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

Writ Petition No. 12748 of 2016

In the matter of:

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

-And-

In the matter of:

Md. Ziauddin

..... Petitioner.

Vs.

Artha Rin Adalat No.1 and others.

..... Respondents.

Mr. Muhammad Momen Rashid, Advocate
..... For the petitioner.

Mr. Shaikh Mohammed Zakir Hossain,
Advocate.

..For the respondent no.2

Heard on 11.04.2017 and 12.04.2017.
Judgment on: 08.05.2017.

Present:

Mr. Justice Sheikh Hassan Arif

And

Mr. Justice Md. Badruzzaman

SHEIKH HASSAN ARIF, J

Rule Nisi was issued calling upon the respondent Nos. 1 and 2 to show cause as to why they should not be directed to strike-out the petitioner's (defendant No. 4) name from the plaint pursuant to Order No.1 Rule 10(2) of the Code of Civil Procedure as required by law to do and as to why the Order No. 12 dated 17.08.2016 (Annexure-C-2) passed by the respondent No. 1 should not be set aside as the same is illegal and without lawful authority and is of no legal effect.

Short facts, relevant for the disposal of the Rule, are that, the Sonali Bank Ltd., Local Office, Motijheel C/A, Dhaka-1000 (respondent No.2) filed Artha Rin Case No. 745 of 2015 against 13 defendants, including the petitioner as defendant no.4, for recovery of loan for an amount of Tk. 59,90,13,429/-. In the said Suit, the petitioner along with other defendants entered appearance and, at one stage, the petitioner filed an application for striking out his name as defendant in the said suit in view of the provisions under Order 1 Rule 10(2) of the Code of Civil Procedure. As against the said application, the plaintiff-bank filed written objection, whereupon the Adalat, vide impugned order dated 17.08.2016, rejected the said application of the petitioner. Being aggrieved by such rejection order, the petitioner moved this Court and obtained the aforesaid Rule. At the time of issuance of the Rule, this Court, vide order dated 13.11.2016, stayed further proceedings of the said Artha Rin suit for a period of 06(six) months, which was subsequently extended time to time. Being aggrieved by the ad-interim order of the High Court Division, the Bank preferred Civil Petition for Leave to Appeal No.126 of 2017 before the Appellate Division, whereupon the Appellate Division, vide order dated 22.01.2017, allowed the said suit to proceed. In the course of hearing, learned advocate for the bank has informed this Court that, the suit is now at the stage of mediation

ion The Rule is opposed by the plaintiff bank (respondent no.2) by filing affidavit-in-opposition stating, inter alia, that the petitioner was admittedly a director of the company which obtained the loan/credit facilities from the bank and as such he was a necessary party in the said Artha Rin Suit.

sh Mr. Muhammad Mohsen Rashid, learned advocate appearing for the petitioner, drawing this Court's attention to the provisions under Sections 6(5) of the Artha Rin Adalat Ain, 2003 ("the said Ain"), submits that, apart from three categories

of defendants as mentioned in the said provisions, there is no scope in an Artha Rin Suit to implead any other defendants. Referring to the averments in the plaint of the plaintiff bank as annexed to the writ petition as annexure-A, Mr. Rashid submits that, nowhere in the said plaint the bank has stated a single word that the petitioner ever executed any charge document or letter of guarantee or any mortgage deed securing the said credit facility obtained by defendant no.1, which is a limited company. This being so, according to him, being a director-share-holder of the said defendant no.1-company, the petitioner is only liable to the extent of the share-holding in accordance with the provisions of the Company Act after liquidation of the said company. In this regard, he refers to two decisions of this Court in **Eakul Akter (Mrs.) vs. Bangladesh & ors, 15 MLR (AD)-225** and **Mahbub Al vs. Judge, Artha Rin Adalat & ors, 6 SCOB (2016) HCC-102**. Further referring to the recently decided case of the Appellate Division, namely **Sekandar and another vs. Janata Bank Ltd. and others, 22 BLC(AD)-53**, learned advocate submits that, in the said case the Appellate Division has in categorical terms clarified the scope of the provisions of sub-section (5) of Section 6 of the said Ain and held that, beyond the said three categories of defendants, there is no scope for impleading anybody else in the Artha Rin case. This being so, learned advocate submits that, the Adalat committed gross illegality and acted without jurisdiction in not allowing the application of the petitioner for striking out his name.

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As against above submissions, Mr. Shaikh Mohammad Zakir Hossain, learned advocate appearing for the respondent bank, referring to the same decision in **Bakul Akter (Mrs.) vs. Bangladesh & ors, 15 MLR (AD)-225**, in particular paragraph-7 of the same, submits that the Appellate Division in the said case held that the Chairman of the borrower company was a necessary party and his

or her presence in the suit was required. Accordingly, he submits that, the Rule should be discharged.

It appears from materials on record, in particular the plaint of the Artha Rin Suit No. 745 of 2015 (Annexure-A) that, though the plaintiff in categorical terms stated that some of the defendants had executed personal guarantee to secure the credit facilities of defendant no.1, nowhere in the plaint it has been stated that this petitioner (defendant no.4) executed any such personal guarantee. Learned advocate representing the bank before us also admits this apparent position. However, referring to the written objection of the bank as filed before the Adalat by the bank, learned advocate submits that, in the said written objection the bank stated that this petitioner had accepted the liability of the company by signing Form-XII and CD 10 while he became director share-holder of the said company. However, we do not find any substance in the said submission as well as statement of the bank in the written statement in so far as the law relating to the categories of defendants in Artha Rin Suit is concerned. Section 6(5) of the said Ain has clearly provided that the plaintiff bank will implead only the principal borrower, third party mortgagor and/or third party guarantor. The Artha Rin Adalat Ain, 2003 being special law, the interpretation of the same has to be done in accordance with the letters of that law. This position has in the meantime been settled by our Appellate Division in **ion Sekandar's Case** as well as by the High Court Division in W.P. No. 10161 of 2011 (**Jamuna Bank Limited vs Artha Rin Adalat No.1, Dhaka and others**), to which we were parties.

Not only that, the Appellate Division has in the meantime in **Bakul Akter (Mrs.) vs. Bangladesh & ors, 15 MLR (AD)-225** held that the Director or share holder

of a limited company is only liable to the extent of their share liability after liquidation of the company. Therefore when a limited company obtains credit facility from a bank or financial institution, the director share-holder or even the Managing Director of the said company cannot be personally held liable to be defendant in the Artha Rin Suit unless and until it is found or stated by the plaintiff bank that they had executed personal guarantee or mortgage deed for securing the said loan. Since the loan has been obtained by a limited company, the said limited company is the only defendant. However, since a limited company is juristic person, it should be made a defendant being represented by a human being like Chairman or Managing Director. This position has been clarified by the Appellate Division in the said Bakul Akter's case at paragraph-7.

In view of above position of law, if we examine the impugned order dated 17.08.2016 passed by the Adalat, it will be evidently clear that the Adalat misdirected itself under a very misconception of law in that since the petitioner was a Director of the company, he was a necessary party. This being so, we have no scope but to declare that order to be without lawful authority.

In view of above, we find merit in the Rule and as such the same should be made absolute.

In the result, the Rule is made absolute without any order as to costs. Thus, the impugned Order No. 12 dated 17.08.2016 (Annexure-C-2) passed by the respondent No.1 is hereby set aside. The Adalat concerned is directed to strike out the name of the petitioner (defendant No. 4) in the said Arthia Rin Suit No.745 of 2015 and thereafter proceed with the suit in accordance with law.

Communicate this.

S.H. Arif

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(Sheikh Hassan Arif,J)

I agree,

M. B. Zaman

.....
(Md. Badruzzaman,J)

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20.07.17

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Typed by: Nipa: 20.07.2017.

Read by: 20.07.17

Exam. by: 20.7.17

Readied by:

20.07.17
Md. Shamsul Haque
Superintendent

মোঃ আব্দুর রশিদ
প্রশাসনিক কর্মকর্তা