

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

Writ Petition No. 4779 of 2012.

In the matter of:

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

-And-

In the matter of:

Agrani Bank Limited represented by its
Manager.

..... Petitioner

-Versus-

Judge, Artharin Adalat, Chattogram and
others.

Mr. Shamim Khaled Ahmed, Senior Advocate with
Mr. M. Mohiuddin Yousuf, Advocate

. . . For the petitioner.

Mr. A. F. Hassan Ariff, Senior Advocate with
Mr. Abid Chowdhury and

Mr. Mohammad Osman Chowdhury, Advocates.

. . . For the respondent No.3.

Present:

Mr. Justice J. B. M. Hassan

and

Mr. Justice Razik Al Jalil

Heard on 09.11.2023, 12.11.2023.,
14.11.2023, 22.02.2024 and Judgment
on 29.02.2024.

J. B. M. Hassan, J.

The petitioner obtained the Rule Nisi in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show
cause as to why the order No. 73 dated 06.07.2011 passed by
the learned Judge of the Artha Rin Adalat, Chattogram in Artha
Rin Jari Case No. 862 of 2003 (Annexure-E to the writ petition)
should not be declared to have been passed without lawful
authority and is of no legal effect.”

Subsequently, by filing an application the petitioner obtained supplementary Rule Nisi on 19.01.2020 in the following terms:

“Let a supplementary Rule be issued calling upon the respondents to show cause as to why the order No. 81 dated 01.12.2011 passed by the learned Judge, Artha Rin Adalat, Chattogram in Artha Rin Jari Case No. 862 of 2003 declining to accept the statement of accounts submitted on 19.09.2011 by the decree holder Bank before the Artharin Adalat should not be declared to be without lawful authority and of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper.”

Relevant facts leading to issuance of the Rule Nisi are that the petitioner, Agrani Bank Ltd (shortly, the Bank) obtained a decree against the respondents No. 2-10 for Tk. 1,34,42,452/- as on 31.12.1997 passed by the 1st Artha Rin Adalat, Chattogram (shortly, the Adalat) in Mortgage Suit No. 1 of 1998. Pursuant to said decree final decree was prepared on 21.01.2002 and accordingly, the Bank filed Artha Rin Execution Case No. 862 of 2003 for Tk. 2,41, 63,263/- as on 17.03.2001. During execution process the petitioner-decree holder-Bank and the judgment debtor-respondents came to a settlement pursuant to which the Bank issued the letter dated 26.08.2004 incorporating conditions amongst others for adjustment of Tk. 15 lac by private sale of mortgaged property upon redemption and also to pay Tk. 70.38 lac by tri-monthly installments within next five years. Accordingly, a Tripartite agreement was executed among the Bank, judgment debtor and the proposed purchaser of the mortgaged property.

According to said agreement, the mortgaged property measuring an area of 4.82 decimals situated at Narayangonj District was sold and Tk. 15 lac was deposited to the respondents' loan account from the sale proceed and other sources. Thereafter, the petitioner Bank wrote a letter to the judgment debtors on 01.01.2005 for adjustment of rest amount as per the settlement but the respondent-judgment debtors did not pay any amount. Rather vide their letter dated 02.04.2006 the respondents informed the Bank that they failed to adjust the rescheduled liability due to some arbitrary action of another lender financial institution, namely, Bangladesh Shilpa Rin Songstha (BSRS). The petitioner Bank after serving several reminder and notices, finding no response, filed an application in the execution proceedings for reducing Bank's claimed amount adjusting Tk. 15 lac, received from sale proceeds of the Schedule-B property.

The judgment debtor-respondents objected the said application stating that by selling the Schedule-B properties, the borrower adjusted entire loan amount to the Bank. In support of their contention, the borrowers also furnished the deed of redemption bearing No. 3927 dated 11.10.2004. In that context the Artha Rin Adalat heard both the parties and by the impugned order dated 06.07.2011 accepted borrower's contentions and rejected the petitioner's application. In this backdrop, the petitioner-Bank filed this writ petition and obtained the present Rule Nisi.

The petitioner also got a supplementary Rule challenging the Order No. 81 dated 01.12.2011 passed by the Artha Rin Adalat, Chattogram

declining to accept petitioner-Bank's statement submitted on 12.10.2011 for Tk. 5,89,31,859/-.

The respondent No.3-judgment debtor is contesting the Rule Nisi by filing an affidavit in opposition contending, *inter alia*, are that the writ petition involves disputed questions of facts which can not be adjudicated under the present Rule Nisi. On 28.09.2004, an unregistered and legally unenforceable tripartite agreement was executed between the parties under certain terms and conditions. Through DD No. 09A-6440526/- 6 dated 28.09.2004 the respondents deposited Tk. 15,00,000/- as sale proceeds of mortgaged property for loan adjustment. The whole deal was made without informing the learned Court and the negotiated real receiving amount from sale of the schedule mortgaged property, was never disclosed to the respondents. The respondents were in dark about the whole transaction as it was made by the Bank authority privately. The respondents had to follow the Bank's instruction as the Bank authority had assured them that full and final adjustment of the loan amount will be made once the schedule II (b) land (mortgaged property) is sold out to the buyer as per the Bank's private negotiation. In consideration of full and final adjustment of the loan amount, the redemption deed No. 3927 was executed and registered on 11.10.2004. There were anomalies as to the actual price of the sold mortgaged land. As per the Sale Deed No. 4644 executed and registered on 13.12.2004, the value of the said land was Tk. 6,51,000/- but as per the tri-partite agreement, the value received for the sold mortgaged land was

Tk.15,00,000/-. Therefore, the actual value of the said mortgaged land was much higher than it was shown in the record.

Mr. Shamim Khaled Ahmed, learned senior Advocate appearing for the petitioner-Bank submits that the settlement was made between the petitioner-Bank and the judgment debtors (respondents) pursuant to the order dated 26.08.2004 and following the said settlement the judgment debtors adjusted Tk. 15 lac. But, second part of the settlement having not been complied with, the Bank filed an application for adjustment of received amount at Tk. 15 lac. He further submits that the Artha Rin Adalat misconceived the law as well as section 79 of the Evidence Act and thereby accepting recitals of the deed of redemption, came to a conclusion of adjustment of entire liability although the judgment debtor could not show any scrap of paper regarding other payment except for Tk. 15 lac. He also submits that the Artha Rin Adalat misconstrued the case of Shishir Kanti Pal and others Vs Nur Mohammad and others reported in 55 DLR (AD) 39 which enunciated the ratio only as to the presumption of correctness of the endorsement of the deed in question but it is not relevant regarding the recital of the deed in question. However, in support of his submissions, learned Advocate refers to the case of Abani Mohan Saha Vs Assistant Custodian (SDO), Vested Property, Chandpur and others reported in 39 DLR (AD) 223 and the case of Kamaluddin and others Vs Abdul Aziz (Md) and others reported in 56 DLR (HCD) 485.

On the other hand, Mr. A. F. Hassan Ariff, learned Senior Advocate appearing for the respondent No.3 (judgment-debtor) contends that the deed

of redemption itself reflects the payment of entire liabilities. The petitioner's denial regarding the payment is a disputed issue which can not be determined under writ jurisdiction. He further contends that the deed of redemption executed under the Transfer of Property Act (TP Act) has to be construed as a contract in accordance with section 4 of the TP Act and it is a registered document. Therefore, if the petitioner attempts to repudiate the same, he has to file civil suit for cancellation of deed. He also contends that after payment of entire liability, the deed of redemption was executed and title deed was handed over. Considering all aspects and facts, the Artha Rin Adalat allowed the respondents' application and rejected the petitioner's prayer. As such, there is no infirmity in the impugned order for interference under judicial review of this Court.

We have gone through the writ petition, affidavit in opposition, supplementary Rule, supplementary affidavit in opposition and other materials on record.

There is no dispute regarding the Artharin suit and the decree thereof for Tk. 1,34,42,452/-. Pursuant to said decree, the execution case No. 862 of 2003 was also filed for realization of Tk. 2,41, 63,263/- as on 17.03.2001. It also appears that during pendency of the execution proceeding, both the decree holder and the judgment debtors came to an amicable settlement pursuant to which the Bank issued the letter dated 26.08.2004 which runs as follows:

“ব্যবস্থাপনা পরিচালক,
-মসার্স স্যাপীড সীজ লিঃ
১২৮৪, জবল আহম-দর বাড়ী, মিন্ধিপাড়া
চট্টগ্রাম।

বিষয়ঃ মেসার্স স্যাপীড সীজ লিঃ এর অনুকূলে মঞ্জুরীকৃত ঋণের বিপরীতে বন্ধকীকৃত সহ জামানত প্রাইভেট নিগোশিয়েসনে বিক্রয় পূর্বক বিক্রয়লব্দ অর্থ ঋণ হিসা-ব জমাকরণ এবং অবশিষ্ট দেনা আদা-য়র নিমিত্তে ব্যাংক কর্তৃক গঠিত সুপারিশমালার বাস্তবায়ন প্রসঙ্গে।

প্রিয় ম-হাদয়,

শিরোনামোক্ত বিষয়ে আপনাদের আবেদন এবং শাখার সুপারিশের প্রেক্ষিতে উপরোক্ত প্রস্তাবটি ০৯-০৮-২০০৪ ইং তারি-খ অনুষ্ঠিত পরিচালনা পর্ষ-দর সভায় ১৭০৩/০৪ নম্বর স্মারকমূ-ল উপস্থাপন করা হ-ল পর্ষদ মেসার্স স্যাপীড সীজ লিঃ এর

“(ক) ঋ-ণর বিপরী-ত ব্যাং-কর অনুকূ-ল বন্ধকীকৃত ‘দক্ষিণ কাট্রলী মৌজার ৪০ শতক জমির বন্ধক ঋণ হিসাব সম্পূর্ণরূপে সমন্বয় না হওয়া পর্যন্ত বহাল থাকবে শর্তে নারায়নগঞ্জ জেলাস্ব ৪.৮২ শতক জমি প্রাই-ভট নে-গাসি-য়শ-নর মাধ্য-ম যৌথ তত্ত্বাবধানে সর্বোচ্চ দরে বিক্রি নিশ্চিত করে বিক্রয়লব্দ অর্থসহ গ্রাহ-কর নিজস্ব উৎস হ-ত মোট ১৫.০০ লক্ষ টাকা ঋণ হিসা-ব জমাকরণ এবং

(খ) গ্রাহক কর্তৃক ‘ক’ অনু-চ্ছ-দ বর্ণিত জামানত বিক্রয়লব্দ অর্থসহ ১৫.০০ লক্ষ টাকা ঋণ হিসা-ব জমাকরণ-পর পর এবং পরি-শাধিতব্য দেনা ১০% ডাউন পে-ম-ন্টর ম-ধ্য জমাকৃত ১.০০ লক্ষ টাকা বা-দ অবশিষ্ট ডাউন পে-মন্ট বাবদ ১২.৪৫ লাখ টাকা পর্ষদের অনু-মাদন প্রাপ্তির ৯০ (নব্বই) দি-নর ম-ধ্য কিস্তির অতিরিক্ত হিসেবে পরিশোধ করার পর অনা-রাপিত সুদ ১,৮৫,৯২,৮৭৪০০ টাকা ঋণ হিসা-ব আ-রাপ না করণ/মওকুফ, শাখার সুদ অনিশ্চিত খাত হ-ত ২২.৮৭ লাখ টাকা ও প্রধান কার্যাল-য়র প্রতিশন খাত হেত ১৪.৯২ লাখ টাকা যোগান দি-য় আ-রাপিত সুদ ৩৭.৩৮ লাখ টাকা মওকুফ এবং সুদ মওকুফা-স্ত আইন ও অন্যান্য খরচসহ মওকুফ অবশিষ্ট নির্ণীত দেনা ৭০.৩৮ লাখ টাকা ত্রৈমাসিক ৩.৫২ লাখ টাকা কিস্তিতে ৫ (পাঁচ) বছরের মধ্যে পরিশোধের নিমিত্ত পুনঃতফশিলীকরণ সংক্রান্ত প্রস্তাবটি নিমোক্ত শ-র্ত অনু-মাদন ক-রন।

শর্ত

পুনঃতফশিলকৃত দা-য়র বিপরী-ত পরি-শাধিতব্য ২ (দুই) টি কিস্তির সমপরিমান অর্থ ব-কয়া হ-ল প্রদত্ত সুবিধা বাতিল বলে গণ্য হবে এবং শাখা কর্তৃক দেনা আদা-য়র জন্য আইনগত ব্যবস্থা নেওয়া হ-ব।”

পর্ষদের শর্ত অনুযায়ী জামানত বিক্রয়লব্দ অর্থসহ নিজস্ব উৎস হতে মোট ১৫.০০ লাখ টাকা ঋণ হিসা-ব জমা করার জন্য অবহিত করা হল এবং পর্ষ-দর সিদ্ধান্ত অনুযায়ী প্র-য়াজনীয় ব্যবস্থা গ্রহ-ণর নিমিত্তে অনুরোধ করা হল।

এমতাবস্থায় পর্ষদের উপরোক্ত সিদ্ধান্ত আপনি পুঞ্জানুপুঞ্জরূ-প পরিপালনে সম্মত হলে অত্র পত্রের ২য় প্রস্থে সম্মতিসূচক স্বাক্ষর প্রদান করে শাখায় দাখিল করার জন্য অনুরোধ করা হল।”

(Underlined)

The contesting respondent No.3 does not deny the aforesaid letter. Rather pursuant to said letter, admittedly a tripartite agreement was executed among the Bank, proposed purchaser and the respondent No.3 for selling the mortgaged property. The said agreement is also quoted here in below for appreciation of the issue in question:

“মেসার্স স্যাপীড সীজ লিঃ এর অনুকূলে মঞ্জুরীকৃত ঋণের বিপরীতে বন্ধকীকৃত সহ জামানত প্রাইভেট নেগোশিয়েশনে বিক্রয় পূর্বক ১৫ (পনের) লক্ষ টাকা ঋণ হিসাবে জমা করণের প্রেক্ষিতে নারায়নগঞ্জে অবস্থিত নিম্নে তফশিলভুক্ত জমির মূল দলিলাদি ক্রেতার নিকট হস্তান্তর কার্যক্রমের ত্রিপক্ষীয় চুক্তিনামা।

১। অগ্রণী ব্যাংকের ব্যবস্থাপনা কর্তৃপক্ষের রোড বিভাগের ১৮-০৮-০৪ ইং তারিখের বিডি/বিএমএ/২০০৪/ ১৮ ১৬ নম্বর পত্রমূলে এই মর্মে অবহিত করা হয় যে, অত্র শাখার ১৩-০৭-০৪ ইং তারিখের বাএকশা/ঋণ/মোসাখা/৭০৫/২০০৪ নম্বর পত্রের প্রেক্ষিতে উপরোক্ত প্রস্তাবটি ৯-৮-২০০৪ ইং তারিখে অনুষ্ঠিত পরিচালনা পর্ষদের সভায় ১৭/০৩/২০০৪ নং স্মারকমূলে উপস্থাপন করা হলে পর্ষদ উপরোক্ত গ্রাহকের ঋণের বিপরীতে বন্ধকীকৃত নারায়নগঞ্জ জেলাস্থ ৪.৮২ শতক জমি প্রাইভেট নেগোশিয়েশনের মাধ্যমে যৌথ তত্ত্বাবধানে সর্বোচ্চ দরে বিক্রী নিশ্চিত করে গ্রাহকদের উৎস সহ মোট ১৫ (পনের) লক্ষ টাকা ঋণ হিসাবে জমা করতে হবে।

২। সেই লক্ষ্যে অদ্য ২৮-০৯-২০০৪ ইং তারিখে ডিডি নং ০৭A-৬৪৪০৫২৬/০৬ তাং ২৬-০৯-২০০৪, ১৫,০০,০০০/- (পনের লক্ষ) টাকা ঋণ হিসাবে জমা গ্রহণ করা হয়।

৩। প্রাইভেট নেগোশিয়েসনের আগ্রহী ক্রেতার অনুকূলে নিম্নে তফশিলভুক্ত জমির মূল দলিল ও তাৎসংশ্লিষ্ট দাখিলা, খতিয়ান গ্রাহককে হস্তান্তর করার প্রক্রিয়া সম্পন্ন করার প্রয়োজনে ক্রেতা, ঋণগ্রহীতা ও ব্যাংকের কর্মকর্তা কর্তৃক অত্র চুক্তিনামা স্বাক্ষর করে দলিলাদি হস্তান্তর করা হল।

৪। অতঃপর মেসার্স স্যাপীড সীজ লিঃ এর ঋণাংকের সাথে হস্তান্তরকৃত দলিলাদির কোন সংশ্লিষ্টতা রইল না অথবা হস্তান্তরকৃত দলিলাদির জমি কোন অবস্থাতেই উপরোক্ত ঋণগ্রহীতার কোন ঋণের বিপরীতে সংশ্লিষ্ট না এবং ইহা সম্পূর্ণ ঋণের ব্যয় হতে অবমুক্ত রহিল।

৫। জমির মূল মালিক অতঃপর ক্রেতার অনুকূলে আইনগতভাবে জমি হস্তান্তর/বিক্রয় করিতে পারিবেন এবং প্রয়োজনীয় রেজিস্ট্রি করতে পারবেন। এতে ঋণদাতা ব্যাংকের কোন ওজর আপত্তি থাকবে না।

৬। তফশিলঃ- জেলা-নারায়নগঞ্জ, মৌজা-পাইকপাড়, আর এস খতিয়ান নং ২০৯২১০, প্লট নং- ২৭১, মিউটেসিয়ান খতিয়ান নং-২৮৪/১, প্লট নং-৬৬৩, মোট জায়গার পরিমাণ ৪.৮২ শতক। দলিল নং-৭২৬১।

৭। এই চুক্তিনামা অদ্য ২৮-০৯-২০০৪ ইং স্বাক্ষরিত হলো।

(ক) ক্রেতার স্বাক্ষর

(খ) জমির মালিকের স্বাক্ষর

(গ) স্বাক্ষর (ব্যাংক)
সহকারী মহাব্যবস্থাপক

(ঘ) ঋণগ্রহীতার স্বাক্ষর

MD.ZAHIRUL ISLAM
Asstt. Gen. Manager
P. A No. 2771”

On perusal of the aforementioned papers, it is crystal clear that by the settlement, the liability was re-fixed in two folds, firstly Tk. 15 lac have to be paid by selling the mortgaged property under Narayangonj District as well as from the borrower’s own fund and as second fold liability of Tk. 70.38 lac to be paid by tri-monthly installments within next five years and tripartite agreement also reflects payment of Tk. 15 lac to the Bank pursuant to which the transaction of selling the said property was made by redemption of mortgage by the Bank and then selling the same by the respondent judgment debtor. There is no other correspondences, materials or transaction regarding second part of the settlement i.e as to payment of Tk. 70.38 lac.

The aforesaid letter dated 26.08.2004 and the tripartite agreement dated 28.09.2004 have also been described as admitted documents. In particular, paragraph No. 6(g) and relevant portions of paragraph 6(h) of the affidavit-in-opposition filed by the respondent No. 3 are as follows:

“6(g) That on 09.08.04, the Directors in a Board Meeting vide Memo No. 1703/04 approved reschedulement of the Bank loan account and agreed to adjust the loan account by the sale

proceed of the Scheduled land by private negotiation and on 26.08.04, the Bank had communicated the decision taken on 09.08.04 to the Respondents.

6(h) That on 28.09.04, an unregistered and legally unenforceable tripartite agreement was made between the parties under certain terms and conditions and through DD No. 09A-6440526/-6 dated 28.09.04 deposited Tk. 15,00,000/- as mortgaged property sale proceed for loan adjustment surprisingly before execution of any redemption and sale deed which is vague, misleading and done with malice on the part of the Bank as because the whole dealing was made without informing the learned Court and the actually negotiated and real receiving amount of sale of the scheduled mortgaged property was never disclosed to the Respondents and the Respondents were in dark about the whole transaction as it was made by the Bank authority privately and for the sake of saving the backs of the Respondents, the Respondents had to follow the Bank's instruction accordingly as the Bank authority had assured them that full and final adjustment of the loan amount will be made once the scheduled II (b) land is sold out to the buyer as per the Bank's private negotiation.....”

Now only by showing the recital incorporated in the contents of the redemption deed, the judgment debtor claims the payment of entire liability. To determine the issue, the Artha Rin Adalat relied upon the case reported in 55 DLR (AD) 39 (supra) and also section 79 of the Evidence Act. For better understanding, section 79 of the Evidence Act is quoted herein below:

“79. Presumption as to genuineness of certified copies- The Court shall presume every document purporting to be a certificate, certified copy or other document, which is by law declared to be admissible as evidence of any particular fact and

which purports to be duly certified by any officer [of the [Government]] to be genuine:

Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf.

The Court shall also presume that any officer by whom any such document purports to be signed or certified, held, when he signed it, the official character which he claims in such paper.”

Further, relevant portions of the case law cited in 55 DLR (AD) 39 as referred to by the learned Judge, Artha Rin Adalat are quoted herein below:

“ A registered document carries presumption of correctness of the endorsement made therein and that one who disputes the said presumption is under the law required to dislodge the correctness of the endorsement in the registered document.”

On perusal of the aforesaid provision and clarification made in the cited case reported in 55 DLR (AD) 39 with regard to section 79 of the Evidence Act, it is clear that the deed of redemption, carries presumption of correctness of the endorsement made therein by registering the same with the concerned sub-registry office and that one who disputes the said presumption is under the law required to dislodge the correctness of the endorsement in the registered document. Thus, the cited case helps only to the extent of presumption of correctness as to registration and genuineness of the document. But not the contents or recitals of the document.

Although in the recital of the redemption deed the words as to the entire payment have been mentioned but two other admitted documents regarding settlement i.e the Bank’s letter dated 26.08.2004 and the tripartite

agreement dated 28.09.2004 (pursuant to which the redemption deed was executed) do not support the said recitals. Those papers or any subsequent paper(s) or transaction do not show that the judgment debtor made the entire payment inasmuch as in the admitted agreement it was stipulated that payment would be made by tri-monthly installments within next five years. Therefore, due to aforesaid contradiction even, if we rely the case reported in 55 DLR (AD) 39, the recital of the deed of redemption alone can not help the judgment debtor as to the entire payment. Moreover, in this regard we also find support in the case reported in 56 DLR (HCD) 485 (supra) wherein a Division Bench held as under:

“34. It is true that the deed of exchange is a registered document. Registration, no doubt, attaches a statutory presumption, which extends to the registration of the deed only. Such presumption is never intended to extend to the genuineness of the transaction or to prove execution and/or recitals in the deed.”

Regard being had to the above, we find substance in the submissions of the learned Advocate for the petitioner and thereby we are led to hold that the impugned orders were not proper inasmuch as the Artha Rin Adalat misconceived the legal proposition in passing the impugned order.

Hence, we find merit in this Rule Nisi.

In the result, the Rule Nisi and the supplementary Rule Nisi are made absolute. The order No. 73 dated 06.07.2011 passed by the learned Judge of Artha Rin Adalat, Chattogram in Artha Rin Jari Case No. 862 of 2003 (Annexure-E to the writ petition) and the order No. 81 dated 01.12.2011 passed by learned Judge, Artha Rin Adalat, Chattogram in Artha Rin Jari

Case No. 862 of 2003 is hereby declared to have been passed without lawful authority and of no legal effect.

The learned Judge, Artha Rin Adalat, Chattogram is directed to proceed with the execution case in accordance with law.

Communicate a copy of this judgment and order to the respondents at once.

Razik Al Jalil, J

I agree.