

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION**

(SPECIAL ORIGINAL JURISDICTION)

WRIT PETITION NO.218 OF 2016

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. Abduz Jaker

.... Petitioner

- Versus -

Bangladesh represented by Secretary, Ministry of
Law, Justice and Parliamentary Affairs,
Bangladesh Secretariat, Dhaka and another.

..... Respondents

No one appears.

.....For the Petitioner

Mr. Md. Taufiqul Islam, Advocate

.....For the Respondent No.2

Mr. Mohammad Waliul Islam Oli, D. A. G. with

Ms. Shahida Afrin Shapla, D. A. G. with

Ms. Nilufar Yesmin, A.A.G. with

Mr. Md. Moshir Rahman, A.A.G. with

Mr. Md. Motasim Billah Parvez, A.A.G. with

Mr. Md. Faridul Islam, A.A.G.

.....For the Respondents Government

Heard on 25.11.2025

Judgment delivered on 02.12.2025

Present :

Mr. Justice Yousuf Abdullah Suman

And

Mr. Justice Dihider Masum Kabir

Dihider Masum Kabir, J

On an application filed under Article 102 of the Constitution of the
People's Republic of Bangladesh, the Rule was issued and a conditional
order of stay of the proceedings was granted with direction on 12.01.2016
as under:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the publication of the Auction Notice by the respondent No. 2 in “The Daily Ittefaq” dated 22.12.2015 (Annexure-A) should not be declared to have been done without lawful authority and is of no legal effect and why such other or further order or orders should not be passed as to this court may seem fit and proper.

Pending hearing of the rule, let the operation of the impugned Auction Notice for sale of property in the schedule thereto, published by respondent No.2 in the ‘Daily Ittefaq’ dated 22.12.2015 (Annexure-A) be stayed for a period of 06 (six) months, subject to payment of the outstanding amount of Tk.2,34,14,648/- as it appears from the auction notice, within 12 (twelve) months in the manner set out below: The petitioner shall pay a sum of Tk.23,41,464.8 within 02 (two) months i.e. within 11.03.2016. The rest of the amount i.e. Tk.2,10,73,220/- shall be paid in 4 (four) equal installments of Tk.52,86,305/- each within the next 10 (ten) months, the 1st installment by 11.05.2016; the 2nd installment by 11.07.2016; the 3rd installment by 11.09.2016 and the 4th installment by 11.11.2016.

In the event of failure to pay any of the installments the rule shall stand discharged and the respondents shall be at liberty to take such steps as may be advised to ensure repayment of the debts.”

The facts relevant for the disposal of the instant Rule as made out in the writ petition, in short, are that the petitioner company availed credit facility from respondent No.2, Bangladesh Development Bank limited, Dinajpur Branch, Dinajpur mortgaging landed property. Being defaulter, the respondent No.2 proceeded for selling the mortgaged property following section 12(3) of Artta Rin Adalat Ain, 2003 for recovery of Tk.2,34,14,648/- publishing auction notice in the “Daily Ittefaq” dated 22.12.2015 and the bid was scheduled to be held on 12.01.2016. Challenging the said auction notice, the petitioner moved to this Division and subsequently filed supplementary affidavit stating that he is ready to pay the total loan amount within 12 (twelve) months and the petitioner shall pay 10% at Tk. 23,41,464.8 out of total dues claimed by respondent No.2 within 2 (two) months i.e. within 11.03.2016 and the rest amount i.e. Tk.2,10,73,220/- within next 10 (ten) months i.e. within 11.11.2016 in four equal installments.

Respondent No.2, Bangladesh Development Bank Limited, Dinajpur Branch, Dinajpur filed affidavit in opposition on 19.11.2025 stating that after issuing the Rule Nisi and staying of the operation of auction procedure, the petitioner did not deposit any installment or paid any part of the installment from outstanding amount up to 30.09.2015 of Tk.2,34,14,648/- (Auction Notice). The petitioner is a habitual loan defaulter. The respondent Bank sent several letter to the petitioner requesting him to repay the outstanding amount. The petitioner deposited total amount 56.38 Lac so far and the debt amount stands at Tk.493.07 Lac as on 15.10.2025. The respondent bank already filed Artha Rin Suit being No.49 of 2018 against the petitioner for recovery of outstanding amount.

No one appears on behalf of the petitioner though the instant case was fixed for hearing and also for judgment of several consecutive days in the daily cause list. The petitioner didn't pay the amount as per direction of this Division and file no affidavit in compliance.

On the other hand, learned counsel Mr. Md. Taufiqul Islam appearing on behalf of the respondent No.2 submits that the submissions of the writ petitioner in this instant writ petition are misconceived, erroneous, illogical, illegal and not tenable in the eye of law. He also submits that the respondent bank disbursed the loan with the terms and conditions contained in the sanction letter, but the petitioner did not comply with the terms and conditions of the sanction letter and failed to implement the project and also failed to repay the loan as per schedule of payment and did not take any step for transferring the mortgaged land to the respondent bank. In such a situation, the bank proceeded for selling the mortgaged property publishing auction notice following section 12(3) of Artha Rin Adalat Ain, 2003. Moreover, the petitioner failed to stand on his own commitment made in his supplementary affidavit filed on 12.01.2016 and failed to obey the order of this Division also. The respondent No.2 legally published auction notice. They had no malafide and arbitrary intension and did everything within the jurisdiction contained in the provisions of law. In the above circumstances, the Rule issued by this Hon'ble Division is liable to be discharged.

Learned Deputy Attorney General Mr. Mohamad Waliul Islam Oli submits that the date of auction has already been expired and the petitioner didn't comply with the order of this Division. So, the Rule is liable to be discharged as it has become infructuous.

We have considered the submissions of learned counsel Mr. Md. Taufiqul Islam appears on behalf of the respondent No.2, Bangladesh Development Bank and learned Deputy Attorney General Mr. Mohamad Waliul Islam Oli and perused the writ petition, supplementary affidavit and affidavit in opposition of respondent No.2 and other material on records.

On perusal of the writ petition, supplementary affidavit and affidavit in opposition, it is revealed that the petitioner challenged the auction notice published in "The Daily Ittefaq" dated 22.12.2015 by the respondent No.2, (Annexure-A). This Division issued Rule and stayed the operation of auction procedure for a period of 06 (six) months subject to pay the outstanding amount of Tk.2,34,14,648/- as it appears from the auction notice, within 12 (twelve) months by installments, i.e. within 11.11.2016, otherwise, the Rule shall stand discharged. But the petitioner violated the order and direction of this Division. In the instant case notice has been issued under the special legislation that is Artha Rin Adalat Ain, 2003 (Act VIII of 2003) which was enacted as a special measure for speedy realization of the loan money from the borrower and the Ain came in to force on 1st of May, 2003. In section 3 of the Ain it has been provided that 'আপাততঃ বলবৎ অন্য কোন আইনে ভিন্নতর যাহা কিছুই থাকুক না কেন, এই আইনের বিধানাবলীই কার্যকর হইবে'। Although the power to sell the property with the permission of the court was there under section 69 of the Transfer of Property Act, 1882, since the provision of section 12 will prevail upon any other law, the bank has no other alternative but to invoke section 12 of the Ain and accordingly, the bank issued the impugned sale notice which was published in the daily newspaper. Let us review the relevant portion of section 12 the Artha Rin Adalat Ain, 2003.

অর্থ ঋণ আদালত আইন, ২০০৩

১২। আর্থিক প্রতিষ্ঠান কর্তৃক কতিপয় জামানত বিক্রয়

- (১) উপ-ধারা (২) এর বিধান সাপেক্ষে, কোন আর্থিক প্রতিষ্ঠান, উহার নিজ দখল বা নিয়ন্ত্রণে থাকা বিবাহীর কোন সম্পত্তি যাহা পণ বা বন্ধক (Lien or pledge) রাখিয়া ঋণ প্রদান করা হইয়াছে, এবং যাহা বিক্রয় করিবার আইনগত অধিকার বাদীর রহিয়াছে বা বাদীকে অর্পণ করা হইয়াছে, উহা বিক্রয় না করিয়া এবং বিক্রয়লব্ধ অর্থ ঋণ পরিশোধ বাবদ সমন্বয় না করিয়া, অর্থ ঋণ আদালতে কোন মামলা দায়ের করিবে না।
- (২) উপ-ধারা (১) এর বিধান সত্ত্বেও, কোন আর্থিক প্রতিষ্ঠান নিজ দখল বা নিয়ন্ত্রণে থাকা পণ বা বন্ধকী সম্পত্তি বিক্রয় না করিয়া মামলা দায়ের করিলে অনতিবিলম্বে উক্ত সম্পত্তি

পূর্ব-বর্ণিত মতে বিক্রয় করিয়া বিক্রয়লব্ধ অর্থ ঋণের সহিত সমন্বয় করিবে এবং বিষয়টি আদালতে লিখিতভাবে অবহিত করিবে।

(৩)কোন আর্থিক প্রতিষ্ঠান, বিবাদীর নিকট হইতে কোন স্থাবর সম্পত্তি (Immovable Property) বন্ধক (Mortgage) রাখিয়া অথবা অস্থাবর সম্পত্তি (Movable Property) দায়বদ্ধ রাখিয়া (Hypothecated) ঋণ প্রদান করিলে এবং বন্ধক প্রদান বা দায়বদ্ধ রাখার সময় বন্ধকী বা দায়বদ্ধ সম্পত্তি বিক্রয়ের ক্ষমতা আর্থিক প্রতিষ্ঠানকে প্রদান করা হইয়া থাকিলে, উহা বিক্রয় না করিয়া এবং বিক্রয়লব্ধ অর্থ ঋণ পরিশোধ বাবদ সমন্বয় না করিয়া, অথবা বিক্রয়ের চেষ্টা করিয়া ব্যর্থ না হইয়া, অর্থ ঋণ আদালতে কোন মামলা দায়ের করিবে না।

On a plain reading of the above provisions of law, we have found no illegality in publishing the advertisement of sale of mortgaged property by auction under section 12(3) of Artha Rin Adalat Ain, 2003.

Admittedly, the property as mentioned in the impugned sale notice was mortgaged by registered mortgaged deed and the petitioner failed to repay the loan money. In such a case, invoking section 12(3) of the Artha Rin Adalat Ain 2003, is not contrary to the provision of our Constitution. The case of Overseas Garments Industries (Pvt.) and others Vs. Bangladesh and others reported in 57 DLR 168 and many other cases support the above observation. The core purpose of the writ petitioner has already been served out by staying operation of auction procedure. In the case of Md. Tariqul Islam Taraque Vs. Islamic Finance and Investment Ltd. and others reported in 2012 (XX) BLT (AD) 64 held that “Section 12 of the Artha Rin Adalat Ain, 2003 authorizes any lending bank to sell the mortgaged property without any intervention of any Court for adjustment of its due money from the borrower and then to proceed, in accordance with law, for the realization of the balance amount, if any.”

In view of the above observations as well as the facts and circumstances of the case, we find no merit in the instant Rule Nisi and accordingly, the Rule is discharged and the ad-interim order of stay and direction is hereby re-called and vacated.

However, there is no order as to costs.

Communicate the judgment and order at once.

Yousuf Abdullah Suman, J

I agree,

