IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)

Present:

Mr. Justice Sikder Mahmudur Razi

Writ Petition No. 8418 of 2015

IN THE MATTER OF:
Most. Shahida Begum
...Petitioner.
-Versus-
Manager, Jamuna Bank Ltd., and others.
…Respondents.
None appears
…For the petitioner.
Mr. Mohammad Mizanur Rahman, Adv.
...For the respondent No. 1.

Heard on: ***20.11.2025***
And
Judgement on: ***The 25th November, 2025.***

Sikder Mahmudur Razi, J:

In an application under Article 102 of the Constitution of the People's Republic of Bangladesh a Rule Nisi was issued in the following terms:

> *Let a Rule Nisi be issued calling upon the respondents to show cause as to why the impugned order No. 11 dated 06.11.2014, passed by the respondent No. 3, issuing warrant of arrest against the petitioner in Artha Execution Case No. 22 of 2013 now pending in the Court of Artha Rin Adalat, First Court, Rangpur (Annexure-E), should not be declared to have been passed without lawful authority and is of no legal effect and/or such other or further order or orders as to this court may seem fit and proper should not be passed.*

Facts gathered from the materials on record are that the respondent no. 1-Bank instituted Artha Rin Suit being No. 30 of 2011 against its borrower, namely Md. Abdur Rauf, proprietor of M/s. Sheuli Shopnil Traders and guarantors namely Md. Shahidul Islam and Most. Shahida Begum for recovery of Tk.7,27,011/- only. The said suit was decreed *exparte* against defendant no. 1 and on contest against the rest of the defendants vide judgment and decree dated 22.01.2013 (decree drawn up on 28.01.2013). Thereafter, decree holder bank filed execution case no. 22 of 2013. As there was no mortgaged property, therefore, bank filed an application on 18.05.2014 under Section 34 of the Artha Rin Adalat Ain, 2003 to confine the judgment-debtors in civil imprisonment as an effort to compel them to pay the decretal amount. The said application was ultimately heard on 06.11.2014 and the Artha Rin Adalat vide order dated 06.11.2014 allowed the same and the order runs as follows:

> *অদ্য ডিক্রীদারপক্ষে দাখিলী দরখাস্ত শুনানীর জন্য দিন ধার্য আছে। ডিক্রীদারপক্ষ হাজিরা দিয়াছেন। দরখাস্ত শুনানীর জন্য উপস্থাপন করা হইল। শুনিলাম। প্রার্থনা মঞ্জুর করা হইল। আগামী ১৯/১/১৫ ইং তারিখ ফেরতের দিন ধার্যে দেনদারের প্রতি W/A ইস্যু করা হোক।*

Challenging the said order the petitioner who was guarantor of the credit facility and against whom decree was passed on contest filed the instant writ petition and obtained the Rule and order of stay.

The matter was fixed at the instance of the respondent no. 1-bank. However, when the matter was taken up for hearing though the learned advocate for the respondent no. 1-bank appeared before the court but no one appears on behalf of the petitioner. Since, it is a matter of the year 2014 and the crux of the issue involved in the instant matter has already been settled, therefore, the matter was taken up for hearing and after hearing the learned advocate for the respondent-bank, the matter was posted for judgment fixing the date today.

On perusal of the record, it appears that the main ground taken by the petitioner was that before passing the impugned order no show cause notice was issued as per Order XXI Rule 37(1) of the Code of Civil Procedure. But the law is settled on this point. It has already been settled by a catena of judgments that there is no need to issue any show cause notice under the provision of Section 51 and order XXI Rule 37 of the Code of Civil Procedure; rather civil imprisonment can be awarded and warrant can be issued directly under section 34 of the Ain, 2003 since it makes an elaborate, exhaustive and independent provision for awarding civil imprisonment and issuing of warrant of arrest irrespective of man and woman. As ready reference reliance can be placed on the case of *Provat Kumar Das vs Agrani Bank, 15 BLC (AD) 96, Kanika Begum vs Artha Rin Adalat, 64 DLR 276, Manik K Bhattacherjee vs Artha Rin Adalat, 16 BLC 195.*

Therefore, the grounds taken by the petitioner does not stand at all. However, it came to the notice of this court that while allowing the application under section 34 of the Artha Rin Adalat Ain, 2003, the Adalat without passing any order of civil imprisonment as per provision of section 34(1) of the Ain, 2003 directly issued warrant of arrest against the petitioner, which is an illegality in the eye of law. The same view was taken in the case of *Kysun Suliao Industries Ltd. and Ors. Vs. Artha Rin Adalat, Court No. 3, Dhaka and Ors, reported in LEX/BDHC/0267/2023*.

Accordingly, the *Rule Nisi* issued in the instant writ petition is hereby made absolute on the grounds set forth in the immediately preceding paragraph. The impugned order is hereby declared to have been passed without lawful authority and is of no legal effect. However, the respondent bank is at liberty to file a fresh application under section 34 of the Artha Rin Adalat Ain, 2003 by swearing affidavit or verification, and if so filed, the Artha Rin Adalat will consider the same in the light of the observation made hereinabove.

Communicate the judgment at once.

(Sikder Mahmudur Razi, J:)

I agree

(Raziuddin Ahmed, J:)