

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

Order No-15
Dt. 03.03.2026

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/petitioners have 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 23.02.2025 and signed on 25.02.2025** passed by this Court in **Artha Rin Suit No. 1796 of 2023** against the present petitioners, who were the **defendants No.1-4/6** 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. 1796 of 2023** wherein the present-petitioner was the defendant No. **1-4/6**. From the materials on record, it appears that the aforesaid Artha Rin Suit was decreed **ex-parte on 23.02.2025** and the decree was subsequently **signed on 25.02.2025**. 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 **06.10.2025** by obtaining information slip through their learned Advocate and thus they became fully aware of the decree passed against them. 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. 100A0172209 amounting to Tk. 3,98,000/-**, 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.1-5** 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 "**Bonik Barta and 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.1-5 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 23.02.2025 and 25.02.2025 in Artha Rin Suit No. 1796/2023 would be set-aside as per prayer of the petitioner ?**

Discussion and Decision

The petitioner brought a witness to prove it's case namely **Md Anwar Hossain** (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 no witness and in cross examination of Pt.W.1, learned advocate uttered no objection against the Misc case.

Issue no. 1

Upon careful scrutiny of the pleadings, oral evidence adduced by the parties, and the record of the original suit, it transpires that the petitioners were impleaded as defendant Nos. 1–4 and 6 in **Artha Rin Suit No. 1796 of 2023**. The principal contention raised by the petitioners is that they had no knowledge of the institution or pendency of the original suit, inasmuch as no summons was ever duly served upon them, and that the ex-parte decree was consequently obtained behind their back without affording them any opportunity of contest.

In order to examine the legality of the ex-parte decree, the record relating to service of summons has been carefully perused. It appears from the record that the summons issued upon defendant Nos. 1–6 was not returned to the Court in accordance with law. There is nothing on record to demonstrate that the summons was either personally served upon the defendants or that any lawful attempt at such service was effectively made.

Moreover, neither the concerned Process Server nor any independent witness, in whose presence service was allegedly attempted, has been produced before the Court to substantiate the claim of due service. In absence of such

supporting evidence, the alleged service through Process Server remains wholly uncorroborated and cannot be accepted as satisfactory proof of lawful service.

It has further been contended on behalf of the opposite party that substituted service was effected through publication in the newspapers *Bonik Barta and Daily Ajker Jibon*. It is true that substituted service by publication is permissible where ordinary service cannot be effected; however, such substituted service must satisfy the test of effectiveness and reasonableness under the given circumstances. Mere publication in newspapers, without any material to establish that such newspapers enjoy sufficient circulation in the locality where the defendants ordinarily reside or carry on business, cannot automatically lead to the presumption that the defendants had actual or constructive knowledge of the proceeding.

In the present case, no evidence has been placed before the Court to establish that the aforesaid newspapers had wide circulation in the relevant locality of the petitioners. Therefore, publication therein, standing alone, cannot be treated as conclusive proof of effective service.

The cumulative effect of the foregoing circumstances unmistakably leads this Court to the conclusion that the opposite party has failed to establish that summons of the original suit was duly, lawfully, and effectively served upon the petitioners before proceeding ex-parte.

It is a settled proposition of law that proper service of summons is a condition precedent for sustaining an ex-parte decree. In this regard, reliance may safely be placed upon the principle laid down by the Appellate Division in **35 DLR (AD) 162**, wherein it was held:

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

The above principle squarely applies to the facts of the present case.

It is also significant that the opposite party financial institution has fairly submitted before this Court that it has no objection if the present Miscellaneous Case is allowed and the ex-parte decree is set aside. Such submission further strengthens the view that no prejudice shall be caused to the opposite party by reopening the suit for adjudication on merit.

This Court is therefore satisfied that the petitioners were deprived of their valuable legal right to contest the suit due to absence of proper service of summons. Denial of an opportunity of hearing in such circumstances would amount to violation of the principles of natural justice, which require that no person shall be condemned unheard.

Considering the above facts, circumstances, and legal position, and in order to ensure that the dispute between the parties is adjudicated upon on merit rather than on technicalities, and also to prevent multiplicity of proceedings, this Court finds it just, equitable, 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 23.02.2025 and signed on 25.02.2025 passed in Artha Rin Suit No. 1796 of 2023 by this Court are hereby set aside.

The said Artha Rin Suit No. 1796 of 2023 is restored to its original file and number and shall stand revived at the stage of filing of Written Statement by the defendant No.1-4/6 (the present petitioner).

The **Pay-Order No. 100A0172209 amounting to Tk. 3,98,000/-**, 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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