

Present : Md Hasan Zaman, Judge, Artha Rin Adalat No.1, Dhaka

Order No- 15
Dt. 09.03.2026

Today is fixed for necessary order.

Both the petitioner and the opposite party are present by filing hazira.

The record is taken for order.

The defendant/petitioner has moved an application under **Section 19(2) read with Section 57 of the Artha Rin Adalat Ain, 2003** seeking the relief of setting aside the **ex-parte judgment and decree dated 02.02.2025 and signed on 06.02.2025** passed by this Court in **Artha Rin Suit No. 1153 of 2024** against the present petitioner, who was the **defendant No.3** in the said suit.

The petitioner's case in brief is that the present opposite party as plaintiff instituted the original **Artha Rin Suit No. 1153 of 2024** wherein the present-petitioner was the defendant No.3. From the materials on record, it appears that the aforesaid Artha Rin Suit was decreed **ex-parte on 02.02.2025** and the decree was subsequently **signed on 06.02.2025**. The petitioner asserts that no summons of the original suit was ever served upon him and that the plaintiff obtained the ex-parte decree by suppressing the fact of non-service of summons. According to the petitioner, he first came to know about the ex-parte decree on **26.06.2025** through his learned Advocate and thereafter upon receiving notice in **Execution Case No. 590 of 2025**, issued on **07.05.2025**, he became fully aware of the decree passed against him.

Upon gaining such knowledge, the petitioner has approached this Court by filing the present Miscellaneous Case and has deposited **10% of the decretal amount** as required under **Section 19(3) of the Artha Rin Adalat Ain, 2003**, by **Pay-Order No. 100A0083117 amounting to Tk. 1,39,000/-**, thereby fulfilling the statutory pre-condition for seeking the relief of setting aside the ex-parte decree.

Per Contra, the plaintiff/opposite party contested the application contending that summons of the original suit had been duly served upon the defendant No.3 both through the **Process Server (Jarikarak)** and by **postal service**. It is further asserted that when personal service could not be effected, the summons was published in the daily newspaper "**Daily Ajker Jibon**" in compliance with the provisions of **Section 7 of the Artha Rin Adalat Ain, 2003**. According to the opposite party, despite having knowledge of the suit proceedings, the defendant No.3 deliberately abstained from appearing before the Court and consequently the suit was decreed ex-parte. It is therefore

contended that the present Miscellaneous Case has been filed with mala fide intention merely to delay the execution of the decree and harass the plaintiff.

Points for determination

1. **Whether the ex-parte Order and decree dated 02.02.2025 and 06.02.2025 in Artha Rin Suit No. 1153/2024 would be set-aside as per prayer of the petitioner ?**

Discussion and Decision

The petitioner brought a witness to prove it's case namely **Nure Alam Siddiki** (Pt.W.1) and **during examination of Pt.W.1 no** documents were produced. On the other hand, the opposite party **LankaBangla Finance Limited** produced a witness namely **Md Omor Faruque** as O.P.W.1 and produced no documents. **Pt.W.1** for the petitioner and **OP.W 1** for the opposite parties has given statements admitting their respective case.

Issue no. 1

Upon careful scrutiny of the pleadings, the oral testimonies and the record of the original suit, it is admitted that the petitioner was the **defendant No.3** in **Artha Rin Suit No. 1153 of 2024**. The petitioner has consistently denied having received any summons of the original suit and has alleged that the decree was obtained behind his back without proper service.

The record relating to service of summons has therefore been examined. It appears from the **service-return report** that the summons issued upon defendant No.3 was **returned unserved**, the report indicating that the defendant was not available at the addresses mentioned. In such a situation, once the petitioner denied proper service of summons, the burden of proving that the summons had been duly served shifted upon the opposite party in accordance with the principles embodied in **Section 103 of the Evidence Act**. However, the opposite party failed to discharge such burden. No **Process Server** or any independent witness in whose presence the summons was allegedly attempted to be served was produced before the Court. Consequently,

the claim of effective service through the Process Server remains unsubstantiated.

It has further been contended by the opposite party that summons was published in the newspaper “**Daily Ajker Jibon.**” While substituted service by publication is permissible under the law, the effectiveness of such service must be assessed in light of the circumstances of each case. In the cross-examination of **O.P.W.1**, it has been admitted that he has no knowledge whether the said newspaper is actually circulated in the locality where the petitioner resides. In the absence of any material establishing that the said newspaper enjoys wide circulation in the concerned locality, publication therein cannot by itself be treated as sufficient proof that the petitioner had knowledge of the suit proceedings.

The cumulative effect of these circumstances leads this Court to the conclusion that the opposite party has failed to establish that the summons of the original suit was **duly and effectively served** upon the petitioner.

It is a settled principle of law that the **proper service of summons is a fundamental prerequisite for sustaining an ex-parte decree.** The Appellate Division in the case reported in **35 DLR (AD) 162** has held that:

“An ex-parte decree will be set aside if it is found that there was no service of summons on the defendant.”

Applying the above principle to the present case, this Court is satisfied that the petitioner was deprived of the opportunity to contest the suit due to absence of proper service of summons. Denial of such opportunity would result in serious prejudice to the petitioner and would be contrary to the fundamental principles of natural justice.

In order to ensure that the dispute between the parties is adjudicated on merit and to avoid multiplicity of proceedings, this Court finds it just and proper to allow the present Miscellaneous Case.

Court fee paid is correct.

Hence,

It is Ordered

that the present Miscellaneous Case filed under Section 19(2) of the Artha Rin Adalat Ain, 2003 is hereby allowed on contest against the plaintiff/opposite party without any order as to cost.

The ex-parte judgment and decree dated 02.02.2025 and signed on 06.02.2025 passed in Artha Rin Suit No. 1153 of 2024 by this Court are hereby set aside.

The said Artha Rin Suit No. 1153 of 2024 is restored to its original file and number and shall stand revived at the stage of filing of Written Statement by the defendant No.3 (the present petitioner).

The **Pay-Order No. 100A0083117 amounting to Tk. 1,39,000/-**, representing **10% of the decretal amount**, is taken on record in compliance with **Section 19(3) of the Artha Rin Adalat Ain, 2003** and shall remain in the custody of the Court to be dealt with in accordance with law at the time of final disposal of the suit.

Serestader is directed to act on this order forthwith.

Fix ----- for filing of **Written Statement**.

D/C by me

Md Hasan Zaman
Judge
Artha Rin Adalat No.1, Dhaka

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