

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Civil Appellate Jurisdiction)**

**First Miscellaneous Appeal No. 200 of 2011
(Civil Rule No. 428 (FM) of 2011)**

In the matter of:

Md. Mofizul Islam

... Appellant-petitioner

-Versus-

Bangladesh Development Bank and others

... Respondents-opposite parties

Mr. Mohammad Ahasan, Advocate

... For the appellant-petitioner

Mr. Sheikh Habib-ul Alam, Advocate

.... For the respondent-opposite party no. 1

**Heard on 16.01.2024 23.01.2024 06.02.2024
07.02.2024
and Judgment on 07.02.2024.**

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Mohi Uddin Shamim

Md. Mozibur Rahman Miah, J.

Since the point of law and facts involved in the appeal as well as in the rule are interrelated they have been heard together and are being disposed of by this common judgment.

At the instance of the auction purchaser, this appeal is directed against the judgment and order dated 20.02.2011 passed by the learned Additional District Judge, Bankruptcy, Court, Dhaka in the Bankruptcy case no. 18 of 1999 allowing the application filed by the plaintiff respondent no.1 dated 13.02.2011 restraining the receiver from taking possession of the project as well as dispose of the same.

The short facts leading to preferring this appeal are:

The respondent no.1 as plaintiff originally filed the aforesaid Bankruptcy suit seeking following reliefs:

(ক) বিবাদী দেনাদারগনকে বাদী পাওনাদার ব্যাংকের পাওনা ৩১.১২.১৯৯৭ ইং তারিখের হিসাবানুযায়ী ২৩,৫৮,৪৮,০০০/- টাকা মাত্র পরিশোধের আনুষ্ঠানিক দাবী নামা মোতাবেক দাবী ও পরিশোধে না করে দেউলিয়া কর্ম করায় বিবাদী দেনাদারগনকে দেউলিয়া ঘোষণার এক আদেশ দিতে;

(খ) একজন রিসিভার নিয়োগ করিয়া দেনাদার গনের নিম্ন তফসিল বর্ণিত সম্পত্তি সহ অন্যান্য সকল স্থাবর ও অস্থাবর সম্পত্তির হেফাজত গ্রহন, পাওনাদার ব্যাংকের হিসাব সংগ্রহ সহ সকল পাওনাদারের পাওনা অনুযায়ী বিতরণ করিবার আদেশ দিতে মর্জি হয়।

(গ) বিবাদী দেনাদারগনকে সিভিলজেলে প্রেরণের আদেশ দিতে ও মাননীয় আদালতের আজ্ঞা হয়।

The said suit was taken up for hearing by the learned judge of Bankruptcy court and vide order dated 11.08.2008 the same was allowed declaring the opposite parties to the case that is, respondent nos. 2-9 as Bankrupts. Subsequently those opposite party was declared as discharged bankrupt vide order dated 02.02.2009. Thereafter respondent no. 10, Mr. Abdur Rob Mollah, a retired District Judge was appointed as a receiver to dispose of the property of the bankrupts and he has given appointment by the court by vide letter dated 15.03.2009. However, when the proceedings to be carried out by the receiver was going on, the creditor-decree holder, bank on 17.01.2010 filed an application for withdrawal of the case against the defendants-bankrupts on the back of liquidating the dues towards the decree holder bank and the learned

judge of the Bankruptcy court vide order being no. 93 dated 17.01.2010 allowed the application holding that, the dues has been paid back to the creditor bank in full satisfaction (পূর্ণ সন্তুষ্টিতে) and the order declaring the defendants as bankrupts was set aside (রদ করা হইল). Since the said order has not been intimated to the receiver he thus went on to sell the property mortgaged with the decree holder, bank and ultimately sold out 'chc'(ছ) scheduled land in favour of the auction purchaser-petitioner vide registered sale deed dated 13.06.2010. Following the said sale, the receiver then filed a report to the Bankruptcy court on 15.07.2010 where it has been described about his ignorance of the withdrawal of the suit vis-a-vis not complying with the provision so provided in section 42 of the Bankruptcy Act, 1997. Soon the decree holder filed an application for recalling the appointment of the receiver on 28.10.2010 stating that, the receiver did not inform his performance from time to time before the court and the learned judge of the Bankruptcy court vide order no. 96 allowed the said application recalling the appointment of the receiver. But in spite of recalling the appointment of the receiver he kept on running his activities as a receiver when the respondent no. 1 bank (BDBL) again filed an application on 13.02.2011 praying for restraining the receiver from taking possession of any project (property mortgaged with it) of the judgment debtor and to dispose of the same. The learned judge then vide impugned order allowed the application restraining the receiver from taking all steps (সমুদয় কার্যক্রম) and if any action it be taken will be treated as illegal and inoperative. It is at that stage the auction purchaser as appellant came before this court and preferred this appeal. After preferring this appeal, the appellant filed an application for staying

the operation of the impugned judgment and order and this court vide order dated 30.05.2011 also issued rule and passed an order staying the operation of the impugned order initially for a period of 06(six) months and it was then extended from time to time and on 16.04.2013 it was extended till disposal of the rule.

Mr. Mohammad Ahasan, the learned counsel appearing for the appellant-petitioner at the very outset submits that, since powers of the receiver will be governed by the appointment letter issued on 15.03.2009 as per the provision of section 65 and 73 of the Bankruptcy Act 1997 and the receiver has not done anything contrary to the said appointment letter as well as the provision of law so what he has been done by selling the property to the auction purchaser will not come within the purview of the impugned judgment and order and the auction purchase so have been made in favour of the auction purchaser will remain valid.

The learned counsel further contends that, since the information in regard to recalling the appointment of the receiver has not been communicated to him nor the withdrawal of the case, so invariably the receiver has got no information about the development made in the proceeding though fact remains soon after withdrawal of the suit vide order dated 17.01.2010 the self same decree holder bank also filed an application for amendment of the said order vide application dated 16.05.2011 that is long after 1 year 6 months asserting that inadvertently the case was withdrawn though the bankrupts has not paid back their debts to the creditor, bank but no order had yet been passed on that applicant due to pendency of the appeal which construe that, the decree

holder did not get back the outstanding dues from the debtors-bankrupts and therefore the said withdrawn is totally illegal and inoperative.

The learned counsel by referring to the provision of section 42 of the Bankruptcy Act also contends that, from the four corners of the total order sheets it does not imply any step has been taken to comply with the very provision and if it is not done, then there had been no reason for the receiver to know about the withdrawal of the Bankruptcy case and if the receiver had knowledge about withdrawal of the suit he would not have proceeded with the sale of the mortgaged property in favour of the auction purchaser so under no circumstances can the auction sale in favour of the auction purchaser be rendered as invalid. On those very legal proposition, the learned counsel finally prays for allowing the appeal and making the rule absolute.

On the contrary, Mr. Sheikh Habib-ul Alam, the learned counsel appearing for the respondent opposite party no. 1 very candidly opposes the contention so taken by the learned counsel for the appellant petitioner and contends that, it was the bounden duty of the receiver to give notice to the court concern from time to time especially in every 40 days by filing a report but since it has not been done so the dispose of the property in favour of the auction purchaser is totally illegal.

The learned counsel by referring to the provision of section 65(2) of the Bankruptcy Act also contends that, since prior permission is required to be sought from the court by the receiver in disposing of the property but it has not been done, so there has been no scope to validate the auction sale since it has not been intimated to the court concerned by the receiver.

The learned counsel further contends that, on the self same dispute a criminal case is also pending as well as a Artha Rin Suit has also been decreed in favour of the present decree holder bank and an Artha Rin execution case is now pending so under no circumstances can the property in question be sold out to the auction purchaser and it can be validated. On those counts, the learned counsel finally prays for dismissing the appeal and discharging the rule.

We have considered the submission so advanced by the learned counsel for the appellant-petitioner and that of the respondent-opposite-party no. 1. Only point-in-issue in disposing of the appeal and that of the rule is that, whether the impugned order passed restraining the receiver from proceeding with all activities in disposing of the property mortgaged with the creditor bank is valid in spite of the fact appointment of the receiver has been recalled on 28.10.2010 and it will affect the validity of auction purchase by the petitioner. However, on going through the application so filed by the decree holder bank dated 13.02.2011 we don't find under what provision of law that, very application has been filed. Since it is admitted facts that, on 28.10.2010 the appointment of the receiver has been recalled so subsequent application dated 13.02.2011 is totally redundant one because moment the appointment of the receiver is re called certainly, the receiver has got no authority to proceed with any action as per the terms and condition of his appointment dated 15.03.2009. However, on going through the order dated 17.01.2010 we don't find that, the receiver has ever been intimated about withdrawal of the suit on the heels of liquidating all the dues of the bank with full satisfaction (পূর্ণ সন্তুষ্টিতে) let alone declaring the defendants

as non-bankrupts. Had the said information ever intimated to the receiver, he would not have proceeded with the sale in favour of the auction purchaser. Apart from that, from the report so have been annexed with the supplementary affidavit no. 2 as of Annexure-‘M’ we find that, the sale deed was registered in favour of the auction purchaser on 13.06.2010 and the report was submitted to the bank on 15.07.2010 complying the conditions so have been set out in the appointment letter dated 15.03.2009. Furthermore, after passing the order being order no. 93 dated 12.01.2010, the suit was withdrawn, the subsequent order being no. 94 was passed on 03.10.2010 and in between the said period the sale deed was registered on 13.06.2010 in favour of the auction purchaser. But the procedure provided in section 42 of the Act ought to have been followed by the decree holder but admittedly no step as provided in that section has been taken enabling the receiver to know about the development that is, withdrawal of the Bankruptcy suit.

Against the above backdrop, we don't find any latches either on the part of the receiver or on the part of the auction purchaser in the process of auction sale/purchase of 'cha' scheduled land. So, vide impugned order the auction purchase as well as the registered sale deed in favour of the auction purchaser petitioner (Annexure-‘C’ to the application for stay) has not been vitiated and cannot be called in question about its veracity whatsoever.

In view of the above discussion and observation, we don't find any *ioto* of substance in the impugned order which cannot be sustained in law.

Accordingly, the appeal is allowed and the impugned judgment and order dated 20.02.2011 so far as it relates to the purchase of the property by the auction purchase dated 13.06.2010 (Annexure 'C' to the application) passed by the learned Additional District Judge, Bankruptcy, Court, Dhaka is hereby set aside and has got no binding effect on the petitioner.

Since the appeal is allowed the connected Rule being Civil Rule No. 428(FM) of 2011 is hereby made absolute.

Let a copy of this order be communicated to the concerned forthwith.

Mohi Uddin Shamim, J.

I agree.