

Present:

Ms. Justice Nazmun Ara Sultana

and

Mr. Justice Md. Ruhul Quddus

Writ Petition No.2362 of 2005

Abdul Motaleb Howlader alias Chan Miah

... Petitioner

-Vs-

Judge, Artha Rin Adalat No.1, Pirojpur and others

... Respondents

Mr. M. A. Muntakim, Advocate

... for the Petitioner

Ms. Nasrin Ferdous, Advocate

... for the Respondent

Judgment on 25.1.2011

Md. Ruhul Quddus, J:

This Rule, at the instance of a judgment debtor, was issued calling in question order dated 31.5.2004 passed by the Judge, Artha Rin Adalat No.1, Pirojpur admitting a second execution case namely Artha Rin Decree Execution Case No.2 of 2004 arising out of Artha Rin Suit No.3 of 1998.

The facts leading to this writ petition are that respondent No.3, Bangladesh Krishi Bank, Pirojpur branch as plaintiff instituted Artha Rin

Suit No. 3 of 1998 against the petitioner for realisation of loan. The said suit was decreed *ex parte* and the decree-holder bank initiated Artha Rin Decree Execution Case No. 5 of 1999 which was dismissed for default on 29.7.2002. Thereafter the bank filed second execution case namely Artha Rin Decree Execution Case No.2 of 2004 on 10.4.2004, which the executing Court admitted on 31.5.2004. Being aggrieved by the said order dated 31.5.2004 the petitioner moved the High Court Division under its special original jurisdiction and obtained the instant Rule and order of stay on 10.4.2005. Nearly after four years it was posted in the daily cause list and was taken up for hearing on 19.2.2009, but as the learned Advocate for the petitioner did not appear to press the Rule, the Rule was discharged for default and the order of stay was also vacated. Subsequently the Rule was restored on 12.5.2009, but no further stay was granted.

Bangladesh Krishi Bank, Pirojpur branch as respondent No.3 has appeared and filed an affidavit-in-opposition on the facts stated therein. In the said affidavit the respondent-bank has contended that the second execution case in question is well within time and as such maintainable in law.

Mr. M. A. Muntakim, the learned Advocate appearing for the petitioner submits that after dismissal of the first execution case for default on 29.7.2002, the second execution case has been filed on 10.4.2004, i.e. beyond one year from disposal of the first execution case and as such it is hopelessly bared by limitation under section 28 (3) of the Artha Rin Adalat

Ain, 2003. But the learned Judge of the executing Court has admitted the second execution case violating the law of special limitation, and as such it is without lawful authority.

On the other hand Ms. Nasrin Ferdous, the learned Advocate appearing for the respondent-bank though admits the facts, but opposes the Rule submitting that the second execution case is well within time as it has been filed within one year from the Artha Rin Adalat Ain, 2003 came in force and the learned Judge of the executing Court has not committed any illegality in admitting the same.

We have examined the writ petition, affidavit-in-opposition and the order sheet of the execution case and carefully consulted with the relevant provisions of law. It appears that the suit was instituted on 23.6.1998 and was decreed on 12.7.1999 (decree signed on 15.7.1999). Thereafter the first execution case was filed on 8.9.1999, and it was dismissed for default on 29.7.2002. All these events took place, when the Artha Rin Adalat Ain, 1990 was in force, and the general limitation under article 182 of the Limitation Act, 1908 read with section 48 of the Civil Procedure Code was applicable in an execution case filed for execution of an Artha Rin Decree. Article 182 (5) of the Limitation Act provides three years period of limitation for filing a next application for execution and the period would be computed from the final order passed in the earlier application. The Artha Rin Adalat Ain, 2003 came into force on 1.5.2003 with special limitation of one year for filing the second execution case under section 28 (3) of the said Ain excluding the

scope of applicability of the Limitation Act and the Civil Procedure Code. Section 60 of the said Ain of 2003 saved all the existing proceedings under the Artha Rin Adalat Ain, 1990 and it further provides that all proceedings under the previous law would proceed under the new law, so far it is practicable. Under the above circumstances we hold that the limitation of filing the second execution case in question, would be computed from the date of enforcement of the Artha Rin Adalat Ain, 2003.

It further appears from the writ petition (vide paragraph No.6) that the second execution case namely Artha Rin Decree Execution Case No.2 of 2004 was filed on 10.4.2004. Thus the second execution case was filed clearly within one year from 1.5.2003, when the Artha Rin Adalat Ain, 2003 came in force and as such it is well within time.

In view of the above, we do not find any substance in the Rule. Accordingly, the Rule is discharged, however, without any order as to costs.

Communicate the judgment to the concerned executing Court at once.

Nazmun Ara Sultana, J:

I agree.