



22.05.18 25.10.18 25.10.18 25.10.18 25.10.18

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

**Writ Petition No. 15175 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:**

Syed Seraj Uddin Ahmed

..... Petitioner.

Vs.

Governemnt of the People's Republic  
of Bangladesh, represented by the  
Secretary, Ministry of Finance,  
Banking Division, Bangladesh  
Secretariat, Ramna, Dhaka-1000 and  
others.

..... Respondents.

Mr. Firozur Rahman Mullah, Advocate

..... For the petitioner.

Mr. Shaikh Mohammad Zakir Hossain,  
Advocate

...For the respondent No.3.

**Present:**

Mr. Justice Sheikh Hassan Arif

And

Mr. Justice Md. Badruzzaman

**Heard on 16.05.2018 and  
17.05.2018**

**judgment on: 20.05.2018.**

**SHEIKH HASSAN ARIF, J**

Rule Nisi was issued calling upon the respondents to show cause as  
to why the order dated 19.10.2016 passed by the Artha Rin Adalat  
No.1, Dhaka in Artha Rin Case No. 745 of 2015 (Annexure-F),  
should not be declared to have been passed without lawful authority  
and is of no legal effect.

W.P. No. 15175 of 2016 (Judgment dated 20.05.2018)

“দেশথেকে শপথ নিন, দুর্নীতিকে বিদায় দিন”



Facts, relevant for the disposal of the Rule, are that Sonali Bank Limited, Local Office, Motijheel, as plaintiff, filed Artha Rin Suit No.745 of 2015 before the Artha Rin Adalat No.1, Dhaka against the petitioner and others for realization of loan amount of Tk. 59,90,13,429.00 as on 30.09.2014. In the said suit, the petitioner was impleaded as defendant No.5. To contest the said suit, the petitioner filed written statement and thereafter filed an application for striking out his name as defendant in view of the provisions under Order I Rule 10(2) of the Code of Civil Procedure on the ground that he had never executed any personal guarantee or that he was not a borrower or he never executed any mortgage deed mortgaging any property to secure the credit facility in question. Therefore, it was contended by this petitioner that he was not a necessary party in the said suit. Thereupon, the Adalat, after hearing the parties, vide impugned order dated 19.10.2016, rejected the said application of the petitioner mainly on the ground that the issues raised by the petitioner could not be determined at that stage and that for determination of such issues, evidences were required to be examined. 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 ad-interim order dated 06.12.2016, stayed further proceedings of the said Artha Rin Suit for a period of 03(three) months, which was subsequently extended time to time.

W.P. No. 15175 of 2016 (Judgment dated 20.05.2018)

২  
“দেশপ্রেমের শপথ নিন, দুর্নীতিকে বিদায় দিন”



The Rule is opposed by respondent No.3-Bank by filing affidavit-in-opposition.

Mr. Firozur Rahman Mullah, learned advocate appearing for the petitioner, submits that in respect of similar alleged liability of the petitioner, the bank in the meantime has filed bankruptcy case, being Bankruptcy Case No. 86 of 2000, and in the said case the petitioner filed similar application for striking out his name which was rejected by the concerned Adalat. It is submitted that the petitioner then filed Writ Petition No.1215 of 2001 wherein the High Court Division, after elaborate examination, struck out the name of the petitioner on the ground that the petitioner never executed any personal guarantee. In support of such contention, learned advocate has drawn this Court's attention to the judgment of the High Court Division in the said Writ Petition No.1215 of 2001, which is annexed to the writ petition and Annexure-B. Learned advocate then submits that even in the plaint of the Artha Rin Suit in question, the bank did not specifically state that the petitioner had ever executed any bank guarantee. In this regard, learned advocate has drawn this Court's attention to paragraph-2 and paragraph-5 of the plaint. According to him, when the bank has categorically stated as to which of the defendants have executed personal guarantee to secure the credit facility, the petitioner cannot be a party in the said Artha Rin Suit in view of the provisions under Section 6(5) of the Artha Rin Adalat Ain, 2003. In support of his such contention, learned advocate has referred to a decision of our



Appellate Division in **Sekandar and another vs. Janata Bank Ltd. and others, 22 BLC (AD)-53** as well as an unreported decision of this Court in **Writ Petition No.12748 of 2016 (Md. Ziauddin vs. Artha Rin Adalat No.1 and others)**.

As against above submissions, Mr. Shaikh Mohammad Zakir Hossain, learned advocate appearing for the respondent bank, frankly concedes that the petitioner in fact did not execute any personal guarantee to secure the credit facility obtained by the main borrower and that he was impleaded in the said suit as because he was one of the directors of the borrower company.

It appears from materials on record, in particular the averment in the plaint in paragraph No.4 that, the plaintiff bank in a cursory way mentioned that this petitioner had executed D.P. Note Personal Guarantee (৫ নং বিবাদী ডি.পি নোট পারসোনাল গ্যারান্টি-----সহি সম্পাদন করেন) etc. Being asked about this, Mr. Hossain, learned advocate appearing for the bank, submits that this D.P. Note personal guarantee is not letter of guarantee. On the other hand, it appears from paragraph-2 that the petitioner was one of the directors of the borrower company and the defendant Nos. 6-8 in the said suit were guarantors of the said credit facilities. This position has been confirmed by the plaintiff bank in paragraph-5 of the Plaint wherein it has been stated by the plaintiff that defendant Nos. 2, 6, 7 and 8 executed personal guarantee to secure the said credit facility obtained by the main borrower and that

W.P. No. 15175 of 2016 (Judgment dated 20.05.2018)

4  
“দেশপ্রেমের শপথ নিন, দুর্নীতিকে বিদায় দিন”



defendant Nos. 6-8 executed mortgage deed to secure the said credit facility.

Therefore, it is apparent from the averment in the plaint as well as submissions of the learned advocate representing the bank that the petitioner in fact did not execute any personal guarantee to secure the credit facility obtained by the main borrower. Therefore, in view of the clear provisions under first proviso to sub-section (5) of Section 6 of the Artha Rin Adalat Ain, 2003, the petitioner was in fact not a necessary party in the said Artha Rin Suit. It further appears from the judgment of the High Court Division in Writ Petition No. 1215 of 2001 (Annexure-B) that this Court in the said writ petition has also reached same conclusion.

This being so, in view of the decision of our Appellate Division in **Sekandar and another vs. Janata Bank Ltd. and others, 22 BLC (AD)-53** as well as consistent decision of this Court relying on the said ratio of Sekandar's case (see **Writ Petition No.12748 of 2016**), we have no option but to hold that the petitioner was not required to be made a defendant in the Artha Rin Suit in question. Accordingly, the Artha Rin Adalat concerned ought to have allowed the said application of the petitioner for striking out his name as defendant. The same having not been done, this Court is of the view that, the Adalat committed illegality as well as acted without jurisdiction. In



6

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. Accordingly, the impugned order dated 19.10.2016 is set aside. The Adalat concerned is directed to strike out the name of the petitioner as defendant No.5 in the said suit and continue with the suit for trial in accordance with law.

Communicate this.

S.H. Arif.

(Sheikh Hassan Arif, J).

I agree.

M. B. Zaman.

(Md. Badruzzaman, J).

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Readied by:

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25.10.18  
মোঃ আব্দুর রশিদ  
প্রশাসনিক কর্মকর্তা

25.10.18  
মোঃ জাকির হোসেন  
সুপারিনটেনডেন্ট

প্রত্যয়িত অবিকল প্রতিলিপি

25.10.18  
সহকারী রেজিস্ট্রার  
বাংলাদেশ সুপ্রীম কোর্ট, হাইকোর্ট বিভাগ  
(১৮৭২ ইং সনের ১নং আইনের)  
৭৬ ধারামতে ক্ষমতা প্রাপ্ত

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