

Present:

Mr. Justice Mohammad Bazlur Rahman  
and  
Mr. Justice Md. Ruhul Quddus

Writ Petition No.175 of 2013

Fair Plastic Industries and others

...Petitioners

-Versus-

Judge, Artha Rin Adalat No.2, Dhaka and another

...Respondents

Mr. A. K. M. Asiful Haque with Syed Md. Moazzem  
Hossain, Advocates

í for the petitioners

Mr. Shamim Khaled Ahamed with Syed Hassan Jobair,  
Advocates

... for respondent 2

Judgment on 27.05.2013

Md. Ruhul Quddus, J.

This *rule nisi* at the instance of three judgment debtors was issued calling in question the legality of judgment and decree dated 25.03.2012 of the Artha Rin Adalat No.2, Dhaka passed exparte in Artha Rin Suit No.24 of 2012. Subsequently on an application filed by the writ petitioners this Court by order dated 17.04.2013 stayed all further proceedings in Artha Jari Case No. 194 of 2012, which arose out of the impugned exparte decree.

Facts leading to issuance of the Rule, in brief, are that petitioner 1 is a proprietorship firm, of which petitioner 2 is the proprietor, who availed credit facilities from respondent 2 International Leasing and Financial

Services Ltd., a Financial Institution licensed under The Arthik Protishthan Ain, 1993. Petitioner 3 stood as a personal guarantor against the loan.

In the event petitioners 1-2 defaulted in repayment of the loan, respondent 2 instituted Artha Rin Suit No. 24 of 2012 on 24.01.2012 before the Artha Rin Adalat No.2, Dhaka for realization of Taka 3,77,55,113/= (three crore seventy-seven lac fifty-five thousand one hundred thirteen) only. The petitioners were impleaded as defendants in the suit.

Although the alternative addresses of defendant-petitioners 2-3 were mentioned in the cause title of the plaint, the plaintiff-respondent filed only one set of requisites for service and did not file any requisites for postal service despite the Artha Rin Adalat by order dated 07.02.2012 directed to serve the summons through usual service as well as postal service and fixed 29.02.2012 for service return. The plaintiff failed to produce any postal receipts to show its attempt of service by post. However, the summons were shown to have been served upon the defendants by way of hanging on the outer door of their houses, on return of which the suit was fixed for exparte hearing on 25.03.2012 and accordingly an exparte decree was passed on the day so fixed and the decree was signed on 29.03.2012. The decree-holder institution put the decree in execution by filing Artha Jari Case No.194 of 2012 before the Artha Rin Adalat. In course of proceeding of the said execution case, the decree-holder filed an application for putting the judgment debtors in civil imprisonment. The executing Court allowed the said application ordering civil imprisonment of the petitioners 2-3 for six months and issued warrant of arrest against them by order dated 14.11.2012. On that very day the petitioners appeared in the execution case

and moved an application for filing written objection, which was rejected. They filed another application on 21.11.1012 for recalling the warrant, which was fixed for hearing on the next day fixed in the execution case. In that event the petitioners moved in this Court with the instant writ petition challenging the exparte decree and obtained the Rule. Subsequently on an application filed by the petitioners, this Court stayed all further proceedings in the execution case.

Respondent 2 International Leasing and Financial Services Ltd. contests the Rule by filing an affidavit-in-opposition denying the material allegations of the writ petition contending, *inter alia*, that the Artha Rin Adalat rightly fixed the suit for exparte hearing on recording that the summons were duly served. The order sheet shows that the plaintiff-respondent at the time of registering the suit filed necessary *talabana* along with filled up summons and copies of the plaint for service upon the defendants as required under section 7 of the Artha Rin Adalat Ain, 2003 (hereinafter called the Ain). It is also evident from the order sheet that the summons were duly served and returned. The defendants did not appear in the suit and the suit was rightly decreed exparte.

Mr. A. K. M. Asiful Hoque, learned Advocate for the petitioners submits that section 7 of the Ain provides specific mode of service and substituted service by publication in news papers and therefore, the mode of service by way of hanging on the outer door of the defendant's house under Order V, rule 17 of the Code of Civil Procedure is not applicable in an artha rin suit. In the present case, it is apparent on the face of the records that the exparte decree was passed without service of summons upon the

defendants and as such the impugned decree is a nullity. The petitioners having no efficacious alternative remedy have moved in this Court with this writ petitioner challenging the exparte decree.

Mr. Shamim Khaled Ahamed, learned Advocate for respondent 2 submits that a writ petition does not lie against any judgment and decree of Artha Rin Adalat. In the instant case, the summons were duly served upon the defendant-petitioners and as such they cannot maintain this writ petition without preferring an appeal against the impugned decree. Mr. Shamim takes us through order No.4 dated 14.11.2012 passed in the execution case and submits that petitioners 2-3 were watchful on the proceeding of the execution case and when the application for putting them in civil imprisonment was filled, then and there they appeared in the execution case and filed an application for filing written objection thereto which was rejected. Since the loan was not secured by any mortgage, the executing Court issued warrant of arrest to put them in civil imprisonment.

We have considered the submissions of the learned Advocates and gone through the records. There is no explanation within the four corners of the writ petition as to when and how the petitioner came to know about the impugned exparte decree and what prevented them from filing an application under section 19 (2) (3) of the Ain. On the basis of the submission made in paragraph 11 of the writ petition, learned Advocate for the petitioner tried to develop an argument that if an exparte decree is passed without proper service of summons, an application under section 19 (2) (3) of the Ain is not an efficacious remedy for setting aside such decree.

In order to appreciate this point, let us examine section 19 of the Ain,  
which runs as follows:

0 19 | (1) gvgj vi i'bvxi Rb" avh<sup>©</sup> ~~vvb~~ Zvwi ~~✖~~ weev`x Av`vj ~~✖~~ Abjcw`~~€~~ ~~vvk~~ ~~✖~~,  
wKsev gvgj v i'bvxi Rb" ~~MuZ~~ nBevi ci WwKqv weev`x ~~✖~~ Dcw`~~€~~ cvl qv bv ~~vvk~~ ~~✖~~,  
Av`vj Z gvgj v GKZidv m~~✖~~ ~~vb~~<sup>®</sup>úwÉ Kwi ~~✖~~ |

(2) ~~✖~~vb gvgj v GKZidv m~~✖~~ ~~W~~µx nB~~✖~~, weev`x D<sup>3</sup> GKZidv ~~W~~µxi Zvwi ~~✖~~i  
A<sub>ev</sub> D<sup>3</sup> GKZidv ~~W~~µx m~~✖~~ú~~✖~~<sup>©</sup>AeMZ nBevi 30 (wĭk) w`exi g~~✖~~, Dc-aviv  
(3) Gi weavb m~~✖~~~~✖~~], D<sup>3</sup> GKZidv ~~W~~µx i~~✖~~i Rb" `iLv` ~~✖~~wi ~~✖~~ cwi ~~✖~~b |

(3) Dc-aviv (2) Gi weavb Abjvqx `iLv` ~~✖~~ ~~W~~L~~✖~~i ~~vvk~~ weev`x ~~✖~~ D<sup>3</sup> `iLv` ~~✖~~  
`~~W~~L~~✖~~i Zvwi ~~✖~~i cieZ<sup>®</sup> 15 (c~~✖~~i) w`exi g~~✖~~ ~~W~~µxK~~✖~~ ~~A~~x<sup>®</sup> 10% Gi  
mgcwi gvb UvKv ev`xi `vexi ~~vvb~~ cwi gv~~✖~~i Rb" ~~✖~~K~~✖~~ ~~✖~~ bM` msikó Aw~~✖~~ ~~℞~~  
cĭZôv~~✖~~, A<sub>ev</sub> RvgvZ ~~✖~~ ~~✖~~ e`vsK WrdU, ~~vv~~AW~~✖~~ ev Ab" ~~vvb~~ cKvi bM` vqb~~✖~~M"  
wevb~~✖~~gq `wj j (Negotiable Instrument) AvKv~~✖~~ RvgvZ ~~vv~~m~~✖~~ Av`vj ~~✖~~ Rgv`vb  
Kwi ~~✖~~ nB~~✖~~ |

(4) Dc-aviv (3) Gi weavbg~~✖~~ ~~W~~µxK~~✖~~ ~~A~~x<sup>®</sup> 10% Gi mgcwi gj Y UvKv Rgv`v~~✖~~i  
ms~~✖~~ ms~~✖~~ `iLv` ~~✖~~ gAj nB~~✖~~, GKZidv ~~W~~µx i` nB~~✖~~ Ges gj gvgj v Dnvi c~~✖~~<sup>®</sup>  
b~~✖~~ I b~~✖~~ ~~✖~~ cpi <sup>3/4</sup>w~~✖~~z nB~~✖~~, Ges Av`vj Z H g~~✖~~<sup>®</sup>GKĭU Av~~✖~~k wj wce~~✖~~ Kwi ~~✖~~;  
Ges AZtci gvgj ~~vv~~U ~~vv~~ch~~✖~~ GK Zidv ~~vb~~<sup>®</sup>úwÉ nBq~~✖~~Qj, H ch~~✖~~i Ae`ewZ  
ce~~®~~Z<sup>®</sup>ch~~✖~~q nB~~✖~~ cwi Pwj Z nB~~✖~~ |

(5) weev`x Dc-aviv (3) weavbg~~✖~~ ~~W~~µxK~~✖~~ ~~A~~x<sup>®</sup> 10% Gi mgcwi gvY UvKv ev`xi  
`vexi ~~vvb~~ cwi gv~~✖~~i Rb" ~~✖~~K~~✖~~ ~~✖~~ bM` msikó Aw~~✖~~ ~~℞~~ cĭZôv~~✖~~, A<sub>ev</sub>  
RvgvZ ~~✖~~ ~~✖~~ e`vsK WrdU, ~~vv~~AW~~✖~~ ev Ab" ~~vvb~~ cKvi bM` vqb~~✖~~M" wevb~~✖~~gq `wj j  
(Negotiable Instrument) AvKv~~✖~~ RvgvZ ~~vv~~m~~✖~~ Av`vj ~~✖~~ Rgv`vb Kwi ~~✖~~ e`<sup>®</sup>  
nB~~✖~~, D<sup>3</sup> `iLv` ~~✖~~ mi vmi Lwi R nB~~✖~~; Ges Av`vj Z H g~~✖~~<sup>®</sup>GKĭU Av~~✖~~k wj wce~~✖~~  
Kwi ~~✖~~ |

(6) A<sub>ev</sub> ~~✖~~ Av`vj ~~✖~~ wePvi vaxb ~~vvb~~ gvgj v, ev`xi Abjcw`~~€~~i ev e`~~✖~~Zv ~~vv~~Zy Lwi R  
Kiv hvB~~✖~~ bv, Ges GBi ~~✖~~ ~~vvk~~ Av`vj Z, b~~✖~~ ~~✖~~ Dc`~~✖~~Z K~~✖~~M~~✖~~Rw` ci x~~✖~~q~~✖~~ Kwi qv  
Y~~✖~~ Y~~✖~~ we~~✖~~ ~~✖~~ gvgj v ~~vb~~<sup>®</sup>úwÉ Kwi ~~✖~~ | 0

The above quoted section of the Ain provides scope for restoration of a suit on setting aside an exparte decree on an application filed with 10% of the decretal amount or equal security. Section 41 of the Ain also gives right to a judgment-debtor to prefer an appeal against a decree of Artha Rin Adalat on payment of 50% of the amount. The writ petitioners do not dispute the fact of availing loan or the amount claimed by the plaintiff-respondent. It is already pointed out that no statement has been made in the writ petition as to when and how the petitioner came to know about the impugned exparte decree and no explanation has been offered as to what prevented the writ petitioners from filing an application for restoration of the suit on setting aside the exparte decree or to prefer an appeal against the same.

Moreover, in the instant writ petition the petitioner did not pray for any relief against the execution proceeding or the order of civil imprisonment, which were the outcome of the impugned decree.

Under the facts and circumstances we do not think that this is a fit case for determination of the point raised by the learned Advocate for the petitioner whether service by way of hanging on the outer door of the defendant's house under Order V, rule 17 of the Code is applicable in an artha rin suit.

The Rule having no merit is thus discharged. The stay granted earlier stands vacated.

Mohammad Bazlur Rahman, J:

I agree.