

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

(SPECIAL ORIGINAL JURISDICTION)

Writ Petition No. 6083 of 2006

In the matter of :

An application under Article 102(2) of the
Constitution of the People's Republic of
Bangladesh.

-And-

In the matter of :

Bangladesh Export Processing Zone Authority

..... Petitioner

-Versus-

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

..... Respondents

No one

.... For the Petitioner

Mr. Sheik Habib-UL- Alam, Advocate

.. For Respondent no. 3

Present:

Mr. Justice Zubayer Rahman Chowdhury
And

Mr. Justice Kazi Ebadoth Hossain

Date of Hearing : 09.05.2023

Date of Judgment : 10.05.2023

Zubayer Rahman Chowdhury, J :

By this application under Article 102(2) of the Constitution, the petitioner has challenged the judgment and order dated 09.03.2006 passed by the Additional District Judge, Bankruptcy Court Dhaka, in Bankruptcy Case no. 2 of 2003.

The Rule is being opposed by respondent no. 3 by filing an affidavit-in-opposition.

At the very outset, it is to be noted that the instant Rule was fixed for hearing on 14.11.2022 at the instance of respondent no. 3. Although the matter has been appearing in the cause list of this Court with the names of the learned Advocate of the contending sides,, no one appeared on behalf of the petitioner. However, Mr. Sheikh Habibul Alam the learned Advocate appears on behalf of respondent no. 3.

Facts relevant for the disposal of the Rule are that respondent no. 3 (Bangladesh Shilpa Bank) filed Bankruptcy Case no. 2 of 2003 seeking to declare respondent no. 4 as Bankrupt and also praying for recovery of Taka Three Crore Ninety Seven Lacs and odd against respondent no. 5. By judgment and order dated 21.09.2023, the learned Court below declared respondent no. 5 as Bankrupt and appointed a Chartered Accounted Firm, namely ACNABIN and Company as Auditor.

Sometime in 2006, three years after the pronouncement of judgment, the petitioner Bangladesh Export Processing Zone Authority

(briefly, BEPZA) filed an application seeking to be added as a party to the said Bankruptcy Case on the ground that BEPZA had allotted commercial land to respondent no. 5 and also stating that as BEPZA had no information regarding filing of the suit, it was unable to file the said application at an earlier point of time. After hearing the parties, the learned Court below rejected the application filed by BEPZA by the impugned order, which has led to the filing of the instant writ petition.

As noted earlier, no one appears on behalf of the petitioner to press the Rule. However, since the matter has remained pending before this Court since 2006, we decided to dispose of the matter on merit.

Mr. Sheikh Habibul Alam, the learned Advocate appearing on behalf of respondent no. 3, having placed the instant application and the documents appended thereto, submits that the impugned order was rightly passed by the Bankruptcy Court and therefore, no interference is called for. He submits that the application for addition of party filed by the BEPZA was rightly rejected by the Court below as BEPZA was not a party in the Bankruptcy case. He further submits that even if it is accepted, but not conceded, that BEPZA was aggrieved by the impugned judgment and order, in such event, the proper remedy for BEPZA was to file an appeal. He submit that as an alternative forum is available, the instant Writ Petition is not maintainable at the instance of BEPZA.

In the instant case, the judgment was pronounced on 21.09.2003. However BEPZA filed the application before the Bankruptcy Court, Dhaka on 01.03.2006, after a period of almost three years. No doubt,

after pronouncement, of judgment, the Bankruptcy Court became functus officio and therefore, the said Court no longer had any jurisdiction to entertain any application, and that too at such a belated stage. In our view, the learned Court below had rightly passed the impugned order. Moreover, we find that the petitioner, instead of preferring an appeal, filed the instant writ petition. In our view, the instant application is not only misconceived, it is also devoid of any substance as well.

In the result, the Rule is discharged.

There will be no order as to costs.

Kazi Ebadoth Hossain, J:

I agree.