

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION**

(SPECIAL ORIGINAL JURISDICTION)

WRIT PETITION NO.9288 OF 2025

IN THE MATTER OF:

An application under Article 102(2)(a)(i) of the Constitution of the People's Republic of Bangladesh.

-AND-

IN THE MATTER OF:

Md. Aman Ullah

.... Petitioner

- Versus -

The Governor, Bangladesh Bank and others.

..... Respondents

No one appears.

.....For the Petitioner

Mr. Mohammad Salim Miah, Advocate

.....For the Respondent No.3

Mr. Mohammad Waliul Islam Oli, D. A. G. with

Ms. Shadia Afrin Shapla, D. A. G. with

Ms. Nilufar Yesmin, A.A.G. with

Mr. Md. Moshir Rahman, A.A.G. with

Mr. Md. Motasim Billah Parvez, A.A.G. with

Mr. Md. Faridul Islam, A.A.G.

.....For the Respondents Government

Heard on 25.11.2025

Judgment delivered on 03.12.2025

Present :

Mr. Justice Yousuf Abdullah Suman

And

Mr. Justice Dihider Masum Kabir

Dihider Masum Kabir, J

On an application filed under Article 102(2)(a)(i) of the Constitution of the People's Republic of Bangladesh, the Rule was issued and an order of stay of the proceedings was granted with direction on 01.06.2025 as under:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the auction notice published in “The daily Jugantor” on 12.05.2025 by the respondent No.3 under section 12(3) of the Artha Rin Adalat Ain, 2003 (Annexure-C) for selling out the mortgaged property of the petitioner as described in the schedule of the said auction notice which is scheduled to be held on 02.06.2025 should not be declared to have been made 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.

Pending hearing of the Rule, let the operation of the auction notice published in “The daily Jugantor” on 12.05.2025 by the respondent No.3 under section 12(3) of the Artha Rin Adalat Ain, 2003 (Annexure-C) be stayed for a period of 06 (six) months from date.

The Petitioner is directed to pay Tk. 1,00,00,000/- (one crore) to the concerned Bank within 04 (four) months and the rest outstanding dues within next 12 (twelve) months by 04 (four) equal installments. The petitioner is also directed to file affidavit-in-compliance after payment of each installment, failing which, the Rule shall stand discharged.”

The facts relevant for the disposal of the instant Rule as made out in the writ petition, in short, are that the petitioner Md. Aman Ullah availed loan facility from the respondent No.3, Al-Arafah Islami Bank PLC, executing deed of the mortgage and power of attorney in respect of land measuring 136.25 decimal along with all construction there on. Being defaulter, the respondent No.3, proceeded for auction sale under section 12(3) of Artha Rin Adalat Ain, 2003 and the advertisement for auction sale of the mortgaged property was published on 12.05.2025 at “The Daily Jugantor” for an amount of Tk.5,46,63,487.82 (Taka five crore forty six lac sixty three thousand four hundred eighty seven and eighty two paisa) as principle, interest and other charges up to 08.05.2025, and the petitioner moved before this Division filing writ petition and this Division was pleased to issue Rule and conditionally stayed of the operation of the auction notice.

Respondent No.3, the Manager, Al-Arafah Islami Bank PLC, Panchdona SME Branch, Narshingdi filed affidavit in opposition on 20.11.2025 stating that in course of business, the petitioner secured the

loan through the mortgage and personal guarantees. But the petitioner failed to repay the installment, hence the respondents No.3 issued the several letters to repay the installments to which the petitioner paid no heed and as such the respondent No. 3 published an auction notice under section 12 of the Artha Rin Adalat Ain, 2003 for selling of the mortgaged property of the petitioner described in the schedule of auction notice published in the "Daily Jugantor" on 12.05.2025 to realize the petitioner's loan liability. Hence, the petitioner being aggrieved with the aforesaid auction process filed the instant writ petition and obtained Rule and a conditional order of stay of the auction process on 01.06.2025. But the petitioner neither complied with the order of this Division nor paid any amount till today. Hence, the instant rule is liable to be discharged in accordance with the order of this Division.

No one appears on behalf of the petitioner though the instant case was fixed for hearing as well as for judgment for several consecutive days in the daily cause list. The petitioner filed no affidavit in compliance.

On the other hand, the learned counsel Mr. Mohammad Salim Miah appearing on behalf of the respondent No.3, submits that the submissions of this writ petitioner in this instant writ petition are misconceived, erroneous, illogical, illegal and not tenable in the eye of law. The petitioner neither paid pay any amount after the order of this Division nor filed any affidavit in compliance. The petitioner violated the order and direction of this Hon'ble Division. The respondent No.3 published auction notice without any malafide and arbitrary intention and did everything within the jurisdiction contained in the provisions of law. He also submits that the auction procedure initiated under section 12(3) of Artha Rin Adalat Ain, 2003 has already been expired, and therefore the Rule issued in this instant writ petition is liable to be discharged as it has become infructuous.

Learned Deputy Attorney General, Ms. Shahida Afrin Shapla submits that the date of auction has already been expired and the order of stay was conditional. The petitioner, however, failed to comply with the order and direction of this Division. So the instant Rule is liable to be discharged.

We have considered the submissions of the learned counsel and learned Deputy Attorney General and perused the writ petition, affidavit in opposition as well as other materials on records.

On perusal of the writ petition and affidavit in opposition, it is revealed that the petitioner challenged the auction notice published in "The

Daily Jugantor” by the respondent No.3, Al-Arafah Islami Bank PLC and obtained Rule and an order of stay of the operation of auction process subject to payment of Tk.1,00,00,000/- (one crore) to the concerned Bank within 04 (four) months and the rest outstanding dues within next 12 (twelve) months by 04 (four) equal installments. The petitioner was also directed to file affidavit-in-compliance after payment of each installment, failing which, the Rule shall stand discharged. But the petitioner violated the order and direction of this Division. In the instant case, notice has been issued under the special legislation that is Artha Rin Adalat Ain, 2003 (Act VIII of 2003) which was enacted as a special measure for speedy realization of the loan money from the borrower and the Ain came in to force on 1st of May, 2003. In section 3 of the Ain it has been provided that ‘আপাততঃ বলবৎ অন্য কোন আইনে ভিন্নতর যাহা কিছুই থাকুক না কেন, এই আইনের বিধানাবলীই কার্যকর হইবে।’ Although the power to sell the property with the permission of the court was there under section 69 of the Transfer of Property Act, 1882, since the provision of section 12 will prevail upon any other law, the bank has no other alternative but to invoke section 12 of the Ain and accordingly, the bank issued the impugned sale notice which was published in the daily newspaper. Let us review the relevant provision of section 12 the Artha Rin Adalat Ain, 2003.

অর্থ ঋণ আদালত আইন, ২০০৩

১২। আর্থিক প্রতিষ্ঠান কর্তৃক কতিপয় জামানত বিক্রয়

- (১) উপ-ধারা (২) এর বিধান সাপেক্ষে, কোন আর্থিক প্রতিষ্ঠান, উহার নিজ দখল বা নিয়ন্ত্রণে থাকা বিবাহীর কোন সম্পত্তি যাহা পণ বা বন্ধক (Lien or pledge) রাখিয়া ঋণ প্রদান করা হইয়াছে, এবং যাহা বিক্রয় করিবার আইনগত অধিকার বাদীর রহিয়াছে বা বাদীকে অর্পণ করা হইয়াছে, উহা বিক্রয় না করিয়া এবং বিক্রয়লব্ধ অর্থ ঋণ পরিশোধ বাবদ সমন্বয় না করিয়া, অর্থ ঋণ আদালতে কোন মামলা দায়ের করিবে না।
- (২) উপ-ধারা (১) এর বিধান সত্ত্বেও, কোন আর্থিক প্রতিষ্ঠান নিজ দখল বা নিয়ন্ত্রণে থাকা পণ বা বন্ধকী সম্পত্তি বিক্রয় না করিয়া মামলা দায়ের করিলে অনতিবিলম্বে উক্ত সম্পত্তি পূর্ব-বর্ণিত মতে বিক্রয় করিয়া বিক্রয়লব্ধ অর্থ ঋণের সহিত সমন্বয় করিবে এবং বিষয়টি আদালতে লিখিতভাবে অবহিত করিবে।
- (৩) কোন আর্থিক প্রতিষ্ঠান, বিবাহীর নিকট হইতে কোন স্থাবর সম্পত্তি (Immovable Property) বন্ধক (Mortgage) রাখিয়া অথবা অস্থাবর সম্পত্তি (Movable Property) দায়বদ্ধ রাখিয়া (Hypothecated) ঋণ প্রদান করিলে এবং বন্ধক

প্রদান বা দায়বদ্ধ রাখার সময় বন্ধকী বা দায়বদ্ধ সম্পত্তি বিক্রয়ের ক্ষমতা আর্থিক প্রতিষ্ঠানকে প্রদান করা হইয়া থাকিলে, উহা বিক্রয় না করিয়া এবং বিক্রয়লব্ধ অর্থ ঋণ পরিশোধ বাবদ সমন্বয় না করিয়া, অথবা বিক্রয়ের চেষ্টা করিয়া ব্যর্থ না হইয়া, অর্থঋণ আদালতে কোন মামলা দায়ের করিবে না।

On a plain reading of the above provisions of law, we have found no illegality in publishing the advertisement of sale of mortgaged property by auction under section 12(3) of Artha Rin Adalat Ain, 2003.

Admittedly, the property as mentioned in the impugned sale notice was mortgaged by executing deed of the mortgage as well as power of attorney and the petitioner failed to repay the loan money. In such a case, invoking section 12(3) of the Artha Rin Adalat Ain 2003, is not contrary to the provision of our Constitution. The case of Overseas Garments Industries (Pvt.) and others Vs. Bangladesh and others reported in 57 DLR 168 and many other cases support the above observation. The core purpose of the writ petitioner has already been served out by staying operation of auction procedure. In the case of Md. Tariqul Islam Taraque Vs. Islamic Finance and Investment Ltd. and others reported in 2012 (XX) BLT (AD) 64 held that “Section 12 of the Artha Rin Adalat Ain, 2003 authorizes any lending bank to sell the mortgaged property without any intervention of any Court for adjustment of its due money from the borrower and then to proceed, in accordance with law, for the realization of the balance amount, if any.”

In view of the above observations as well as the facts and circumstances of the case, we find no merit in the instant Rule Nisi and accordingly, the Rule is discharged and the ad-interim order of stay and direction is hereby re-called and vacated.

However, there is no order as to costs.

Communicate the judgment and order at once.

Yousuf Abdullah Suman, J

I agree.

Mukta A.B.O