

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

Writ Petition No. 1366 of 2015

-AND-

IN THE MATTER OF:

An application under Article 102 of the Constitution
of the People's Republic of Bangladesh

-AND-

IN THE MATTER OF:

Md. Mazibur Rahman Khan

.....Petitioner

-Versus-

The Learned Judge, Artha Rin Adalat, Khulna and
others

..... Respondents

Mr. M. Nazmul Huda with

Mr. Md. Mahadi Hassan, Advocates

.....For the petitioner

Mr. Tushar Kanti Das, Advocate

.....For the respondent No. 3

Heard on: 25.01.2023

Judgment on: The 29th of August, 2023

Present:

Mr. Justice Abu Taher Md. Saifur Rahman

And

Mr. Justice A.K.M. Rabiul Hassan

Abu Taher Md. Saifur Rahman, J:

This Rule was issued on an application filed by the petitioner under Article 102 of the constitution challenging the proceedings of the Artha Rin Suit No. 46 of 2014 now pending before the Court of Artha Rin Adalat, Khulna in violation of the mandatory provision of section 6(2) of the Artha Rin Adalat Ain, 2003 and

order Nos. 13 dated 30.11.2014 and order No.14 dated 18.01.2015 passed by the learned Judge, Artha Rin Adalat, Khulna in Artha Rin Suit No. 46 of 2014 (as evident from **Annexure-‘B’**) directing the petitioner to maintain status quo in the properties mentioned in the application for attachment before judgment filed by the respondent No.3 should not be declared illegal without 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.

At the time of the hearing, this Court was also pleased to stay all further proceedings of Artha Rin Suit No. 46 of 2014 now pending before the Court of Artha Rin Adalat, Khulna for a period of **6 (six)** months from the date which was time to time extended by this Court.

For the purpose of disposal of the Rule, the relevant facts may briefly be stated as follows:

That the respondent No. 2, Premier Bank Limited as plaintiff filed an Artha Rin Suit No. 46 of 2014 on 20.05.2014 against the petitioner and others for the realization of an outstanding loan amounting to **Tk.74,64,75,570.65/-** (Taka Seventy four crore, Sixty four lac, Seventy-five thousand, Five hundred seventy and Sixty five paisa) which was registered accordingly. After filing the aforesaid suit, the plaintiff–respondent bank filed an application dated 22.05.2014 for attachment of the properties of the petitioner. It is further stated that the petitioner duly appeared before the Court on 12.11.2014 and took several adjournments for submitting the written objection as against the aforesaid application for attachment, which was allowed by the court below accordingly. The petitioner

lastly again prayed for time on 13.11.20214 for submitting the written objection and on the same day, the plaintiff bank filed an application seeking direction upon the defendant-petitioner to maintain a status quo over the properties as mentioned in their application for attachment. After hearing, both applications were allowed by the court with a direction upon the petitioner to submit the written objection on 18.01.2015, and till to submitting the written objection, the petitioner is directed to maintain the status quo over the properties as mentioned in the application for the attachment vide its order No.13 dated 30.11.2014 and fixed the next date on 18.01.2015. It is further stated that the petitioner finally filed a written objection on 18.01.2015 and on that day the plaintiff bank also filed an application for an extension of the order of status quo. After hearing, the court below directed the petitioner to maintain the status quo till to heard the application for attachment and fixed the next date on 15.02.2015 for hearing. Being aggrieved the petitioner has preferred this writ petition before this Court and obtained the instant Rule and stay.

Mr. M. Nazmul Huda, the learned Advocate for the petitioner submits that Artha Rin Adalat Ain is a special law and special procedures have been laid down therein. As per provision of section 6(2) of the Artha Rin Adalat Ain, 2003, the plaint has to be submitted before the Court along with an affidavit. In the instant case, the aforesaid Artah Rin Suit was filed on 20.05.2014 with a verification instead of an affidavit, and, as such, the aforesaid Artha Rin Suit is illegal and not sustainable in law. In support of his contention, he relied upon the decision in the case of *M.A. Bari Talukder Vs. Agrani Bank Limited and others* as reported in 8 ADC (AD) page 425.

As against this, Mr. Tushar Kanti Das, the learned Advocate for respondent No. 3 submits that in the instant case, the Artha Rin Suit was filed along with verification instead of an affidavit, which is a procedural error caused by the learned Advocate of the plaintiff bank and may be cured by way of submitting an affidavit in support of the averments of plaint of the aforesaid Artha Rin Suit. So far order Nos. 13 and 14 are concerned, the relevant application filed by the plaintiff bank for attachment of the properties of the petitioner is still pending for hearing before the court below and accordingly the petitioner has nothing to be aggrieved by the aforesaid impugned orders and, as such, the instant Rule is liable to be discharged.

Heard the submissions of the learned Advocates of both sides and perused the impugned orders along with other materials on record thoroughly.

On perusal of the impugned order Nos. 13 and 14 passed in Artha Rin Suit No. 46 of 2014, it transpires that the court below fixed the date on 15.02.2015 for hearing the application filed by the plaintiff bank for attachment which is still pending and without hearing the said application, the petitioner filed the instant writ petition and as such, the petitioner has nothing to be aggrieved by the aforesaid impugned orders.

Now let us examine to see whether the aforesaid Artha Rin Suit in question is liable to set aside for violation of the provision of section 6(2) of the Artha Rin Adalat Ain, 2003.

In order to appreciate the contention of the learned Advocate for the petitioner it is necessary to examine the relevant provision of Section 6(2) of the Artha Rin Adalat Ain, 2003, which reads as follows:

“A suit under this Act shall be instituted by presenting a plaint by the financial institution, an affidavit shall be enclosed with the plaint in support of the statement of the plaint and the relevant documentary evidence, the Court – fees (ad valorem) payable with the plaint shall be paid, and the plaint, so presented, if found just and proper shall be included at seriatim in the prescribed register of the Court.”

On perusal of the aforesaid provisions, it transpires that section 6(2) of the Ain prescribed the procedure for filing an Artha Rin Suit before the Court wherein it provides that an Artha Rin Suit has to be filed by presenting a plaint along with an affidavit in support of the averments of the plaint and the relevant documentary evidence and the required advalorem court fees for the purpose of registration of the suit. So it is clear that unless an affidavit in support of the plaint and the requisite advalorem has been filed it cannot be said that the Artha Rin Suit has been registered properly.

We have gone through the decision in the case of *M.A. Bari Talukder Vs. Agrani Bank Limited and others* as reported in 8 ADC page 425, wherein it transpires that Agrani Bank Limited as plaintiff filed an Artha Rin Suit No. 574 of 2004 against the petitioner M.A Bari Talukder on 28.04.2004 for realization of the outstanding loan amounting to **Tk. 1,19,73,255/-** (Taka One crore, Nineteen lac, Seventy-three thousand and Two hundred fifty-five). On the date of filing of

the aforesaid suit, the plaintiff bank could not file the requisite court fee and subsequently, deposited the court fees on 11.05.2004. In that case, the defendant–petitioner duly appeared and submitted the written statement and ultimately the suit was ready for trial. At that stage, the defendant petitioner filed an application under section 47 of the Artha Rin Adalat Ain, 2003 praying for allowing him to pay the principal loan along with 200% of the principal loan amount as interest as per provision of section 47 of the Artha Rin Adalat Ain, 2003, which was rejected by the court below vide its judgment and order dated 14.10.2008. Being aggrieved, the defendant petitioner filed a writ petition No. 8731 of 2008 before the High Court Division and obtained the Rule. After hearing, the Hon’ble High Court Division was pleased to discharge the Rule vide its judgment and order dated 11.03.2010 holding mainly that since the suit was filed on 28.04.2004, the provision of section 47 of the Artha Rin Adalat Ain 2003 was not applicable to that suit and the provision of section 6(2) of the Artha Rin Adalat Ain 2003, being merely a guideline and directory provision only. The plaintiff bank is at liberty to pay the advolerem court fee within the period prescribed by the court. Being aggrieved the Writ Petitioner filed a Civil Petition for Leave to Appeal on the main contention that since according to section 6(2) of the Artha Rin Adalat Ain, 2003, the plaintiff requires to pay the advolerem court fee along with the plaint and since in this case the advolerem court fee was not paid on the date of the filing of the plaint but it was paid on a subsequent date i.e. on 11.05.2004 the plaint should be deemed to be have been registered on that date i.e. on 11.05.2004 and in the circumstances, the borrower defendant is entitled to get the benefit of section 47 of the Artha Rin Adalat Ain, 2003.

After hearing, the Hon'ble Appellate Division observed that since at the time of filing of the Artha Rin Suit on 28.04.2004 the plaint was not accompanied with the requisits advolum court fee the plaint was not filed properly as per sub-section 2 of section 6 of the Artha Rin Adalat Ain, 2003. On 11.05.2004 only when the advolumn court fee was filed then only the plaint of the Artha Rin Suit in question became ready for registration as per above quoted subsection 2 of section 6 of the Artha Rin Adalat Ain, 2003. Where the special law clearly provides that when the plaint of the Artha Rin Suit is filed properly i.e. filed along with an affidavit an advolerem court fee then only it can be registered, the registration of the Artha Rin Suit in question before filling of the advolerem court fee was illegal being in contravention of the subsection 2 of section 6 of the Artha Rin Adalat Ain,2003. So in in view of the above discussion our view is that since in the present case, the advolerem court fee was filed on 11.05.2004 the plaint has to be deemed to have been filed and registered on that very date i.e. on 10.05.2004. So in the circumstances, the defendant petitioner is entitled to get the benefit of section 47 of the Artha Rin Adalat Ain, 2003" and thereby directed upon the concerned Artha Rin Adalat to dispose of the Artha Rin Suit in question in the light of the aforesaid observation and dispose of the Civil Peition for Leave to Appeal accordingly.

In view of the aforesaid observation as made by the Hon'ble Appellate Division, we are of the view that even after filing the Artha Rin Suit, there is an still opportunity to file an affidavit in support of the averments of the plaint and to pay the requisite advolerem court fees later on for the purpose of registration of

the Artha Rin Suit. The moment the requisite affidavit in support of the plaint and the required advolorem Court fees has been filed, it will be deemed to be registered on that day.

Under the given circumstances, we are of the view that justice would be done if the plaintiff-respondent bank is directed to submit an affidavit in support of their plaint for complying with the statutory provision of section 6(2) of the Artha Rin Adalat Ain, 2003.

Accordingly, the plaintiff-respondent bank is hereby directed to submit an affidavit in support of the averments of the plaint in the aforesaid Artha Rin Suit No. 46 of 2014 within **15 (fifteen)** working days from the date of receipt a copy of this order.

The Artha Rin Adalat concerned is directed to dispose of the aforesaid Artha Rin Suit in the light of the aforesaid observation and direction.

With the aforesaid observation and direction, the Rule is disposed of.

The order of stay granted earlier by this Court is hereby stand vacated.

Communicate this order to the respondents at once.

A.K.M. Rabiul Hassan, J

I agree.