

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)

CIVIL REVISION NO. 4755 OF 2003

In the matter of:

An application under Section 115(1) of the Code of Civil Procedure, 1908.

AND

In the matter of:

Lutfor Rahman, son of Kobad Ali Biswas of village-Bokul Nagore, Police Station- Sailkupa, District-Jhenaidah.

.... Petitioner

-Versus-

Sonali Bank, Head Office, Motijheel Commercial Area, Dhaka represented by the Manager, Sonali Bank, Garagonj Branch, Shoilkupa, Jhenaidah.

....Opposite-party

No one appears

... For the petitioner

Heard and Judgment on 14.08.2024.

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

Md. Mozibur Rahman Miah, J:

At the instance of the defendant in Title Suit No. 03 of 1992 and that of the judgment-debtor in Money Execution Case No. 01 of 2000, this

rule was issued calling upon the opposite-party to show cause as to why the order no. 41 dated 13.10.2003 passed by the learned Joint District Judge, 1st Court, Jhenaidah in the said Money Execution Case issuing warrant of arrest under section 35 of the Artha Rin Adalat Ain, 2003 should not be set aside and/or such other or further order or orders be passed as to this court may seem fit and proper.

At the time of issuance of the rule, this court also stayed the operation of the impugned judgment and order dated 13.10.2003 passed by the learned Joint District Judge, 1st Court, Jhenaidah in Money Execution Case No. 01 of 2000 till disposal of the rule.

The short facts so figured in the revisional application are:

The present opposite-party as plaintiff filed the aforesaid money suit claiming an amount of taka 6,36,472/- seeking following reliefs:

- “(ক) ইং ৩১/১০/৯১ তারিখ পর্যন্ত বিবাদীর নিকট পাওনা ৬,৩৬,৪৭২/- (ইং ১৫/১/৯৪ তারিখের ১৩ নং আদেশ সংশোধিত) টাকা বাদীর অনুকূলে ডিক্রী হয়।
- (খ) ঋণের টাকা সুদসহ আদায় না হওয়া পর্যন্ত মোকদ্দমার দাখিলের তারিখ হইতে ২২% হারে তিন মাস অন্তর অন্তর চক্রবৃদ্ধি হারে সুদ আদায়ের আদেশ হয়।
- (গ) বিবাদী ঋণের টাকা আদায় দিতে ব্যর্থ হইলে তাহার বিরুদ্ধে *personal decree* হয়।
- (ঘ) মোকদ্দমার যাবতীয় খরচা বাবদ বিবাদীর বিরুদ্ধে ডিক্রী হয়।
- (ঙ) আদালতের ন্যায় বিচারে বাদী আরও যে কোন প্রতিকার পাইতে পারে তাহারও আদেশ হয়।”

In the said suit, the learned Judge vide judgment and decree dated 26.11.1999 decreed the suit *ex parte* against the lone defendant directing him to pay the decretal amount within a period of 90(ninety) days in default, the plaintiff was directed to realize the said decretal amount with interest at the rate of 22% per annum. Since the defendant did not come forward to pay the decretal amount, the plaintiff as decree-holder then filed an execution case being Money Execution Case No. 01 of 2000. During the course of execution case, the decree-holder took step for selling the property mortgaged with it through auction and on two consecutive occasions dated 04.09.2003 as well as 02.10.2003, the said mortgaged property was put on auction sale but as no bidder came forward to purchase the said mortgaged property thus auction could not be held. Ultimately, the decree-holder filed an application for detaining the judgment-debtor in civil prison. After hearing the decree-holder, the learned Judge vide impugned order dated 13.10.2003 issued warrant of arrest against the judgment-debtor though under section 35 of the Artha Rin Adalt Ain, 2003. It is at that stage, the judgment-debtor as petitioner filed this revisional application and obtained instant rule and order of stay as has been stated hereinabove.

No one appears for the petitioner to press the rule though the matter has been referred by the Hon'ble Chief Justice of Bangladesh by his office order and it has been appearing in the list on several occasions with the name of the learned counsel for the petitioner. However, we have perused the impugned judgment and order and all the documents so appended with the revisional application.

On going through the documents so annexed with the revisional application, we find that, the suit was filed for realization of money in ordinary civil court of the then sub-ordinate Judge, Jhenaidah and accordingly, decree was passed *ex parte* by the said court. Since the defendant did not pay the decretal amount, the opposite-party as decree-holder then initiated the execution case no. 01 of 2000 and the impugned order was passed on an application filed by the decree-holder under section 35 of the Artha Rin Adalat Ain, 2003. On going through the provision of section 35 of the Artha Rin Adalat Ain, 2003, we find that, the said section speaks about the authority supposed to be exercised by a Magistrate of the 1st class. Since the money suit has not been filed under any provision of Artha Rin Adalat Ain, 1990 or 2003 so there has been no scope on the part of the sub-ordinate Judge now the Joint District Judge to exercise the authority provided in section 35 of the Artha Rin Adalat Ain, 2003. Further, civil detention can only be passed under the provision of section 34 of the Artha Rin Adalat Ain which has no manner of application in money execution case. So given the above legal proposition, we don't find that the impugned judgment and order can at all be sustained when Artha Rin Adalat Ain has got no application in adjudicating a money execution case let alone the court where the execution case has now been pending is not any Artha Rin court.

All in all, we don't find any legality in the impugned judgment and order which is liable to be set aside.

In the result, the rule is made absolute however without any order as to cost.

The impugned judgment and order dated 25.05.2005 passed by the learned District Judge, Barisal in Miscellaneous Case No. 06 of 2005 is thus set aside.

However, the learned Judge of the executing court is hereby directed to dispose of the said Money Execution Case No. 01 of 2000 as expeditiously as possible preferably within a period of 3(three) months from the date of receipt of the copy of the order.

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

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

Md. Bashir Ullah, J:

I agree.