



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

**Writ Petition No. 987 of 2010.**

In the matter of:

An application under article 102 (2) of the  
Constitution of the People's Republic of  
Bangladesh.

-And-

**In the matter of:**

Quazi Ehsanul Alim

..... Petitioner

-Versus-

Bangladesh represented by the Secretary,  
Ministry of Law, Justice and Parliamentary  
Affairs and others.

Mr. M. Sayed Ahmed, Senior Advocate with  
Mr. Tajul Islam, Advocate and  
Mr. Md. Sohel Rana, Advocate

... For the petitioner.

Mr. Shaikh Mohammad Zakir Hossain, Advocate

... For the respondent No.3.

Present:

Mr. Justice J. B. M. Hassan

and

Mr. Justice Razik Al Jalil

Heard on 06.03.2023 and Judgment  
on 09.03.2023.

**J. B. M. Hassan, J.**

The petitioner obtained the Rule Nisi in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show  
cause as to why the proceedings of Artha Execution Case No.  
142 of 2009 now pending before Artha Rin Adalat, 1<sup>st</sup> Court,  
Dhaka should not be declared to have been taken without lawful  
authority and is of no legal effect.”

Relevant facts leading to issuance of the Rule Nisi are that the  
respondent No. 3-Agrani Bank Limited instituted Artha Rin Suit No. 583 of  
2004 before the Artha Rin Adalat No. 1, Dhaka for recovery of loan

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amounting to TK. 2,70,29,600.25 as on 31.03.2004 with interest till recovery of loan. Ultimately the suit was decreed ex-parte on 04.09.2008 (decreed signed on 11.09.2008). Thereafter, on 29.06.2009 the decree holder Bank filed Artha Rin Execution Case No. 142 of 2009 under Order XXI Rule 11 of the Code of Civil Procedure (the Code).

On 23.12.2007 the provision of sub-section (1) of section 28 of the Artha Rin Adalat Ain, 2003 (the Act, 2003) was amended vide the Artha Rin Adalat (Amendment) Ordinance, 2007 (Ordinance No. 39 of 2007) wherein limitation period for filing execution case was inserted for One year instead of 180 days. Article 93(2) of the Constitution of the People's Republic of Bangladesh prescribes that an Ordinance made under Article 93 (1) shall be laid before the Parliament at its first meeting following the promulgation of the Ordinance and shall, unless it is earlier repealed cease to have effect at the expiration of thirty days after it is so laid or, if a resolution disapproving of the Ordinance is passed by the Parliament before such expiration upon passing of the resolution.

The Parliament session started on 25.01.2009. But the said Ordinance amending the Act, 2003 was not placed before the Parliament at its first session and thereby the same was not approved by the Parliament. Thus, the Ordinance became nonset on 25.02.2009 and thereby the limitation period of 180 days under the previous law revived and so, the execution case filed beyond 180 days from the decree was time barred. In such view of the matter, the impugned execution proceeding is without lawful authority and is of no legal effect. The Ordinance No. 39 of 2007 has ceased to have effect as

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because it was not approved within 30 days from the date of first session of the Parliament and as such it has no existence in the eye of law from 25.02.2009. Therefore, the execution proceeding is clearly barred by limitation under section 28 (1) of the Act, 2003 and as such, the impugned proceeding is liable to be declared to be without lawful authority and is of no legal effect.

In this backdrop, the petitioner filed this writ petition and obtained the present Rule Nisi.

The Manager, Agrani Bank Limited filed an affidavit in opposition contending, *inter alia*, are that the Ordinance No. 39 of 2007 was published with effect from 23.12.2007 which enhanced the limitation period for filing execution case from 180 days to One year. Thereafter, the Artha Rin Adalat No.1, Dhaka passed the ex-parte decree on 04.09.2008 (decree signed on 11.09.2008). The respondent Bank with a view to realize the decretal amount filed Execution Case No. 142 of 2009 on 29.06.2009 within the aforesaid limitation period of One year. The 9<sup>th</sup> Parliament sat on 25.01.2009 but the Ordinance No. 39 of 2007 was not placed before the Parliament. According to article 93(2) of the Constitution of Bangladesh, the Ordinance 39 of 2007 lost its force/existence on 24.02.2009 due to non-approval by the Parliament. The Artha Rin Adalat passed the judgment and decree on 04.09.2008 and at that relevant time, the Ordinance No.39 of 2007 having One year limitation, was in operation. Therefore, the said limitation period under the Ordinance shall be applicable in filing the relevant execution case.

Hence, the respondent Bank in accordance with the said Ordinance

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proceeded with the execution case and as such, there is no illegality or limitation bar.

Mr. M. Sayed Ahmed, learned Senior Advocate with Mr. Tajul Islam, learned Advocate appearing for the petitioner submits that the Ordinance No. 39 of 2007 was promulgated by the President incorporating One year limitation period instead of previous 180 days for filing execution case regarding decree of artha rin suit. He further submits that Article 93 of the Constitution prescribes that if an Ordinance is intended to be continued it must be placed before the Parliament for approval within 30 days from the date of resumption of its session.

He also submits that subsequently the Parliament Session was resumed on 25.01.2009 and so, the Ordinance was required to be placed before the Parliament within 30 days from the date of resumption of its session. But having not been done so, the Ordinance No. 39 of 2007 incorporating One year limitation was ceased to have effect from 25.02.2009. But the execution case was filed beyond 180 days i.e within the prescribed period of One year under the non existent Ordinance No. 39 of 2007. Therefore, the execution proceeding is hit by section 28 of the Act, 2003. He again submits that since the execution proceeding is clearly barred under section 28(2) of the Act, 2003 and so further prolongation of the execution proceeding is an abuse of the process of the Court and therefore, the same is liable to be dismissed.

On the other hand; Mr. Shaikh Mohammad Zakir Hossain, learned Advocate appearing for the respondent No.3-Bank contends that the

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Ordinance changing the limitation period of One year came into force on 23.12.2007 and that the respondent-Bank got the decree on 04.09.2008 when the said Ordinance was very much in existence and thus the Bank got an accrued right to get limitation period of One year in accordance with the section 6(c) of the General Clauses Act and within the said period the execution case was filed on 29.06.2009. He further contends that although subsequently the Ordinance was not placed before the Parliament and thereby the previous law revived in existence but the Bank's accrued right under the prevailing law as to the limitation period of One year can not be curtailed by the subsequent law. In support of his submission learned Advocate refers to the case of Shamsuddin Ahmed, Advocate Vs The State reported in 44 DLR (AD) 203, Motiur Rahman & others Vs. Chowdhury Md. Mahfuzul Islam & others reported in 55 DLR (AD) 204, AKM Kawsar Ahmed & others Vs. Bangladesh & others reported in 65 DLR (HCD) 277 And the case of and Paschimanchol Gas Company Limited Vs. Md. Nuruzzaman and others reported in 70 DLR (AD) 179.

We have gone through the writ petition, affidavit in opposition filed by the respondent Bank, supplementary affidavits thereto and other materials on record.

It appears that under section 28 of the Artha Rin Adalat Ain, 2003 (the Act, 2003) the limitation period was 180 days from the date of decree subject to section 29 of the said Act for filing application to execute a decree of the Artha Rin Adalat. Subsequently, in the absence of Parliament, the Hon'ble President promulgated the Ordinance amending the Artha Rin

  
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Adalat Ain, 2003 (the amendment Ordinance, 2007) gazetted on 23.12.2007 in accordance with article 93(1) of the Constitution increasing the limitation period to One year instead of 180 days. While the said Ordinance was prevailing, the Bank got the decree on 04.09.2008. Thereafter the 9<sup>th</sup> Parliament was constituted and 1<sup>st</sup> session started on 25.01.2009. But the Ordinance was not laid before the Parliament at its 1<sup>st</sup> meeting. Thereby on expiry of 30 days i.e on 24.02.2009 the Ordinance ceased to have effect and resultantly, the previous limitation period of 180 days revived instead of One year. However, in this case, the decree holder-Bank filed the Execution Case on 29.06.2009, when 180 days expired from the date of decree. But, it was within One year from the date of decree.

In the circumstances, question arises whether the Bank's execution case can continue being filed when the Ordinance incorporating One year limitation period was no more in existence and thereby the execution case becomes time barred due to revival of the previous law providing limitation period of 180 days. In this context, learned Advocate for the Bank has drawn our attention to the article 93(2) of the Constitution and section 6 of the General Clauses Act which run as follows:

**Article 93(2) of the Constitution:**

“93. (2) An Ordinance made under clause (1) shall be laid before Parliament at its first meeting following the promulgation of the Ordinance and shall, unless it is earlier repealed, cease to have effect at the expiration of thirty days after it is so laid or, if a resolution disapproving of the Ordinance is passed by Parliament before such expiration, upon the passing of the resolution.”

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**Section 6 of the General Clause Act:**

"6. Where this Act, or any [Act of Parliament] or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not-

- (a) revive anything not in force or existing at the time at which the repeal takes effect; or
- (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
- (d) after any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."

(Underlined supplied)

Referring to the aforementioned provisions, learned Advocate submits that the Bank has got an accrued right of limitation period for One year having obtained the decree at the relevant time of enforcement of the Ordinance incorporating limitation period of One year. Although subsequently the Ordinance was not approved by laying before the Parliament as per requirement of article 93(2) of the Constitution and thereby previous law revived providing limitation period 180 days but the decree holder's (Bank) accrued right shall not be affected as per section 6(c) of the General Clauses Act.

In this connection, we have gone through the cited cases which support the contention of the learned Advocate for the respondent Bank. In particular, in the case of Shamsuddin Ahmed, Advocate Vs People's

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Republic of Bangladesh, represented by the Secretary, Ministry of law and Justice, Bangladesh Secretarist, Dhaka and another reported in 44 DLR (AD) 203, the Apex court held as under:

“With effect from that day, which is called the commencement of the Constitution the provision of Article 7(3) of PO No. 150 of 1972 came into force and, thereunder any reference in any law to an Advocate of the High Court of Bangladesh, shall, as from the commencement day, be construed as an Advocate entitled to practise before both the Divisions, High Court Division and Appellate Division of the Bangladesh Supreme Court Even independent of this specific statute, section 6(c) of the General Clauses Act will apply to the appellant’s case. Section 6(c) says when any law repeals another law, then, unless a different intention appears, the repeal does not affect any right accrued under the law so repealed PO No. 5 of 1972 was repealed by the Constitution on 16.12.72, but the right accrued under the former law was not affected by the repeal.”

(Underlined supplied)

In the case of Tarique Rahman Vs. Government of Bangladesh, represented by the Secretary, Ministry of Law, Justice and Parliamentary Affairs, and others reported in 63 DLR (AD) 18, the Apex court held as under:

“29. ....

We have noticed that in the case of Md. Nazimuddin vs State reported in 30 DLR 49 (FB) it has been held that while a statute is repealed by a fresh legislation on the same subject, and a contrary intention does not appear therein, the repeal does not affect any right, obligation or liability acquired, accrued or incurred under repealed enactment. Their Lordships further observed that in such a case the court has to examine the provisions of the new law to examine whether the new law indicates a different intention and the enquiry would be not to find out whether the new law expressly keeps alive old rights and liabilities, but whether it manifests an intention to destroy them. According to their Lordships another test is, to find out

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whether the new provision manifests an intention incompatible with the provisions of the section, and such incompatibility will have to be ascertained from a consideration of all the provisions of the new law.”

At the last, Mr. Tajul Islam, learned Advocate for the petitioner submits that section 6(c) of the General Clauses Act is applicable in respect of situation when the Act is repealed by any subsequent Act. But here no Act was repealed rather due to non-laying the Ordinance as per requirement of article 93(2) of the Constitution, the Ordinance became ceased to have effect by operation of law and so section 6(c) of the General Clauses Act is not applicable. To appreciate his submission we have again examined the article 93(2) of the Constitution and section 6 of the General Clauses Act.

Article 93(2) of the Constitution describes the Ordinances' effect as act of Parliament after resumption of Parliament session. It also provides status of the Ordinances which are no more in existence due to repeal Or non approval by the Parliament by not laying the same before Parliament within 30 days from the date of session Or by disapproving the same by the Parliament upon passing resolution. On the other hand, by using the word “Repeal” section 6 of the General Clauses Act describes the status of laws which are no more in existence by operation of law.

In section 6(c), only the word “Repeal” being used question arises whether it is applicable in respect of law which became non existent not by repealing the law. Rather for want of placing the Ordinance before the Parliament, the law (Ordinance) became non existent and so, whether this manner of non existing of any law can be construed within the meaning of “Repeal of Law”. In this regard, the Black's Law Dictionary, Eight Edition

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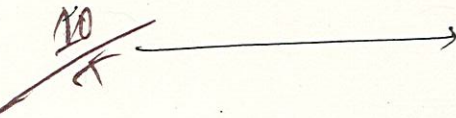
provides meaning of "Repeal" as "RESCIND; esp. abrogation of an existing law by legislative act". Here, the Ordinance has been abrogated by operation of the article 93(2) of the Constitution which is, of course, a legislative act. Therefore, we are of the view that the Ordinance became non-existent by operation of Article 93(2) of the Constitution, can be construed as a repealed law within the meaning of section 6(c) of the General Clauses Act.

Regard being had to the above, we hold that section 6(c) of the General Clauses Act is applicable in this particular situation and the decree holder Bank's accrued right of limitation period for One year shall not be affected by revival of previous law providing limitation period of 180 days.

Secondly, in course of development of our jurisprudence by a good number of judicial pronouncements of our Apex court, it is now no more a res integra that an accrued right under a particular law can not be waived/taken away by subsequent law unless it is clearly expressed therein.

Thirdly, we find that the Ordinance was not laid before the Parliament due to which its effect expired on 24.02.2009 and so, the previous law providing 180 days revived. Even, in this situation, the Bank's execution case was filed on 29.06.2009 i.e within the period of 180 days from 24.02.2009.

Thus, we are of the view that in these three counts, as discussed above, the execution case was well within the limitation period and as such, there is no bar to continue with this execution case. As such, we do not find any merit in this Rule Nisi.



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In the result, the Rule Nisi is discharged without any order as to costs. The interim order of stay is hereby recalled and vacated. The executing Court is directed to proceed with the case in accordance with law.

Communicate a copy of this judgment and order to the respondents at once.

J.B.M. Hassan

Razik-Al-Jalil, J

I agree.

Razik-Al-Jalil

প্রত্যয়িত অবিকল প্রতিলিপি

Typed by: Asif: 29.11.2023

Read by: *Asif*

Exam by: *29-11-23*

Readied by:

*Asif* 29-11-23  
সহকারী রেজিস্ট্রার  
বাংলাদেশ সুপ্রীম কোর্ট, হাইকোর্ট বিভাগ  
(১৮৭২ ইং সনের ১নং আইনের  
৭৬ ধারামতে ক্ষমতা প্রাপ্ত)

*Asif*

*Asif*  
29-11-23  
রুহুল আমিন  
প্রশাসনিক কর্মকর্তা

*Asif*  
29-11-23  
মোঃ সহিদুল ইসলাম খান  
সুপারিনটেনডেন্ট

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