



6.4.2021 6.4.2021 6.4.2021 6.4.2021, 7.4.2021

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

Present

Mr. Justice Abu Taher Md. Saifur Rahman
And
Mr. Justice Md. Zakir Hossain

Writ Petition No. 677 of 2017

IN THE MATTER OF:

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

-AND-

IN THE MATTER OF:

Sonali Bank Limited

.....Petitioner

-Versus-

Artha Rin Adalat No.1, Dhaka and others

.....Respondents

Mr. Sheikh Mohammad Zakir Hossain, Advocate
for the petitioner

None appears

...for the respondents

Heard on: 04.03.2021

Judgment on: 18.03.2021

Md. Zakir Hossain, J:

At the instance of the petitioner, this Rule *Nisi* was issued
calling upon the respondent No. 1 to show cause as to why the
order No. 28 dated 25.07.2016 allowing the application of
respondent No. 10 for striking out his name and his portion of

দেশপ্রেমের ষণ্ময় মিন, দুর্নীতিকে বিদায় দিন



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property from the plaint of Artha Rin Suit No. 424 of 2014 should not be declared to have been done without any lawful authority and is of no legal effect and/or such other or further order or orders passed as to this Court may seem fit and proper.

At the time of issuance of the Rule, this Court also further pleased to stay the operation of the order No. 28 dated 25.07.2016 in Artha Rin Suit No. 424 of 2014 by respondent No.1 for a period 2(two) months which was subsequently extended from time to time by this Court.

Facts leading to the issuance of the Rule are, in brief, as follows:

Sonali Bank Limited being plaintiff instituted Artha Rin Suit No. 424 of 2014 against the respondent Nos. 2 to 14 before the Artha Rin Adalat, 1st Court, Dhaka, hereinafter shortly referred to 'the Adalat' for realization of outstanding amount of Tk. 9,56,42,863.00 with interest thereon. The defendant entered appearance in the suit and by filing application under rule 10(2) of order 1 of the Code of Civil Procedure, 1908 for striking out of his name and the respondent No.10 by filing another application

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দেশপ্রেমের শপথ নিন, দুর্নীতিকে বিদায় দিন



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under Section 57 of the Artha Rin Adalat Ain, 2003, hereinafter shortly referred to 'the Ain, 2003' for striking out of his portion of land from the plaint of the Artha Rin Suit. Upon hearing, the Adalat was pleased to allow the petition. Challenging the legality and propriety of the said order, the petitioner moved this Court and obtained the aforesaid Rule and stay therewith.

Mr. Sheikh Mohammad Zakir Hossain the learned Advocate appearing on behalf of the petitioner submits that the learned Judge of the Adalat only on the basis of the expert opinion was pleased to strike out the name of the respondent No. 10 and his mortgaged property which is not tenable in the eye of law.

Finally, he submits that without examining the expert and taking evidence of the plaintiff-Bank to be adduced at the time trial, the Adalat cannot consider the expert opinion as substantive evidence, therefore, the impugned order suffers from patent illegality and is liable to be quashed.

None appears on behalf of the respondents to oppose the Rule.

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শেষধর্মের শপথ লিখ, দুর্নীতিকে বিচার দিখ



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We have meticulously examined the entire materials on record along with the submissions advanced by the learned Advocate of the petitioner.

The pertinent issue is-

Is the impugned order sustainable in the eye of law?

In order to appreciate the submission of the learned Advocate, let us examine the impugned order. The relevant portion of the impugned order may be read as follows:

“উভয় পক্ষের নিয়োজিত বিজ্ঞ কৌশলীগণের বক্তব্য, দরখাস্তদ্বয়, আপত্তিদ্বয়, দাখিলী কাগজাদি, হস্তরেখা ও হস্তলেখা বিশারদ কর্তৃক ইস্যুকৃত প্রতিবেদন সহ নথি পর্যালোচনা করা হইল। হস্তলিপি বিশারদ এর প্রতিবেদন পর্যালোচনায় দেখা যায় যে, তিনি তাহার মতামত/প্রতিবেদনে সুস্পষ্ট ভাবে উল্লেখ করিয়াছেন যে, “সামগ্রিক বিবেচনায় ৯নং বিবাদী মোঃ নূর হোসেন এর খ, খ-১ হতে খ-৯ চিহ্নে চিহ্নিত নমুনা স্বাক্ষর সমূহের সাথে বন্ধকী দলিল নং ৩৩৪৪২/২০০৭, তারিখ ০২/১২/২০০৭ এ ক, ক-১ হতে ক-৮ চিহ্নে চিহ্নিত ৯নং বিবাদী মোঃ নূর হোসেন নামীয় বিতর্কিত স্বাক্ষর সমূহের মিল নাই”। হস্তলিপি বিশারদ এর উক্তরূপ মতামত এর প্রেক্ষিতে ৯ নং বিবাদী অত্র মোকদ্দমার আর কোন প্রয়োজনীয় পক্ষ নহে সিদ্ধান্ত গৃহীত হইল এবং তাহার নাম অত্র মোকদ্দমার আরজি হইতে কর্তনযোগ্য। তাহাছাড়া যেহেতু উপরোক্ত সিদ্ধান্তের আলোকে ৯নং বিবাদীর নাম অত্র মোকদ্দমার আরজি হইতে কর্তন যোগ্য সেহেতু বন্ধকী দলিলে ৯নং বিবাদীর মালিকানাধীন ৯ শতাংশ সম্পত্তি বন্ধকী দলিল সহ অত্র মোকদ্দমার আরজি হইতে কর্তন যোগ্য।”

It transpires that on the basis of the expert opinion, the Adalat was pleased to strike out the name of the defendant No.

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দেশপ্রেমের শপথ নিন, দুর্নীতিকে বিদ্যায় দিন



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9. It is now well settled that expert opinion is not a substantive evidence but it is just piece of evidence. Therefore, only on the basis of expert opinion, the Court cannot come to any decision whether name of the defendant No. 9 was improperly added as defendant and whether the defendant No. 9 executed a mortgage deed in favour of the Bank or not without considering the other evidence which will be produced at the time of trial.

It is well settled that the opinion of hand expert is not conclusive or substantive evidence but it assists the Court to come to a reasonable conclusion and that is why an expert opinion, particularly of a hand writing expert has to receive with great care and attention. Report of expert does not *ipso facto* prove the case of either party of the suit or proceedings. The report of expert has to consider along with other evidence to be produced at the time of trial.

Having regard to the facts and circumstances of the case and legal position intricately involves therein, we are of the view that the manner in which the Adalat struck out the name of the petitioner from the plaint and portion of the land stated in the

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“দেশপ্রেমের শপথ নিন, দুর্নীতিকে বিদায় দিন”



alleged mortgage deed is not based on sound reasoning and therefore, the same is liable to be turned down by this Court.

Accordingly, we find merit in the Rule and as such the Rule is legally bound to be made absolute.

As a result, the Rule is made absolute, however, without passing any order as to costs. Accordingly, the impugned order No. 28 dated 25.07.2016 passed in Artha Rin Suit No. 424 of 2014 by the Adalat is hereby declared illegal.

The Adalat is hereby directed to frame issue as to whether the defendant No. 9 was improperly joined in the Artha Rin Suit No. 424 of 2014 and whether his property has been legally mortgaged in favour of the bank. Upon taking evidence, at the time of trial, the Adalat shall take decision whether the defendant No. 9 has been improperly impleaded as defendant and whether he has executed the mortgage deed so far it relates to his property.

Let a copy of the judgment be sent down to the Court below to dispose of the Artha Rin Suit with utmost expedition

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preferably within 6(six) months from the date of receiving the copy of the judgment.

Md. Zakir Hossain.

Abu Taher Md. Saifur Rahman, J:

I agree.

S. Rahman.

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Readied by: [Signature] 06.04.21

প্রত্যয়িত মৌখিক প্রতিলিপি
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6.4.2021
সহকারী রেজিস্ট্রার
বাংলাদেশ সুপ্রীম কোর্ট, হাইকোর্ট বিভাগ
১৮৭২ ইং সনের ১নং আইনের।
৩৬ ধারামতে ক্ষমতা প্রাপ্ত

[Signature]
6.4.2021
লিটন মিয়া
প্রশাসনিক কর্মকর্তা

[Signature]
6.4.2021
মোঃ ছালাম সিকদার
সুপারিনটেনডেন্ট