে, অথবা যদি বাংলাদেশ ব্যাংক এইরূপ বিবেচনা করে যে, কোন ব্যাংক-কোম্পানী বা আর্থিক প্রতিষ্ঠান জ্ঞাতসারে বা ইচ্ছাকৃতভাবে এই ধারার বিধান লঙ্ঘন করিয়াছে, তাহা হইলে উক্ত লঙ্ঘনের জন্য উক্ত ব্যাংক-কোম্পানী বা আর্থিক প্রতিষ্ঠানের উপর অন্যূন ৫০ (পঞ্চাশ) লক্ষ টাকা এবং অনধিক ১ (এক) কোটি টাকা জরিমানা আরোপিত হইবে, এবং যদি উক্ত লঙ্ঘন অব্যাহত থাকে, তাহা হইলে উক্ত লঙ্ঘনের প্রথম দিনের পর প্রত্যেক দিনের জন্য অতিরিক্ত অনূর্ধ্ব ১ (এক) লক্ষ টাকা জরিমানা আরোপিত হইবে।]”

So in view of the above discussion, we explicitly find that neither rule 7 of Chapter VII of the Supreme Court of Bangladesh (High Court Division) Rules, 1973 nor section 57 of the Ain has any binding effect of a decision of a larger bench upon this court nor any authority has been given to the Artha Rin Adalat to impose any restriction upon any borrower made defendants in an Artha Rin Suit from going abroad.

It is the contention of the learned counsel for the petitioner that the claim against the respondents is a huge so in order to evade to repay the said hefty loan liability and to frustrate the decree supposed to be passed against them, they can flee the country when the security against the loan is shockingly inadequate. But that very submission has got no substance because the petitioner and its officials have to be held accountable for providing all that unethical facilities knowing that the collateral against the loan is insufficient and moreover, the suit is at the very nascent stage when the defendants have not found any opportunity to make their defence by filing written statement. On going through the record, we find that on the very date of filing the suit, the plaintiff filed the application under section 57 of the Ain for seeking restriction upon the defendants to flee or leave the country which is unusual and beyond the provision of section 9 of the Ain, 2003 and cannot be entertained. Every persons herein the borrower, respondent no. 4 has also got the right to take his/her defence by filing the written statement refuting the allegation so have been made by the plaintiff-bank against them but without giving them the statutory opportunity, the bank has been running abruptly against the defendants by putting pressure upon them which law does not empowers rather it smells a rat.

Insofar as regards to the decision placed by the learned counsel for the petitioner which has been reported in 19 SCOB (HCD) 76 as well as an unreported decision of a larger bench, we find that though the provision of section 27kha of the Bank Companies Act as well as the decision reported in 74 DLR (AD) 1 has been referred but how that very

provision (27kha) will be applicable in case of the petitioner and the decision will not be applicable has not been determined in any of those two decisions. But we are constitutionally bound to obey decision of the Appellate Division which is consider as law to us since the *ratio* settled therein is found to be squarely applicable in the facts and circumstances of the case in hand.

Furthermore, there has been no case ever described by the plaintiff-bank that the respondent no. 4 or his company has ever classified as "willful defaulter" at the point of time passing the impugned order. Further, the case so have been described in those decisions and that of the instant case is totally distinguishable.

On top of that, by filing an affidavit-in-opposition, the learned counsel take us to Annexure-'D' where we find that though after filing of the suit by the petitioner, the defendants-respondents was declared as "willful defaulter" but ultimately on 08.12.2025, Bangladesh Bank has allowed appeal filed under section 27kha (5) of the Act of 2023. So as of today, this respondent has not been declared any "willful defaulter" having no scope as well to take resort to section 27kha(1) and (6) of the Bank Companies Act, 2023.

Overall, we don't find any substance in the rule order which is liable to be discharged.

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

At any rate, the direction passed at the time of issuance of the rule stands recalled and vacated.

Communicate a copy of this judgment to the respondents forthwith.

Shathika Hossain, J.

I agree.

Abdul Kuddus/B.O.