

**9 SCOB [2017] HCD 157**

**High Court Division  
(Special Original Jurisdiction)**

Writ Petition No. 7966 of 2013

**Shetu International Pvt. Limited & others  
Vs.  
Judge, Artha Rin Adalat No.2, Dhaka & another**

Mr. Shamim Khaled Ahmed with  
Mr. M. Mohiuddin Yusuf  
... for the petitioners.

Mr. Nazmul Karim  
... for the Respondents No. 2.

Heard on 5.6.2014 & 28.10.2014  
&  
Judgment on 11<sup>th</sup> November, 2014.

**Present:  
Mr. Justice Syed Refaat Ahmed  
And  
Mr. Justice Mahmudul Hoque**

**Artha Rin Adalat Ain, 2003**

**Section 7(1):**

The word 'Bc;ma' as appears in the context of Section 7(1) bears reference to a scenario emerging when the Court which in its considered opinion thinking it just and expedient for a notice to be published in a national daily and in a local newspaper, if there be any, for ends of justice, and making an order to publish a notice at the cost of the plaintiff. But in the present case the plaintiff –Respondent No.2 itself took step under section 7(1) of the Act on its own motion on the date fixed for return of summons and acknowledgement receipt after service upon the defendants without waiting for the report of the Process Server and Order of the Court to that effect. It is noted that the summons in a suit shall be served by the Process Server simultaneously through postal department, and in evidence of the sending of the summons through post the postal receipt thereof must be tagged with the record. But in the present case no summons was served through Process Server or by post nor any attempt was made to serve the notice/ summons upon the defendants. Moreover, no Order has been passed by the Court necessitating publication of summons in the daily newspaper. Rather publication in the newspaper ensued at the behest of and as desired by the plaintiff which, in this Court's view is contrary to the provisions of Section 7(1) of the Act. ... (Para 15)

**Artha Rin Adalat Ain, 2003**

**Section 6(2):**

From a plain reading of the above quoted provisions, it is clear that all affidavits under Section 6(2) must be declaratory of conversance with and in attestation of the documents submitted in court in support of the claim of the Plaintiff. But in the present case this Court finds that the affidavit attached to the plaint is not so affirmed in accordance with the provisions of Section 6(2) of the Act and as such the ex parte decree passed on the basis of the said affidavit without examination of any witness and formal

**proof of the documents is found to be wholly inadequate and shorn of all legal substratum. ... (Para 17)**

### **Judgment**

#### **Mahmudul Hoque, J:**

1. In this application under Article 102 of the Constitution of Bangladesh a Rule Nisi has been issued at the instance of the petitioner calling upon the respondents to show cause as to why the impugned judgment and decree dated 17.01.2013 (Annexure-C) passed by the learned Judge of Artha Rin Adalat No.2, Dhaka in Artha Rin Adalat Suit No. 200 of 2012 should not be declared to have been passed without lawful authority and is of no legal effect, and/ or pass such other or further order or orders as to this Court may seem fit and proper.

2. Facts in brief, are that the Petitioner No. 1 company availed of lease finance facilities amounting to Tk. 79,00,000/- and Tk-4,41,60,000/- from the Respondent No. 2 for a period of sixty months for procurement of generators, sub-stations and lay film plant in its establishment. The Respondent No. 2 further sanctioned a term loan amounting Tk. 1 crore for a period of forty eight months to meet the growing capital expenditures of the Petitioner No. 1 Company.

3. The Petitioner No. 1 had been paying the lease rentals and installments regularly to the Respondent no. 2 but by the end of 2006 the petitioner no. 1 faced business difficulties which caused huge financial lose resulting in failure in payment of lease rentals and installments to the Respondent no. 2. Consequentially, on the prayer of the Petitioner No. 1 the Respondent No. 2 rescheduled the loan at a revised rate. Accordingly, the Petitioner made regular payment till the end of the year 2009. However, during the Caretaker Government the business faced downward trend everywhere and as a matter of fact the Petitioner No. 1 again faced financial crisis and failed to maintain regular installment payments to the Respondent No.2.

4. The Petitioners approached the Respondent no. 2 to allow them more time in view of financial difficulties. The Respondent No. 2 assured that the time will be extended but the Respondent no. 2 instead of extending time disclosed that they already filed Artha Rin Suit against the petitioners for recovery of loan. Knowing the fact of filing of the Suit the petitioners through an advocate made a search in the concerned Adalat and came to know that the Suit was decreed ex parte against the petitioners. Thereafter, the petitioners obtained certified copy of the plaint and entire Order sheets of the Artha Rin Suit.

5. From the Order Sheet it is revealed that no notice/summon was served upon the petitioners about filing of the Suit and without proper service of the summons the Suit was decreed ex parte on 17.01.2013 against the petitioners beyond their knowledge. It is asserted that the petitioners have been prevented from appearing in the Suit on the failure of the Respondent no. 2 to arrange service of summons upon the petitioners as per provisions of law and also on the failure of the Respondent No. 1 Adalat to see that it is properly done before it took up the Suit for ex parte disposal.

6. Further, the case of the petitioners is that the Order Sheet of the Artha Rin Suit No. 200 of 2012 shows that though two separate addresses of the petitioner Nos. 2 and 3 are given in the cause title the Plaintiff-Respondent No. 2 only filed one set of usual summons with

requisites for service upon the Defendant-Petitioners. The postal receipts in evidence of posting of the summons to be served upon the Defendant-Petitioners has not been tagged in the Suit File of the Court. Order Nos. 2 and 5 dated 11.09.2012 and 04.11.2012 respectively are silent about this.

7. It is contended that 04.11.2012 being fixed for service return and acknowledgment receipts, the Respondent No. 2 did not file any postal receipts to prove at least that step was taken to effect service of summons by post upon the Defendant-Petitioners. The respondent no. 2 without following said procedure hurriedly on 04.11.2012, on its own initiatives took step under Section 7(1) of the Artha Rin Adalat Ain (“Act”) to effect service of summons upon the petitioner and the court accepting the same fixed 07.01.2012 for filing copy of the newspaper showing publication of notice. The Court below by its Order dated 07.01.2013 considered due service of summons upon the defendant-Petitioners and fixed 17.01.2013 for ex parte hearing. On 17.01.2013 the Court without examining plaintiff’s witness and based on the facts on affidavit decreed the Suit ex parte. The Petitioners now contend that the Respondent No. 1 Court acted without jurisdiction in purporting to pass the Impugned Order dated 17.01.2013 in Artha Rin Suit No. 200 of 2012 decreeing the Suit in favour of the Respondent no. 2 without proper service of summons upon the Defendant-Petitioners. At this stage the petitioners moved this Court by filing the instant Application under Article 102 of the Constitution challenging the Order and Decree dated 17.01.2013 passed by the Artha Rin Adalat and obtained the present Rule and Order of stay.

8. The Respondent No. 2 contested the Rule by filing an Affidavit-in-Opposition denying all the material allegations made in the petition contending inter alia that the Act is a special law and its provisions are to be strictly followed and that the provisions of the Code of Civil Procedure, 1908 shall be applicable in an Artha Rin Suit so far as those are not inconsistent with the provision of the said act. In so far as the summons of the Artha Rin Suit are concerned it is argued, that Section 7 of the Act, in derogation of the Code of Civil Procedure, requires simultaneous service of summons through process server and registered post with acknowledgement receipt due. The said Section 7 provides fifteen days time for return of summons after service allowing also for the court to arrange publication of the summons in newspapers if within fifteen days from the date of issuance the summons is not returned duly served or returned unserved before that period. The Respondents No.2 submits that in the instant case, the summons having not been returned duly served within fifteen days from the date of issuance, a publication on 19.11.2012 in a newspaper ensued as provided in Section 7(1) of the Act and as such there was no illegality in the process of service of summons. Consequently, therefore, the decree passed in favour of the Plaintiff-Respondent no. 2 is submitted to be in accordance with law.

9. It is also stated that since the Artha Rin Suit No. 200 of 2012 has already been disposed of by the Order and Decree dated 17.01.2013, the instant Writ Petition is not maintainable and the recourse available to the petitioners is either to set aside the Decree by filing an application under Section 19 or file an appeal under Section 41 of the Act.

10. Mr. Shamim Khaled Ahmed, learned Advocate appearing for the Defendants-Petitioners submits that the ex parte decree is a nullity in the eye of law as no attempt was made to serve the summons upon the Defendants- petitioners by the Plaintiff-Respondent No. 2. Referring to the Order Sheets of the Artha Rin Suit No. 200 of 2012, he further submits that the Orders do not show as to whether summons was served or returned unserved. Nothing, further is evident from the Order Sheets regarding service of summons either

through a process server or by post. Rather on the prayer of the plaintiff, the Court fixed 07.01.2013 for submission of the newspaper in court after publication of the summons and on that date the Suit was made ready, apparently, on the basis of publication of summons in the daily newspaper with 17.01.2013 fixed for ex parte hearing. Consequentially, the Suit being decreed ex parte on 17.01.2013, Mr. Ahmed argues this to be in violation of Section 7 of the Act and as such prays on behalf of the Petitioners to have the Impugned Decree declared illegal and without lawful authority. In support of his submissions Mr. Ahmed has referred to the case of Sonali Bank Ltd.-vs-Prime Global limited and others reported in 16 MLR(AD) 151.

11. Mr. Nazmul Karim, learned advocate appearing on behalf of the Plaintiff-Respondent No. 2 opposing the Rule submits that the summons was duly served upon the petitioners as per provisions of Section 7 and the Court below has passed the ex parte decree against the Defendants-Petitioners rightly and lawfully. He further submits that since the Suit has already been disposed of, the petitioners now have two options i.e. either to get the ex parte Decree set aside by filing an application under Section 19 or by filing an appeal under Section 41 of the Act, but not by filing the instant Writ Petition.

12. Heard the learned Advocates for the parties. Perused the Application, Affidavit-in-Opposition and the annexures annexed thereto.

13. By this Application the petitioner has challenged the legality of the Judgment and Decree dated 17.10.2013 passed ex parte by the Artha Rin Adalat No.2, Dhaka in Artha Rin Suit No. 200 of 2012. From a perusal of the Order Sheets it appears that the Suit was filed on 11.9.2012 with a deficit court fee. On the prayer of the plaintiff the Court allowed time thrice up to 16.10.2012 for depositing court fee vide Orders dated 11.9.2012, 1,10,2012 and 7.10.2012. By Order No.4 dated 16.10.2012 summons was issued for service upon the defendants fixing 4.11.2012 for return of summons and postal acknowledgement receipt after service. On the date fixed for return of summons, however, summons was not returned after due service upon the defendants as evident from Order No.5 dated 4.11.2012. Order No.4 dated 16.10.2012 shows that summons was issued for service of the same with 4.11.2012 fixed for return of the same. Order No.5 dated 4.11.2012 speaks about non-service of summons upon the defendants and non-return of acknowledgement receipt showing service of the same. Nothing has been mentioned regarding service of summons through Process Server or by post in the Order Sheet. Rather, the plaintiff of its own motion took step under Section 7(1) of the Act for publishing the summons in the daily newspaper. The Artha Rin Adalat on the same day passed an Order directing the Plaintiff to publish the said notice in the daily Noya Diganta fixing 7.1.2013 for submission of the newspaper in Court after publication of the summon. On 7.1.2013 the plaintiff submitted the newspaper in Court and the court made the Suit ready treating the summons served upon the defendants, apparently on the basis of publication of summons in the daily newspaper and fixed on 17.1.2013 for ex parte hearing. On the date fixed the Artha Rin Adalat heard the Suit and decreed the same ex parte without examination of any witness on the basis of an affidavit attached to the plaint sworn at the time of filing of the suit.

14. To appreciate the question raised in the instant Rule the relevant provisions regarding service of summons upon the defendants as contained in Section 7 of the Act, may be looked into. Section 7(1) relevantly runs thus:-

Section 7:- (1) আপাততঃ বলবৎ অন্য কোন আইনে যাহা কিছুই থাকুক না কেন, বাদী আদালতের জারীকারক  
Laill Hhw fpc üflj|pq 8(Soill ত ডাকযোগে প্রেরণের নিমিত্ত, আরজির সহিত সমন জারী। Serf pj 8u amhje;

আদালতে দাখিল করিবেন, এবং আদালত অবিলম্বে উহাদের একযোগে জারীর ব্যবস্থা করিবেন, এবং যদি সমন ইস্যুর ১৫ (পনের) দিবসের মধ্যে জারী হইয়া ফেরত না আসে, অথবা তৎপূর্বেই বিনা জারীতে ফেরত আসে, তাহা হইলে আদালত উহার, পরবর্তী ১৫ (পনের) দিবসের মধ্যে বাদীর খরচায় যে কোন একটিকে *V hým f0(1) a h;mmj Sjaðu °c0eL f00eLju, Hhw ac* ফি একটি স্থানীয় পত্রিকায়, যদি থাকে, এবং আদালত যদি ন্যায় বিচারের স্বার্থে প্রয়োজনীয় মনে করে, বিজ্ঞাপন প্রকাশের মাধ্যমে সমন জারী করাইবেন, এবং অনুরূপ জারী আইনানুগ জারী মর্মে গণ্য হইবে।

15. The word ‘*Bc;ma*’ as appears in the context of Section 7(1) bears reference to a scenario emerging when the Court which in its considered opinion thinking it just and expedient for a notice to be published in a national daily and in a local newspaper, if there be any, for ends of justice, and making an order to publish a notice at the cost of the plaintiff. But in the present case the plaintiff –Respondent No.2 itself took step under section 7(1) of the Act on its own motion on the date fixed for return of summons and acknowledgement receipt after service upon the defendants without waiting for the report of the Process Server and Order of the Court to that effect. It is noted that the summons in a suit shall be served by the Process Server simultaneously through postal department, and in evidence of the sending of the summons through post the postal receipt thereof must be tagged with the record. But in the present case no summons was served through Process Server or by post nor any attempt was made to serve the notice/ summons upon the defendants. Moreover, no Order has been passed by the Court necessitating publication of summons in the daily newspaper. Rather publication in the newspaper ensued at the behest of and as desired by the plaintiff which, in this Court’s view is contrary to the provisions of Section 7(1) of the Act. This Court finds that the mere issuance of summons by the Court for service upon the defendants is not sufficient to necessitate and support the conclusion that summons sent for service without a report from the Process Server regarding service or non-service of summons and without the presence of postal receipts on record constitutes a due service of summons. Rather, in the absence of the Process Server’s report and postal receipts showing sending of summons through post and also the absence of satisfaction of the Court about non-service of summons or of any Order of the Court requiring publication of notice in the daily newspaper, publication of notice at the instance of the plaintiff constitutes a mode of alternate service not within the contemplation of, as indeed, the spirit of the law. The Order Sheets of the Suit are found to be completely silent about the reasons for non service of summons upon the defendants.

16. Furthermore, it appears from the plaint that an affidavit was sworn by an Officer of the plaintiff institution at the time of filing of the Suit to the effect that he is conversant with the facts and the matter involved in the Suit, lacking short of the prescription for the affirmation of such affidavits spelt out in Section 6(2) of the Act thus:-

Section 6(2).- এই আইনের অধীন কোন মামলা আর্থিক প্রতিষ্ঠান কর্তৃক আরজি দাখিলের মাধ্যমে দায়ের করিতে হইবে, আরজির বক্তব্য এবং সংশ্লিষ্ট দালিলিক প্রমাণাদির সমর্থনে আরজির সহিত একটি হলফনামা (Affidavit) সংযুক্ত করিতে হইবে, আরজির সহিত প্রদেয় কোর্ট ফি (ad valorem) প্রদান করিতে হইবে *Hhw c;0MmL2a B10S* যথাযথ হইলে আদালতের নির্ধারিত রেজিস্টারে উহা ক্রম অনুসারে অন্তর্ভুক্ত করিতে হইবে।

17. From a plain reading of the above quoted provisions, it is clear that all affidavits under Section 6(2) must be declaratory of conversance with and in attestation of the documents submitted in court in support of the claim of the Plaintiff. But in the present case this Court finds that the affidavit attached to the plaint is not so affirmed in accordance with the provisions of Section 6(2) of the Act and as such the ex parte decree passed on the basis of the said affidavit without examination of any witness and formal proof of the documents is found to be wholly inadequate and shorn of all legal substratum.

18. Since we have held on the fact of the ex parte decree passed against the Petitioner being without proper service of summons to be a nullity, the Judgment and Decree of the Court below is found not to be sustainable in law. This Court finds, in this regard, that due and proper as per the specific prescription of law, service of summons upon the defendants in a suit is a mandatory requirement. In the present case this Court finds that summons was not served properly upon the defendants and the Order Sheets of the Suit show nothing of any effort made on the part of the plaintiff as well as of the Court below to effect service of summons upon the Defendants. The Court below instead of taking proper step for service of summons upon the Defendants is found to have been more interested in disposing of the case hurriedly by publishing a notice in the newspaper in a manner wholly opposed to the true intent and provisions of law regarding service of summons. Consequentially, this error at the very initial stages is found to have marred the ensuing proceeding and the decree passed ex parte in such proceedings without proper service of summons as well as an inadequate affidavit is found to be one not good and sustainable in law.

19. In the facts and circumstances we, therefore, find merit in the application and substance in the Rule and we are, therefore, inclined to make the Rule absolute.

20. In the result, the Rule is made absolute, however, without any Order as to costs.

21. It is, hereby, declared that the Judgment and Decree dated 17.1.2013 passed by the Artha Rin Adalat, Court No.2, Dhaka in Artha Rin Suit No. 200 of 2012 is illegal, without lawful authority and of no legal effect and the same is, hereby, set aside.

22. The Artha Rin Adalat, Court No.2, Dhaka is hereby directed to dispose of the case in accordance with law within 6(six) months from the date of receipt a certified copy of this Judgment and Order, thereby, providing opportunity to the petitioners to place their case as per provisions of law.

23. The Order of Stay granted earlier at the time of issuance of the rule is, hereby, vacated.

24. Communicate a copy of this Judgment and Order to the Court concerned at once.