

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

Present:

Mr. Justice S M Kuddus Zaman

And

Ms. Justice Tamanna Rahman Khalidi

FIRST MISCELLANEOUS APPEAL No.536 of 2025

Md. Ashikur Rahman

... Appellant

-Versus-

Bangladesh House building Finance Corporation

...Respondent

Mr. Asaduzzaman, Advocate

...For the Appellant.

Mr. A.K.M. Alamgir Parvez Bhuiyan, Advocate

...For the Respondent

Heard and Judgment on: 04.05.2026.

S M Kuddus Zaman, J

This appeal is directed against the judgment and order dated 18.08.2025 passed by the learned Senior District Judge, Mymensingh in Rehani Decree Jari Case No.02 of 2022 arising out of Miscellaneous Money Suit No.01 of 2014.

Facts in short are that the appellant obtained loan of Tk.21,00,000/- with the rate of interest at the rate of 10% on 08.11.2010 from the respondent for construction of a multistoried building but failed to make repayment of above loan in accordance with the terms of loan agreement. As such above loan along with interest stood at Tk.26,64,209.21/- and for recovery of above money respondent as plaintiff filed Miscellaneous Case No.01 of 2014 to the District Judge, Mymensingh which was decreed ex-parte. Above plaintiff instituted Execution Case No.02 of 2022 and the judgment debtor appellant appeared and filed objection against above execution case. The learned Judge heard the learned

Advocates for the respective parties on above objection on 18.08.2025 but instead of passing an order kept the same with the record and directed for auction sale of the disputed property for satisfying above decree.

Being aggrieved by and dissatisfied with above judgment and order of the learned Senior District Judge above judgment debtor as appellant moved to this court and preferred this First Miscellaneous Appeal.

Mr. Asaduzzaman learned Advocate for the appellant submits that after drawing of impugned decree the appellant has deposited Tk.10,20,000/- during the period from 26.06.2023 to 30.04.2025 by several installments which receipt by the decree holder and at this point of time only Tk.4,50,000/- remains unpaid. The terms of loan agreement gives the appellant time for repayment of above loan by 2027 but the respondent with ulterior motive to evict the appellants from their dwelling house and to make unlawful gains by selling above house at a lower price in auction filed above this execution case which is not tenable in law.

Mr. A.K.M. Alamgir Parvez Bhuiyan learned Advocate for the respondent submits that admittedly the appellant obtained a loan of Tk.21,00,000/- on 08.11.2010 with interest at the rate of 10% from the respondent but failed to make repayment of above loan in accordance with the terms of the loan agreement and a total amount of Tk.26,00,000/- fell due. The respondent as plaintiff filed above suit for recovery of above money which was decreed ex-parte on 13.08.2015. The respondent filed several execution cases for satisfying above decree which were disposed of on compromise. But he respondent did not honour the terms of compromise and made payment of above outstanding loan money. As such the respondent lastly filed above execution case on 28.02.2022 for recovery of Tk.30,66108.75/- and on consideration of above facts and circumstances of the case and materials on record the learned Senior District

Judge rightly directed for sale of above property to satisfy above decree which calls for no interference.

We have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record.

It is admitted that the appellant obtained loan of Tk.21,00,000/- from the appellant on 08.11.2010 with interest at the rate of 10% which stood at Tk.26,00,000/- when the respondent as plaintiff filed above suit for recovery of above money which was decreed on ex-parte on 13.08.2015. It is also admitted that for satisfying above decree the respondent filed two separate execution cases before filing of above execution case and above two previous execution cases were settled on compromise but due to non compliance of terms of above solenamas the respondent filed above execution case for satisfying above decree on 28.02.2022.

Since above execution case was filed after more than two years of the drawing of the decree the executing court issued notice upon the judgment debtor appellant under Order 21 Rule 22 of the Code of Civil Procedure, 1908 and the judgment debtor appellant entered appearance in above case and filed a written objection on 07.05.2025. The respondent decree holder filed a petition for satisfying above decree by selling out the mortgaged property and the learned Senior District Judge fixed above two petitions for hearing on 22.05.2025. The learned Senior District Judge heard the learned Advocates for respective parties and kept the written objection filed by the judgment debtor appellant with record and allowed the petition filed by the respondent decree holder and directed for auction sale of above property.

The provision of Order 21 Rule 22 and Rule 23 of the Code of Civil Procedure, 1908 are reproduced below:

22(1) Where an application for execution is made-

- (a) More than [two years] after the date of the decree, or
- (b) Against the legal representative of a party to the decree,

or where an application is made for execution of a decree filed under the provisions of section 44A, the Court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show cause, on a date to be fixed why the decree should not be executed against him:

Provided that on such notice shall be necessary in consequence of more than [two years] having elapsed between the date of the decree and the application for execution if the application is made within [two years] from the date of the last order against the party against whom execution is applied for, made on any previous application for execution, or in consequence of the application being made against the legal representative of the judgment-debtor, if upon a previous application for execution against the same person the Court has ordered execution to issue against him.

(2) Nothing in the foregoing sub-rule shall be deemed to preclude the Court from issuing any process in execution of a decree without issuing the notice thereby prescribed, if, for reasons to be recorded, it considers that the issue of such notice would cause unreasonable delay or would defeat the ends of justice.

[(3) No order of execution of the decree shall be invalid by reason of the omission to issue a notice under sub-rule (1) or to record reasons in a case where notice is dispensed with under sub-rule (2) unless the judgment-debtor has sustained substantial injury by reason of such omission.]

23(1) Where the person to whom notice is issued under the last preceding rule does not appear or does not show cause to the satisfaction of the Court why the decree should not be executed, the Court shall order the decree to be executed.

(2) Where such person offers any objection to the execution of the decree, the Court shall consider such objection and make such order as it thinks fit. (underlines added).

In view of the provision of Order 22 Rule 1 of the Code of Civil Procedure, 1908 the learned Senior District Judge rightly issued notice upon the judgment debtor appellant asking them to show cause as to why above decree shall not be executed since above execution case was filed after more than two years of the passing of above judgment and decree. The appellant judgment debtor on receipt of above notice appeared before the executing court and filed a written objection under Order 21 Rule 23 (2) and the learned Senior District Judge rightly took upon above written objection for hearing. Sub-rule 2 of Rule 23 imposes a duty on the learned executing Judge to pass an order on above written objection and then proceed with the execution case in accordance with law. But the learned Senior District Judge did not pass any order but kept above written objection with record. On the contrary the learned Senior District Judge directed for auction sale of above property making above written objection infructuous.

The learned Senior District Judge did not have any legal jurisdiction to proceed with above execution case before passing an order on the written objection filed by the judgment debtor appellant. But the learned Senior District Judge utterly failed to appreciate above provisions of the law and most illegally directed for auction sale of above property without disposing of the written objection of the judgment debtor by passing an appropriate order which is not tenable in law.

On consideration of above facts and circumstances of the case and materials on record we hold that the ends of justice will be met if the impugned order is set aside and the learned District Judge is directed to pass an appropriate

order on the written objection filed by the judgment debtor and then proceed with the execution case in accordance with law.

In above view of the materials on record we find substance in this First Miscellaneous Appeal which deserves to be allowed.

In the result, the First Miscellaneous Appeal is allowed.

The judgment and order dated 18.08.2025 passed by the learned Senior District Judge, Mymensingh in Rehani Decree Jari Case No.02 of 2022 arising out of Miscellaneous Money Suit No.01 of 2014 is set aside and the learned Senior District Judge is directed to dispose of above written objection filed by the judgment debtor by passing an appropriate order and then proceed with the execution case in accordance with law.

Let a copy of this judgment be transmitted down at once.

Tamanna Rahman Khalidi, J

I agree.

Md. Kamrul islam
Assistant Bench Officer