

IN THE SUPREME COURT OF BANGLADESH

APPELLATE DIVISION

PRESENT:

Mr. Justice Hasan Foez Siddique
-Chief Justice

Mr. Justice Md. Nuruzzaman

Mr. Justice Obaidul Hassan

Mr. Justice Borhanuddin

Mr. Justice M. Enayetur Rahim

CIVIL APPEAL NO.508 OF 2017

(From the judgment and order dated 31.01.2016 passed by the High Court Division in Writ Petition No.4546 of 2014).

Most. Tahmina Khatun. :Appellant.

-Versus-

Md. Lutfor Rahman Mollah and others. :Respondents.

For the Appellant. : Mr. Nurul Amin, Senior Advocate instructed by Mr. Md. Taufique Hossain, Advocate-on-Record.

For Respondent Nos. 1-4 and 6-7. : Mr. Probir Neogi, Senior Advocate with Mr. Ekramul Haque, Advocate and Mr. Abdul Alim Miah, Advocate instructed by Ms. Madhumalati Chowdhury Barua, Advocate-on-Record.

For Respondent Nos. 5 and 8-13. : Not represented.

Date of Hearing. : The 19th & 25th October, 2022.

Date of Judgment. : The 25th October, 2022.

J U D G M E N T

Borhanuddin, J: This civil appeal by leave is directed against the judgment and order dated 31.01.2016 passed by the High Court Division in Writ Petition No.4546 of 2014 making the Rule absolute with direction.

The facts, leading to disposal of the appeal, in brief, are that the respondent nos.1-7 herein as petitioners preferred Writ Petition No.4546 of 2014 invoking jurisdiction under Article 102 of the Constitution challenging judgment and decree dated 08.11.1994 passed by the respondent no.2 Subordinate Judge, Artha Rin Adalat, Rajshahi, in Miscellaneous Case No.27 of 1994, allowing the application filed by the respondent no.6 Bangladesh House Building Finance Corporation (hereinafter stated as 'the Corporation'), Regional Office, Rajshahi, under Article 27 of the Bangladesh House Building Finance Corporation Order, 1973 (hereinafter referred to as 'P.O. No.7 of 1973') for realization the loan money by selling the case land and pursuant to the aforesaid judgment and decree auction sale dated 11.09.2002 should not be declared to have been held without lawful authority and is of no legal effect and as to why a direction should not be given upon the respondents to receive the loan money from the petitioners and release the case land thereby restoring the possession of the same in their favour, contending

interalia, that 0.0432 acre of land of S.A. Plot No.1282 under C.S. and S.A. Khatian No.576 corresponding to R.S. Plot No.1591 of Khatian No.634 of Mouza Laxmipur under Police Station-Rajpara, District-Rajshahi was owned and possessed by Most. Ambia Khatun, deceased wife of the writ-petitioner no.1 and mother of writ-petitioner nos.2-7; With a view to constructing residential house in the said land Most. Ambia Khatun obtained loan amounting to Tk.5,80,000/- from writ-respondent no.6 the Corporation, Regional Office, Rajshahi; A mortgage deed was executed by Most. Ambia Khatun on 16.09.1986 infavour of the Corporation, which was registered by the office of the local Sub-Registrar; The said loan amount was payable within 20 years in monthly installment basis at the rate of Tk.4213.70 per month; After obtaining the loan money, Ambia Khatun constructed a multi-storied residential building in the said land in 1986-1987 and was residing there alongwith the writ-petitioners as her family members; Ambia Khatun deposited monthly installments up to 11.01.1988 but thereafter she failed to pay the installments and at one stage outstanding dues stood at

Tk.10,35,531.35; Writ-respondent no.6 on 16.05.1994 filed Miscellaneous Case No.27 of 1994 before the Artha Rin Adalat, Rajshahi, under Article 27(1) of P.O. No.7 of 1973 for recovery of outstanding dues by selling the mortgaged property; The miscellaneous case was decreed ex-parte by the Artha Rin Adalat vide judgment and decree dated 08.11.1994; The decree holder-respondent no.6 filed Execution Case No.34 of 1995 before the Artha Rin Adalat, Rajshahi, which was transferred to Artha Rin Adalat No.3, Rajshahi and renumbered as Miscellaneous Execution Case No.24 of 2004; In the meantime, the mortgaged property was put in auction on 11.09.2002 and on the date of auction none but the Corporation participated in the bid and purchased the case property at Tk.16,41,323/- and obtained registered sale certificate through court on 21.08.2003 but it did not take over possession of the case property; After few years, the Corporation decided to sell the property and put it in auction on 07.07.2010; Writ-respondent no.7 Ms. Tahmina Khatun and others participated in the tender, out of which, writ-respondent no.7 became the highest bidder; Being aware about the

auction, writ-petitioner nos.1, 6 and 7 tried to resist the process by filing Title Suit No.155 of 2010 in the Court of Assistant Judge, Sadar, Rajshahi, but the plaint of that suit was rejected under Order VII Rule 11 of the Code of Civil Procedure as being not maintainable; Long after auction sale, writ-respondent no.6 the Corporation issued a letter on 06.06.2011 infavour of writ-respondent no.7 confirming the approval of the said sale; Thereafter, the Corporation initiated Eviction Case No.9/2011-2012 through the office of Deputy Commissioner, Rajshahi, who on 12.06.2013 served a notice under section 5(2) of the Government and Local Authority Lands and Buildings (Recovery of Possession) Ordinance, 1970 asking the writ-petitioners to vacate the case property; Writ-petitioner no.7 challenged the said notice by filing Writ Petition No.6999 of 2013, which was ultimately rejected as being not pressed; Thereafter, Assistant Commissioner, Rajshahi, evicted the writ-petitioners from the case property forcefully with the help of police on 13.02.2014 and the same was handed over to writ-respondent no.7; It is also stated the value of the suit property was fixed

at Tk.35,17,717/- in auction, out of which writ-respondent no.6 received 30% from writ-respondent no.7; The balance money, as agreed, is payable within 15(fifteen) years in equal installment @ Tk.13,608/- per month; It has also asserted that the case land was the homestead of the writ-petitioners, from which, they were evicted by illegal means; As such, the writ-petitioners invoked the writ jurisdiction.

Upon hearing the learned Advocate for the petitioners, a Division Bench of the High Court Division issued a Rule Nisi upon the respondents.

Writ-respondent no.7 contested the Rule by filing an affidavit-in-opposition stated, interalia, that the property in question has been transferred to her in accordance with law and since then she has been owning and possessing the land by depositing installments; The petitioners filed the writ petition after long period of 20 years from the date of judgment and decree passed in 1994 and therefore, the Rule issued by the High Court Division is liable to be discharged.

After contested hearing, a Division Bench of the High Court Division vide impugned judgment and order dated 31.01.2016 made the Rule absolute with following direction:

"The respondents are directed to restore possession of the case property infavour of the petitioners within 60(sixty) days from the date of receipt of the copy of this judgment."

Feeling aggrieved, the writ-respondent no.7 as petitioner filed Civil Petition for Leave to Appeal No.1259 of 2016 before this Division and obtained leave granting order dated 30.10.2017.

Leave was granted considering the submissions made by the learned Advocate for the petitioners which are as follows:

I. Because, in view of the provision of section 5(1) of the Artha Rin Adalat Act, 1990, the financial institution should file suit for realization of loan money to the Artha Rin Adalat and accordingly, Bangladesh House Building Finance Corporation filed the suit before the Artha Rin Adalat, Rajshahi. The Artha Rin Adalat, Rajshahi had exclusive jurisdiction to entertain and dispose of the suit according to the

said provision. In view of the fact, the learned Judges of the High Court Division erred in law in holding that Artha Rin Adalat has no jurisdiction to try the suit.

II. Because, the learned Judges of the High Court Division committed gross illegality in holding that Artha Rin Adalat has got no jurisdiction to try the case and the judgment and decree passed by the said Court was a nullity.

III. Because, Bangladesh House Building Finance Corporation rightly filed the case before the Artha Rin Adalat, Rajshahi but inadvertently in the cause title it was written under Article 27 (1) of Order 7 of 1973. Mere mis-description or mis-quotation or mistaken use of a section of law in an application itself will not debar a Court to pass an appropriate order for the relief sought provided that from the facts stated in the application, the relief can be given under a different provision of the law.

IV. Because, the learned Judges of the High Court Division made the Rule absolute relying upon the decision reported 11 ADC 291, 49 DLR (AD) 80 which is quite distinguishable from the facts of the present case.

V. Because, the financial institution had option either to bring a suit under

section 5(1) of the Act or to take recourse of the special procedure providing in relevant law but the learned Judges of High Court Division erred in law in not considering this proposition of law.

Consequently, this civil appeal arose.

Mr. Nurul Amin, learned Senior Advocate summaries his argument in line with the submissions made in the leave granting order.

Mr. Probir Neogi, learned Senior Advocate appearing for the respondents supports the impugned judgment and order passed by the High Court Division.

Heard learned Advocates for the respective parties.
Perused the papers/documents contained in the paper book.

It appears that when Most. Ambia Khatun failed to deposit installments of loan amount and then the writ-respondent no.6, the Corporation filed Miscellaneous Case No.27 of 1994 before the Artha Rin Adalat, Rajshahi, under Article 27(1) of P.O. No.7 of 1973 for recovery of outstanding dues by selling the mortgaged property. The miscellaneous case was decreed ex-parte by the Artha Rin

Adalat vide judgment and decree dated 08.11.1994. The decree holder writ-respondent no.6 filed Execution Case No.34 of 1995 before the Artha Rin Adalat, Rajshahi, which was transferred to the Artha Rin Adalat No.3, Rajshahi and renumbered as Miscellaneous Execution Case No.24 of 2004. In the meantime, the mortgaged property was put in auction on 11.09.2002 and on the date of auction the Corporation alone participated in the bid and purchased the property and obtained registered sale certificate through court on 21.02.2003 but it did not take over possession of the case property. Subsequently, the Corporation put the property in auction on 07.07.2010 and added writ-respondent no.7 became the highest bidder and ultimately got possession.

The question is to be decided whether the Artha Rin Adalat was competent or had jurisdiction to deal with an application filed under Article 27 of the P.O. No.7 of 1973.

Section-5 of the Artha Rin Adalat Act, 1990 (Act No. IV of 1990), briefly, the Act, was promulgated on 28.01.1990 which runs as follows (relevant portion):

৫। অর্থ ঋণ আদালতের ক্ষমতা ও এখতিয়ার ১-(১) অন্য কোন আইনে যাহা কিছুই থাকুক না কেন, আর্থিক প্রতিষ্ঠানের ঋণ আদায় সংক্রান্ত যাবতীয় মামলা অর্থ ঋণ আদালতে দায়ের করিতে হইবে এবং উক্ত আদালতেই উহা নিষ্পত্তি করিতে হইবে:

তবে শর্ত থাকে যে, কোন আইন দ্বারা কোন আর্থিক প্রতিষ্ঠান প্রতিষ্ঠা করা হইয়া থাকিলে এবং উক্ত আইনে উহার ঋণ আদায়ের জন্য কোন বিশেষ বিধান বা পদ্ধতি থাকিলে সেই বিধান বা পদ্ধতি এই ধারার বিধান দ্বারা ক্ষুণ্ণ হইবে না।

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On consideration of section-5(1) of the Act, it appears that the section speaks that notwithstanding anything contained in any other law, all cases relating to realization of loan by any financial institution will be heard and disposed of by the Artha Rin Adalat but a condition or a proviso is attached with it to the effect that if any financial institution has got it's own Rules and regulations for realization of the loan then that financial institution shall follow the provisions of those Rules and regulations for realization of their own loan as provided under the condition attached to section-5(1). So, evidently section-5(1) clearly speaks that if any special provisions are made for realization of loan

by any financial institution in its own special law, the same will be guided by those Rules and regulations and will not be affected or hit by the provisions of the Artha Rin Adalat Act, 1990.

Again, P.O. No.7 of 1973 has made special provisions for realization of the Corporation's loans from the borrowers in Articles 26 and 27. Article 26(1) provides that when a borrower or his surety makes default in repayment etc., the Corporation notwithstanding the provisions of any other law may, without the intervention of any court, sell any property pledged, mortgaged, etc. Sub-Article(3) provides that all sums due to the Corporation from the borrower or his surety shall be recoverable as arrears of land revenue. Article 27(1) provides that where by reason of the breach of any agreement by the borrower the Corporation becomes entitled to require the immediate payment of the amount due by the borrower to the Corporation, any officer of the Corporation ----- may apply to the District Judge ----- for anyone or more of the following reliefs, namely:

(a) *An order for the sale of any property or properties pledged, mortgaged ----- by the borrower.*

(b) *For an injunction restraining the borrower or his ----- surety -----*

(c) *For an ad-interim attachment -----*

Evidently, the Corporation is a financial institution and loans to the people for construction of their buildings with certain terms and conditions. In the P.O. No.7 of 1973 Article 27 provides provisions for institution of cases before the learned District Judge for realization of its loan and detailed procedure has also been prescribed therein. Further, Article 27(9) of P.O. No.7 of 1973 provides that an order under this Article for attachment or sale of the property shall be carried into effect as far as may be in the manner in the Code of Civil Procedure, 1908, and for the attachment or sale of the property in execution of a decree the Corporation would be treated as decree holder. There is also provision for preferring appeal against a decree passed by the learned District Judge under Article 27 of the said order to the High Court Division. So, it is clear that complete provision has been incorporated in

P.O. No.7 of 1973 for realization of its own loan through the court of the District Judge. The question as raised by the learned Advocate for the appellant is no longer a res-Integra because the answer has been given in our jurisdiction in so many cases. In the case of *Jahan Ara Akhtar vs. BHBFC*, reported in 47 DLR 158, it is held:

"The cases for realization of loan of the House Building Finance Corporation shall be instituted in the court of the learned District Judge and the same would be heard and disposed of by the learned District Judge according to the provision of Article 27 of P.O. No.7 of 1973"

This judgment was affirmed by the Appellate Division in the case of *BHBFC vs. Jahan Ara Akhtar*, reported in 49 DLR (AD), 80.

Again, the term 'jurisdiction' is a term of art. It is an expression used in a variety of senses and draws colour from its context. Therefore, to confine the term 'jurisdiction' to its conventional and narrow meaning would be contrary to the well settled interpretation of the term. The expression 'jurisdiction', as stated in

Halsbury's Laws of England, Volume 10, paragraph 314, is as follows:

"Meaning of 'jurisdiction': By 'jurisdiction' is meant the authority which a court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter or commission under which the court is constituted, and may be extended or restricted by similar means.

If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the claims and matters of which the particular court has cognizance, or as to the area over which the jurisdiction extends, or it may partake of both these characteristics."

Again, in *American Jurisprudence, Volume 32A, paragraph 581, it is said that:*

"Jurisdiction is the authority to decide a given case one way or the other. Without jurisdiction, a court cannot proceed at all in any case; jurisdiction is the power to declare law, and when it ceases to exist, the only function remaining to a court is that of announcing the fact and dismissing the cause."

The Supreme Court of India, in the case of *Foreshore Co-operative Housing Society Limited and Ors. vs. Praveen D. Desai and Ors.*, reported in (2015) 6 SCC 412, observed that:

"It is well settled that essentially the jurisdiction is an authority to decide a given case one way or the other. Further, even though no party has raised objection with regard to jurisdiction of the court, the court has power to determine its own jurisdiction. In other words, in a case where the court has no jurisdiction; it cannot confer upon it by consent or waiver of the parties."

In the case of *Md. Selim Hossain vs. Shahabuddin Ahmed and others*, reported in 11 ADC 291, this Division held:

"Mere failure to raise objection as to the jurisdiction of a court to hear and try a suit or a case or in others words, mere surrendering to the jurisdiction of a court, jurisdiction cannot be conferred to a court if it is found that the court which heard or disposed of the suit or the case had no jurisdiction to hear such suit or case as the case may be. Because the decree or order passed by a court without jurisdiction is a nullity and such nullity, in no way, is curable or immune from being challenged. So, in the instant case, if any of the writ-

petitioner failed to take any objection against the disposal of the suit by the Artha Rin Adalat, the decree passed therein shall not get the seal of validity or shall not be immune from attacked or being challenged."

Thus, it is the settled principle of law laid down by the Apex Court of Various Jurisdictions including this Division by a long line of decisions that the question of jurisdiction cannot be conferred to a court if it is found that the court has no jurisdiction to try the suit/case as the case may be.

In the premises above, we are of the view that the High Court Division did not commit any illegality in declaring the judgment and decree dated 08.11.1994 in Miscellaneous Case No.27 of 1994, auction sale dated 11.09.2002 and subsequent auction sale dated 07.07.2010 and sale certificate dated 06.06.2011 in respect of the case property to have been passed and issued without any lawful authority and are of no legal effect.

Accordingly, the civil appeal is disposed of.

Judgment and order passed by the High Court Division in Writ Petition No.4546 of 2014 is maintained.

However, Artha Rin Adalat, Rajshahi, is directed to return the plaint of Miscellaneous Case No.27 of 1994 to the House Building Finance Corporation to facilitate it to file the same in proper jurisdiction if, it so advised.

House Building Finance Corporation is directed to return the deposited auction money to the auction purchaser of this appeal and thereafter, to takeover possession of the auction property from her.

However, no order as to costs.

C.J.

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