

In the Supreme Court Bangladesh  
High Court Division  
(Special Original Jurisdiction)

**Writ Petition No. 4361 of 2009**

**In the matter of:**

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

-And-

**In the matter of:**

Sheikh Md. Romij Uddin (Tara Miah) and another  
.....Petitioners

Vs.

Sonali Bank and another  
.....Respondents

Mr. Khondaker Md. Khurshid Alam  
.....For the petitioners

Mr. Majedul Islam Patwary with  
Mr. Syed Hasan Zahir, Advocates  
.....For the Respondent No. 1

**Heard on 28.9.2010 and Judgment on 04.10.2010**

Present:

Ms. Justice Nazmun Ara Sultana  
And  
Mr. Justice Sheikh Hassan Arif

**Sheikh Hassan Arif, J:**

Rule was issued challenging the legality of the proceedings in Artha Jari  
Case No. 422 of 2008 pending in the Artha Rin Adalat No. 1, Dhaka.

Short facts, relevant for disposal of the rule, are that the respondent no.1,  
Sonali Bank, Local Office, Motijheel Commercial Area, Dhaka filed Artha Rin  
Suit No. 221 of 2001 against the petitioners and 3 others in the Artha Rin Adalat

No.1, Dhaka for recovery of Tk. 1,05,59,983.01, whereupon the Adalat passed judgment and decree dated 15.7.2004 decreeing the suit infavour of the bank for the same amount. The petitioner no.2 then filed Writ Petition No. 7016 of 2004 before the High Court Division of the Supreme Court of Bangladesh challenging the said judgment and decree, wherein the High Court Division by order dated 10.01.2005 issued Rule and by the same order stayed operation of the impugned judgment and decree for 3(three) months. However, upon expiry of the said 3(three) months period of stay, the petitioner no.2 did not pray for extension of the same, and consequently, the order of stay granted by the High Court Division at the time of issuance of rule remained unextended. Subsequently, the High Court Division heard the rule and by a judgment dated 14.11.2007 discharged the same. Sonali Bank then, on 21.05.2008, filed Artha Jari Suit No. 221 of 2008 before the Artha Rin Adalat No.1, Dhaka for execution of the said decree and accordingly the Adalat proceeded with the same. In the said execution proceeding, the petitioners on 23.10.2008 filed an application under section 28 of the Artha Rin Adalat Ain, 2003 ( "the said Ain") for rejection of the execution case on the ground that the same was barred by limitation as prescribed by sub-section (1) of section 28 of the said Ain, whereupon the Adalat, after hearing the parties, rejected the same by order dated 28.10.2008. Being aggrieved, the petitioners moved this court under writ jurisdiction and obtained the rule. The rule was contested by Sonali Bank,- respondent no.1 by filing affidavit-in-opposition.

Mr. Khondaker Md. Khurshid Alam, the learned advocate for the petitioners, submits that since the order of stay dated 10.01.2005 passed by the High Court Division in Writ Petition No. 7016 of 2004 expired after 3(three) months and no further order of extension was granted by the Hon'ble High Court Division, the execution case filed by the decree holder bank on 21.05.2008 is

hopelessly barred by limitation as prescribed by sub-section (1) of section 28 of the Artha Rin Adalat Ain, 2003 and as such the Adalat ought to have rejected the same directly in view of the mandatory provisions of sub-section (2) of section 28 of the said Ain. He further submits that after expiry of 180 days period for filing the execution case, the Adalat acted without jurisdiction in admitting the application for execution filed on 21.05.2008 and as such the execution proceeding has been initiated illegally and the same has continued without jurisdiction. As against this, Mr. Majedul Islam Patwary, the learned Advocate for the respondent no.1, Sonali Bank, submits that since the order dated 28.10.2008 is a final order passed by the execution court, the writ petition is not maintainable. He further submits that since the writ petition no. 7016 of 2004 was finally disposed of on 14.11.2007 by judgment of the High Court Division, the counting of period for filing execution case should be commenced from 14.11.2007 and as such the execution case has been filed well within the time of limitation.

Perused the writ petition, affidavit-in-opposition and material papers on record and considered the submissions of the learned Advocates. It appears that admittedly the order of stay dated 10.01.2005 passed by the High Court Division in writ petition no. 7016 of 2004 expired with the end of 3(three) months period, namely on 09.04.2005, and the said order of stay was never extended further by the High Court Division. This being so, we are of the view that the decree holder bank was required to file the execution case within 180 days from the date of decree plus 60 days period allowed in the decree in view of section 29 of the said Ain added by the period of 3 (three) months during which the operation of the judgment and decree was stayed by the High Court Division in writ petition no. 7016 of 2004. We do not find any cogent reason as to why the Sonali Bank failed to file execution case within the said period of limitation as mentioned in section 28 of

the said Ain. The learned Advocate for the Sonali Bank also has failed to show any reason for not filing the same within the said mandatory period. This has to be borne in mind that Artha Rin Adalat Ain, 2003 is a special law and the provision of the said Ain has to be strictly complied with. Since Sonali Bank has failed to file the execution case within the said mandatory period of limitation because of its negligence or indolence, it will have to face the consequence of law. When subsection (2) of section 28 has categorically provided that the Adalat will not accept the execution case and reject the same if the same is filed after 180 days as applicable at the relevant time, we are of the view that upon expiry of the said period the Adalat acted without jurisdiction by admitting the execution case and by proceeding with the same upon rejecting the petitioner's application under section 28.

Thus, in the facts and circumstances of the case and for the reasons stated above, we hold that the rule should succeed. In the result, the rule is made absolute. It is declared that the Artha Jari Suit No. 422 of 2008 pending in the Artha Rin Adalat No. 1, Dhaka has been commenced and continued without lawful authority and the same is of no legal effect.

NAZMUN ARA SULTANA,J

I agree.