



20-11-19 21-11-19 21-11-19 24-11-19 24-11-19

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

WRIT PETITION NO. 6749 of 2015

In the matter of:

An application under Article 102 (1)(2) of
the Constitution of the People's Republic
of Bangladesh.

-And-

In the matter of :

M/S, Ali Macca Husking Mill.

.....Petitioner.

-Versus-

Bangladesh represented by the Ministry of
Finance and Banking Division, Bangladesh
Secretariat, Dhaka and others.

..... Respondents

Mr. Md. Ziaur Rahman with

Mr. Ruhul Quddus Kazal, Advocates

..... For the petitioner.

None appears ... For the respondents

**Heard and
Judgment on 25.07.2018**

Present:

Mr. Justice Md. Ashfaquul Islam

And

Mr. Justice Mohammad Ali

Md. Ashfaquul Islam, J:

At the instance of the petitioner this Rule was issued on 29.06.2015

in the following terms:

*"Let a Rule Nisi be issued calling upon the
respondents to show cause as to why the impugned
order No.03 dated 06.05.2015 passed by the learned*

"দেশপ্রেমের শপথ নিন, দুর্নীতিকে বিদায় দিন"



Artha Rin Adalat Panchagar respondent No.3 in Artha Rin Execution Case No.22 of 2015 issued an warrant of Arrest against the petitioner under section 34 of the Artha Rin Adalat Ain,2003 which is Annexure- 'K' and 'K-1' should not be declared to have been passed without lawful authority and is of no legal effect."

The background leading to the Rule, in short, is that the respondent No.2 Sonali Bank, Head Office, Dhaka as plaintiff filed Artha Rin Suit No. 38 of 2014 before the Artha Rin Adalat , Panchagaar on 24.07.2014 against the petitioner who appeared as defendant in the suit. The defendant -petitioner filed written statement on 01.10.2014. Subsequently, the suit was decreed exparte on 01.01.2015. Thereafter the decree was put into execution in Artha Rin Execution Case No.22 of 2015 in which on 11.03.2015 the respondent bank claiming an amount of Tk.68,57,221/- prayed for issuance of warrant of arrest and the Adalat by order No.03 dated 06.05.2015 issued an order of a warrant of arrest. The petitioner has challenged the said order of warrant of arrest and moved this Division and obtained the present Rule and order of stay.

Mr. Md. Ziaur Rahman, the learned counsel appearing for the petitioner after placing the petition and other materials on record mainly assailing the order of warrant of arrest to be illegal pressed into service a single argument that without making any attempt for auction sale of the

“দেশভেদে শপথ নিন, দুর্নীতিকে বিদায় দিন”



বাংলাদেশ
কোর্ট ফি



দুই
টাকা

mortgaged property, order of warrant of arrest was issued which is ex facie illegal and should be declared to have been passed without any lawful authority and is of no legal effect.

The Rule is not opposed by filing any affidavit-in-opposition on behalf of the respondent-bank.

We have heard the learned counsel for the petitioner and considered his submissions. We have carefully perused the application and entire orders sheets. It appears from the Annexure- 'K-1' which is the information slip which shows that no attempt was ever made by the respondents to sell the mortgaged property in auction. The law is very much clear and settled that without holding any auction in terms of section 34(9) there cannot be an order of warrant of arrest. For better understanding the section 34(9) is quoted below.

“৩৪(৯) এই ধারার অধীনে আদালত কোন দায়িককে দেওয়ানী কারাগারে আটক করার আদেশ প্রদান করিবে না, যদি না তৎপূর্বে অন্ততঃ একটি নিলাম বিক্রয় কার্যক্রম অনুষ্ঠিত হইয়া থাকে এবং উহার দ্বারা ডিক্রীদারদের প্রাপ্য পরিপূর্ণ ভাবে আদায় হইয়া থাকে।”

In many a decision this Division held the aforesaid proposition of law making the Rule absolute. The issue is well settled which is no longer a resintegra. Harping on the same tune we are of the view that the order impugned against is illegal which should be declared to have been passed without any legal authority and is of no legal effect.

“দেশপ্রেমের শপথ নিন, দুর্নীতিকে বিদায় দিন”



In the result, the Rule is made absolute. The order impugned against is declared to have been passed without any legal authority and is of no legal effect and it is set aside.

Communicate at once.

Md. Ashfaqul Islam.

Mohammad Ali, J :

I agree

Mohammad Ali.

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24-11-19

মুহাম্মদ মোস্তফা শিকদার
প্রশাসনিক কর্মকর্তা

24-11-19

আব্দুল জালিল
মুদারিস/সেক্রেটারি

প্রত্যায়িত অবিকল প্রতিলিপি

24-11-19

সংকরী বেঙ্গিন্দ্রার
বাংলাদেশ সুপ্রীম কোর্ট, হাইকোর্ট বিভাগ
(১৮৭২ ইং সনের ১মং আইনের)
৭৬ ধারামতে ফরজা প্রাপ্ত