

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

Writ Petition No. 9571 of 2013.

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:

Gourango Chandra Roy

..... Petitioner

-Versus-

Bangladesh Bank represented by the
Governor and others.

Mr. Samsuddin Babul with

Mr. Kanai Lal Saha, Advocates

. . . for the petitioner.

None appears

. . . For the respondents.

Present:

Mr. Justice J. B. M. Hassan

and

Mr. Justice Razik Al Jalil

Heard on 12.10.2023 and Judgment
on 17.10.2023.

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 impugned order dated 10.09.2013 passed by the respondent No.5 in Misc. Case No. 52 of 2013 rejecting the applicaiton of the petitioner for setting aside the judgment and decree dated 20.06.2013 passed by the learned Joint District Judge, 1st Court and Artha- Rin Adalt, Dinajpur in Artha Rin Suit No. 36 of 2013 obtained by way of practicing fraud as well as the proceedings of Artha Rin Execution case No. 45/2013 now pending before the Court of the Joint District Judge, 1st Court and Artha Rin Adalat, Dinajpur, arising out of the said judgment and decree dated

20.06.2013 and 27.06.2013 passed by the learned Joint District Judge, 1st Court and Artha Rin Adalat, Dinajpur in Artha Rin Suit No. 36 of 2013 should not be declared to have been obtained by way of practicing fraud (Annexure-H1, G1 and I) and shall not be declared to be illegal, without any 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.”

Relevant facts leading to issuance of the Rule Nisi are that the respondent Janata Bank Ltd (the Bank) obtained an ex-parte decree against the petitioner and others for Tk. 2,45,41,085/- and thereafter filed execution case No. 45 of 2013 for realization of decretal dues. Subsequently, the petitioner filed Miscellaneous Case No. 52 of 2013 under order IX Rule 13 of the Code of Civil Procedure (the Code) read with section 57 of the Artha Rin Adalat Ain, 2003 (the Act, 2003) for setting aside the ex-parte decree. The Adalat by the impugned order dated 10.09.2013 rejected the said Miscellaneous Case. Against the said order, the petitioner filed this writ petition and obtained the present Rule Nisi.

Mr. Samsuddin Babul learned Advocate appearing for the petitioner submits that the Bank by practising fraud obtained the ex-parte decree against the petitioner and so the application was quite maintainable under order IX Rule 13 of the Code. But the Adalat misconceived the law and passed the impugned order. In support of his submission learned Advocate refers to the case of Jahangir kabir Chowdhury Vs Bangladesh Government represented by the secretary Ministry Law, Justice and Parliamentary Affairs, Bangladesh and others reported in 22 BLC (AD) 139. He further submits that since the application was filed under order IX Rule 13 of the Code read with Section 57 of the Act, 2003, the Adalat should entertain the miscellaneous case for interfering with the ex-parte decree. He also submits

that the plaintiff Bank even did not deposit Court fees at the time of filing the suit as per requirement of section 6 of the Act, 2003. He again submits that the suit was filed on 24.04.2013 and in a hurried manner within 4 months exercising fraud, the Bank obtained the decree on 20.08.2013 even without giving 40 days time to the petitioner to file written statement in accordance with section 10 of the Act, 2003. He again submits that section 19 will not apply in this particular case because the petitioner could not file written statement and in support of his submission learned Advocate refers to the case of ABSCo limited represented by its Managing Director Vs the Artha Rin Adalat No. 2, Dhaka and another reported in 4 ALR (HCD) 326.

None appears to represent the respondents when the matter is taken up for hearing.

We have gone through the writ petition, the impugned order and other materials on record.

Section 19 of the Act, 2003 specifically incorporates provision for setting aside the ex-parte decree on observance of prescribed requirements incorporated therein. Whatever the fraud or illegality in obtaining the ex-parte decree, can all be adjudicated in the miscellaneous case on merit under section 19 of the Act, 2003. **But** without resorting to specific provision provided in the Act under section 19, the application under section 57 of the Act, 2003 is misconceived and the Adalat has no scope to entertain such application. The case reported in 22 BLC (AD) 139 (supra) was relating to setting aside auction and as such the present case having distinct facts relating to ex-parte decree, is not applicable in this particular case. Further, the case reported in 4 ALR (HCD) 326 (supra) also does not help the petitioner. Thus the Rule Nisi fails.

In the result, the Rule is discharged without any order as to costs.

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

J. B. M. Hassan, *J*

I agree.

Razik Al Jalil, *J*