

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

WRIT PETITION NO. 5845 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:

Md. Khokon @ Mohammad Hossain and others,
all are sons of late Md. Ibrahim of 24/2 Mukim
Katara, Police Station- Lalbag, District- Dhaka.
... Petitioners

-Versus-

The learned Judge, Artha Rin Adalat No. 4,
Dhaka and others.
... Respondents

Mr. Md. Ibrahim, Advocate
...For the petitioners

Mr. K.S. Salah Uddin Ahmed, Senior Advocate
with
Mr. Helal Uddin Sikder and
Mr. Md. Aserul Haque, Advocates
...For the respondent no. 2

Heard on 07.01.2026 and 15.01.2026.
Judgment on 15.01.2026.

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 judgment and order dated 31.10.2024 passed by the learned Judge, Artha Rin Adalat No. 4, Dhaka in Miscellaneous Case No. 50 of 2024 rejecting the same 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, all further proceedings of Artha Jari (Execution) Case No. 264 of 2024 was stayed for a period of 6(six) months. Record shows, no further extension was taken by the petitioner.

The short facts leading to issuance of the instant rule are:

The present respondent no. 2, Southeast Bank Limited as plaintiff originally filed a suit being Artha Rin Suit No. 430 of 2020 against the petitioners who are defendant nos. 5-7 and seven others as defendants claiming an amount of taka 1,42,61,318/98 as on 06.12.2020. In the said suit, summons upon the defendants were served through the provision of section 7 of the Artha Rin Adalat Ain, 2003. However, when the suit was taken up for hearing, none except defendant no. 2 entered appearance and the suit was decreed on contest only against the defendant no. 2 and *ex parte* against all other defendants vide judgment and decree dated 18.09.2023. Challenging the said judgment and decree passed *ex parte*, the defendant nos. 5-7 herein the petitioners filed an application under section 19(1) of the Artha Rin Adalat Ain, 2003 on depositing 10% of the decretal amount stating that though the decree was passed on 18.09.2023,

it is only on 15.09.2024, the petitioners came to learn about the said decree and filed a Miscellaneous Case on 23.09.2024 which was registered as Miscellaneous Case No. 50 of 2024. The said Miscellaneous Case was ultimately taken up for hearing by the learned Judge of the Artha Rin Adalat and vide impugned order dated 31.10.2024 dismissed the said Miscellaneous Case holding that since the summons/ notice was served upon all the defendants through publishing the same in the dailies and since the petitioners are all mortgagors so they had every knowledge about the *ex parte* decree stating further that only to deprive the plaintiff-respondent to get the benefit out of the decree, the petitioners filed the Miscellaneous Case. Even though, on the same date, the learned Judge vide Annexure-‘E’ to the writ petition stayed further proceedings of the Execution Case No. 264 of 2024 till disposal of the Miscellaneous Case being No. 50 of 2024. Subsequently, on an application filed by the decree-holder, the said order of stay was vacated vide order dated 25.11.2024.

However, challenging the judgment and order passed in Miscellaneous Case No. 50 of 2024 dated 31.10.2024, the said defendant nos. 5-7 as petitioners came before this court and obtained instant rule and interim order as has been stated hereinabove.

Mr. Md. Ibrahim, the learned counsel appearing for the petitioner upon taking us to the writ petition in particular, the impugned judgment and order, at the very outset submits that there has been no scope on the part of the learned Judge other than to restore the suit in its original file and number moment 10% of the decretal amount is paid as per section 19(4) of the Artha Rin Adalat Ain, 2003 but without bothering to consult

with that provision of law, the learned Judge has travelled beyond his jurisdiction and rather discussed some extraneous facts which is not align with the said statutory provision provided in section 19(3) and (4) of the Ain.

The learned counsel in his second leg of submission also contends that since the impugned order is an ad-interim order within the meaning of section 44 of the Ain, so the writ itself is quite maintainable having no scope to prefer appeal under section 41 of the Ain. With those two legal submissions, the learned counsel finally prays for making the rule absolute on setting aside the impugned order.

In support of his submission, the learned counsel has placed his reliance in the decision reported in 73 DLR (HCD) 237.

On the contrary, Mr. K.S. Salah Uddin Ahmed, the learned senior counsel appearing for the respondent no. 2 very robustly opposes the contention taken by the learned counsel for the petitioners and contends that the remedy lies to the petitioner to section 41 of the Ain by preferring appeal on depositing 50% of the decretal amount not in the form of filing Miscellaneous Case.

The learned counsel by referring to section 41(3) of the Ain also contends that, that very provision clearly denotes that the petitioner should have preferred appeal not filing Miscellaneous Case and since there has been alternative forum open to the petitioner, the learned Judge has then rightly passed the impugned order which calls for no interference by this Hon'ble court. However, in support of his submission, the learned

counsel placed his reliance in the decision reported in 12 BLC (HCD) 578 and also takes us through paragraph 8 thereof.

The learned counsel next contends that since the adjudication of the Miscellaneous Case is final one in an Artha Rin Suit, so Miscellaneous Case cannot lie. With those submissions, the learned counsel finally prays for discharging the rule.

Be that as it may, we have considered the submission so placed by the learned counsel for the petitioners and that of the learned senior counsel for the respondent no. 2 and very meticulously gone through the provision so laid down in sub-section (3) and (4) of section 19 and that of section 41 of the Ain vis-à-vis the observation by the learned Judge while dismissing the Miscellaneous Case vide impugned order.

On going through the said observation made by the learned Judge, we find that he has taken two counts while dismissing the Miscellaneous Case. **Firstly**, since the summons/notice was served upon all the defendants through publication of the same in the newspapers under section 7(1) of the Ain, so all the defendants had knowledge about filing of the suit as well as the proceedings of the same. **Secondly**, since the petitioners who are defendant nos. 5-7 in the suit impleaded as mortgagors had knowledge about filing of the suit. But those observations have got no legs to stand if we peruse the provision provided in sub-section (4) of section 19 of the Ain. Because that section does not denote anything about the knowledge of the defendants regarding the suit rather section 19(2) of the Ain which remains uncontroverted. Rather, section 19(4) has given exclusive leverage to the court, mandating it that moment the

Miscellaneous Case was filed within 30 days from the date of knowledge of the decree and 10% of the decretal amount is deposited within 15 (fifteen) days upon filing the application, the application will be allowed, the suit be restored to its original file and number and the *ex parte* decree will be set aside. So on these legal score, the learned Judge has clearly committed a grave illegality in not restoring the suit to its original file and number.

The learned senior counsel for the respondent no. 2 put his emphasis on the provision of section 41 of the Ain contending that the petitioners have got alternative remedy to prefer appeal basing on that provision but we don't find any shred of substance in the said submission because since the judgment and decree was passed *ex parte* against the petitioners so certainly they will take recourse to the easier provision prescribed by law that is, depositing 10% of the decretal amount by filing a Miscellaneous Case which they have rightly done.

Secondly, since the order passed by an Artha Rin Adalat in a Miscellaneous Case is regarded as interim order, so there has been no reason for there to prefer appeal treating it to be final adjudication and that very legal proposition has clearly been set at rest by the judgment of this division reported in 73 DLR (HCD) 237 where exactly similar point was raised. On the contrary, what has been cited by the learned counsel for the respondent no. 2 that reported in 12 BLC (HCD) 578 has got no nexus with the facts and circumstances of the instant case because in the cited decision, no order passed in a Miscellaneous Case has been challenged.

Regard being had to the above facts and circumstances, we find ample substance to the submission so advanced by the learned counsel for the petitioners having find no justification of the impugned order which rather exemplifies non-application of judicial mind of the learned Judge.

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

The impugned judgment and order dated 31.10.2024 passed by the learned Judge, Artha Rin Adalat No. 4, Dhaka in Miscellaneous Case No. 50 of 2024 is hereby set aside.

The learned Judge of the Artha Rin Adalat No. 4, Dhaka is directed to restore the suit to its position providing opportunity to the petitioners to contest the suit setting the date for filing written statement by them and to dispose of the same within a period of three months from the date of receipt of the copy of this order. The Artha Execution Case No. 264 of 2024 will be stayed till disposal of the Artha Rin Suit No. 430 of 2020.

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

Shathika Hossain, J.

I agree.