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

Writ Petition No. 3363 of 2013

In the matter of:
An application under Article 102 of the Constitution of the People's Republic of Bangladesh.

AND

In the matter of:
Osman Gazi Chowdhury
.....defendant-Petitioner
-Versus-

Artha Rin Adalat, 4th Court, Dhaka and another.
... Plaintiff-Respondents

Mr. S.N. Goswami, Advocate
.....For the petitioner

Mr. Mohammad Saiful Karim with
Mr. Md. Musharraf Hussain, Advocates
....For respondent no. 2

Heard on 03.09.2015, 15.09.2015, 09.12.2015, 13.12.2015 and Judgment on 27.01.2016.

Present:
Mr. Justice Md. Emdadul Huq
&
Mr. Justice Muhammad Khurshid Alam Sarkar

Head Notes:

Section 6(4) of the Artharin Adalat Ain, 2003:

Whether plaint/WS is to be considered by the Adalat in *exparte* disposals;

Section 6(4) of the Ain, 2003 mandates the Adalat to dispose of an Artharin suit *exparte* or instantly by simply considering the plaint (prepared under affidavit) or written statement (made with affidavit) and the documents filed therewith, upon treating all of them as substantive evidence and, thus, pleadings with affidavits is the focal-point of this provision and any formal examination of witnesses has got less emphasis in the Ain, 2003.

Whether the plaint or W/S or both should be considered in *ex-parte* disposal;

The expression "qmge¡j¡kš² BIS£ **h¡** Sh¡h" incorporated in Section 6(4) of the Ain, 2003 has been used in the context of "কোন মামলা একতরফাসূত্রে বা তাৎক্ষনিক নিষ্পত্তির ক্ষেত্রে"

For application of the above expression in an *exparte* disposal situation, when the word "h¡" (or) would be read as the disjunctive one, an unworkable situation would arise for the Adalat. Because, in that event the Adalat shall have to consider either the plaint only or the written statement only in the backdrop of impossibility of disposal of a suit solely on the basis of written statement. Furthermore, disposal of a suit solely based on the written statement will render the provisions of Section 19(6) of the Ain, 2003 nugatory.

On the contrary, if the word "h¡" (or) employed in Section 6(4) of the Ain, 2003 is read as a conjunctive word in an *exparte* disposal situation, it will mean that even if the defendant is absent, the Adalat must consider both the plaint and written statement making the provisions of Section 19(1) of the Ain 2003 redundant, for, this Section requires *exparte* disposal (একতরফাসূত্রে) in the absence of defendant.

When in an Artharin suit the defendant-side would not participate in the hearing, what would the Adalat do with the written statement? The normal presumption would be that by his non-participation in the hearing he was not placing before the Adalat his claims, which were raised in the written statements. And keeping this scenario in mind, the Legislature made the provision in Section 19(1) of the Ain, 2003 for the Adalat to dispose of the suit *exparte* (একতরফাসূত্রে). The expression "একতরফাসূত্রে" in Section 19(1) of the Ain, 2003 has been purposefully employed debarring the Adalat from considering the defendant's case.

The above analysis on the different provisions of the Ain, 2003, which had been carried out in an effort to lay down a workable statutory interpretation, leads us to take a view that the meaning of the expression "qmge¡j¡kš² BIS£ h¡ Sh¡h" employed in Section 6(4) of the Ain, 2003 is that the plaint (made with affidavit) is to be considered and where necessary the written statement (made under affidavit) is also to be considered. Hence, in Bangla the following expression "হলফনামা যুক্ত আরজী এবং যথাযথ ক্ষেত্রে বিবাদীর হলফনামাযুক্ত জবাব" would sound more appropriate.

Section 19(1) of the Artharin Adalat Ain, 2003:

Whether the Artharin Adalats should go for *ex-parte* disposal;

From the language employed in Section 19(1) of the Ain, 2003, the literal meanings of the language gives us two situations, namely; on the date of hearing if the defendant does not register his/her presence before the Adalat by filing

Hazira (*Av`vj‡Z Abyôv¯Z _vwK‡j*) or if after recording his/her presence in paper, s/he is found absent when the case is taken up for hearing (*Wvwmsev wee`‡K Dc¯Z cvIqv bv †M‡j*), to proceed towards disposal of a case *exparte*. However, the spirit that derives from the provision of Section 19(1) of the Ain, 2003 is that if the Adalat finds that the manner and style of conducting the case by the defendant is to avoid or refrain from hearing (*ïbvbx bv Kiv*), the Adalat should go for *exparte* disposal of the suit.

Section 19(2) of the Artharin Ain, 2003:

The Legislature has eased the task of restoration of an Artharin suit for an alleged loan-defaulter by incorporating the above provisions. Because of the percentage of deposit being only 10% of the decretal amount, the time-limitation of filing the application being sufficient (30 days from the date of knowledge of passing the *exparte* decree plus further 15 days for deposit) and the mode of payment being flexible, for, it is permissible to pay in cash or submit bank draft, pay order, cheque and any other negotiable instrument, it would not be irrational to view these conditions as affordable for an aggrieved party.

Section 41 of the Artharin Ain, 2003:

No writ is maintainable against a decree or post-decree order passed by Artharin Adalats:

It is the clear intention of the Legislature that a party to an Artharin Suit if aggrieved by a decree, must prefer an appeal. Since the Ain, 2003 is a special law with an overriding provision over other laws and has prescribed a special procedure, there is no scope to bypass the appellate forum, if the forum under Section 19(2) of the Ain, 2003 against an *exparte* decree is already not availed of by the party.

About 10 (ten) years ago, our Apex Court in the case of BADC -Vs- Artharin Adalat 59 DLR(6) urged the learned Advocates of this Court to be susceptive in filing a writ petition against any decree of the Artharin Adalat. But unfortunately the learned members of the Bar are coming up with the said writ petitions indiscriminately and thereby causing wastage of valuable time of this Court which is overwhelmingly overburdened with huge backlog of cases.

Writ is maintainable against a pre-decree order passed by Artharin Adalat.

The only exception is that before passing the decree, if a party to an Artharin Suit feels aggrieved by an order, writ jurisdiction may be invoked as has been held in the case Sonali Bank Ltd Vs Asha Tex International 20 BLC 185.

For time-barred Artharin Cases, with 50% deposit of the decretal amount, a writ petition may be entertained:

However, when an aggrieved party to an Artharin suit, when comes with clean hands and his move is a bonafide one directed at examining a clear-cut factual issue or legal point and not to frustrate the Artharin suit, and files a writ petition by making a 50% down payment of the decretal amount to the lender Bank/financial institution and furnishes detailed reasons for not being able to prefer an appeal within the prescribed time, in the aforesaid rarest of rare situations, this Court by exercising its 'special jurisdiction' under Article 102(2)(a)(ii) of the Constitution may entertain the application, for, being barred by limitation there is no other forum for the aggrieved party.

Suggestions for Artharin Adalats of Bangladesh:

The overall suggestion for the Adalat is that the Ain, 2003 is aimed at expeditious disposal of the Bank's/Financial Institution's claim for recovery of money which is, in fact, the money of the State. If the Adalat, after putting its best effort to serve the notice upon the defendant/s, is satisfied that the notice has been served properly, it should proceed towards the disposal of the suit. The Adalat should bear in mind that while there are unscrupulous defendant/s to delay the disposal of the Artharin suits and thereby frustrate the scheme of the Ain, 2003, however, there are also bonafide defendant/s who might be victimised by the Adalat's inconsiderate hurriedness. The Adalat being in a better position to assess the above issues/factors from the manner and style of conducting the case by the defendant-side, it should pass appropriate order as per the demand of the circumstances invoking its inherent power under Section 57 of the Ain, 2003.

The bottomline for the Adalat is to ensure fair justice for the parties to the suit and, in doing so, when the Adalat shall endeavour to protect the interest of a clean and bonafide defendant, the Adalat shall also not allow the cunning loan-defaulters to abuse the process of the Adalat. To save a vulnerable defendant from the unreasonable demand of the Banks/Financial Institutions and also to save the defendant's property from selling at a shockingly low-price, which very often takes place in connivance with the staff of the Bank/Financial Institution and the concerned Court staff, if needed, the Adalat may exercise its inherent power recording the detailed reasons to substantiate its order.

Observations for Law Commissions:

The Commission may make the following proposals to the Legislature;

(1) In order to remove the ambiguity in the phrase "*njdbvgvhy³ AviRx ev Reve*", the same may be replaced by the following expression "*njdbvgvhy³ AviRx Ges h_vh_ †¶‡Î weev`x i njdbvgvhy³ Reve*" with an "Explanation" of the word "*h_vh_‡¶‡Î*" to be incorporated underneath of the Sub-Section 6(4) of the Ain, 2003. "*h_vh_‡¶‡Î*" means when the Adalat is required to dispose of an Artharin Suit under the provisions of Section 19(6) of the Ain, 2003 in the absence of the plaintiff and

defendant, it shall consider the case of the defendant as well, if the written statement (made under affidavit) and any other documents have been filed.

(2) The word *'GKZidvmvÎ'*, as occurs in section 19(1) of the Ain, 2003 should be given a definition clarifying that when the defendant upon appearing in the suit files written statement and after framing issue does not attend hearing, the Adalat shall consider only the case of the plaintiff and ignore the written statement and issues framed.

(3) Section 19 (1) of the Ain, 2003 should prescribe two more reasons for proceeding with *exparte* disposal. The first reason should be "*avivi 7 Gi Kvhµg m¤úb nIqvi ci hw` cieZx wbawiZ Zwi‡L weev`x bv Av‡m*" and, thereafter, the present two reasons would come and, then, the last reason should be incorporated in the following phrase "*gvgjvi †h †Kvb chv‡q hw` weev`x cici wZb evi mg‡qi Av‡e`b K‡i*".

Observation for JATI:

We further feel that the Judicial Administration Training Institute (JATI) should undertake a training program for the learned judges who are presiding over the Artharin Adalats with an aim to familiarize them with the interpretation of the different provisions of the Ain, 2003 so as to ensure that all the Adalats of the land use and take uniform meaning of the provisions of the Ain, 2003 and thereby help minimize preferring appeal or filing writs against the orders passed by them.

Judgment

MUHAMMAD KHURSHID ALAM SARKAR, J:

This Rule was issued calling upon the respondents to show cause as to why the *exparte* decree dated 22.04.2012, passed by the Artha Rin Adalat, 4th Court, Dhaka in Artha Rin Suit no. 124 of 2010, should not be declared to have been passed without lawful authority and is of no legal effect.

Succinctly, the facts of the case, as stated in this writ petition, are that on 04.08.2010, the ICB Islami Bank Ltd (hereinafter referred to as respondent no. 2 or "the Bank") as plaintiff instituted Artharin Suit no. 124 of 2010 against the present petitioner impleading him as defendant for realization of the Bank's loan of Tk. 8,10,09,374/- (eight crore ten lacs nine thousand three hundred and seventy four). The petitioner-defendant, upon receipt of the summons, appeared before the Artharin Adalat (hereinafter referred to as "the Adalat") on 03.11.2010 and, then, on 09.03.2011 he filed a written statement. Thereafter, a mediator was appointed by the Adalat on 28.03.2011, and 31.05.2011 was fixed for submission of the report by the Mediator. Thereafter, on 24.08.2011 the issues for the suit were framed, fixing 25.09.2011 for peremptory hearing. On 20.03.2012 the P.W.1 Abu Jafar gave his deposition before the Adalat and 10.04.2012 was fixed for further hearing when the

petitioner made a prayer for adjournment of the hearing, but the Adalat rejected the prayer and ordered that the *exparte* judgment and decree shall be pronounced on 22.04.2012. On the said scheduled date for pronouncement of *exparte* judgment and decree, the petitioner came up with an application for recalling the previous order, by which the date for delivery of *exparte* judgment and decree was ordered. But the Adalat rejected the petitioner's application and decreed the suit *exparte*.

Being aggrieved with the said order of *exparte* judgment and decree dated 22.04.2012, the petitioner by invoking Article 102 of the Constitution approached this Court and obtained the instant Rule.

The Rule is contested by the Bank (respondent no. 2) through filing an affidavit-in-opposition containing typical general denials to the statements of the writ petition. The Bank's core contention is that the petitioner's intention was to protract disposal of the suit by making prayer for adjournments one after another before the Adalat and the suit has rightly been decreed *exparte*.

Mr. S. N. Goswami, the learned Advocate appearing for the defendant-petitioner, takes us through the impugned judgment and decree dated 22.04.2012 intandem with the plaint, written statement and the application for recalling the order fixing the date of delivery of *exparte* judgment and submits that the impugned *exparte* judgment and decree has been passed by the Adalat without applying its judicial mind inasmuch as since on the same day the petitioner filed the application for recalling the previous order with an expectation to enable him deducing his deposition, the Adalat ought to have entertained and allowed the application. He terms the Adalat's *exparte* judgment and decree to be an outcome of its whimsical and arbitrary thoughts and actions given that since the said application was filed on the same day with a prayer for cross-examining the D.W.1, the Adalat could have adjudicated upon the suit justly on the basis of the witnesses' deposition and cross-examination. He refers to the order portion of the impugned *exparte* decree and submits that the impugned order has been passed by the Adalat mechanically without discussing the averments of the plaint, written statement and the contention of the deposition made by the PW 1. In an effort to substantiate his submissions on this point, he places provision of Section 6(4) of the Artha Rin Adalat Ain, 2003 (Ain, 2003) and submits that whenever any Adalat would consider to pass an *exparte* decree, it is incumbent upon the Adalat that it shall go through the averments made in the plaint and the written statement and also examine the documents submitted by the parties. He alleges that the Adalat, without going through the plaint, the written statement and without looking at the documents and papers submitted before it, hurriedly disposed of the case by pronouncing an *exparte* decree simply by making a cursory findings that those have been considered. In support of his above submissions, the learned Advocate for the petitioner refers to the cases of Pabna Mental Hospital Vs Tossadek Hosain & others 13 BLC(AD)91, Rupali Bank Ltd and others Vs Tafazal Hossain and others 44 DLR (AD) 260 and Arfanuddin Akand and another Vs Artharin Adalat 15 BLT(HCD) 243.

With regard to the issue of maintainability of this writ petition on the ground of bypassing the appellate forum, Mr. Goswami refers to the case of (i) Collector of Customs, Chittagong Vs M. Hannan 10 BLD (AD) 216, (ii) Tafijul Huq Sarker Vs Bangladesh 4 MLR (AD) 19, (iii) Bangladesh Vs Iqbal Hasan Mahmud Tuku 60 DLR (AD) 147 and (iv) Mayor, Chittagong City Corporation Vs Md. Jahangir Faruk and

other 14 BLT (AD) 24 and submits that in spite of the availability of forum of appeal, the present writ petition is to be held maintainable on the strength of the *ratio* laid down in the afore-referred cases.

By making the aforesaid submissions, the learned Advocate for the defendant-petitioner prays for making the Rule absolute.

Per contra, Mr. Mohammad Saiful Karim, the learned Advocate appearing on behalf of respondent no. 2 (plaintiff), at the very outset, places the provisions of Section 19 (2), 19(3) & 19(4) of the Ain, 2003 and submits that the writ petition is not maintainable as the petitioner did not avail himself of an opportunity for restoration of the suit by depositing 10% of the decretal amount within 30(thirty) days before the concerned Adalat No. 4, Dhaka. He next reads Section 41 of the Ain, 2003 and submits that he had also the option to prefer an appeal against the impugned judgment and decree and could have agitated all the issues before the appellate Court. By taking us through the order sheets of the Adalat, he seeks to impress upon this Court that the petitioner was never willing to proceed with the trial of the suit as he persistently tried to prolong the disposal of the suit and finally when the learned Judge of the Adalat came to realise the ill motive of the cunning petitioner as to dillydallying the disposal of the suit, the concerned Adalat has rightly passed the *exparte* decree and, therefore, he submits that there is no illegality in passing the impugned order.

In support of his submissions as to non-maintainability of this writ petition, he refers to the following cases; (i) Zahirul Islam Vs National Bank 46 DLR (AD) 191, (ii) Gazi M. Towfiq Vs Agrani Bank 54 DLR (AD) 6, (iii) BADC Vs Artharin Adalat 59 DLR (AD) 6, (iv) ACC Vs Enayetur Rahman 64 DLR (AD) 14 and (v) Sonali Bank Ltd Vs Asha Tex International 20 BLC 185.

We have heard the learned Advocates for both the sides at length, perused the writ petition, the affidavit-in-opposition, examined the materials on record as well as the relevant laws and decisions, and considered the same very carefully.

The apparent legal issues require to be considered by this Court are; whether the Adalat's decision to dispose of the suit *exparte* is lawful, secondly whether the petitioner's allegation against the trial Court as to non-consideration of his written statement as well as the issues that were already framed is true, in other words, whether the trial Court has failed to apply the provisions of Section 6(4) of the Ain, 2003 in passing the impugned *exparte* decree and thirdly whether in the backdrop of operation of the provisions of Sections 19(2) and 41 of the Ain, 2003, the present writ petition is maintainable.

Let us first take up the above first issue as to the lawfulness of the order by which the Adalat fixed the suit for *exparte* hearing. In this case, it is evident from the order-sheets that the very pattern of handling the suit by the defendant compelled the Adalat to record the following order on 10.04.2012;

> *27---10/4/12 --- A`¨ Gd.GBP Gi Rb¨ w`b avh¨ Av‡Q| ev`xc¶ nwRi| weev`xc¶ GK `iLv¯– `v‡qi Kwiqv ewbZ Kvi‡b mgq cv_bv Kwiqv‡Qb| ïbjvg| bw_ ch¨v‡jvPbvq †`Lv hvq weev`xc¶ BwZc‡e GKwaKevi mgq †bqvq, mg‡qi cv_bv bvgÄyÿ| G¶bB c¯–yZi wb‡`k (w f.I.w c)| cieZx‡Z weev`xc¶ †Kvb c`‡¶c ‡bq bvB| AvMvgx 22/8/12 wLt ZwiL GKZidv ïbvbx|* (underlined by us)

The above order shows that the defendant's application for adjournment was rejected as he was trying to protract the disposal of the suit by seeking repeated

adjournments on different occasions and, at the stage of giving oral evidence by the DW, when the Adalat took up the suit but the defendant-side did not participate in the hearing of the case *(cieZx‡Z ev`xc¶ †Kvb c`‡¶c †bq bvB)*, the matter was fixed for *exparte* judgment. Given the above scenario, we are to look at Section 19 of the Ain, 2003, which regulates the aspect of *exparte* disposal of an Artharin Suit.

d¡l¡-19z HLalg¡ ¢Xœ²¢ pÇf¢La ¢hd¡ez-

(1) j¡jm¡l öe¡e¢l Se¢É d¡k কোন তারিখে ¢hh¡c¢ Bc¡mতে অনুপস্থিত থাকিলে, কিংবা j¡jm¡ öe¡e¢l Se¢É N¢a qCh¡l fl X¡¢Lu¡ ¢hh¡c¢কে উপস্থিত পাওয়া না গেলে, Bc¡ma j¡jm¡ HLlag¡ pত্রে নিস্পত্তি করিবে।

From the language employed in Section 19(1) of the Ain, 2003, the literal meanings of the language gives us two situations, namely; on the date of hearing if the defendant does not register his/her presence before the Adalat by filing Hazira *(Av`vj‡Z Abyôv¯Z _vwK‡j)* or if after recording his/her presence in paper, s/he is found absent when the case is taken up for hearing *(Wvwmsev wee`‡K Dc¯Z cvIqv bv †M‡j)*, to proceed towards disposal of a case *exparte*. However, the spirit that derives from the provision of Section 19(1) of the Ain, 2003 is that if the Adalat finds that the manner and style of conducting the case by the defendant is to avoid or refrain from hearing *(ïbvbx bv Kiv)*, the Adalat should go for *exparte* disposal of the suit.

Let us now see whether the conduct of the petitioner in dealing with the suit compelled the Adalat to go for *exparte* disposal. After scrutinizing the order-sheets of the suit, it transpires that the suit was registered on 04.08.2010 and when this petitioner was not appearing before the concerned Adalat, on 04.10.2010 by order no. 4 the Adalat fixed 20.10.2010 for pronouncing *exparte* decree of the suit. However, on 03.11.2010, the petitioner entered his appearance and filed an application, having prayed for time to submit written statement, which was allowed by the Adalat and, consequently, the suit was withdrawn from the status of *exparte* disposal. Since then, the petitioner sought for time on this or that plea on 3 (three) occasions (on 28.11.2010, 13.01.2011 & 08.02.2011) for filing written statement. Thereafter, in between the time of filing of the written statement (on 09.03.2011) and the framing of issues (on 24.08.2011), the petitioner applied for time on 15.06.2011 and 19.07.2011 and then the Adalat fixed a date for peremptory hearing on 15.11.2011, on which date the Bank was ready for hearing with its witness, but due to the petitioner's adjournment application the hearing did not take place. Thereafter, on 26.02.2012, when the petitioner prayed for adjournment, the Adalat allowed it with a cost of Taka 2000/- and on 20.03.2012 the Adalat took deposition of the PW1 fixing 10.04.2012 for further hearing. This time when the petitioner again came up with an application for adjournment, the Adalat listed the suit for *exparte* disposal. Thus, the Adalat, in fact, showed leniency to the petitioner in the light of the fact that, as per the provisions of Sections 16 & 17 of the Ain, 2003, although it is directory, the suit ought to have been disposed of within 170 days (under Section 16 # 20 days + under Section 17 # 150 days) from the institution of the suit.

Thus, it appears that the petitioner was trying to delay the disposal of the suit from the very beginning and the Adalat decided to go for *exparte* disposal when the petitioner was coming up with adjournment applications with an intention to refrain

from participating in the hearing of the case. It is the legal duty of the trial Court that once deposition of any witness is taken, it shall continue with the hearing of the suit without allowing any adjournment application. Therefore, we do not find any illegality in proceeding with the *exparte* disposal of the suit by the Adalat and, accordingly, we hold that the Adalat rightly fixed 22.04.2012 for *exparte* judgement.

After the foregoing conclusion as to the correctness of the Adalat in going for disposing of the suit *exparte*, we may now undertake the examination of the second issue as to whether the Adalat committed an error in not considering the written statement and in not disposing of the suit on the basis of the issues that had already been framed.

In order to examine the above issue, it would be profitable if we look at the impugned *exparte* judgement which is reproduced below:

> *22/4/12--- A¨ GKZidv ïbvbxi Rb¨ w`b avh¨ Av‡Q| ev`x c¶ I weev`x c¶ nvwRi| weev`x c¶ njdbvgv mn GK `iLv¯– `v‡qi Kwiqv †gvKÏgv GKZidv n‡Z D‡Ëvjb KiZt mv¶x‡K †Riv Kivi Abyôv‡Z cv_bv Kwiqv‡Qb|*
> *weev`xc¶ A_FY Av`vjZ AvBb 2003 Gi 57 Zrmn 151 avivi weavb g‡Z njdbvgv mn Aci GK `iLv¯– `v‡qi Kwiqv ewbZ Kvi‡b Bmjv‡gi kixqv †gvZv‡eK (e¨vswKs) Fb Av`vq Kivi Rb¨ ev`xc¶‡K wb‡`k c`v‡bi cv_bv Kwiqv‡Qb| bw_ †ck Kiv n‡jv| ïbjvg| bw_ ch¨v‡jvPbvq †`Lv hvq †h, 1bs weev`x c¶ MZ 15/11/11 wL. Zwi L, 12/1/12 wL. Zwi L, 26/2/12 wL. Zwi L Ges me‡kl 10/4/12 wL. Zwi L mgq wb‡q‡Qb| A¨ `iLv¯– `v‡qi Kwiqv GK-Zidv ïbvbx n‡Z D‡Ëvj‡bi cv_bv Kwiqv‡Qb| BwZg‡a¨ AvBb wbawiZ mgq AwZewnZ nIqvq `iLv¯– bvgÄyi Kiv n‡jv| ev`x c¶ wdwi¯– Øviv `vMRcÎ `wLj Kwiqv‡Qb| bw_ †ck Kiv n‡jv|*
> *bw_ GKZidv ïbvbxi Rb¨ Mp¤xZ n‡jv| ev`xc‡¶i weÁ AvBbRxexi e³e¨ ïbjvg| Bnv D‡j-L¨ †h, A_FY Av`vjZ AvBb 2003 Gi 6(4) avivi weavb ev`xc¶ †gvKÏgv `v‡qiKv‡j AviwR I KvMRw`i mv‡_ Gwd‡WweU `wLj Ki‡j †gvKÏgv GKZidv ev Zvr¶wbK wb¯úwËi †¶‡Î †Kvb mv¶x‡K ci¤¶v e¨wZ‡i‡K njdbvgvhy³ AviwR `vjvjK cgvbw` we‡k-lb Kwiqv ivq ev Av‡`k c`vb Kiv hvq| ev`xc¶ Gwd‡WweU mn AviwR `wLj K‡i‡Qb|*
> *AÎ †gvKÏgvi AviwR, ev`x c‡¶i `wLjx KvMRcÎ Ges bw_ chv‡jvPbv Kijvg| ev`x e¨vs‡Ki `vex AvBbvbyôvfv‡e cgwbZ nq| d‡j ev`xc¶ cv_xZ cwZKvi cvB‡Z nK`vi|*
> *c`Ë †KvU wd mwVK|*
> *AZGe,*
> *Av‡`k nq †h,*
> *G †gvKÏgwU weev`xM‡Yi wei“‡× GKZidv m‡Î LiPv mn MZ 30/6/10 wL. chš– 8,10,09,374/- (AvU †KwU `k j¶ bq nvRvi wZbkZ Pgvwi) UvKvi wWµ n‡jv| 01/07/10wL. Zwi L †_‡K UvKv Av`vq bv nIqv chš– ev`xc¶ A_FY Av`vjZ AvBb 2003 Gi 50(2) avivq ewYZ mÿmn cvß n‡e| weev`xc¶‡K ivq cPv‡ii 60 (lvU) w`e‡mi g‡a¨ wWµxKZ.UvKv mÿ mn ev`xc‡¶i AbyK‡j cwi‡kv‡ai wb‡`k †`qv n‡jv| e¨_Zvq ev`x c¶ Av`vjZ †hv‡M AvBb I c×wZ †gvZv‡eK wWµxKZ.UvKv Av`vq K‡i wb‡Z cvi‡e|*
> *‡gvKÏgv `v‡qi cieZx weev`xc¶ †Kvb UvKv Rgv c`vb Ki‡j, ev`xc¶‡K D³ UvKv ev` w`‡q cieZx Kvhµg MnY Kivi wb‡`k †`qv n‡jv|*
> *Avgvi Kw_Z g‡Z gÿY I ms‡kwaZ|* (underlined by us)

It is evident from the above-quoted impugned judgement and order that the learned Judge of the Adalat heard the defendant side's two applications; one is for withdrawing the suit from the list under the heading of "delivery for judgment" and the other application is for realization of loan under the Sharia Law, both of which were filed under Section 57 of the Ain, 2003 read with Section 151 of the Code of Civil Procedure (CPC), and the same were rejected by the Adalat on the ground that the applications were filed for delaying the disposal of the suit. Then the Adalat disposed of the case on consideration of the plaint made under affidavit and the documents filed therewith. It is, however, evident that the Adalat did not consider the written statement, nor did it dispose of the suit upon examining the issues which the Adalat had framed upon receiving the written statement.

Now, the pertinent question comes up for examination is whether the Adalat was under a legal duty to consider the written statement of the defendant-petitioner, in a situation, when he failed to participate in the hearing of the case or purposefully refrained from attending the hearing of the case.

To have a resolution of the above query, we need to look at Section 6(4) of the Ain, 2003, which is quoted below :

> **"6z ¢hQ¡l fÜ¢a-** (1), (2), (3) .....
>
> (4) HC BCনের অধীন অর্থঋণ আদালতে মামলা নিস্পত্তির ক্ষেত্রে উপ-d¡l¡ (2) J (3)-Hl ¢hd¡e Aek¡u£ pwkš² qmge¡j¡ (Affidavit) মৌখিক সাক্ষ্য (substantive evidence) ¢qp¡বে গন্য হইবে, এবং আদালত ®L¡e j¡jm¡l HLalg¡ h¡ a¡vr¢eL ¢eØf¢šl ®rত্রে কোন সাক্ষীকে fl£r¡ hÉ¢aরেL, কেবল এইরুপ হলফনামা-kJ² Bl¢S h¡ ¢m¢Ma Sh¡h J pw¢rç c¡¢m¢mL প্রমানাদি বিশ্লেষণ করিয়া রায় বা আদেশ প্রদান করিবেz"
>
> (underlines added)

Our unambiguous understanding on the above provisions of the law is that Section 6(4) of the Ain, 2003 mandates the Adalat to dispose of an Artharin suit *exparte* or instantly by simply considering the plaint (prepared under affidavit) or written statement (made with affidavit) and the documents filed therewith, upon treating all of them as substantive evidence and, thus, pleadings with affidavits is the focal-point of this provision and any formal examination of witnesses has got less emphasis in the Ain, 2003.

Whether in the expression "qmge¡j¡kš² Bl S£ h¡ Sh¡h" incorporated in Section 6(4) of the Ain, 2003, the word "h¡" (or) is to be read as a conjunctive word or as a disjunctive word requires some examination and discussion for effective disposal of not only of this Rule, but also of the other cases with the similar background.

To carry out the above scrutiny, we need to look at the provisions of Sections 6(4), 13 and 19(1) of the Ain, 2003 side-by-side, for, Section 6(4) of the Ain, 2003 does not outline the procedure to be followed in a situation requiring *exparte* disposal or instant disposal and it is Section 13 of the Ain, 2003 which seeks to provide the grounds and procedures for instant *(Zvr¶wbK/Awej‡¤)* disposal of an Artharin suit and Section 19 of the Ain, 2003 outlines the reasons for taking up an Artharin suit for *exparte* disposal and also the procedures to be followed.

We would quote only the provisions of Section 13 of the Ain, 2003 herein under, as the other two Sections have already been embodied in this judgment hereinbefore. Section 13 of the Ain, 2003 reads as under:

13| (1) wewe`x KZ„K wjwLZ Reve `wLj nIqvi cieZx‡Z avh GKwU wbawiZ Zwi‡L Av`vjZ Dfq c¶‡K, hw` Dcw¯Z _v‡K, ïbvbx Kwiqv Ges AviwR I wjwLZ eYbv chv‡jvPbv Kwiqv gvgjvi wePvh welq, hw` _v‡K, MVb Kwi‡e; Ges hw` wePvh welq bv _v‡K, Av`vjZ Awej‡¤ ivq ev Av‡`k c`vb Kwi‡e|

(2) Dc-avivi (1) G wbawiZ Zwi‡L, †Kvb ev Dfq c¶ hw` Abyôvw¯Z _v‡K, Zvnv nB‡j Av`vjZ, AviwR I wjwLZ eYbv chv‡jvPbv Kwiqv gvgjvi wePvh welq, hw` _v‡K, MVb Kwi‡e; Ges hw` wePvh welq bv _v‡K, Av`vjZ Awej‡¤ ivq ev Av‡`k c`vb Kwi‡e|

(3) gvgjvi †h †Kvb chv‡q, wjwLZ eYbvq wKsev Ab¨ †Kvbfv‡e wewe`x KZ„K ev`xi AwRi e³e¨ ¯xKZ.nBqv _wK‡j, Ges D³ic ¯xKwZi wfwË‡Z †hic ivq ev Av‡`k cvB‡Z ev`x AwaKvix, ‡mic ivq ev Av‡`k cv_bv Kwiqv ev`x Av`vj‡Zi wbKU `iLv¯–Kwi‡j, Av`vjZ, ev`x I wewe`xi g‡a¨ we`¨gvb Acivci wePvh welq wb®úwËi Rb¨ A‡c¶v bv Kwiqv, Dchy³ ivq ev Av‡`k c`vb Kwi‡e|

(4) gvgjvi ïbvbxi Rb¨ avh c_g Zwi‡L A_ev gvgjvi †h †Kvb chv‡q hw` Av`vj‡Zi wbKU cZxqgvb nq †h, c¶Ø‡qi g‡a¨ NUbv A_ev AvBbMZ wel‡q †Kvb wewe` bvB, Zvnv nB‡j, Av`vjZ Awej‡¤ ivq ev Av‡`k c`vb Kwiqv gvgjv Pvgvš–fv‡e wb®úwË Kwi‡e|

(underlined by us)

From a concurrent reading of the aforesaid three Sections, it appears to us that the expression "qmge¡j¡kš² BIS‡ hi Sh¡h" incorporated in Section 6(4) of the Ain, 2003 has been used in the context of "কোন মামলা একতরফাসূত্রে বা তাৎক্ষনিক নিষ্পত্তির ক্ষেত্রে" and, accordingly, we are to see whether the expression "qmge¡j¡kš² BIS‡ h¡ Sh¡h" relates only to a situation of *exparte* disposal or only to a situation of instant disposal.

For application of the above expression in an *exparte* disposal situation, when the word "h¡" (or) would be read as the disjunctive one, an unworkable situation would arise for the Adalat. Because, in that event the Adalat shall have to consider either the plaint only or the written statement only in the backdrop of impossibility of disposal of a suit solely on the basis of written statement. Furthermore, disposal of a suit solely based on the written statement will render the provisions of Section 19(6) of the Ain, 2003 nugatory. The said Section 19(6) of the Ain is quoted below:

> 19(6) Ab-ঋণ আদালত‡hQ¡l¡d‡e ®L¡e j¡jm¡, h¡c‡l Aef‡Ø‡q‡a h¡ hÉba¡ ®qa M¡‡IS Ll¡ k¡Cবে না, এবং এইরুপ ক্ষেত্রে Bc¡ma, e‡bতে উপস্হাপিত কাগজাদি পরীক্ষা করিয়া গুনাগুন বি-শ্লেষণে মামলা নিষ্পত্তি করিবে।

From a plain reading of the above law it appears that this provision requires consideration of the plaintiff's case on merit, irrespective of the fact as to whether the plaintiff is present in the Adalat or not. The provision is about a situation where only the plaintiff is absent as reflected in the words "h¡c‡l Aef‡Ø‡q‡a h¡ hÉba¡l ®qaz". It further speaks of "গুনাগুন বিশ্লেষণে মামলা নিষ্পত্তি করিবে". From the practical view point, when the plaintiff is absent or fails to appear, two situations, namely (i) the plaintiff is absent but defendant is present or (ii) both the parties are absent, would arise. Given that Section 19(6) of the Ain, 2003 is silent about presence or absence of the defendant, an assessment is required to be made to know the real intention of Section 19(6) on the Ain, 2003. The straight-forward reply is that in both the situations, while it is mandatory for the Adalat to consider the plaintiff's case on merit, for, Section 6(4) of the Ain, 2003 dictates the Adalat to consider the plaint (made under affidavit) and the documents, it is discretionary for the Adalat whether to consider the defendant's case

or not. Our view is that in disposing of a suit under Section 19(6) of the Ain, 2003, since there is no prohibition to consider the defendant's case in the event of the defendant's absence, the case of the defendant should also be considered, and not of the plaintiff alone. However, when the defendant is present his case is also to be considered either by way of production of formal evidence through witness or without examination of witnesses as stipulated in Section 6(4) of the Ain, 2003.

On the contrary, if the word "hj" (or) employed in Section 6(4) of the Ain, 2003 is read as a conjunctive word in an *exparte* disposal situation, it will mean that even if the defendant is absent, the Adalat must consider both the plaint and written statement making the provisions of Section 19(1) of the Ain 2003 redundant, for, this Section requires *exparte* disposal (একতরফাসূত্রে) in the absence of defendant.

Similarly, when the expression "qmge¡j¡kš² BIS£ hj Shjh" in the context of instant disposal situation, as occurs in Sections 6(4) (তাৎক্ষনিক নিষ্পত্তির ক্ষেত্রে) and 13(1), 13(2), 13(3) & 13(4) (*Av`vjZ Awej‡¤ ivq ev Av‡`k c`vb Kwi‡e)* of the Ain, 2003, would be applied, the Adalat would face the same dilemma, as discussed above in the event of *exparte* disposal, if the word "*ev*" (or) is taken in the conjunctive sense or disjunctive sense.

Thus, apparently there is a bit of lack of clarity in the provisions of Section 6(4) of the Ain, 2003 and it has inevitably become a bounden duty for this Court to interpret the provisions of Section 6(4) of the Ain, 2003 on the touchstone of the scheme of the Ain, 2003 and, thereby, attribute a cohesive meaning of it.

By Section 6(4) & 19(6) of the Ain, 2003 the Legislature has created a device for the Adalat that if the parties to the Artharin suit fail to produce witnesses for the purpose of proving their cases by way of formally stating it on the witness box, as in an ordinary Civil Case, or they do not want to face the hassle of attending the Court premise for giving evidence, they will be allowed to prove their respective cases by way of submitting documents. While Section 6(4) of the Ain, 2003 directs that in the event of absence of the defendant, the Adalat would dispose of a suit upon considering the plaint or/and written statement together with documentary evidence, Section 19(6) provides that due to the plaintiff's absence the Adalat cannot dismiss the suit, for, the law obliges the Adalat to consider the merit of the plaint with affidavit and also the documents filed in the Adalat.

The legislative intention behind enactment of this special law is to set up special Courts for recovery of the Banks'/Financial Institutions' loan from the defaulters. For achieving the target, the Legislature has sought to incorporate a short-cut procedure in disposing of the Artharin Suits and avoid lengthy procedures as being followed in the ordinary civil Courts. With this aim, the Legislature has provided the procedure for the Adalat to be followed in an *exparte* disposal scenario or instant disposal situation. An *exparte* disposal may be done, both, before and after receiving the written statement. If the suit is decreed *exparte* before receiving the written statement, then there is no difficulty in reading and applying the provisions of Sections 6(4) & 19(1) of the Ain, 2003. However, once the Adalat receives the written statement and the defendant's inaction or failure to pursue the suit compels the Adalat to opt for *exparte* disposal, then the question comes for consideration as to whether the Adalat should consider the written statement.

When in an Artharin suit the defendant-side would not participate in the hearing, what would the Adalat do with the written statement? The normal presumption would be that by his non-participation in the hearing he was not placing before the Adalat his claims, which were raised in the written statements. And keeping this scenario in mind, the Legislature made the provision in Section 19(1) of the Ain, 2003 for the Adalat to dispose of the suit *exparte* (একতরফাসূত্রে). The expression "একতরফাসূত্রে" in Section 19(1) of the Ain, 2003 has been purposefully employed debarring the Adalat from considering the defendant's case.

The above analysis on the different provisions of the Ain, 2003, which had been carried out in an effort to lay down a workable statutory interpretation, leads us to take a view that the meaning of the expression "qmge¡j¡kš² BlS£ h¡ Sh¡h" employed in Section 6(4) of the Ain, 2003 is that the plaint (made with affidavit) is to be considered and where necessary the written statement (made under affidavit) is also to be considered. Hence, in Bangla the following expression "qmge¡j¡ kš² BlS£ Hhw kb¡kb ক্ষেত্রে বিবাদীর হলফনামাযুক্ত জবাব" would sound more appropriate.

It is a finding of fact, this Court already arrived at hereinbefore by examining the background-events, that the petitioner's failure to participate in the hearing led the Adalat to proceed towards *exparte* disposal under Section 19(1) of the Ain, 2003. The facts of the case, thus, show that the Adalat has exercised its jurisdiction as a competent Court, so far the framing of issues and the passing of the *exparte* decree in the absence of the defendant are concerned and, therefore, we do not find that the Adalat had no jurisdiction to pass the impugned order and, thus, the *ratio* of the cited case of Pabna Mental Hospital Vs Tossadek Hossain & others 13 BLC (AD) 91, wherein the concerned State-functionary had exceeded its jurisdiction, and the case of Rupali Bank Ltd Vs Tafazal Hossain 44 DLR (AD) 260, wherein the civil Court had tried the suit without having jurisdiction, has no manner of application in the present case, and the case of Md. Arfanuddin akand & another Vs Artharin Adalat and others 15 BLT 243 is not applicable here in this case, for, the decision arrived at by the High Court Division is *per incurium* inasmuch the Court missed examination of Section 19 (1) of the Ain, 2003. In the instant case, thus, the Adalat was not under a legal duty to consider the case of the defendants as made out in the written statements or the issues that had been framed earlier.

Let us now deal with the issue of maintainability of this writ petition. In order to examine the said issue, we need to look at the provisions of Section 19(2), 19(3) & 19(4) of the Ain, 2003 which is quoted below:

> 19 (2) ®Lje jjm¡ HLalg¡ pত্রে ডিক্রী হইলে, বিবাদী উক্ত একতরফা ডিক্রীর তারিMl Abh¡ Eš² HLalg¡ ¢Xœ²£ pÇfর্কে অবগত হইবার ৩০ (ত্রিশ) দিবসের মধ্যে, উপ-d¡l¡ (3) Hl ¢hdje সাপেক্ষে, উক্ত একতরফা ডিক্রী রcl SeÉ clM¡Ù¹L¢l ত পারিchez
>
> 19 (3) Ef-d¡l¡ (2) Hl ¢hdje Aekµu£ clM¡Ù¹c¡¢Mলের ক্ষেত্রে বিবাদ¢kে উক্ত দরখাস্ত দাখিে-লর তারিMl fl ha£ 15 (fনের) দিবসের মধ্যে ডিক্রীকৃত অর্থের ১০% এর সমপরিমাণ টাকা h¡c£l c¡h£l ®pC f¢lj¡ণের জন্য স্বীকৃতিস্বরুপ নগদ সংশ্লিষ্ট আর্থিক প্রতিষ্ঠাne, Abh¡ Sj¡ea-ül¦f hÉ¡wL XÊgV, ®f-AX¡l h¡ AeÉ ®Lje fÐl eNc¡ueযোগ্য বিনিময়ে দলিল (Negotiable Instrument) BL¡রে জামানত হিসাবে আদালতে জমাদান করিca qCবে।

19 (4) ***Dc-avivi (3) Gi weavbg‡Z wWµxKZ.A‡_I 10% Gi mgcwigvY UvKv Rgv`v‡bi ms‡M ms‡M `iLv¯—wU gÄyi nB‡e, GKZidv wWµx i` nB‡e Ges gj¨ gvgjv Dnvi b¤i I bw_‡Z cÖvi“¾xweZ nB‡e, Ges Av`vjZ H g‡g GKwU Av‡`k wjwce× Kwi‡e; Ges AZtci gvgjwU ‡h chv‡q GK Zid wb®úwË nBqwQj, H chv‡qi Ae¨ewnZ ceeZx chvq cwiPvwjZ nB‡e|***

It appears that the Legislature has eased the task of restoration of an Artharin suit for an alleged loan-defaulter by incorporating the above provisions. Because of the percentage of deposit being only 10% of the decretal amount, the time-limitation of filing the application being sufficient (30 days from the date of knowledge of passing the *exparte* decree plus further 15 days for deposit) and the mode of payment being flexible, for, it is permissible to pay in cash or submit bank draft, pay order, cheque and any other negotiable instrument, it would not be irrational to view these conditions as affordable for an aggrieved party.

In the case at hand, the impugned *exparte* judgment and decree has been passed on 22.04.2012 and the petitioner could have filed an application for restoration of the suit within 22.05.2012 with the opportunity of depositing the 10% of the decretal amount within next 15 (fifteen) days of filing the aforesaid application. The petitioner, instead of availing himself of the above route, opted to file the instant writ petition and that too was done after 1 (one) year of passing the impugned *exparte* judgment and decree. It is evident from the statement of the Bank that the Execution Case no. 110 of 2012, having been started on 24.09.2012, has its final disposal still awaiting and, in fact, issuance of the instant Rule has halted the further process of the Execution case, albeit there is no direction or injunction restraining its process.

The petitioner could also have sought remedy in the form of preferring an appeal under Section 41 of the Ain, 2003 within the time as prescribed therein. The appellate Court is competent to examine any factual issue and law point, including the issue of passing the impugned judgment and decree exceeding its jurisdiction, and take fresh or further evidence for effective disposal of an appeal. However, the petitioner purposefully refrained from availing himself of the aforesaid remedy. Section 41 runs as follows:

> **"dj¡l¡-41z Bf‡m c¡য়ের ও নিষ্পত্তি সম্পর্কিত বিশেষ বিধান।** -(1) j¡jm¡l ®L¡e f r, ®L¡e AbGZ Bc¡mতের আদেশ বা ডিক্রী দ্বারা সংক্ষুব্ধ হইলে, k¢c ¢Xœ²¢La V¡L¡l f¢lj¡Z 50 (f'¡n) m r V¡L¡ Aপেক্ষা অধিক হয়, তাহা হইলে Ef-dj¡l¡ (2) Hl ¢hd¡e p¡পেক্ষে, পরবর্তী ৩০ (ত্রিশ) দিবসের jdÉ q¡Cকোর্ট বিভাগে, Hhw k¢c ¢Xœ²¢La V¡L¡l f¢lj¡Z 50 (f'¡n) m r V¡L¡ Abh¡ acAপেক্ষা Lj qu, a¡q¡ qCলে জেলা জজ আদালতে আপীল করিতে পারিবেন।
>
> (2) Bf‡mL¡l‡, ¢Xœ²¢La V¡L¡র পরিমাণZl 50% Hl pjf¢lj¡Z V¡L¡ h¡c‡l c¡h‡l Bw¢nL ü‡L¢aül¦f eNc ¢Xœ²¢c¡l B¢bL f‡Ùü¡নে, অথবা বাদীর দাবী স্বীকার না করিলে, জামানতস্বরুপ ¢Xœ² f‡Ùe¡L¡l‡ Bc¡mতে জমা করিয়া উক্তরুপ জমার প্রমাণ দরখাস্ত বা আপীlম ®j¡মোর সহিত আদালতে a c¡¢Mm e¡ L¢lলে, উপ-dj¡l¡ (1) Hl Ad‡e ®L¡e Bf‡m L¡k¡র্থে গৃহীত হইবে না।
>
> (3) Ef-ধারা (২) এর বিধান সত্ত্বেJ, ¢hh¡c‡-c¡¢uL C¢ajধ্যে ১৯(৩) ধারার বিধান মতে ১০% (দশ na¡wn) f¢lj¡Z V¡L¡ eNc Abh¡ S¡j¡ea ¢qp¡বে জমা করিয়া থাকিলে, অত্র ধারার অধীনে আপীল c¡য়েেল ®rত্রে উক্ত ১০% (দশ শতাংশ) টাকা উপরি-E¢õ¢Ma 50% (f'¡n na¡wn) V¡L¡ qCতে h¡c qCবে।

(4), (5), (6).....”

It is the clear intention of the Legislature that a party to an Artharin Suit if aggrieved by a decree, must prefer an appeal. Since the Ain, 2003 is a special law with an overriding provision over other laws and has prescribed a special procedure, there is no scope to bypass the appellate forum, if the forum under Section 19(2) of the Ain, 2003 against an *exparte* decree is already not availed of by the party.

The only exception is that before passing the decree, if a party to an Artharin Suit feels aggrieved by an order, writ jurisdiction may be invoked as has been held in the case Sonali Bank Ltd Vs Asha Tex International 20 BLC 185. However, after passing a decree, if the party of an Artharin Suit, becomes aggrieved by any type of order, there is no forum other than preferring an appeal under Section 41 of the Ain, 2003.

The cases referred to by the learned Advocate for the petitioner are factually different in nature inasmuch as those did not arise out of any order or decree of an Artharin Suit. In the celebrated case of the Collector of Customs Vs Mr. A. Hannan 10 BLD (AD) 216, the appellate forum was held to be ‘not equally efficacious’ as the provision requires deposit of 50% of the penalty. But in the Artharin suits the required deposit is of the decretal amount and it is the money of the Bank/financial institution, as opposed to levying any duty or penalty. In the case of Tafijul Huq Sarker Vs Bangladesh 4 MLR (AD) 19, the appellate forum for a terminated Mutawalli was held to be not equally efficacious as the precondition for preferring an appeal is to hand over the charge first and, thus, the fact being completely different bypassing the appellate forum was held to be justified in the said case. The *ratio* laid down in the case of Bangladesh Vs Iqbal Hasan Mahmeed Tuku 60 DLR (AD) 147 has been overruled by the Apex Court by their decision passed in the case of ACC Vs Enayetur Rahman 64 DLR (AD) 14. The case of Mayor, Chittagong City Corporation Vs Md Jahangir Faruk and others 14 BLT (AD) 24 is about dismissal of the writ petitioner who directly had invoked writ jurisdiction without preferring an appeal to the appellate authority and the said appellate authority, being an Administrative higher authority, the forum cannot be termed to be an equally efficacious forum in the backdrop of apparent *ex-facie* illegality in the dismissal order which was passed without carrying out any departmental proceeding. Thus, none of the said cases’ *ratio* is applicable in this case.

Therefore, the writ petition is not maintainable, for, there are alternative efficacious remedies available to the petitioner. Our above view gets support from the principles laid down in the cases of (i) Zahirul Islam Vs National Bank 46 DLR (AD) 191, (ii) Gazi M. Towfiq Vs Agrani Bank 54 DLR (AD) 6, (iii) BADC Vs Artharin Adalat 59 DLR (AD) 6, (iv) Oriental Bank Vs AB Siddiq 13 BLC (AD) 144, (v) ACC Vs Enayetur Rahman 64 DLR (AD) 14 and (vi) Sonali Bank Ltd Vs Asha Tex International 20 BLC 185.

The petitioner has resorted to a wrong forum by invoking the writ jurisdiction of this Court. He cannot now avail himself of the remedy under Section 41 of the Ain, 2003, for, evidently he is out of time. Had this writ petition been filed within 30 (thirty) days of the decree, he could have enjoyed the benefit of the provisions of Section 14 read with Section 29 of the Limitation Act as was viewed by a Division Bench of the High Court Division in the case of Sharifa Begum Vs Bangladesh (Writ

Petition no. 15331 of 2012) (unreported). However, it is our view that when an aggrieved party to an Artharin suit, when comes with clean hands and his move is a bonafide one directed at examining a clear-cut factual issue or legal point and not to frustrate the Artharin suit, and files a writ petition by making a 50% down payment of the decretal amount to the lender Bank/financial institution and furnishes detailed reasons for not being able to prefer an appeal within the prescribed time, in the aforesaid rarest of rare situations, this Court by exercising its 'special jurisdiction' under Article 102(2)(a)(ii) of the Constitution may entertain the application, for, being barred by limitation there is no other forum for the aggrieved party.

Before parting with the judgment, we find it proper to have a survey on the manner and style of handling the present case by the learned Advocate for the petitioner and thereby make an assessment as to whether he has performed his professional duty in conformity with the norms and etiquette of the legal profession in the backdrop of the Appellate Division's following observations made at Para 21 in the case of BADC Vs Artharin Adalat 59 DLR(AD) 6;

> Before we part, we would like to put it on record that in spite of the fact that the law in the matter has been settled long back, petitions are unnecessarily filed under Article 102 of the Constitution challenging the judgment of the Artharin Adalat without making any case covered under the aforesaid Article, not to speak of any ground touching fundamental rights of the petitioner. As a result, the superior Courts are wasting public time which should be discouraged by all concerned including the learned members of the Bar, who are as well officers of the Court.

About 10 (ten) years ago, our Apex Court urged the learned Advocates of this Court to be susceptive in filing a writ petition against any decree of the Artharin Adalat. But unfortunately the learned members of the Bar are coming up with the said writ petitions indiscriminately and thereby causing wastage of valuable time of this Court which is overwhelmingly overburdened with huge backlog of cases.

More so, after obtaining the Rule on 29.04.2013 no step was taken by the petitioner to get the matter heard. It is only when the matter was sent to this Bench by the concerned office of this Court (Writ Section) to dispose of the Rule, did the learned Advocate for the petitioner appear on 19.08.2015 before this Court and the matter was fixed for hearing. However, since the date of fixing the matter for hearing, the learned Advocate for the petitioner was not appearing before this Court and, consequently, the matter was placed in the Daily Cause List under the heading 'For Order'. Thereafter, on the verbal promise of the learned Advocate for the petitioner that he shall assist this Court in disposing of the Rule, the matter was again taken back in the category of the items under the column "For Hearing". Since then, every day at the 'Mentioning Hour' the learned junior Advocate attached to Mr. S.N. Goswami was coming up with a prayer to 'pass over' the item on the ground of Mr. Goswami's engagement in the Appellate Division and eventually the matter was heard-in-part and adjourned to 15.09.2015. Thereafter, the learned Advocate for the petitioner took adjournment on several occasions by sending his junior on his personnel ground. In the meantime, the jurisdiction of this Bench changed from writ matters to criminal cases and the Hon'ble Chief Justice, upon receiving administrative note from this

Bench, asked us to continue with the hearing of all the part-heard writ matters in addition to exercising the criminal jurisdiction. Accordingly, for nearly two weeks the matter was appearing in a separate Cause List and when the learned Advocate for the petitioner was not turning up, this Court informed the learned Advocate for the petitioner through the Bank's lawyer about this Court's intention to dispose of the Rule, whether or not the learned Advocate for the petitioner attend this Court to make any submissions. On 08.12.2015, Ms. Afsana Begum, the associate Advocate of the learned Advocate for the petitioner, prayed for time on the plea that Mr. Goswami wants to make some submissions on the issue of maintainability of the writ petition and on 09.12.2015 when the matter was taken up for hearing, neither the learned Advocate Mr. Goswami nor his junior Ms. Afsana Begum complied with their promise to attend the hearing and, under the circumstance, this Court fixed the next day for delivery of judgment and on 10.12.2015 when this Court took up the case for pronouncement of the judgment, unfortunately, no one was present, not even his junior, to receive the judgment. However, on 10.12.2015 pronouncement of the judgment could not be finished due to ending the working hour of the day and this Court had to adjourn the pronouncement of the rest of the judgment. Today, (27.01.2016) when this Court is about to accomplish the unfinished judgment, Ms. Afsana Begum, the learned junior to Mr. Goswami, appeared and placed some decisions in support of their argument on the issue of maintainability of this writ petition. The above pattern of handling the case by the learned Advocate for the petitioner amply suggests that the petitioner filed the instant writ petition for delaying the execution process through abusing the process of this Court and the above style of dealing with this case leads us to hold that the petitioner managed to resort to this extreme extent of abuse of the process of the highest Court with the assistance of the learned Advocate for the petitioner for which both of them deserve to be penalised by slapping exemplary costs to be paid from the pocket of the learned Advocate for the petitioner in addition to ordinary statutory costs to be paid by the petitioner, as was ordered in the case of Bandar Nagari Bahumukhi Samabay Samity Ltd Vs Bangladesh 5 ALR-2015 (1) 194. However, Given the fact that Mr. Goswami has showed this attitude for the first time before this Bench, we refrain from passing any order of payment of costs from his pocket, as was done in the case of AKM Asaduzzaman Vs Public Service Commission 4 ALR-2014(2)278. Accordingly, the petitioner shall pay the costs to be imposed upon him hereinafter.

There is something more to pen through before we quit this judgment. This is for the Artharin Adalats who are everyday dealing with the Ain, 2003 and, as a part of our obligation under Article 109 of the Constitution, it would be an incomplete job for this Court if we do not prescribe their tasks in clearer terms after making the above lengthy discussions and analysis, which may seem to be cumbersome to the readers, on the provisions of Sections 6(4), 13 and 19 of the Ain, 2003.

(i) In disposing of the *exparte* disposal of the Artharin suits, the Adalat must record its reasonings in detail. If the *exparte* disposal is required for the defendant's non-appearance after complying with the provisions of Section 7 of the Ain, 2003, the Adalat should give at least one chance to the defendant to enable the latter to register its presence in the suit and contest it.

(ii) Upon receiving the summons, when the defendant appears and seeks adjournment for filing written statement, the Adalat should not allow more than two adjournments and, accordingly, the Adalat should go for *exparte* disposal if the defendant approaches for third adjournment without submitting the written statement.

(iii) After filing the written statement and framing issues, when the date is fixed for peremptory hearing, the Adalat should not allow more than two adjournments and on the prayer for third-time adjournment for attending hearing, the Adalat should dispose of the suit *exparte*.

The overall suggestion for the Adalat is that the Ain, 2003 is aimed at expeditious disposal of the Bank's/Financial Institution's claim for recovery of money which is, in fact, the money of the State. If the Adalat, after putting its best effort to serve the notice upon the defendant/s, is satisfied that the notice has been served properly, it should proceed towards the disposal of the suit. The Adalat should bear in mind that while there are unscrupulous defendant/s to delay the disposal of the Artharin suits and thereby frustrate the scheme of the Ain, 2003, however, there are also bonafide defendant/s who might be victimised by the Adalat's inconsiderate hurriedness. The Adalat being in a better position to assess the above issues/factors from the manner and style of conducting the case by the defendant-side, it should pass appropriate order as per the demand of the circumstances invoking its inherent power under Section 57 of the Ain, 2003. The bottomline for the Adalat is to ensure fair justice for the parties to the suit and, in doing so, when the Adalat shall endeavour to protect the interest of a clean and bonafide defendant, the Adalat shall also not allow the cunning loan-defaulters to abuse the process of the Adalat. To save a vulnerable defendant from the unreasonable demand of the Banks/Financial Institutions and also to save the defendant's property from selling at a shockingly low-price, which very often takes place in connivance with the staff of the Bank/Financial Institution and the concerned Court staff, if needed, the Adalat may exercise its inherent power recording the detailed reasons to substantiate its order.

We feel it pertinent to opine that the Law Commission of Bangladesh should look into our observations as to the ambiguities of some phraseology used in Sections 6 (4), 13 of 19(1) of the Ain, 2003 and take necessary steps for incorporation of appropriate expressions or deletion thereto. The Commission may make the following proposals to the Legislature;

(1) In order to remove the ambiguity in the phrase "*njdbvgvhy³ AviRx ev Revei*", the same may be replaced by the following expression "*njdbvgvhy³ AviRx Ges h_vh_ †¶‡Î weev`xi njdbvgvhy³ Revei*" with an "Explanation" of the word "*h_vh_‡¶‡Î*" to be incorporated underneath of the Sub-Section 6(4) of the Ain, 2003. "*h_vh_‡¶‡Î*" means when the Adalat is required to dispose of an Artharin Suit under the provisions of Section 19(6) of the Ain, 2003 in the absence of the plaintiff and defendant, it shall consider the case of the defendant as well, if the written statement (made under affidavit) and any other documents have been filed.

(2) The word '*GKZidvmvtÎ*', as occurs in section 19(1) of the Ain, 2003 should be given a definition clarifying that when the defendant upon appearing in the suit files written statement and after framing issue does not attend hearing, the

Adalat shall consider only the case of the plaintiff and ignore the written statement and issues framed.

(3) Section 19 (1) of the Ain, 2003 should prescribe two more reasons for proceeding with *exparte* disposal. The first reason should be "*avivi 7 Gi Kvhµg m¤úb nIqvi ci hw` cieZx wbawiZ Zwi‡L weev`x bv Av‡m*" and, thereafter, the present two reasons would come and, then, the last reason should be incorporated in the following phrase "*gvgjvi †h †Kvb chv‡q hw` weev`x cici wZb evi mg‡qi Av‡e`b K‡i*".

We further feel that the Judicial Administration Training Institute (JATI) should undertake a training program for the learned judges who are presiding over the Artharin Adalats with an aim to familiarize them with the interpretation of the different provisions of the Ain, 2003 so as to ensure that all the Adalats of the land use and take uniform meaning of the provisions of the Ain, 2003 and thereby help minimize preferring appeal or filing writs against the orders passed by them.

With the above observations and direction, the Rule is discharged with a cost of Tk. 20,000/- (twenty thousand) to be paid by the petitioner in the national exchequer by way of submitting Treasury Challan within 30 (thirty) days from the date of receiving this judgment.

Office is directed to communicate this order to the learned presiding judges of all the Artharin Adalats functioning all over the Bangladesh so as to let them be acquainted with the above analysis on the Ain, 2003 and the *ratio* derived therefrom.

The Artharin Adalat, Court No. 4, Dhaka is directed to complete the execution process without any further delay.

Office is further directed to send a copy of this judgement to the Bangladesh Law Commission and the Director General, JATI for their perusal and necessary action.

MD. EMDADUL HUQ, J:

I agree.