Artha Rin 37 of 2009

Order-150

Date- 10/09/2026

Today is fixed for hearing of the petition filed by the plaintiff under **Order XXXVIII Rule 5 of the Code of Civil Procedure, 1908 read with Section 57 of the Artha Rin Adalat Ain, 2003**, praying for attachment before judgment of the scheduled property belonging to Defendant No. 2 in the presence of both parties.

The plaintiff and Defendant No. 2 are present by filing hazira.

Defendant No. 2 has also filed a petition under **Order I Rule 10(2) of the Code of Civil Procedure, 1908 read with the relevant provisions of the Artha Rin Adalat Ain, 2003**, praying for striking out his name from the plaint. However, the record is taken up today for hearing **First** of the petition for attachment before judgment filed by the plaintiff.

Heard the learned Advocate for the plaintiff-petitioner. Perused the petition, affidavit, firisti, documents annexed thereto and the materials available on record.

It appears that the instant suit was instituted by the plaintiff-bank in the year 2009 for realization of a sum of **Tk. 1,16,54,179/- (Taka One Crore Sixteen Lac Fifty-Four Thousand One Hundred Seventy-Nine)** as outstanding dues as on 31.03.2009 against the defendants.

The plaintiff-petitioner contends that Defendant No. 2 is attempting to transfer the scheduled property to third parties and has already executed an unregistered agreement for sale thereof and is also looking for prospective buyers for disposing of the remaining portion of the property. It is further alleged that Defendant No. 2 is attempting to dispose of his property with a view to defeating and delaying the execution of any decree that may ultimately be passed in the suit. The petitioner has also contended that the value of the mortgaged property is insufficient to satisfy the entire outstanding liability and, therefore, attachment of the scheduled property of Defendant No. 2 before judgment is necessary for securing the plaintiff's claim.

The learned Advocate for Defendant No. 2 vehemently opposed the petition.

Upon careful consideration of the petition, affidavit, documents annexed thereto and the materials available on record, it appears that the suit has been instituted by the plaintiff-creditor for realization of its alleged outstanding dues

of **Tk. 1,16,54,179/- as on 31.03.2009** against the defendants. It further appears that, as security for the credit facility in question, Defendant No. 1 mortgaged the **'Ka' scheduled property** described in the plaint, measuring **30.05 decimals together with the structure standing thereon**, in favour of the plaintiff-bank. On the other hand, Defendant No. 2, whose property is sought to be attached, is admittedly a guarantor of the said credit facility.

The most significant aspect of the matter is that the credit facility in question is already secured by a mortgage created by Defendant No. 1. Thus, the plaintiff-creditor has already obtained substantial security in respect of the loan transaction through the mortgaged property. In such circumstances, the mere apprehension expressed by the plaintiff that Defendant No. 2, being a guarantor, may dispose of his property does not, by itself, appear to furnish sufficient legal basis for invoking the extraordinary jurisdiction of the Court under **Order XXXVIII Rule 5 CPC** against the property of Defendant No. 2.

It is also material to note that the plaintiff has not been able to demonstrate, on the basis of cogent materials, that Defendant No. 2 is in the process of disposing of his property with the specific intent to obstruct or delay the execution of any decree that may ultimately be passed in the suit. Mere allegation or apprehension, without sufficient supporting materials establishing the circumstances contemplated under Order XXXVIII Rule 5 CPC, cannot ordinarily justify an order of attachment before judgment.

In the instant case, the petitioner has failed to establish the necessary circumstances warranting exercise of this extraordinary jurisdiction. The materials on record rather disclose that the loan transaction is already secured by the mortgage created by Defendant No. 1. The plaintiff has also failed to demonstrate any additional or independent circumstance sufficient to justify attachment before judgment of the property of Defendant No. 2 merely on the basis of his status as guarantor and the apprehension expressed by the plaintiff.

Having regard to the facts and circumstances of the case and upon consideration of the materials available on record, this Court is of the considered view that the essential requirements for exercise of jurisdiction under **Order XXXVIII Rule 5 CPC** have not been established by the plaintiff-petitioner.

Accordingly, the petition filed by the plaintiff-petitioner under Order XXXVIII Rule 5 of the Code of Civil Procedure, 1908 read with Section

57 of the Artha Rin Adalat Ain, 2003, praying for attachment before judgment of the scheduled property of Defendant No. 2, is hereby rejected.

Now, the record is taken up for passing necessary order on the application filed by the Defendant No.2 under **Order I Rule 10(2) of the Code of Civil Procedure, 1908 read with Section 57 of the Artha Rin Adalat Ain, 2003**, praying for striking out his name from the plaint.

Heard the learned Advocates for the respective parties and perused the application, the plaint and the materials available on record.

The learned Advocate appearing for the Defendant No.2 submits that the petitioner is neither the borrower nor the guarantor nor the mortgagor in respect of the loan facility in question. According to him, the petitioner was merely a former Director of Defendant No.1-company and does not fall within the ambit of Section 6(5) of the Artha Rin Adalat Ain, 2003. It is further submitted that no cause of action has been disclosed against the petitioner and that he has been unnecessarily impleaded in the suit, causing him social and economic harassment and thereby amounting to an abuse of the process of the Court. On such submissions, the learned Advocate prays for striking out the name of Defendant No.2 from the plaint.

On the other hand, the learned Advocate appearing for the plaintiff opposes the application and submits that Defendant No.2 has been lawfully and properly impleaded in the suit and that the allegations made in the application are wholly unfounded.

On perusal of paragraphs 2 and 6 of the plaint, it appears that the plaintiff has specifically pleaded that the Defendant Nos.2–4 stood as personal guarantors in respect of the credit facility availed by Defendant No.1 and, on that basis, has sought recovery of the outstanding dues against them. Thus, the plaint discloses a specific and direct assertion of liability against Defendant No.2 arising out of the loan transaction in question.

It is true that the Defendant No.2 has denied being a borrower, guarantor or mortgagor and has contended that, being merely a former Director of the said company namely **Mohanagori Traders Ltd**, he does not come within the purview of Section 6(5) of the Artha Rin Adalat Ain, 2003. However, the question as to whether the Defendant No.2 in fact executed any guarantee, whether such guarantee is legally binding upon him, and whether he has ceased to have any liability in respect thereof are matters which require determination

upon consideration of the pleadings and evidence at the appropriate stage of the suit. Such disputed questions cannot, in the circumstances of the present case, be conclusively determined at this interlocutory stage while considering an application under Order I Rule 10(2) of the Code.

In the present case, the plaintiff has founded its claim against Defendant No.2, inter alia, upon an alleged personal guarantee connected with the credit facility in question. Furthermore, no material has been placed before the Court at this stage showing that the alleged guarantee was discharged or that the Defendant No.2 was released from his alleged liability by the plaintiff-bank through any valid discharge or No Objection Certificate. Whether such liability was subsequently discharged or otherwise extinguished is a matter to be established by evidence.

In view of the specific averments made in the plaint and the nature of the dispute raised by the parties, the presence of Defendant No.2 cannot, at this stage, be regarded as wholly unnecessary or improper. His alleged liability is directly connected with the subject matter of the suit, and striking out his name at this stage may result in an incomplete adjudication of the controversy and may also give rise to multiplicity of proceedings.

Accordingly, this Court finds that the application filed by Defendant No.2 does not merit acceptance. The question of his ultimate liability, if any, shall be determined upon consideration of the evidence and the applicable law at the appropriate stage of the suit.

Hence, it is

ORDERED

that the application filed by the Defendant No.2 under **Order I Rule 10(2) of the Code of Civil Procedure, 1908 read with Section 57 of the Artha Rin Adalat Ain, 2003**, praying for striking out his name from the plaint, is hereby **rejected**.

The suit shall proceed against Defendant No.2 along with the other defendants in accordance with law.

Let the suit proceed in accordance with law.

To----------for furnishing of Order of the Hon'ble HCD.

T/C by Me

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

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Judge
Artha Rin Adalat No.1,
Dhaka