

----The record is taken up for necessary order on the petition dated 01.01.2026 filed by the Judgment Debtor No. 3 under section 57 of the Artha Rin Adalat Ain, 2003, praying for dismissal of the instant Execution Case.

Heard the learned Advocates for both sides at length and perused the petition along with the materials available on record.

It appears from the record that the Decree-Holder Bank instituted **Artha Rin Suit No. 10904 of 2023** for realization of an amount of **Tk. 52,00,89,766/-** against the present petitioner and others. The said suit was decreed on 14.09.2023 and the decree was signed on 17.09.2023.

Subsequently, the Decree-Holder initiated **Execution Case No. 62 of 2024 (1st Execution Case)**, which was ultimately disposed of upon issuance of a certificate under section 33(7) of the Artha Rin Adalat Ain, 2003, whereby ownership of the mortgaged property was vested in favour of the Decree-Holder.

Thereafter, the Decree-Holder instituted the present **Execution Case No. 1323 of 2024 (2nd Execution Case)** upon adjusting the value of the said mortgaged property with the decretal dues.

The principal contention of the petitioner/Judgment Debtor No. 3 is that after issuance of a certificate under section 33(5) of the Ain, in the event of failure to sell the mortgaged property through public auction, the law provides for filing a subsequent execution case under section 33(6)(Kha) of the Ain, 2003. However, there is no provision under the Ain permitting initiation of a second execution case after issuance of a certificate under section 33(7). As such, the present 2nd Execution Case is, according to the petitioner, without lawful authority and liable to be dismissed.

It is further contended that the valuation of the mortgaged property, in respect of which the certificate under section 33(7) was issued, has been grossly undervalued. According to the petitioner, the actual market value of the property, situated in prime locations such as Ramna and Dhanmondi areas of Dhaka, exceeds Tk. 100 crore. In contrast, the assessed value of Tk. 26,12,48,000/- cannot be considered as a fair or reasonable valuation, particularly when compared to prevailing market rates which are substantially higher than the mouza rates.

The petitioner further submits that the Decree-Holder initiated the present execution proceeding without making any attempt to sell the mortgaged property through public auction, which is contrary to the scheme and spirit of

the Artha Rin Adalat Ain, 2003, and thus renders the proceeding illegal. It has also been alleged that the Decree-Holder has not taken actual possession of the mortgaged property despite issuance of the certificate under section 33(7) in the earlier execution case.

Finally, it is contended that upon issuance of a certificate under section 33(7), the execution proceeding stands finally disposed of in view of section 33(9) of the Ain, and there exists no provision for initiation of any subsequent execution case. Hence, the present 2nd Execution Case is, according to the petitioner, not maintainable in law and is liable to be dismissed.

On the other hand, the learned Advocate for the Decree-Holder Bank submits that the petition is not maintainable and has been filed only to delay the execution proceeding. It is further submitted that the valuation of the mortgaged property has been duly adjusted with the decretal dues and the present execution case has been filed in accordance with law for realization of the remaining decretal amount.

Now, upon careful consideration of the submissions of both sides and the relevant provisions of the Artha Rin Adalat Ain, 2003, the core issue that falls for determination is whether a subsequent execution case is maintainable after disposal of the previous execution case upon issuance of a certificate under section 33(7) of the Ain.

It is admitted that the 1st Execution Case was disposed of upon issuance of a certificate under section 33(7), whereby the ownership of the mortgaged property vested in favour of the Decree-Holder. It is also evident that the present execution case has been filed for realization of the remaining decretal dues after adjusting the value of the said property.

Section 28(3) of the Ain provides that a subsequent execution case may be filed within the prescribed time after disposal of the previous execution case. Further, section 33(9) stipulates that upon vesting of ownership under section 33(7), the execution case shall be deemed to have been finally disposed of, subject to the provisions of section 28.

A harmonious reading of sections 28(3) and 33(9) clearly indicates that although the previous execution case reaches its conclusion upon issuance of a certificate under section 33(7), such conclusion does not create a legal bar against institution of a subsequent execution case for realization of the remaining decretal amount, provided the requirements of section 28 are complied with.

The contention of the petitioner that no second execution case can be filed after issuance of a certificate under section 33(7) is thus not tenable in law.

As regards the argument relating to non-holding of auction, it is found that the requirement of prior attempt to sell the mortgaged property through public auction is specifically contemplated under section 33(5) of the Ain. However, no such mandatory requirement has been prescribed under section 33(7). Therefore, the absence of auction or attempt to sell the said property does not render the present execution case illegal.

Furthermore, the question of valuation of the property and its alleged higher market price involves disputed facts which cannot be adjudicated in a summary manner in an execution proceeding under section 57 of the Ain. The law does not require re-assessment of market value at this stage once the statutory process has been followed. The judgment debtor had the opportunity to raise such questions in the previous execution case but failed to do so.

The contention that the Decree-Holder did not take possession of the property does not, in any manner, impair the maintainability of the present Execution Case. This is particularly so in view of the fact that ownership of the property has already vested in the Decree-Holder by virtue of the certificate issued under section 33(7) of the Ain. A plain reading of the words “উপধারা ৩৩(৫) বা ৩৩(৭) এর অধীন সম্পত্তির দখল আদালত যোগে প্রাপ্ত হওয়া আবশ্যিক হলে----” as incorporated in sub-section 33(7Ka)—does not suggest that obtaining possession is a mandatory precondition to be fulfilled by the Decree-Holder after issuance of a certificate under section 33(5) or 33(7). Rather, the provision is conditional in nature and applies only where recovery of possession through court becomes necessary in the given circumstances.

Accordingly, the failure to obtain possession of the property in the first Execution Case does not create any legal bar to the institution of the subsequent (second) Execution Case.

In view of the discussions made above, this Court finds no legal infirmity in the institution or continuation of the present Execution Case.

Accordingly, the petition dated 01.01.2026 filed by the Judgment Debtor No. 3 under section 57 of the Artha Rin Adalat Ain, 2003 is hereby **rejected**.

The Execution Case shall proceed in accordance with law.

To-----for Necessary order on petition of attachment filed by decree holder.

D/C by me

Md Hasan Zaman
Judge
Artha Rin Adalat No.1
Dhaka

Md Hasan Zaman
Judge
Artha Rin Adalat No.1
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