

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)**

WRIT PETITION NO. 8937 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:

Md. Abdul Jalil

..... Petitioner

- Versus -

Artha Rin Adalat No.1, Dhaka and another

.....Respondents

Mr. Md. Lutfor Rahman, Advocate

.....For the Petitioner

Mr. Md. Kaiser Zahid Bhuiyan, Advocate

.....For the Respondent No.2

Mr. Md. Masudul Alam (Doha), D.A.G with

Ms. Laboni Akter, A.A.G

....For the Respondents-Government

**Heard on 26.11.2025, 03.12.2025 & 17.12.2025
& Judgment on 19.02.2026**

Present :

Mr. Justice Yousuf Abdullah Suman

And

Mr. Justice Dihider Masum Kabir

Dihider Masum Kabir, J

The Rule was issued calling upon the respondents to show cause as to why the Order No.04 dated 03.02.2025 passed by the respondent No. 1 in Artha Jari Case No.811 of 2024 imposing civil imprisonment for 06(six) months and issuing warrant of arrest so far as it relates to the petitioner 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 as to this Court may seem fit and proper.

The facts relevant for the disposal of the instant Rule, as set out in the writ petition, in short, are that the petitioner (defendant No. 5), Md. Abdul Jalil, is a mortgagor and guarantor for the borrower M/s. N. R. Corporation (Pvt.) Limited. The petitioner, along with defendant No. 6, mortgaged the property described in schedule-Kha (land in Narayanganj) vide Mortgaged Deed No. 11930 and a corresponding Power of Attorney No. 11931, both dated 14.10.2009. Respondent No. 2, Sonali Bank PLC, filed Artha Rin Suit No. 746 of 2015, which was decreed by the Artha Rin Adalat No. 1, Dhaka, on 07.09.2016. Subsequently, respondent No. 2 initiated Artha Jari Case No. 305 of 2017, claiming a total of Tk. 2,27,15,238/- as of 15.04.2017. In the execution case there were two scheduled properties, schedule-Ka (land at Narayanganj) and schedule-Kha (land at Gazipur). Due to territorial jurisdiction limits, the Artha Rin Adalat No. 1, Dhaka, transferred the decree to the respective Courts in Narayanganj and Gazipur.

While the Artha Rin Adalat, Gazipur, registered and disposed of Artha Jari Case No. 78 of 2022, the petitioner contends that no such case was registered in Narayanganj regarding his mortgaged land. Respondent No. 2 applied for civil imprisonment, and respondent No. 1 (Artha Rin Adalat No. 1, Dhaka), in Artha Jari Case No. 811 of 2024 imposed civil detention for a period of six (6) months against the petitioner vide Order No. 4 dated 03.02.2025 under section 34(1) of the Artha Rin Adalat Ain, 2003 (hereinafter referred as to the Ain). The petitioner subsequently moved to this Division and obtained this Rule.

Respondent No. 2 filed an affidavit-in-opposition on 24.11.2025, followed by a supplementary affidavit on 02.12.2025, stating that Artha Execution Case No. 112 of 2018 was indeed filed in Narayanganj and an auction date was fixed for 08.07.2025, but it was unsuccessful. Thereafter, the court scheduled for a second auction on 23.02.2026 under section 33(4) of the Ain. In a further supplementary affidavit dated 14.12.2025, the respondent stated that since the auction through Gazipur Court (Execution Case No. 78 of 2022) was already completed, the requirement of section 34(9) of the Ain was satisfied, and the arrest order dated 03.02.2025 was legally valid.

The learned Advocate, Mr. Md. Lutfor Rahman, appearing on behalf of the petitioner, submits that the petitioner is not the principal borrower but a third-party mortgagor and guarantor. He contends that the learned Judge of the Artha Rin Adalat acted without lawful authority by awarding civil imprisonment against the petitioner in blatant violation of section 34(9) of the Ain.

The law mandates that the Court must first attempt to satisfy the decree through the auction and sale of the mortgaged property. Given that no auction process has been initiated regarding the petitioner's specific property in Narayanganj, the impugned order for imprisonment is premature, illegal, and void ab initio. He further submits that under the Ain, 2003, civil imprisonment is a remedy of last resort. The respondent-bank (the decree-holder) currently holds the title and possession of the mortgaged properties and has already secured a certificate under section 33(5) of the Ain for the land of Gazipur land. By seeking imprisonment without exhausting the sale of the property of Narayanganj, the respondent-bank has bypassed the due process of law.

As a third-party mortgagor and guarantor, the petitioner's liability is primarily collateral under the principles of equity and the statutory scheme of the Ain. Until the mortgaged property is sold and the proceeds are found insufficient to satisfy the debt, the personal liberty of a third-party mortgagor cannot be curtailed through incarceration. Consequently, the failure to verify whether the mandatory auction requirements were met before issuing the warrant constitutes a gross non-application of the judicial mind, rendering the order liable to be set aside.

Conversely, the learned Advocate, Mr. Md. Kaiser Zahid Bhuiyan, appearing on behalf of respondent No. 2, submits that pursuant to section 34(9) of the Ain, the Court shall not order the civil imprisonment of a judgment-debtor unless at least one auction process has been conducted. He further contends that under section 34(10), if for any reason an auction sale under sub-section (9) cannot be held, the person liable may be directly arrested and detained in civil prison.

In the instant case, an auction was successfully completed in Execution Case No. 78 of 2022 concerning the property located at Gazipur. The learned Advocate argues that since this auction satisfied the requirement of section 34(9), there remains no further legal impediment to arresting the debtor. Consequently, he submits that on 03.02.2025, the Artha Rin Adalat rightly ordered the civil detention of the petitioner for a period of six (6) months under section 34(1) of the Ain."

We have considered the submissions of the learned Advocates for both parties and have perused the writ petition, the affidavit-in-

opposition, the supplementary affidavit-in-opposition, and other materials on record.

Upon perusal of the pleadings, it appears that the petitioner challenged the order of imposing civil imprisonment for a period of six months and directing for the issuance of a warrant of arrest under section 34(1) of the Ain passed by the respondent No.1 in Artha Jari Case No. 811 of 2024 vide Order No. 04 dated 03.02.2025. Let us review the relevant portion of section 34 of the Ain.

অর্থ ঋণ আদালত আইন, ২০০৩

৩৪। দেওয়ানী আটকাদেশ

(১) উপ-ধারা (১২) এর বিধান সাপেক্ষে, অর্থ ঋণ আদালত, ডিক্রীদার কর্তৃক দাখিলকৃত দরখাস্তের পরিপ্রেক্ষিতে, ডিক্রীর টাকা পরিশোধের প্রয়াস হিসাবে, দায়িককে ৬ (ছয়) মাস পর্যন্ত দেওয়ানী কারাগারে আটক রাখিতে পারিবে।

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(৯) এই ধারার অধীনে আদালত কোন দায়িককে দেওয়ানী কারাগারে আটক করার আদেশ প্রদান করিবেনা, যদি না তৎপূর্বে অন্ততঃ একটি নিলাম বিক্রয় কার্যক্রম অনুষ্ঠিত হইয়া থাকে।

(১০) যদি কোন কারণে উপ-ধারা (১) এর অধীন একটিও নিলাম বিক্রয় কার্যক্রম অনুষ্ঠান করা সম্ভব না হয়, তবে সেই ক্ষেত্রে দায়িককে সরাসরি গ্রেফতার ও দেওয়ানী কারাগারে আটক করা যাবে।

Upon a plain reading of the aforementioned provision of law, it is evident that before imposing civil imprisonment for a period of 6 (six) months, at least one auction process must be completed. In the instant writ petition, the mortgaged properties are situated in the districts of Gazipur and Narayanganj. While an auction has been completed for the land situated in Gazipur, no auction process was initiated by the Court of Narayanganj for the property located there prior to the imposition of civil imprisonment in Artha Jari Case No.

811 of 2024 (Dhaka). Although a partial auction process has occurred, the petitioner who is both a mortgagor and a guarantor has seen his specific mortgaged property remain 'untouched' by the execution process.

In the case of *Abdur Razzaque Chowdhury and others -vs- Artha Rin Adalat and others* reported in 65 DLR(AD)(2013) 111 it was held that:-

“A reading of section 34(9) of the Ain, 2003 shows that the Adalat shall not pass any order of civil detention until process of holding of auction sale of the property of judgment -debtors(s) has been resorted to at least once. In sub-section (1) of section 34 of the Ain,2003, it has been provided that power under this subject of sub-section (12) of the section; a reading of sub-section (9) of the section also shows that power under sub-section (1) thereof cannot be exercised unless the conditions as stipulated therein are fulfilled . So it is necessary to see whether before issuing the warrant of arrest under sub-section (1) of section 34 vide the impugned order dated 07.10.2007, there was compliance of sub-section (9) of section 34.”

In this instant case, the writ petitioner is a mortgagor and guarantor, not the principal borrower. Therefore, the interpretation of 'at least one auction process' must be applied equitably to him. Since his liability is limited to the value of his mortgaged property, his personal liberty should not be curtailed until that property has been put to sale. According to the respondent's own affidavit, the auction in Narayanganj was held on 08.07.2025, five months after the order of imprisonment. Consequently, imposing civil imprisonment under

section 34(1) without complying with the spirit of section 34(9) of the Artha Rin Adalat Ain, 2003 is unjustifiable and legally unsustainable.

We further observe that Artha Jari Case No. 112 of 2018 was filed in Narayanganj, wherein an auction for the petitioner's property was scheduled for 08.07.2025. As that auction proved unsuccessful, the Court scheduled for a second auction on 23.02.2026 pursuant to Section 33(4) of the Ain. In light of these circumstances, and since section 34(9) has been duly complied with, there exists no hindrance to applying section 34(1) of the Ain once again.

In view of the above observations, as well as the facts and circumstances of the case, we find merit in the instant Rule.

Accordingly, the Rule is made absolute with the aforementioned observations.

The Order No. 04 dated 03.02.2025, passed by respondent No.1, Artha Rin Adalat No.1, Dhaka in Artha Jari Case No. 811 of 2024, is declared to have been made without lawful authority and to have no legal effect; it is accordingly, set aside.

However, there is no order as to costs.

Communicate the judgment and order at once.

Yousuf Abdullah Suman, J

I agree.