

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

WRIT PETITION NO. 10505 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:

Prime Ship Recycling Limited and others
... Petitioners

-Versus-

The Learned Artha Rin Adalat No. 2, Dhaka and
another
... Respondents

Mr. Ehsan A. Siddiq, Senior Advocate with
Mr. Md. Mahbubur Rahman, Advocate
...For the petitioners

Mr. K.S. Salah Uddin Ahmed, Senior Advocate with
Mr. Muhammed Mustafizur Rahman Khan, Senior
Advocate
...For the respondent No. 2

Heard on 09.09.2026
and Judgment on 09.09.2026

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 order No. 13 dated 20.04.2025
passed by the respondent No. 1 in Artha Rin Suit No. 1160 of 2024

(Annexure-A to the writ petition) allowing the applications for attachment before judgment of the property and shares of the petitioners should not be declared to have been passed without lawful authority and is of no legal effect and/or such other or further order or orders passed as to this Court may seem fit and proper.

At the time of issuance of the rule, the operation of the impugned order dated 20.04.2025 was stayed for a period of 04 (four) months which was subsequently extended from time to time.

The salient facts leading to issuance of the rule are:

The present respondent No. 2 as plaintiff originally filed the aforesaid suit claiming an amount of taka 134,35,67,642.19. In the said suit, all the defendant nos. 1-3 filed a joint written statement denying the material averment so made in the plaint and ultimately prayed for dismissal of the suit. After that, the plaintiff, bank filed 2 application both on 13.11.2024 under order 38 rule 5 of the Code of Civil Procedure prying for attachment of the landed property described in the schedule to the said applications one, with regard to the landed property and another one shares held by the defendant nos. 2 and 3. Against that application, the defendant nos. 1 and 2 also filed written objection denying all the material averment so made in the application for attachment before judgment and ultimately prayed for rejecting the same. Initially on the said application a show cause notice was issued upon the defendants and ultimately vide impugned judgment and order dated 20.04.2025 the court allowed the application of the plaintiff, bank. It is at that stage, the said defendant of the Artha Rin Suit came before this court and obtained instant rule and order of stay.

Mr. Ehsan A. Siddiq, learned senior counsel along with Mr. Md. Mahbubur Rahman, learned counsel appearing for the petitioners upon taking us to the writ petition at the very outset submits that the provision provided in Order 38 rule 5 of the Code of Civil Procedure has not at all been complied with in regard to disclose any definite information that the defendants were going to dispose of the property in the entire application file by the plaintiff and therefore the impugned order, cannot be sustained in law. To supplement the said submission, with reference to the impugned order the learned counsel also contends that nothing sort of any provision of Order 38, rule 5 has ever been discussed or observed which demonstrates, the impugned order bears any legal substance. The learned counsel by taking us to the application for attachment before judgment in particular paragraph no. 6 of two applications also contends that on the face of the alleged apprehension stated therein, it does not construe, the plaintiff gathered any definite information with regard to dispose of the landed property as well as the share scheduled in those 2 applications by the defendants in absence of which such vague application cannot be entertained let alone allowing the same vide impugned order. The learned counsel by taking us to Annexure-‘C’ to the writ petition which is a deed of mortgage executed between the plaintiff as well as the defendants also contends that valuation of the properties has been fixed at taka 180 crore, so there has been no necessity on the part of the bank to file application for attachment if the valuation of the mortgaged property is taken into consideration. By taking us to the supplementary-affidavit filed today in particular, paragraph no. 10 to the same, the learned counsel also contends that it has been revealed from the ordering portion passed by the learned District Judge while disposing of a Miscellaneous Case filed for transfer who clearly asserted that, the landed property as well as the shares of the defendant no. 2 has erroneously been shown in the plaint which

has subsequently been strike out from the plaint and the case was then transferred to another Artha Rin Adalat which clearly indicates that the plaintiff bank from the very inception adopted ill practice in order to grab the personal landed property of the defendant no. 2 as well as his shares. In support of the assertion for not having any definite information with regard to transfer of shares, Mr. Ehsan A. Siddiq, referred a decision reported in 31 DLR (AD) 112 and takes us through paragraph no. 6 thereof where it has been held *“The party imputing the motive on the defendant must be ready with the evidence to satisfy the court, if called upon to do so. Vague or general allegations without any material are insufficient to invoke the power of the court under this provision.”*

The learned counsel also referred another decision reported in 27 DLR (HC) 256 and takes us through paragraph no. 11 where it has also been propounded that *“The party must produce some definite materials before the court in order to satisfy it in this regard. Vague and general allegations can never be the foundation of the exercise of the extraordinary powers under the provision of Order XXXVIII, Rules 5 and 6 of the Code of Civil Procedure.”*

With those legal submissions, the learned counsel finally prays for making the rule absolute and set aside the impugned judgment and order.

On the contrary, Mr. K.S. Salah Uddin Ahmed as well as Mr. Muhammed Mustafizur Rahman Khan, learned senior counsels appearing for the respondent, bank by filing affidavit-in-opposition very candidly opposes the contention taken by the learned counsel for the petitioners and at the very outset submits that the apprehension so have been expressed in paragraph no. 6 in both the application fled for attachment before judgment is sufficient to prove that the defendants were trying to dispose of their landed property as well as shares and

therefore the learned judge upon due consideration of that very material fact described by the bank in the application has passed the impugned order which is liable to be sustained.

By taking us to Annexure-‘IV’ to the affidavit-in-opposition the learned counsel further contends that from the letter issued by a inspection company dated 21.09.2011 as well as another company dated 28.11.2022 it reveals that, the valuation of the property as described in the schedule to the plaint will not exceed taka 8,61,12,000/- so on that very cogent apprehension, the plaintiff, bank has rightly filed the application for attachment before judgment and if the property is not attached, the decretal amount that might have passed against the defendants cannot be realized with selling the property mortgaged with the bank. When we pose a question to the learned counsel for the bank with regard to valuation so have been mentioned in mortgaged deed, the learned counsel then contends that, that very valuation does not imply the actual valuation of the landed property mortgaged at the time of obtaining loan and therefore basing on that valuation it cannot be said that the impugned order has been passed illegally. By adopting the submission so placed by the Mr. K.S. Salahuddin Ahmed, Mr. Khan another learned senior counsel also echoed the same view just added that since the apprehension has been found by the learned judge as of genuine one and the share has already been attached so there has been no scope to get any benefit by the defendants out of the said shares in the form of obtaining dividend out of those shares, so for that obvious reason, the shares have rightly been attached by the learned judge of the Artha Rin Adalat having no illegality in it. With the said submission, the learned counsel finally prays for discharging the rule.

We have considered the submission so placed by the learned counsels for the petitioners and those of the learned senior counsels for the respondent no. 2, bank.

Together, we have also very meticulously gone through the writ petition, all the document appended therewith vis-à-vis the affidavit-in-opposition filed by the respondent no. 2 and that of the supplementary-affidavit filed by the petitioners today. Aside from that, we have also very carefully gone through the provision so have been provided in Order 38 rule 5 of the Code of Civil Procedure. On going through clause (a) and (b) of order 38 rule 5(1) of the Code of Civil Procedure we simply find, it has clearly been asserted therein that, the plaintiff bank has to gather a definite information with regard to dispose of the property which will supposed to be attached by the bank. But on the plain reading of what has been asserted in the application for attachment for attaching the landed as well as the shares of the defendant nos. 1 and 2, we simply don't find any reflection of that provision in the assertion made in the application rather in a very half-hearted and slipshod manner, apprehension has been expressed and when we pose a question to the learned senior counsel, Mr. Muhammed Mustafizur Rahman Khan to that effect, he simply finds it difficult to go beyond to what has been stated in paragraph No. 6 of two application, Then if it is so, we are of the considered view that the above 2 clauses under Order 38 rule 5(1) of the Code of Civil Procedure has never been complied with by the plaintiff, bank. Furthermore, since in the mortgaged deed, the valuation of the landed property has clearly been mentioned at taka 180 crore and on our query about the implication of mentioning that very

valuation, the learned senior counsel readily contends that said valuation had been evaluated only to realize the outstanding dues and if it is so, then the application for attachment before judgment is totally a futile exercise and a tool to harass the petitioners. Because, from the plaint we find that the claim has been made against the defendants for taka 134,35,67,642/19 crore when the valuation of the mortgaged property has been set at 180 crore which is way above the claim against the petitioners having no necessity on the part of the bank to file the application for attachment. So the submission placed by Mr. Ehsan A. Siddiq that from the very inception, the bank has been running after the defendants with an ill motive to grab the property and ultimately became successful by filing the application for attachment by including those properties which was earlier excluded by the learned District Judge while disposing a transfer Miscellaneous Case got substance.

On top of that since the mandatory provision so have been provided in clause-(a) and (b) to Order 38 rule 5 has not been complied with as earlier found, so there had been no scope on the part of the trial court to pass such kind of frivolous impugned order and obviously we thus find substance in the decision cited by the learned counsel for the petitioners as reported in 27 DLR (HC) 256 and 31 DLR (AD) 112 to be squarely applicable in the case in hand.

Regard being had to the above facts and circumstances, we don't find any substance in the impugned judgment and order.

Accordingly, the same is liable to be set aside.

Consequently, the rule is made absolute however without any order as to costs.

The impugned judgment and order dated 20.04.2025 passed by the respondent No. 1 in Artha Rin Suit No. 1160 of 2024 (Annexure-A to the writ petition) is thus set aside.

The order of stay granted at the time of issuance of the rule is thus recalled and vacated.

In view of the vacating the order of stay, there would have no necessity to pass any order on the application filed by National Credit and Commerce Bank PLC which was kept with the record vide order dated 14.07.2026.

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

Rezaul Karim, J.

I agree.

