

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

**First Miscellaneous Appeal No. 53 of 2015
With
Civil Rule No. 1192(FM) of 2014**

In the matter of:

Naziran Nesa, wife of late Sohrabuddin Ahmed,
320/A, West Dhanmondi, Road No. 8/A (New),
15(Old), Police Station- Hazaribag, District-
Dhaka.

... Appellant

-Versus-

The Manager, Sonali Bank Limited, Sadarghat
Branch, Dhaka and others.

... Respondents.

Mr. Md. Haroon Ar Rashid, Advocate

...For the appellant-petitioner

Mr. A.Z.M. Fariduzzaman, Advocate

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

**Heard on 03.07.2024 and 09.07.2024.
Judgment on 10. 07.2024.**

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

Md. Mozibur Rahman Miah, J.

Since the point of law and fact so figured in the appeal and that of the rule are intertwined, they have heard together and are being disposed of by this common judgment.

At the instance of the 3rd party in Artha Execution Case No. 24 of 1992 and that of the petitioner in Miscellaneous Case No. 11 of 2011, this appeal is directed against the judgment and order dated 13.11.2014 passed by the learned Joint District Judge and Artha Rin Adalat No. 2, Dhaka in the said case rejecting an application filed by the petitioner under sections 33 (7)(kha), 28, 26, 32 and 57 of the Artha Rin Adalat Ain, 2003 as well as order XXI, rule 103 and 99 of the Code of Civil Procedure including section 53 of the Transfer of Property Act holding that, the scheduled property so have been described in the application filed for releasing the property has got no nexus with the schedule mentioned in the Artha Execution Case No. 24 of 1992 for which there has been no reason to hold any local inspection either.

It is at that stage, the said 3rd party-petitioner of the Miscellaneous Case as appellant preferred this appeal under section 41(1) of the Artha Rin Adalat Ain, 2003. After preferring the appeal, the appellant as petitioner also filed an application for stay of the operation of the impugned order dated 13.11.2014. This court then upon considering the same issued rule and stayed the operation of the said impugned order for 4(four) months which gave rise to the Civil Rule No. 1192(FM) of 2014.

Mr. Md. Haroon Ar Rashid, the learned counsel appearing for the appellant-petitioner at the very outset submits that, the learned Judge of the Artha Rin Adalat erred in law innot considering the aspect that, the plot number so have been mentioned in the Artha Execution Case and that of the plot number described in the Miscellaneous Case initiated under section 32 of the Artha Rin Adalat Ain is not the same but without considering the

said vital assertion, the learned Judge has very illegally rejected the same which cannot be sustained in law.

The learned counsel further submits that, in spite of having no S.A plot number in the schedule of the plaint in Title Suit No. 58 of 1989 as well as in the Artha Execution Case No. 24 of 1992, the same has been inserted by amending the application for execution case yet there has been no R.S. plot number in the schedule of the said Artha Execution Case though the R.S. Khatian has been prepared in the name of the present petitioner but without considering the said aspect of the case, the learned Judge of the Artha Rin Adalat has very erroneously dismissed the Miscellaneous Case.

The learned counsel further contends that, the learned Judge of the Artha Rin Adalat has misappreciated the submission so placed by the learned counsel for the petitioner before it that the learned Judge arrived at a wrong finding that, the schedule mentioned in the schedule of the Artha Execution Case and that of the schedule mentioned in the Miscellaneous Case though in the schedule of the Artha Execution Case, the holding number has been mentioned as 320/A whereas in the schedule of the application so filed under section 32 for release of the property, holding number has been mentioned as 320/A Sathmosjid Road, Eidgah still the learned Judge erred in law in dismissing the said Miscellaneous Case.

At this, when the learned counsel for the appellant-petitioner was confronted with the submission placed by the learned counsel for the respondent no. 1 about the maintainability of the instant appeal since the pecuniary jurisdiction of the appeal requires to prefer the same to the

District Judge when the learned counsel finds it difficult to controvert the said submission.

Furthermore, we pose a question to the learned counsel about depositing 50% of the decretal amount in order to entertain an appeal as per the provision of section 41(1) of the Artha Rin Adalat Ain the appellant based on, the learned counsel then contends that, since at the time of filing the Miscellaneous Case before the Artha Rin Adalat, 25% of the decretal amount had been deposited so there has been no necessity to deposit the balance 25% amount for entertaining the appeal and finally prays for allowing the appeal and making the rule absolute.

On the contrary, Mr. A. Z. M. Fariduzzaman, the learned counsel appearing for the respondent-opposite-party no. 1 just raised the question of maintainability of the appeal asserting that, since as per section 41(1) of the Artha Rin Adalat Ain, the instant appeal has been preferred when admittedly the decretal amount is only taka four lakh so the petitioner should have preferred this appeal before the learned District Judge not before this Hon'ble court and thus the instant appeal is liable to be dismissed in limine.

The learned counsel in his second leg of submission also contends that, since it has been admitted position that, without depositing 50% of the decretal amount as contemplated in section 41 of the Artha Rin Adalat Ain, the appeal has been preferred so on that score as well, the instant appeal cannot sustain. On those two legal submissions, the learned counsel finally prays for dismissing the appeal and that of discharging the rule.

We have considered the submissions so advanced by the learned counsels for the appellant and that of the respondent no. 1 and perused the memorandum of appeal as well as the application for stay of the operation of the impugned judgment and order.

Since the central point of maintainability has been raised on the part of the bank, respondent no. 1 so we feel it expedient not to dwell on any factual aspect so canvassed by the learned counsel for the appellant-petitioner because if we find the appeal itself is not maintainable then there has been no necessity to discuss or observe the factual point. On going through the memorandum of appeal as well as the order initially passed by this court admitting the appeal, we find that, no statutory deposit has been made by the appellant to make the appeal entertainable as per section 41 of the Artha Rin Adalat Ain though section 41 of the Ain clearly speaks that if any appeal is preferred even against any order of the Artha Rin Adalat, the appellant has to deposit 50% of the decretal amount. It is admitted position that, the title suit was decreed for an amount of taka 4,00,000/- so invariably appellant ought to have deposited 50% of the said amount to get the appeal admitted so depositing 25% of the decretal amount before the executing court for filing the Miscellaneous Case under section 32 of the Artha Rin Adalat Ain will never validate the instant appeal.

Furthermore, since section 41 of the Ain clearly denotes that, if the decretal amount is less than taka 50,00,000/-, the appeal has to be preferred before the learned District Judge so very reasonably the appellant will have to prefer appeal before the learned District Judge. In view of that statutory

legal provision so provided in section 41 of the Artha Rin Adalat Ain, we find, the appeal is not maintainable.

Accordingly, the appeal is dismissed however without any order as to cost.

Since the appeal is dismissed, the connected rule being Civil Rule No. 1192(FM) of 2014 is hereby discharged.

The order of stay granted at the time of issuance of the rule stands recalled and vacated.

However, the learned Judge of the executing court is hereby directed to dispose of the Artha Execution Case No. 24 of 1992 as expeditiously as possible preferably within 2(two) months from the date of receipt of the copy of this judgment.

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

Md. Bashir Ullah, J.

I agree.