

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL APPELLATE JURISDICTION)

Present:

Mr. Justice Md. Badruzzaman.

And

Mr. Justice Sashanka Shekhar Sarkar

FIRST MISC. APPEAL NO. 11 OF 2012

WITH

CIVIL RULE NO. 104 (F.M)/2012.

Md. Showkat Ali

...Appellant.

-Versus-

Bangladesh Housing Building Finance Corporation
and another

....Respondents.

Mr. Mozammel Haque Bhuiya, Advocate

... For the appellant

Mr. S.M Didar Mahady, Advocate

... For respondent No. 1

Mr. Masud Parvez, Advocate for

Mr. Md. Mostofa, Advocate

... For respondent No. 2

Heard on: 12.05.2024.

Judgment on: 13.05.2024.

Md. Badruzzaman, J

This appeal is directed against an order dated 31.07.2011 passed by learned District Judge, Mymensingh in Decree Execution Case No. 12 of 2008 rejecting an application filed by the appellant for a direction to submit loan statement by Bangladesh House Building Finance Corporation (HBFC).

Facts, relevant for the disposal of this appeal, are that the appellant Md Showkat Ali obtained loan facilities from Bangladesh House Building Finance Corporation (HBFC) on 07.05.2002 and

defaulted in payment of the outstanding dues whereupon, the Corporation filed Miscellaneous Case No. 40 of 2002 on 07.05.2002 before learned District Judge for recovery of the outstanding dues.

Though the appellant entered appearance and submitted written statement but thereafter, did not contest the case. Eventually, the case was allowed *ex-parte* vide judgment and order dated 13.08.2008 for an amount of Taka 13,19,282.85 as on 31.03.2002. The appellant did not challenge the judgment and order of the learned District Judge before any higher forum. The Corporation then filed Mortgage Execution Case No. 12 of 2008 before the learned District Judge for an amount of Taka 17,22,514.67 as on 30.09.2008 and put the mortgaged property on auction. But the auction could not be held due to want of bidders. Thereafter, the Corporation filed an application on 31.07.2011 for holding 2nd auction. At that time, the judgment debtor-appellant filed an application for a direction to the Corporation for submitting account statement after adjusting of the outstanding dues with the amount already deposited by the appellant-judgment debtor and the learned District Judge, after hearing the parties, rejected the application vide impugned order dated 31.07.2011 fixing the date for holding auction on 05.09.2011.

Challenging the legality of said order dated 31.07.2011 the judgment debtor has preferred this appeal. Upon an application filed by the appellant, this Court vide order dated 19.03.2012 issued aforesaid Rule and stayed further proceeding of the execution case for a period of 3 (three) months, which was subsequently extended time to time.

The Bangladesh House Building Finance Corporation (HBFC) has entered appearance by filing Vokatnama.

On the other hand, Mr. Md. Nazmul Kabir has been added as respondent No. 2 on the basis of an application for addition party filed by him. Added respondent No. 2 filed supplementary affidavit contending that before filing this appeal auction was held on 19.01.2012 and being highest bidder, he purchased the mortgaged property through auction by depositing bid money amounting to TK. 60,60,000/- and when he was awaiting for the Sale Certificate, the further proceeding of the execution case has been stayed by this Court by order dated 15.02.2012.

Mr. Mozammel Haque Bhuiya, learned Advocate appearing for the appellant by taking us to the impugned order submits that after obtaining loan from the Bangladesh House Building Finance Corporation (BHBFC) the appellant deposited installments time to time but the degree holder without adjusting the amount filed the miscellaneous case and also proceeded with the execution case and as such, the application was filed by the judgment debtor for a direction upon the corporation to submit statement by adjusting the installments but the learned District Judge illegally rejected the application and proceeded with the execution case and as such, interference is called for by this Court.

Mr. S.M Didar Mahady, learned Advocate appearing for Bangladesh House Building Finance Corporation (BHBFC) submits that the present appellant as defendant filed written statement to contest the case but thereafter, did not adduce any evidence and the case was decreed *ex-parte* within the knowledge of the judgment debtor. Learned Advocate submits that the Bangladesh House

Building Finance Corporation (HBFC), after adjusting the installments paid by the judgment debtor filed the miscellaneous case as well as the execution case and the judgment debtor could not produce any paper or deposit slip to show that the installment was not adjusted and as such, the learned District Judge committed no illegality in rejecting the application.

Mr. Md Masud Parvez, learned Advocate appearing for Mr. Md. Mostofa, learned Advocate for added respondent No. 2 submits that before filing of this appeal auction was held on 19.01.2012 in respect of the mortgaged property and added respondent No. 2 participated in the auction and having highest bidder, the learned District Judge accepted his bid by order dated 19.01.2012 and the mortgaged property was sold in auction at a consideration of Taka 60,60,000/- and as per order of the Court added respondent No. 2 deposited total consideration through Challan and as a 3rd party auction purchaser, he accrued a right in the property sold in auction and as such, there is no scope to cancel the said auction in this proceeding.

We have heard the learned Advocates, perused the impugned order as well as other relevant documents available on record. It appears from record that the appellant availed a loan facility of Taka 5,86,000/- by mortgaging the land in favour of the Corporation and thereafter, constructed building thereon with the loan money and thereafter, defaulted in repayment of the outstanding dues, whereupon the Corporation filed Miscellaneous Case No. 40 of 2002 for realization of the outstanding dues. Though the appellant entered appearance in the Miscellaneous Case and filed written statement but thereafter did not contest the case and the Miscellaneous Case

was allowed *ex parte* vide judgment dated 13.08.2008. The appellant did not challenge the judgment of the learned District Judge. The execution proceeding was initiated by the Corporation and the mortgaged property along with the building constructed therein was put to auction for satisfying the decree of the learned District Judge.

It also appears that the auction could not be held which was fixed earlier and the Corporation filed an application for holding auction for the 2nd time. At that stage, the judgment debtor appellant filed the application for a direction upon the corporation for furnishing account statement by adjusting the installments paid by the appellant. It appears that the appellant by filing supplementary affidavit (filed on 01.02.2012) contends that he deposited Taka 1,04,800/-. The appellant could not show that he deposited further amount to the Corporation which was not adjusted during execution proceeding. However, the which has been deposited by the judgment-debtor as installment against the loan should be deducted from the outstanding dues.

Further, before filing of this appeal and granting order of stay by this Court auction was held on 19.01.2012 and as highest bidder added respondent No. 2 purchased the mortgaged property at a consideration of Taka 60, 60, 000/- and he deposited the amount to the Court through Treasury Challan on 31.01.2012. Thereafter, the proceeding of the execution case was stayed by this Court on 15.02.2012. The appellant could not produce any paper to show that any irregularity or fraud was committed in holding the auction. The auction purchaser deposited entire consideration as per order of the Court. As such, the Third-party auction-purchaser (added respondent

No. 2) accrued valuable interest in the property sold in auction which cannot be taken away in this proceeding.

Accordingly, there is no scope to interfere with the impugned order. However, the respondent, the Bangladesh House Building Finance Corporation (HBFC) should adjust the amount already paid by the appellant as installments against the outstanding dues at the time of final settlement of the decretal amount.

In view of the above, we find no merit in this appeal.

In the result, the appeal is dismissed, however, without any order as to costs.

Consequently, the Rule is issued in Civil Rule No. 104 (F.M) of 2012 is discharged and the order of stay granted earlier is vacated.

The learned District Judge, Mymensingh is directed to refund the balance amount to the appellant from the amount already deposited by the auction purchaser after satisfying the decree and adjusting the installments paid by the judgment-debtor-appellant within 60 days from the date of receipt of the copy of this judgment.

Communicate a copy of this judgment to the Court below at once.

(Justice Md. Badruzzaman)

I agree.

(Mr. Justice Sashanka Shekhar Sarkar)