

Present:
Mr. Justice Md. Iqbal Kabir
And
Mr. Justice Md. Riaz Uddin Khan

First Appeal No. 410 of 2012
With
Civil Rule No. 386(F)/2022

Agrani Bank Limited

....Plaintiff/Appellant

Versus

N Rahmania Banaspati & Vegetable Ghee Products
Ltd., represented by its Managing Director, Mr.
Mohammed Yahya, and others

.... Defendant/ Respondents

Mr. M Mohiuddin Yousuf, Advocate

....For the Appellant

Mr. Md. Yamin Newaj Khan, Advocate with
Mr. Najmul Karim, Advocate

....For the Respondents

Judgment on 28.08.2025.

Md. Iqbal Kabir, J:

This appeal is directed at the instance of the appellant against the judgment and order dated 31.07.2012 passed by learned Judge (Joint District Judge), Artha Rin Adalat, Chattogram in Artha Rin Rivew Miscellaneous Case No. 07 of 2012 by which the judgment and decree dated 25.01.2009 (decree drawn on 01.02.2009) passed in the Artha Rin Suit No. 12 of 2008 has been modified.

The short facts leading to preferring this appeal are that originally, the appellant, as the plaintiff, filed Artha Rin Suit No. 12 of 2008 in the Court of Artha Rin Adalat No. 1, Chittagong, against the respondents for realizing an amount of Tk. 24,08,52,784.37/- as on 12.02.2008. By filing written statements, the respondent contested the suit, wherein they admitted the whole loan facility and the overdue amount up to 31.12.2007. However, respondents claimed repayment of Tk. 13,08,87,917.00 and denied the total claim of Tk. 24,08,52,784.37/- of the plaintiff Bank. Upon hearing the same, the Adalat passed judgment and decree dated 25.01.2009 (decree signed on 01.02.2009) against the respondents for an amount of Tk. 24,08,52,784.00/-. The appellant bank put the decree in execution through an Execution Application dated 25.03.2009, whereupon the Artha Rin Execution Case No. 28 of 2009 commenced in the Court of Artha Rin Adalat No. 1, Chittagong.

Respondents, by their appearance, contested the execution case till 03.05.2010 and communicated with the appellant Bank to reschedule the loan. At one point in time, the Adalat issued W/A against the respondents, being the petitioner of the Writ Petition No. 5588 of 2010, he himself swore an affidavit and challenged the warrant order issued by the Court filed Writ Petition No. 5588 of 2010. However, despite pending of the above Rule Nisi, respondents feeling aggrieved by and dissatisfied with the judgment and decree passed on contest, the defendant No. 1 as petitioner filed an application under order 47 rule 1 of the Code of Civil Procedure read with section 57 of the Artha Rin Adalat Ain, 2003 (in short the Ain, 2003) for review the said judgment and decree passed in Artha Rin Suit No. 12 of 2008 filed Artha Rin Review Miscellaneous Case No. 07 of 2012 making the following relief:

“অতএব, বিনীত প্রার্থনা এই যে, হজুর আদালত দয়া পরবেশে উপরোক্ত কারণে বিবাদী/দাইক/প্রার্থীগণকে দেঃ কাঃ বিঃ আইনের আদেশ ৪৭ বিধি ১ মোতাবেক অর্থঋণ আইনের (২০০৩) ৫৭ ধারা মোতাবেক ২৫/০১/২০০৯ ইং তারিখের একতরফা আদেশ পুনঃ নিরীক্ষণ করিয়া অভিপ্রেত ন্যায় বিচার প্রদান করতঃ সুদ মওকুফের আওতায় ০৩ (তিন) বৎসরে কিস্তিতে মূল ঋণের টাকা সমন্বয়/পরিশোধের সুযোগ প্রদান করিয়া বাধিত করিবেন।”

The above prayer was made in the Review application, and it has been filed along with an application for condonation of delay. However, on 29.07.2012, the respondents filed an application, thereby praying to amend the review application. Eventually, by the order No. 39 dated 31.07.2012, the Court below allowed the application, thereby condoned the delay.

However, the Court allowed the Artha Rin Review Miscellaneous Case, wherein it observed that during the pendency of the Artha Execution Case, the petitioner came to learn about the decree of the Artha Rin Suit No. 12 of 2008. Knowing such, Respondent, being Petitioner, filed a Review Miscellaneous Case within the stipulated time fixed in law. The Court observed that the defendant/petitioner was not allowed to get self-defence in the suit. The court opines that since a mistake has been made in terms of law and information, the Review Miscellaneous Case is allowable. In the context noted above, by its judgment and order dated 31.07.2012, the court below by its judgement and order reduced the decretal amount from Tk. 24,08,52,784.00/- to 6,80,35,596.00/- and directed to amend the decree and schedule of the execution case.

The plaintiff-Bank/Appellant, being aggrieved by and dissatisfied with the Judgment and decree dated 31.07.2012 passed by the learned Judge (Joint District Judge), Artha Rin Adalat, Chattagong in Review Miscellaneous Case No. 07 of 2012, thereby reduced the decretal amount and directed to amend the decree and schedule of the execution case preferred this appeal.

It is at this juncture, it has remained that based on the pleadings, the learned judge of the Artha Rin Adalat framed as many as four issues. However, upon considering witness, several documents and other materials on record, the learned Judge of the Artha Rin Adalat vide its Judgment and Decree dated 25.01.2009 decreed the suit on contest against the defendant for an amount of Tk. 24,08,52,784.00/- and directed the said defendant to pay the said decreetal amount within a period of 30 (thirty) days with interest as per the provision so stipulated in section 50(2) of the Ain, 2003.

However, feeling aggrieved with the said judgment and decree passed on the contest, the respondents filed the Review Miscellaneous Case.

Mr. M Mohiuddin Yousuf, learned Advocate appearing for the appellant, upon placing the impugned judgment and other materials, made his submission. However, he raised the question of maintainability; according to him, in this particular case, the question of maintainability must be addressed at the very outset, as it goes to the root of the court's jurisdiction and the competence of the case itself. If a suit or petition is not maintainable in law, then any further discussion on its merits becomes redundant and an exercise in futility. The courts are duty-bound to examine whether the case is maintainable in the present form under the law and whether the relief sought is legally sustainable. Only when the maintainability is affirmed can the court proceed to adjudicate upon the substantive rights and obligations of the parties. Thus, determination of maintainability serves as a threshold filter, ensuring that judicial time is not wasted on cases that are inherently defective or barred by law. However, he makes his submissions on the point of maintainability as well as on merits.

Mr. M Mohiuddin Yousuf, learned Advocate appearing for the appellant upon placing the impugned judgment and other materials on record submits that review under Order XLVII Rule 1 of the Code of Civil Procedure against judgment and decree passed by Artha Rin Adalat is not maintainable in as much as the Ain, 2003 is a special piece of legislation wherein no such express provision of review against a judgment and decree has been conferred upon Court. In support of his submission, he brought to our notice that the right to review has to be conferred specifically and cited the decision reported in 14 BLD (HCD) 297, wherein it was held that:

“This being the legal status of Artha Rin Adalat Ain Adalat, we are to look into the Artha Rin Adalat Ain, 1990, to see whether the said Ain has empowered the Artha Rin Adalat to review its own Judgment because it is a well-settled proposition of law that right to review like the right of appeal is a substantive right and not a mere matter of procedure. It is also well-settled that the power to

review is not an inherent power. It must be conferred by law either specifically or by necessary implication. There is a long line of decisions of the superior Courts of this Sub-continent where it has been consistently held that the canon of interpretation suggests that a right has to be conferred specifically. In the Artha Rin Adalat Ain, it has been provided that an appeal shall lie against a Judgment and decree passed by the Artha Rin Adalat, but we do not find any provision for review. From the other provisions of the Artha Rin Adalat Ain, it can not be said that the power of review has been conferred on the Artha Rin Adalat by implication. We, therefore, hold that no application for review under Order 47 Rule 1 of the Code of Civil Procedure lies in the Artha Rin Adalat. The review Application filed by the defendant-petitioner was not entertainable by the Artha Rin Adalat and, as such, was incompetent and not maintainable. However, we maintain the impugned order on the ground that by the order, the trial Court has obviously corrected a clerical mistake by deducting Tk. 27,830,00 from the decretal amount as the said amount was admittedly received by the plaintiff Bank on account of the petitioner from the Sadharan Bima Corporation.”

According to him, the statute does not contemplate or provide for filing any review in such a manner. It is a settled proposition of law that the right to review must be conferred by law, and in the absence of any enabling provision, a review is not maintainable. The law does not provide any scope for filing a review; therefore, a review application cannot be entertained on merit.

Relying upon an unreported decision passed in First Miscellaneous Appeal No. 30 of 2023 with (Civil Rule No. 574 (FM) of 2022), Md. Kaium Khan vs Janata Bank Limited and others submits that the provision of section 5(11) of the Ain, 2003 contends that, the CPC will be made applicable in adjudicating Artho Rin Suit so far it (CPC) is not inconsistent with any other provision of the Ain, 2003 and then submits that, since there has been no provision of review in the alleged Adalat Ain, so filing of review petition is explicitly inconsistent with the Adalat Ain, thus review of not maintainable. According to him, in the aforesaid decision, it has been settled that if the provisions of sections 5(11), 6, 41, and 42 of the Adalat Ain and Order XLVII Rule 1 of the Code of Civil Procedure are read together, it will be palpably clear that there is no scope to entertain any review petition by the Adalat.

He next submits that the Ain, 2003 is a special law having overriding effect and under section 41 of the Ain there is special procedure, limitation and specific criteria has been set out to challenge a judgment and decree passed by the Adalat for speedy recovery of Bank loan as stated in the preamble of the Ain, 2003, hence in the premises above, if a review application is allowed bypassing the specific forum of Appeal, shall open a floodgate and the purpose

of the Ain, 2003 shall be vitiated. If review is allowed, all the judgment debtors would wait for the expiry of the limitation period of preferring an appeal, and then would come for review, which would frustrate the basic principle of the Ain, 2003.

Mr. Mohiuddin submits that the learned Judge of the Court below erroneously took recourse to the decision reported in 9 BLC (HCD) page 554 in deciding the maintainability of the Review Misc. Case while passing the impugned judgment in Review Misc. Case No. 07 of 2012, much as the said case was decided under the previous Artha Rin Adalat Ain, 1990, and also therein, a review was sought against an order of the Adalat, not against a judgment and decree. Further, he brought notice that in the said 9 BLC judgment, this Court observed that the case is distinguishable from the case reported in 14 BLD (HCD) 297, DLR (HCD) 292 inasmuch as in the 46 DLR case, review was not allowed against judgment and decree, but in the 9 BLC case, the review was sought against an order. In the instant case in hand, the respondents challenged judgment and decree before the trial Court below, and as such, the decision reported in 9 BLC (HCD) 554 has no manner of application to this case. According to him, the appeal is liable to be allowed.

He next submits that the appeal is required to be allowed as a review petition cannot be entertainable with an application under section 5 of the Limitation Act. In support of his submission, he cited an unreported decision passed in First Miscellaneous Appeal No. 30 of 2023 with (Civil Rule No. 574 (FM) of 2022).

Mr. Mohiuddin, by way of submission, claims this is a case of no evidence inasmuch as the respondents did not adduce a single piece of evidence before the Adalat in Review Misc. Case No. 07 of 2012, whereas their case was that due to some obstacle earlier, they could not adduce a relevant document. Further, they asserted they have repaid more money, which is admitted by the appellant Bank, but did not adduce any documents in support of their assertion. Thus, there is no reason to believe their assertion.

He submits that the learned Judge of the court below erred in not conceiving that, as per section 18(2) of the Ain, 2003, set-off and counter claim are not allowed in an Artha Rin suit, and as such, the instant appeal is liable to be allowed.

By way of submission, it has been denied that the circular of Bangladesh Bank for rescheduling was not produced to the Court by the petitioner; thus, the claim for rescheduling is not correct.

Mr. Mohiuddin submits that the petitioner cannot file a review application as he has accepted the judgment and decree dated 25.01.2009. According to

him, it was the claim of the defendant-petitioner that after the passing of the decree, they were constantly trying to repay the loan. By such a claim, they waived their right to challenge the same. Further from the correspondence of the respondent No. 3 with the Bank (Annexure-E series to the Writ Petition No. 5588 of 2010), it is crystal clear that the respondent has accepted the judgment and decree dated 25.01.2009, and as such, the instant appeal is liable to be allowed.

He submits that the impugned judgment and order dated 31.07.2012, passed in Review Misc. Case No. 07 of 2012 is not tenable in the eye of the law, much as in the review judgment, the learned Adalat did not discuss a single mistake that it had committed in the earlier judgment dated 25.01.2009, and as such, the instant appeal is liable to be allowed.

Mr. Md. Yamin Newaj Khan, the learned advocate appearing for the defendants/respondents, supports the impugned judgment and order, which was, according to him, just, correct, and proper. However, he claims that since the provision of section 6 of the Ain, 2003, which states that by that provision, the Code of Civil Procedure has been made applicable in the proceedings of the Code of Civil Procedure, the review application is maintainable, having no scope to say that the review application is not maintainable. The learned Advocate in the course of arguments has taken us through the plaint, impugned order, and submits that during the pendency of the Artha Execution Case, the respondent came to learn about the decree, and was not allowed to get self-defence in the suit. Thus, for proper adjudication, within time, an application that is very much maintainable in law and fact.

We have perused the memorandum of appeal, application for review, application for condonation of delay, including the impugned judgment, and all other connected documents appended in this application, and also heard the learned counsel for the appellant and that of the respondent at length. We have also closely read the decisions relied upon by the learned Advocates for the appellant.

Upon hearing and on scrutiny, it appears that the application for condonation of delay was not in form inasmuch as it neither quantifies the number of days of delay nor explains the delay on a day-to-day basis. The reason, as explained, was that the respondents were in jail and hiding from the law-enforcing authority. However, no such evidence of being in jail or hiding was produced to the trial Judge. The judgment of the alleged Artha Rin Suit was passed on 25.01.2009, by then the emergency period had expired, i.e., in December 08. It is admitted that the respondent knew the judgment. The Artha Execution Case was filed on 25.03.2009, wherein the respondent appeared on

17.05.2009 and contested the execution case till 03.05.2010. At one point in time, the execution Court issued a warrant, challenging such order, the respondent, as petitioner, filed a Writ Petition No. 5588 of 2010, wherein he himself, on 15.07.2010, filed an affidavit. The record shows that respondent No. 3 had a contract with the Bank, and he tried to reschedule the loan during the pendency of the Artha Rin Execution Case No. 28 of 2009 (Annexure-E series to the Writ Petition No. 5588 of 2010).

It is indeed surprising that the Trial Court and the Executing Court, being the same Court, failed to take notice of the continuous appearance of respondent No. 3 in the execution case, and instead blindly accepted the statements made by the respondents in their application for condonation of delay. Though there is no reason to believe the reasons put forth in the said application.

It was argued that the respondent is not willing to pay the loan amount to the Bank, one after another, by filing cases, they keep their distance from paying the loan amount. In this First Appeal, the respondent challenges the proceedings of Artha Jari Csae; therefore, in a Civil Rule No. 386 (F) of 2022, all further proceedings of the Artha Jari Case have been stayed. Consequently, they refrain from the payment of the decretal amount. This act shows the respondent has no intention to pay the loan amount to the Bank.

The respondent took a plea that he could not assist his advocate as he was in jail and hiding from the law-enforcing authority, hence the judgment and decree dated 25.01.2009 is liable to be reviewed. In this context, it reminds us that review is not rehearing. Further, it is not *ex parte*; it was contested, the defense case of the respondents was discussed, and relying upon the written statement filed with an affidavit under section 6(4) of the Artha Rin Adalat Ain, 2003, as it was substantive evidence. From our scrutiny, it appears that respondent No. 3 did not make a true statement, as the order sheets of Artha Rin Execution and correspondence with the Bank [Annexures-A and E) show that the respondent No. 3 was not in jail. Thus, the instant appeal is liable to be allowed.

It is pertinent to note that during the course of the hearing, this respondent filed an application under Order XLI, Rule 23 of the Code of Civil Procedure and prayed to send back the suit on remand for trial. Respondent claims they could not produce sufficient evidence to the Court. This Court allowed sufficient time to furnish those documents to this application by way of supplementary affidavit. But, they did not turn to bring those; however, on perusal, this Court finds there is no cogent reason to accept such a prayer.

However, we may get back to the point of maintainability section 41 and 42 of the Ain, 2003, which provides for preferring appeal and revision against the judgment and decree passed by an Artha Rin Adalat having no provision of any “review” therein.

In an unreported case, taking consideration of the spirit of the above noted sections, it has observed that section 6 of the Ain clearly stipulates that, the provision of the C.P.C will be applicable in adjudicating Artha Rin Suit by the Artha Rin Adalat if the former is not inconsistent with the Artha Rin Adalat, Ain, 2003 whereas section 5 (11) of the Ain, 2003 provides that the power and function of the C.P.C will be applied in adjudicating Artha Rin Suit so far it does not go inconsistent with the provision of the Ain, 2003. So, if we read those two provisions together, it will be palpably clear that there has been no scope to entertain any review petition under Order 47 Rule 1 of the Code of Civil Procedure. So, in view of the clear provision of law, as discussed above, there has been no scope for the Artha Rin Adalat to entertain a review against the judgment and decree passed by it.

It has further been observed that in the application for review, the defendant has referred to section 57 of the Artha Rin Adalat Ain, 2003. Though section 57 empowers the Artha Rin Adalat itself with inherent authority to act in situations where the statute has not expressly provided a forum or procedure. This provision does not authorize any other court or tribunal to exercise such inherent powers beyond what the statute specifically permits.

However, it is pertinent to note that the respondent/petitioner was not bringing any piece of legislation or authority on which this court can rely. In this context, the governing statute and cited decision do not contemplate or provide for filing any review in such a manner. Maintainability being the foremost requirement for invoking the jurisdiction of this Court, and in the absence of any statutory provision conferring such right, the petition must fail on the threshold. Thus, there has been no scope to entertain any review application under the Artha Rin Adalat Ain, 2003. In the context above, the instant application is not maintainable in the eyes of the law.

Accordingly, the First Appeal is allowed, the Review Miscellaneous Case filed following Order XLI, Rule 23 of the Code of Civil Procedure is rejected, and the connected Civil Rule being No. 386(F) of 2022 is discharged without any order as to cost.

In light of the above, the judgment and order dated 31.07.2012 passed by the Artha Rin Adalat based on the Review Miscellaneous Case is hereby declared void.

Consequently, the Judgment and order dated 31.07.2012 passed by the Judge (Joint District Judge), Artha Rin Adalat, Chattagong in Review Miscellaneous Case No. 07 of 2012 is hereby set aside and the judgment and decree dated 25.01.2009 (decree drawn on 01.02.2009) passed by learned Judge, Artha Rin Adalat, Chattinong in Artha Rin Suit No. 12 of 2008 is hereby upheld.

It is pertinent to note that, appellant may have liberty to file an application to correct the documents/applications in light of the judgment and decree dated 25.01.2009, if so advised.

Let a copy of this judgment, along with the lower Court record, be communicated to the Court concerned forthwith.

Md. Riaz Uddin Khan, J:
I agree.