

8 SCOB [2016] HCD 15

**HIGH COURT DIVISION
(Special Original Jurisdiction)**

Writ Petition No. 6698 of 2010

Mr. Saifur Rashid, Advocate

...For the Petitioner

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

Mrs. Khursheed Jahan, Advocate

...For Respondent No. 3

Kazi Monirul Haque

...Petitioner

Mr. Md. Shahidul Islam, DAG

...For the Respondents

Versus

Date of Hearing: 13.05.2015 & 14.05.2015

Date of Judgment: 17.05.2015

**Bangladesh, represented by the
Secretary, Ministry of Law, Justice and
Parliamentary Affairs and others**

...Respondents

Present:

Mr. Justice Zubayer Rahman Chowdhury

And

Mr. Justice Mahmudul Hoque

Artha Rin Adalat Ain, 2003

Section 28:

Section 28(4) of the Ain clearly stipulates that if a new Execution case is filed after the expiry of the 6 years from the date of filing of the 1st Execution case, the 2nd case shall also be barred by limitation. In our view, section 28(4) of the Ain contemplates and takes into account the situation where the 1st Execution case, is neither concluded nor disposed of within the period of 6 years. ... (Paras 14 & 15)

Artha Rin Adalat Ain, 2003

Section 33:

It is to be noted that in the instant case, the respondent no. 3 Bank had obtained a certificate from the Adalat by filing an application under section 33(7) of the Ain, Therefore, in our view, once a certificate has been issued under section 33(7) of the Ain in favour of the decree holder Bank, that by itself would bring to an end of the proceeding of the Artha Jari case. ... (Para 20)

Judgment

Zubayer Rahman Chowdhury, J :

1. By the instant Rule, the petitioner challenges the legality and propriety of Order No. 38 dated 26.01.2009, as evidenced by Annexure M, passed by the learned Judge, Artha Rin

Adalat, Khulna in Artha Jari Case No. 255 of 2005, issuing warrant of arrest against the petitioner.

2. Relevant facts necessary for disposal of the Rule are that the respondent no. 3 Bank (hereinafter referred to as the Bank) instituted Title Suit No. 50 of 1994 before the 2nd Artha Rin Adalat, Khulna impleading Azhar Limited and others, including the petitioner as defendant no. 7, for realization of Tk. 2,59,83,461/-. The suit was decreed *exparte* on 09.02.1995 (decree signed on 16.02.1995).

3. Subsequent to passing of the *exparte*, a resolution was passed by Qazi Azharul Haque and Sons Limited in its Board Meeting on 27.06.1996 to the effect that the amount lying in the company's account with the Bank would be adjusted against the liability of Azhar Limited.

4. Thereafter, the Bank adjusted an amount of T. 13,47,874.01/= from the account of Qazi Ajharaul Haque and Sons against the dues in respect of Ajhar Limited and at the same time, also deposited Tk. 4,80,000/- on 13.02.1996. In this way, the Bank adjusted a sum of Tk. 18,27,874.21 in respect of the liability of the Azhar Limited and an amount of Tk. 29,15,64.79 remained due and outstanding which increased to Tk. 40,37,000/- on 31.12.1998 on account of accumulation of interest.

5. Qazi Azharul Haque and Sons Limited filed Money Suit No. 2 of 2000 on 02.01.2000 against the Bank claiming Tk. 18,02,565/- before the 1st Court of Subordinate Judge, Khulna, which was later renumbered as Money Suit No. 26 of 2002 and is now pending before the Court of 2nd Joint District Judge, Khulna.

6. Despite the position as aforesaid, the Bank filed Artha Jari Case No. 255 of 2005 before the Artha Rin Adalat, Khulna for execution of *exparte* decree claiming Tk. 5,85,14,151.25. The present petitioner was impleaded as judgment debtor no. 7 in the Artha Jari Case, who appeared and filed written objection and prayed for rejection of the case on the ground stated therein.

7. On 05.02.2006, the Bank filed an application under section 34 of the Artha Rin Adalat Ain, 2003 (briefly, the Ain) for issuance of Warrant of Arrest against the judgment debtor nos. 2-8. However, although the said application was filed before the Adalat in February, 2006, after 3 (three) years of filing of the said application, the Adalat vide, Order No. 38 dated 26.01.2009, issued warrant of arrest against the petitioner. Being aggrieved thereby, the petitioner moved this Court and obtained the present Rule along with an order of stay, as noted at the outset.

8. Mr. Saifur Rashid, learned Advocate appears in support of the Rule, while the same is being opposed by Mrs. Khursheed Jahan, the learned Advocate appearing on behalf of respondent no. 3 Bank.

9. Mr. Rashid submits that Order No. 38 dated 26.01.2009 is not tenable in law as the said order was issued during the pendency of the 2nd Artha Jari Case, which was admittedly filed beyond the statutory period of limitation. Elaborating his submission, Mr. Rashid contends that the first Artha Jari Case was instituted on 23.07.1998, which concluded through the issuance of the certificate in favour of the Bank, as evident from Order No. 48 dated 20.06.2004.

10. Referring to Annexure J of the instant Writ Petition, Mr. Rashid submits that the 2nd Artha Jari Case, being Artha Jari Case No. 255 of 2005, was filed on 27.07.2005. Therefore, according to Mr. Rashid, the 2nd Artha Jari Case was barred by limitation on two grounds; firstly, the 2nd Artha Jari Case was filed after a period of over one year since the conclusion of the 1st Artha Jari Case and secondly, the 2nd Artha Jari Case, which was admittedly filed in 2005, was filed after a period of 7 years since the filing of the 1st Artha Jari Case. Therefore, Mr. Rashid contends that on both counts, the 2nd Execution case was hopelessly barred by limitation and consequently, the impugned order dated 26.01.2009 issuing warrant of arrest against the petitioner was also hit by the said principle. Accordingly, Mr. Rashid prayed for making the Rule absolute.

11. Mrs. Khursheed Jahan, the learned Advocate appearing on behalf of the Bank submits that the 2nd Execution Case was not filed within one year of the conclusion or disposal of the 1st Artha Jari Case. However, she submits that sub-section (4) of section 28 of the Ain will not be attracted in the present case. Since the 1st Execution Case was not concluded, section 28(4) would only apply after conclusion of the 1st Artha Jari Case as because the 1st Artha Jari Case may not be concluded within the period of six years, but may take a longer time.

12. For a proper understanding of the issues before us, let us refer to the provision of section 28 of the Ain, which reads as under :

“28z (1) The Limitation Act, 1908 Hhw The Code of Civil Procedure, 1908 H ti æal ঙ্খ বিধানই থাকুক না কেন, ডিএলিডার, আদালতযোগে ডিএলি বা আদেশ কার্যকর করিতে ইচ্ছা করিলে, ডিএলি বা আদেশের প্রদত্ত হওয়ার অন্তর্গত ১ (এক) বৎসরের মধ্যে, ধারা ২৯ এর বিধান সাপেক্ষে জারীর জন্য আদালতে দরখাস্ত দাখিল করিয়া মামলা করিবে।

(2) Ef-ধারা (১) এর বিধানের ব্যত্যয়ে, ডিএলি বা আদেশ প্রদানের f lhañ ১ (এক) বৎসর অতিবাহিত হইবার পরে S i l f l Se f দায়েরকৃত কোন মামলা তামাদিতে বারিত হইবে এবং অনুরূপ তামাদিতে বারিত মামলা আদালত কার্যার্থে N Ë Z e j L t l u j p l j p t l খারিজ করিবে।

(3) S i l f l Se f ð a f u h j f l h a ñ j j m i , f Ë j h j f ñ h a ñ S i l f l j j m i M j t l S h j t e l f t e s q J u j l f l h a ñ H L বৎসর সময় উত্তীর্ণ হওয়ার পরে দাখিল করা হইলে, উক্ত মামলা তামাদিতে বারিত হইবে ; এবং তামাদিতে বারিত অনুরূপ মামলা আদালত কার্যার্থে গ্রহণ না করিয়া সরাসরি খারিজ করিবে।

(৪) জারীর জন্য কোন নতুন মামলা প্রথম জারীর মামলা দাখিলের পরবর্তী ৬ (ছয়) বৎসর সময় অতিবাহিত হইবার পরে দাখিল করা হইলে, উক্ত মামলা তামাদিতে বারিত হইবে এবং তামাদিতে বারিত অনুরূপ মামলা আদালত কার্যার্থে গ্রহণ না করিয়া সরাসরি খারিজ করিবে। ”

13. On a perusal of the provision quoted above, it is apparent that as per section 28 (3), the 2nd Execution Case has to be filed within one year of the conclusion or disposal of the 1st Artha Jari Case, as the case may be. If the 2nd Execution Case is filed after the period of one year, the same shall be barred by limitation.

14. Section 28(4) of the Ain clearly stipulates that if a new Execution case is filed after the expiry of the 6 years from the date of filing of the 1st Execution case, the 2nd case shall also be barred by limitation.

15. In our view, section 28(4) of the Ain contemplates and takes into account the situation where the 1st Execution case, is neither concluded nor disposed of within the period of 6 years. Therefore, in view of the aforesaid provision of law, it is evident that there is substantial force and substance in the contention advanced by Mr. Rashid.

16. Although Mr. Rashid has referred to several decisions namely, 64 DLR (2012) 435, 189 and 61 DLR (2009) section 760, on a perusal of the said, we do not find the aforesaid decision to be applicable to the present case before us.

17. As we have found that the 2nd Execution case is hopelessly barred by limitation, consequently, the impugned Order No. 38 dated 26.01.2009, arising out of the 2nd Execution case, issuing warrant of arrest against the petitioner, cannot be sustained in law.

18. In the result, the Rule is made absolute.

19. Order No. 38 dated 26.01.2009, as evidenced by Annexure M, passed by the learned Judge, Artha Rin Adalat, Khulna in Artha Jari Case No. 255 of 2005, issuing order of arrest against the petitioner, is hereby declared to be without lawful authority and is of no legal effect and consequently, the same is set aside.

20. It is to be noted that in the instant case, the respondent no. 3 Bank had obtained a certificate from the Adalat by filing an application under section 33(7) of the Ain, Therefore, in our view, once a certificate has been issued under section 33(7) of the Ain in favour of the decree holder Bank, that by itself would bring to an end of the proceeding of the Artha Jari case.

21. There will be no order as to cost.

22. The office is directed to communicate the order.