

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

Order No- 23
Dt. 29.03.2026

Today is fixed for necessary order.

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

The record is taken up for order.

The present Miscellaneous Case has arisen out of an application filed by the defendant-petitioner **U/s 19(2), 19(3), 19(4) read with section 57 of the Artha Rin Adalat Ain, 2003** praying for setting aside the ex-parte judgment and decree **dated 29.11.2006, signed on 04.01.2007**, passed in **Artha Rin Suit No. 115 of 2006**, wherein the present petitioner was arrayed as defendant No.3.

The petitioner's case, in brief, is that the opposite party-bank instituted the aforesaid suit for realization of loan money against the borrower company and its guarantors, including the present petitioner. It is stated that the suit was decreed ex-parte against all defendants on 29.11.2006 and the decree was subsequently signed on 04.01.2007. The petitioner asserts that no summons of the original suit was ever served upon her personally and that the decree was obtained suppressing the fact of non-service. According to her, although she had been impleaded as defendant No.3, she had no knowledge of the pendency of the suit at the relevant time.

It is further stated that **defendant No.2**, namely **Faruque Ahmed**, was her husband at the time when the loan transaction took place, but their marital relationship had subsequently been dissolved **on 22.03.2007**, and therefore she had no connection with his later financial dealings. She claims that because of the strained relationship and eventual dissolution of marriage, she remained completely unaware of the proceedings of the suit and the decree passed therein.

According to the petitioner, she first came to know about the ex-parte decree only on **10.08.2025** through officials of the bank and thereafter came to learn that warrant of arrest had already been issued against her in **Artha Jari Case No. 09 of 2011**. Subsequently, after obtaining information slip dated 13.08.2025 through her learned

Advocate, she became fully aware of the decree and immediately approached this Court.

It appears from the record that, along with filing the present case, the petitioner deposited 10% of the decretal amount by Pay Order No. POAA 0254215 amounting to Tk. 18,70,820/-, thereby complying with the mandatory statutory requirement under section 19(3) of the Artha Rin Adalat Ain, 2003.

Per contra, the opposite party-bank contested the petition orally.

Learned Advocate for the bank submits that summons was duly issued and lawful attempts were taken for service upon defendant No.3 both through process server and registered postal service with acknowledgment due. It is further contended that when ordinary process did not return within time, substituted service was lawfully effected through publication in the daily newspapers “**Daily Vorer Kagoj**” and “**Daily Sonar Alo**” in strict compliance with section 7 of the Act.

The opposite party further submits that the petitioner was not a stranger to the loan transaction; rather she was one of the directors of borrower company **M/s R R Tags and Labels Ltd.**, and also executed charge documents as guarantor. Therefore, it is highly improbable that she remained unaware of the litigation.

It is also contended that the present Miscellaneous Case has been filed after an extraordinary delay of about nineteen years solely to obstruct execution proceedings, particularly when substantial execution steps have already been taken and part of the mortgaged property has already been sold in auction.

Point for Determination

Whether the ex-parte judgment and decree dated 29.11.2006 signed on 04.01.2007 passed in Artha Rin Suit No.115 of 2006 is liable to be set aside under section 19 of the Act?

Discussion and Decision

The law is well settled that an ex-parte decree passed under section 19 of the Artha Rin Adalat Ain, 2003 may be set aside only when the defendant successfully establishes that:

1. summons was not duly served, or
2. there existed sufficient cause preventing appearance at the relevant time.

The burden lies squarely upon the petitioner to establish absence of lawful notice or existence of bona fide sufficient cause.

In order to substantiate her case, the petitioner appointed her son **Raihan Ahmed** as attorney, who was examined as **Pt.W.1**. However, during examination no documentary evidence was produced from the side of the petitioner to establish either absence of service or lack of knowledge regarding the suit proceedings. No documentary proof regarding residence, non-receipt of summons, or surrounding circumstances was exhibited.

On the contrary, the record of the original suit has been carefully examined.

It appears that summons was duly issued against defendant No.3. **From Order No.3 dated 19.07.2006 and corresponding side note dated 20.07.2006**, it appears that summons had been issued, although the process and acknowledgment due were not returned within time.

Thereafter, substituted service was undertaken through publication in newspapers under section 7 of the Act. The law permits substituted service where ordinary service becomes impracticable or ineffective.

The newspaper **Daily Vhorer Kagoj** is admittedly a widely circulated national daily in Bangladesh. Publication therein raises a strong legal presumption that due notice was afforded to the concerned defendant unless rebutted by cogent evidence.

No convincing material has been placed before this Court to rebut such presumption. Further, it appears that surrounding circumstances materially has weakened the petitioner's plea of complete ignorance. The evidence clearly establishes that: the petitioner was a director of the borrower company at the relevant time; she executed charge documents personally by putting her English signature; she stood as guarantor for the credit facility; defendant No.2, principal borrower, was then her husband. These facts indicate active participation in the loan transaction and awareness of its legal implications.

Although it is admitted that marital tie between defendant No.2 and the petitioner was dissolved on 22.03.2007, such dissolution occurred after passing of the decree on 29.11.2006. Therefore, the plea that divorce prevented earlier knowledge does not explain absence during the pendency of suit itself. Moreover, **Pt.W.1 Raihan Ahmed**, son of both defendant No.2 and petitioner, admittedly maintains relationship with both parents. In ordinary human conduct, it is difficult to accept that for nearly 19 (nineteen) years the petitioner remained entirely unaware of litigation involving loan liability in which she herself was guarantor and director.

This Court also takes judicial notice of connected proceedings as pleaded by the OP. It appears that in **Writ Petition No. 14876 of 2024**, the auction notice dated 15.09.2024 was challenged and in result the rule was discharged. Again the defendant No.2 in Writ Petition No. **14838 of 2024** obtained relief of bail from the High Court Division subject to payment of decretal amount in four equal installments within twelve months but Rule issued in that writ petition was also discharged. Thereafter **Civil Petition for Leave to Appeal No. 814 of 2025** was filed and it was also dismissed.

These surrounding proceedings indicate continuing litigation regarding the same decretal liability, making the present petition appear closely connected with attempts to delay execution rather than a bona fide assertion of first knowledge.

It further appears from evidence on record that part of the mortgaged property has already been auction sold in execution. The law consistently discourages reopening decrees after extraordinary delay where rights have substantially progressed in execution, unless gross illegality or complete absence of notice is clearly proved.

Mere assertion of ignorance, unsupported by reliable evidence, cannot dislodge long-standing judicial proceedings, particularly where substituted service was lawfully effected and statutory presumptions operate in favour of regularity of judicial acts.

The petitioner has indeed complied with section 19(3) by depositing 10% decretal amount; however such deposit only satisfies maintainability and does not by itself create entitlement to relief.

After considering the pleadings, oral testimony, original record, execution background, statutory provisions and conduct of parties, this Court finds that the petitioner has failed to establish either absence of lawful service, or sufficient cause preventing appearance. Rather, the materials strongly suggest negligence, laches and delayed invocation of jurisdiction after nearly 19 (nineteen) years. Accordingly, this Court finds no lawful ground to interfere with the ex-parte decree.

Hence,

it is ordered that

The present Miscellaneous Case is disallowed on contest against the opposite party-bank without any order as to costs.

D/C by me

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

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