

LEX/BDHC/0130/2019

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION)

Writ Petition No. 10191 of 2015

Decided On: 06.03.2019

Appellants: **Mohammad Ali**
Vs.

Respondent: **Judge (Joint District Judge), Artha Rin Adalat and Ors.**

Hon'ble Judges:

Md. Ashfaqul Islam and Mohammad Ali, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: Afroza Nazneen Akhter, Tasmina Zaman and Shahin Miraz Chowdhury, Advs.

JUDGMENT

Md. Ashfaqul Islam, J.

1 . At the instance of the petitioner, this Rule under adjudication, issued on 21.09.2015, was in the following terms:

"Let a Rule Nisi be issued calling upon the respondents to show cause as to why the order No, 92 dated 09.08.2015 allowing the mediation report submits by the mediator on 01.04.2015 in Artha Rin Case No. 136 of 2012 without complying the provision provides in section 22(4) of the Artha Rin Adalat Ain, 2003 as contained in Annexure-C should not be declared to be without lawful authority and of no, legal effect and as to why a direction should not be given upon the respondent No. 1, the Judge (Joint District Judge), Artha Rin Adalat No. 1, Chittagong for taking step of further mediation before any verdict in the Artha Rin Suit No. 136 of 2012 and/or such other or further order or orders passed as to this court may seem fit and proper."

2. Facts relevant for the disposal of the Rule are very short. Artha Rin Suit No. 136 of 2012 was filed before the Artha Rin Adalat No. 1, Chittagong (hereinafter referred to as Adalat) in which mandatory requirement for mediation under section 22 was initiated at the behest of the Adalat and in due course mediator was appointed on the prayer of the respondent No. 2, Dutch Bangla Bank Ltd. and accordingly the mediator gave it's report which was allowed by the Adalat by it's order No. 32 dated 09.08.2015. The report of the mediation has been annexed as annexure-D of the petition which clearly suggests that the mediation failed totally. Against this report of mediation, mainly contending violation of section 22(4) of the Ain the petitioner moved this Division under Article 102 of the Constitution and obtained the present Rule and order of stay.

3. Mrs. Afroza Nazneen Akhter appearing with Mrs. Tasmina Zaman and Mr. Shahin Miraz Chowdhury, the learned Advocates for the petitioner after placing the petition, the report of mediation and other materials on record mainly submits that in clear violation of section 22(4) of the Ain, 2003 mediation report has been given and as such it is not sustainable under law.

4. On the other hand Md. Forrukh Rahman, the learned Counsel appealing for the

respondent Bank by filling affidavit-in-opposition opposes the Rule and submits that the provision of section 22(4) is merely directory and the petitioner from the very beginning did not oppose the appointment of mediator and at this stage only on the ground of violation of section 22(4) it is not enough to bring an action under article 102 of the constitution. He placed reliance on the decisions of Osman Gani Mondal vs. Mainuddin Ahmed reported in 27 DLR (AD) 61, Maqbool Ahmed vs. Onkar Pratap reported in MANU/PR/0025/1935 : AIR 1935 PC 85, Aminul Islam vs. James Finlay & Co. reported in 26 DLR (AD) 33.

5. We have heard the learned Counsel of both the sides and considered their submissions, we have also perused the writ petition, affidavit-in-opposition, the impugned report of mediation and other materials on record carefully. For better understanding let us see what section 22(4) of the Ain enjoins:

“(৪) পক্ষগণের তথ্যের গোপনীয়তা রক্ষা করিয়া মধ্যস্থতাকারী মধ্যস্থতা কার্যক্রম সমাপ্তির পর একটি প্রতিবেদন আদালতে দাখিল করিবেন এবং উক্ত প্রতিবেদনে মধ্যস্থতাকারী হিসাবে পক্ষগণের স্বাক্ষর, কিংবা, ক্ষেত্রমত, বাম হস্তের বৃদ্ধাংগুলির ছাপ, এবং মধ্যস্থতাকারী ও আইনজীবীগণের স্বাক্ষর গ্রহণ করিতে হইবে, তবে মধ্যস্থতার মাধ্যমে মামলার বিরোধ নিষ্পত্তি হইয়া থাকিলে, অননুপূর্ণ নিষ্পত্তির সর্তাদি নিশ্চিতভাবে মুক্তি আকারে সিপিবদ্ধ করিতে হইবে।”

6. On a careful scrutiny of the report we have found that it has clearly suggested that the mediation totally failed and it is also revealed from the record that at no point of time the petitioner objected the appointment of the mediator on the prayer of the respondent Bank.

7. On the question whether the provision of section 22(4) is mandatory or directory, the law is Well settled. When a particular law does not suggest any consequence of the non-compliance or any particular requirements, it is merely directory: However, on such a trivial ground the petitioner has come before this Court under Article 102 of the constitution and Rule was issued back in the year 2015 staying the entire proceedings of the Suit which is not at all appreciated.

8. In the result the Rule is discharged, however, without any order as to costs. The Adalat is directed to proceed with the suit immediately in accordance with law. The order of stay granted at the time of issuance of the Rule is hereby recalled and vacated.

Mohammad Ali, J.

I agree.

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