

**IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(SPECIAL ORIGINAL JURISDICTION)**

**Present:**

**Mr. Justice Md. Nazrul Islam Talukder**

**And**

**Mr. Justice Khizir Hayat**

**Suo Motu Rule No. 18 of 2020**

**IN THE MATTER OF:**

The State

..... Petitioner.

**-Versus-**

Secretary, Ministry of Home Affairs, Bangladesh Secretariat,  
Ramna, Dhaka and others

..... Respondents.

Mr. A K M Amin Uddin, D.A.G with  
Ms. Anna Khanom Koli, A.A.G and  
Mr. Md. Shaifour Rahman Siddique, A.A.G,

..... For the Respondent Nos.1 and 2.

Mr. Masood R. Sobhan, Advocate with  
Mrs. Fatema Chowdhury, Advocate and  
Mr. AFM Saiful Karim, Advocate with  
Md. Mozammel Haque, Advocate

..... For the Respondent No. 3.

Mr. Manzill Murshid, Advocate with  
Mr. Sanjoy Mandal, Advocate

..... For the Respondent Nos. 04 and 05.

Mr. Ruhul Quddus, Advocate,

..... For the Respondent No.06.

Mr. Ahmad Musanna Chowdhury, Advocate

..... For the Respondent No.07.

Mr. Md. Lutfor Rahman, Advocate

.... For the Applicant Nos. 01 and 02.

Mr. J. K. Paul, Advocate

..... For Special Marriage Register.

Mr. Mirza Sultan-Alraza, Advocate

..... For City Bank Limited.

**Names of the Amici Curiae.**

Mr. A. F. Hasan Arif, Senior Advocate,  
Mr. Kamal Ul-Alam, Senior, Advocate,  
Mr. Md. Nurul Amin, Senior Advocate and  
Mr. M. Quamrul Haque Siddique, Advocate

**Heard on: 03.02.2021, 07.02.2021, 14.03.2021, 01.12.2022  
and 07.06.2023 and judgment on: 07.06.2023**

**Md. Nazrul Islam Talukder, J**

From the Newspaper reports dated 25.10.2020 published in the Daily Somokal under caption “বাবার বাড়িতে ঢুকতে না পেরে রাস্তায় দুই বোন” and in the daily Jugantor under caption “অবসরপ্রাপ্ত

ক্যাপ্টেনকে দেখাশোন করতে এসে সম্পত্তি দখল! and the Newspaper report dated 26.10.2020 published in the Daily Prothom Alo under caption “গুলশানের বাড়ির সামনে দুই বোন” and the TV news dated 25.10.2020 broadcasted by the Jamuna Television, it has come to our knowledge that Mushfiqua Mustafa and Mubassara Mustafa are the daughters of Mustafa Jaglul Wahid, a retired captain of Biman Bangladesh Airlines, who died on October 10, 2020. The aforesaid reports reveal that the daughters of late Mustafa Jaglul Wahid are not being allowed to enter their father's house since their stepmother Anju Kapur has been denying the entry of the daughters into their father's house. According to the reports, Musfiqua Mustafa filed a General Diary with Gulshan Police Station on October 12 and again on October 14, 2020 alleging, inter-alia, that the daughters of late Mustafa Jaglul Wahid are threatened not to enter the house; the parents of the daughters were separated in 2005 and since the separation she has been staying with her mother at another house in Gulshan and her sister Mobassara Mustafa has been staying in USA for the past few years; her sister returned after her father's death about a week ago; the daughters of late Mustafa Jaglul Wahid have been trying to enter their father's house since the death of their father but their stepmother Anju Kapur did not allow them to enter the house saying that they have no right to the house of their father; on October 24, she and her sister along with her husband wanted to enter the house but again their stepmother did not let them enter the house.

It is reported in the Newspapers and TV news that the daughters of late Mustafa Jaglul Wahid stood in front of the gate of the house till October, 26 after failing to enter their father's house.

Since Section 25 of the Code of Criminal Procedure contemplates that the Judges of the Supreme Court are the Justices of the peace within and for of the whole of Bangladesh.

Since Article 101 of the Constitution of the Peoples' Republic of Bangladesh reads that "The High Court Division shall have such original, appellate and other jurisdiction and powers as are conferred on it by this Constitution or any other law."

Since Rule 10(1) of chapter XIA of the Supreme Court of Bangladesh (High Court Division) Rules 1973 (amended in

2012) provides provisions to issue a Rule (Suo Motu) by any Judge of the Supreme Court of Bangladesh in any case of public wrong published in any newspaper.

Considering the above provisions of law and going through the aforesaid reports, this court takes up the matter for issuing Suo Moto Rule since the aforesaid facts disclose about the violation of fundamental rights to property under Article 42 and right to protection of home under Article 43 of the Constitution of People's Republic of Bangladesh.

Under the aforesaid facts and circumstances, this court issued a Suo Moto Rule on 26.10.2010 in the following manner: -

- A. "Let a Suo Moto Rule be issued calling upon the respondents to show cause as to why the inaction of the respondents in not allowing the daughters of late Mustafa Jaglul Wahid to enter their father's house should not be declared illegal, without lawful authority and is of no legal effect and as to why a direction should not be given to take appropriate legal action(s) against the persons responsible and/or pass such other or further order or orders as to this Court may seem fit and proper.
- B. Subject to hearing of the Rule, the Officer-in- Charge of Gulshan Police station is directed to take immediate steps in order to allow the daughters of late Mustafa Jaglul Wahid to enter their father's house by providing all kinds of co- operation and assistance.
- C. Officer-in-Charge of Gulshan is further directed to comply with the order at once and to give compliance of the order tonight to the Special Officer of this Court over Mobile phone.
- D. The Officer-in-Charge of Gulshan is directed to deploy police force in front of house in question till 03.11.2020 in order to keep peace and security in and around the house.
- E. The Officer-in-Charge of Gulshan is further directed to produce Mushfiqua Mustafa and Mubassara Mustafa and their stepmother Anju Kapur before this Court on 03.11.2020 at 10.30 A.M positively.

The Rule is returnable within 7(seven) days from date.

Let this matter appear in the list on 03.11.2020 at 10.30 A.M for necessary order.”

This matter has appeared in the list on 3<sup>rd</sup> November 2020 for further order. Following our order dated 26.10.2020, the Officer -In-Charge of Gulshan Police Station has produced Ms. Mushfiqua Mustafa, Ms. Mubassara Mustafa and their stepmother Ms. Anju Kapur before this court. Pursuant to the order of this court, the Officer-In-Charge of Gulshan Police Station has also filed a compliance report of our order dated 26.10.2020.

Mr. Masood R. Sobhan, the learned Advocate appearing for Ms. Anju Kapur, submits that he needs some time for submitting necessary papers and documents in support of claim and ownership of the house in question.

Mr. Manzill Murshid, the learned Advocate appearing for Ms. Mushfiqua Mustafa and Ms. Mubassara Mustafa, submits that he also requires some time for submitting affidavit in support of claim and ownership of the house as his clients are bona fide heirs of late Mustafa Jaglul Wahid.

After hearing both the parties, this court passed an order directing the learned Advocates for the respective parties to submit necessary papers and documents in support of claim and ownership of the house by way of affidavit in the next date and the Officer-in-Charge of Gulshan Police Station was directed to extend deployment of police force in front of house till 09.11.2020 in order to keep peace and security in and around the house. The Officer-in-Charge of Gulshan Police Station was further directed to allow the relatives and well- wishers of the parties to enter the house in question at the desire and identification of the concerned parties. The next date was fixed on 09.11.2020 for further order.

This matter further appeared in the list on the 9<sup>th</sup> November 2020.

Mr. Manzill Murshid, the learned Advocate appearing on behalf of the Respondent Nos. 4 and 5 Ms. Mushfiqua Mustafa and Ms. Mubassara Mustafa, submits that after the death of Mustafa Jaglul Wahid, the Respondent No. 03 withdrew a huge amount of money from the bank accounts of late Mustafa Jaglul Wahid illegally and prayed for a direction upon the Respondent No. 03 to submit bank statements of banking transactions with

regard to withdrawal of money, before this court by way of affidavit.

He next submits that Mustafa Jaglul Wahid died on October 10, 2020 and thereafter death certificate issued by the concerned hospital has been kept in possession of the Respondent No. 03 and the Respondent Nos. 04 and 05 being heirs of Mustafa Jaglul Wahid, are entitled to get a copy of death certificate. He prayed for a direction to supply a duplicate copy of the death certificate to the Respondent Nos. 04 and 05 by the Respondent No. 3.

He then submits that in order to keep peace and security in and around the house in question, the period for keeping deployment of police should be extended.

He lastly submits that since the bank cheques are with Respondent No. 03, she is trying to withdraw the money from the bank accounts of Mustafa Jaglul Wahid so he prayed for an injunction upon the Respondent No. 3 from withdrawing any money from the bank accounts of late Mustafa Jaglul Wahid till disposal of the Rule.

Mr. A.K.M. Amin Uddin, the learned Deputy Attorney-General appearing on behalf of the State, submits that admittedly the Respondent No. 03, Anju Kapur is Indian Citizen but she did not submit any paper/document/work permit before this court about her living and staying in Bangladesh and in that view of the matter, the Respondent No. 03 may be directed to submit necessary papers to show the legality of her living and staying in Bangladesh.

He next submits that being Indian citizen, the Respondent No.03 is not entitled to hold any immovable property in Bangladesh and under this scenario of the matter, the Respondent No.03 may be directed to explain under what authority she is claiming the property of late Mustafa Jaglul Wahid.

He then submits that the alleged Wasiyat Deed allegedly executed by Mustafa Jaglul Wahid in favour of Respondent No.3 is subject to proof and explanation of law and the Respondent No.3 may be directed to give explanation in the matter of facts and laws in this matter.

He lastly submits that the Respondent No. 03 being Indian/Foreigner is not entitled to swearing affidavit and as such, it may be attended to in accordance with law.

Mr. Masood R. Sobhan, the learned Advocate appearing for Ms. Anju Kapur, the Respondent No.3, submits that as per direction of this Court, the Respondent No.3 submitted affidavit-in-opposition before this Court annexing all the necessary papers and document in support of claim and ownership of the house in question and she will submit on the points of facts and laws at the time of hearing of the Rule with reference to necessary papers and documents as well as the legal decisions, before the Court.

He next submits that the Respondent No.3 will supply a duplicate copy of the death certificate of Late Mustafa Jaglul Wahid within 03 (three) working days from date.

He lastly submits that the Respondent No.3 has no objection if the relatives, friends and well-wishers enter the house in question at the desire and identification of Respondent Nos.4 and 5.

After hearing both the parties and upon considering the facts and circumstances of the case and for ends of justice, this court passed the following orders: -

1. That Responded No.3 is directed to submit necessary papers and documents in support of citizenship and the work permit to work/stay in Bangladesh by way of affidavit in the next date.
2. The Respondent No.3 is restrained by an order of injunction from making any banking transactions in the bank account/s maintained during life time by late Mustafa Jaglul Wahid till disposal of the Rule or till further order of this court.
3. That the Manager of the concerned Bank is directed to supply bank statements with regard to the banking transactions in the bank account/s of Late Mustafa Jaglul Wahid by the Respondent No.3 and at the same time, the Respondent No.3 is also directed to submit the bank statements before this Court mentioning the amount of money withdrawn after the death of Mustafa Jaglul Wahid.

4. That the Officer-in-Charge of Gulshan Police Station is directed to extend deployment of force in front of house in question till 03.12.2020 in order to keep peace and security in and around the house.
5. That the Office-in-Charge of Gulshan Police Station is further directed to allow the relatives and well-wishers of the parties to enter these in question at the desire and identification of the concerned parties.

Let this matter appear in the list on 03.12.2020 for necessary order.

The matter again came up in the list for order on 03.12.22020. Mr. Masood R. Sobhan, the learned Advocate appearing on behalf of the Respondent No.3, has submitted affidavit-in-reply before this Court. Mr. Masood R. Sobhan, the learned Advocate appearing on behalf of the Respondent No.3, submits that the record of the bank account maintained with the City Bank, Gulshan Branch by late Mustafa Jaglul Wahid is required to be called for perusal and examination and for this reason, the Manager, City Bank, Gulshan Branch may be directed to transmit the record of the above-mentioned account to this Court on or before 12.01.2021. He lastly submits that he will not make piecemeal argument in this matter rather he is ready to deliver arguments on the points of laws and facts in details at the time of the hearing of the Rule.

Mr. Manzil Murshid, the learned Advocate appearing on behalf of the Respondent Nos. 4 and 5 in replying to the affidavit filed by respondent no. 3, categorically submits as under:-

- i) That as per statements made in the affidavit-in-opposition filed by Respondent No.3, the marriage between Mustafa Jaglul Wahid and Respondent No. 3 was registered on 31.07.2013 under The Special Marriage Act, 1872, which is evident from annexure-1 and A-1 to the affidavit-in-opposition and Respondent No.3 also claimed the property in question by virtue of Will executed on 03.03.2016, which is evident from annexure-2 to the affidavit-in-opposition.
- ii) That the preamble of The Special Marriage Act, 1872 describes that "it is expedient to provide a form of marriage for persons who do not profess the Christian,

Jewish, Hindu, Muslim, Parsi, Buddhist, Sikh nor Jaina religion".

- iii) That Section 2 of The Special Marriage Act, 1872 indicates that marriages may be celebrated under this Act between persons neither of whom professes the Christian or the Jewish or the Hindu or the Muslim or the Parsi or the Buddhist or the Sikh or the Jaina religion or between persons each of whom professes one or other of the following religions, that is to say, the Hindu, Buddhist, Sikh or Jaina religion.
- iv) That it is evident from the marriage document submitted by Respondent No.3 (as of annexure 1 and A-1 to the affidavit-in-opposition) that during marriage Mustafa Jaglul Wahid belongs to Muslim religion and Ms Anzu Kapur belongs to Hindu religion, so as per the provision of The Special Marriage Act, 1872, such marriage is not permitted and hence it is illegal and void.
- v) That moreover as per section 10 of the said law, both the bride and the bridegroom have to sign a declaration which reads as 'I do not profess the Christian, Jewish, Hindu, Muslim, Parsi, Buddhist, Sikh or Jaina religions' or 'I profess the Hindu, or the Buddhist or the Sikh or the Jaina religion' but it is absent in the marriage document. In other way, 14 days notice has to be served before solemnizing such marriage as per section 4 of the said law but it was not done. Hence the marriage is illegal and void.
- vi) That since marriage of Anzu Kapur with Late Mustafa Jaglul Wahid is not legal, so there is no scope to claim any property as a wife under a Will executed on 03.03.2016 (as of annexure-2 to the affidavit-in-opposition). Rather two daughters namely Mushfiqua Mustafa and Mubashshara Mustafa of late Mustafa Jaglul Wahid will inherit the property. Moreover the property in question is a leasehold property and without RAJUK's permission it cannot be transferred, so the transfer by way of Will is also void. As per law, any Will has to be probated but in the instant case it cannot be done. In the eye of law, the Will is not valid. Hence the claim of property under Will is not maintainable. It was done with a mala fide and ulterior



ill motive in order to deprive the daughters of late Mustafa Jaglul Wahid from their inheritance.

- vii) That the father of the Respondent Nos.4 and 5 namely Mustafa Jaglul Wahid opened and maintained Bank Accounts with City Bank, BRAC Bank, Eastern Bank, Standard Chartered Bank, Mercantile Bank and IFIC Bank all of Gulshan Branch and that Respondent No. 3 withdrew a huge amount of money from the aforesaid Bank accounts after the death of Mustafa Jaglul Wahid and under the aforesaid circumstances, the Managers of those Banks may be directed to supply Bank statements of the transactions made into those bank accounts on demand of Respondent Nos.3, 4 and 5 if required.

Mr. A.K.M. Amin Uddin, the learned Deputy Attorney-General appearing on behalf of the State, submits that many points of law and facts are involved in this matter with regard to marriage, wasiatnama (Will) and inheritance of the property in question and as such, legal assistance may be sought for from the Amici Curiae to settle the issues raised in this Rule.

Since some important questions of facts and laws are involved in this Rule, we need information, expertise, insight and legal assistance and interpretation from the following Amici Curiae in order to come to a decision on the issues raised in this Rule.

The names of the Amici Curiae are as follows:-

- 1) Mr. AF Hassan Arif, Senior Advocate, Supreme Court of Bangladesh.
- 2) Mr. Kamal-Ul-Alam, Senior Advocate, Supreme Court of Bangladesh.
- 3) Mr. Md. Nurul Amin, Senior Advocate, Supreme Court of Bangladesh.
- 4) Mr. M. Qumrul Haque Siddique, Advocate, Supreme Court of Bangladesh.

This court requires legal assistance and expertise from the Amici Curiae on the following matters:-

- i) Whether the marriage between the Mustafa Jaglul Wahid and Respondent No.3 Anju Kapur was solemnized properly in accordance with law following the provisions of The Special Marriage, Act, 1872 and whether the marriage in between them is illegal, and

null and void according to the submissions of the learned Advocate for the Respondent Nos. 4 and 5;

- ii) Whether the wasiatnama (Will) is legal and valid document or not and whether the Respondent No.3 is entitled to the property of Mustafa Jaglul Wahid on the basis of wasiatnama (Will) or not.

Under the aforesaid facts and circumstances and for ends of justice, this court passed the following orders: -

- i) That the learned advocates for the respective respondents are directed to submit all the papers and documents necessary for disposal of the Rule by way of affidavit/affidavit-in-reply in the next date.
- ii) That the Managers of City Bank, BRAC Bank, Eastern Bank, Standard Chartered Bank, Mercantile Bank and IFIC Bank all of Gulshan Branch, are directed to supply bank statements of the transactions made into the bank accounts maintained by late Mustafa Jaglul Wahid on demand of Respondent Nos. 3, 4 and 5 if required and asked for.
- iii) That the manager of the City Bank Gulshan Branch is directed to produce the bank account maintained by late Mustafa Jaglul Wahid before this court on or before 12.01.2021.
- iv) That the OC, Gulshan Police Station is directed to extend the deployment of Police in front of the house in question till 12.01.2020 in order to keep peace and security in and around the house.

The office is directed to transmit this order along with the photo copies of all the materials available in the record to the above-mentioned Amici Curiae forthwith for their information and knowledge.

Communicate the order to the concerned respondents, the Amici Curiae and the Bank Managers of the above-mentioned Banks at once.

After communicating the order, all the learned Amici Curiae appeared before this court and made their valuable legal submissions.

The matter was heard on 03.02.2021, 07.02.2021, 14.03.2021, 01.12.2022 and 07.06.2023. During hearing, 3

applicants came up with applications for added party claiming their interest in the subject matter. After hearing the learned Advocates for the 3 applicants, this court passed an order for keeping the applications for added party, in the record.

At the time of hearing of the Rule, Mr. A.K.M. Amin Uddin, the learned Deputy Attorney-General appearing for the State, submits that admittedly the Respondent No. 03, Anju Kapur is Indian Citizen, so the Respondent No.03 is not entitled to hold any immovable property in Bangladesh.

He then submits that the alleged Wasiyat Deed allegedly executed by Mustafa Jaglul Wahid in favour of Respondent No.3 is an invalid document because the executants of the deed are citizens of different countries and religions.

He next submits that though the marriage of Anju Kapur was executed under the provision of Special Marriage Act but it cannot be held within a muslim and hindu.

Mr. Masood R. Sobhan the learned Advocate with Mr. A.F.M. Saiful Karim, the learned Advocate with Mrs. Fatema Chowdhury, the learned Advocate and Md. Mozammal Haque, the learned Advocate appearing on behalf of the Respondent No. 3, has submitted affidavit-in-opposition and supplementary affidavit-in-oppositions stating, inter-alia, as under:

- (i) That the Respondent No.3 namely Mrs. Anju Kapur Wahid is a highly educated person who was born at Bangalore in India in the year of 1967. She completed her MB.A in Merchandising from Indian Institute of Management and Engineering (IIME), in Bangalore. Afterwards in the year of 1989 she started her professional career in the field of Readymade Garments in India and worked with some famous companies. The Respondent No.3 having higher education got better opportunity and employment in Bangladesh as such in the year of 2003, she joined as a higher executive with a Multinational Company having business in Bangladesh and taking necessary permissions from the concerned authorities required to render her services in Bangladesh started working as a legal foreign working person. Thereafter the Respondent No.3 in the course of her social interaction with

different people in Bangladesh got introduced with retired Airline Captain namely Mr. Mustafa Jaglul Wahid son of late Wahid Uddin Ahmed. Afterwards the two persons came closer and finally tied their knot on 30.07.2013 under Special Marriage Act, 1972 which was registered on 31.07.2013 by the Special Marriage registrar. Thus the couple started performing their conjugal life and happily passing their life till the end of Mustafa Jaglul Wahid on 10.10.2020.

- (ii) That it is stated that Mustafa Jaglul Wahid earlier also married to Momtaz Yousuf, daughter of Aga Yousuf and for not having smooth conjugal life, the earlier wife divorced him in the year of 2005. During wedlock with the earlier wife namely Momtaz Yousuf, the couple were blessed with two daughters namely Mushfiqua Mustafa and Mubassara Mustafa. At the time of divorce taken place between the couple, the two daughters were minors and were staying separately with their mother at House 23/B, Road No. 113, Gulshan-2, Dhaka. The two daughters after separation of their parents taken place in 2005 also stopped all kinds of communications with their father retired Airline Captain Mr. Mustafa Jaglul Wahid till his death. This loneliness drove him to have second wife and thus he married to the Respondent No.3 in the year of 2013 and since then the newly married couple have been residing in the house in question. Since 31.07.2013, the day of marriage the Respondent No.3 has been looking after her husband Mustafa Jaglul Wahid abandoning her career prospect and relatives in India. Whenever Mr. Mustafa Jaglul Wahid became sick, the Respondent No.3 took him to the physician for treatment. For better treatment, she also took him abroad as well. In the year of 2017 Mustafa Jaglul Wahid became serious ill and when it was required better treatment, Respondent No.3 arranged all kinds of treatments in different Hospitals in Bangladesh and in India and was able to cure him from his illness by her endless efforts.

- (iii) That it is stated that as it is mentioned above that Mustafa Jaglul Wahid was passing lonely life before his second marriage and after having second marriage, he got very caring wife who leaving her every ambition only took care of him. Realizing the love and affection of the second wife, Mustafa Jaglul Wahid decided to transfer some of his assets in the name of his Second wife i.e the Respondent No.3. The decision was to have been taken considering that since Mustafa Jaglul Wahid and his second wife belong to different religion and had their marriage registered under Special Marriage Act, 1872. As per Islamic Law of Inheritance, a Hindu woman cannot validly marry to a Muslim man unless and until she is converted to Islam. Even a Muslim man cannot marry a Hindu woman without converting her to Islam as such a Hindu wife is not a wife in the eye of Islamic Law and the said Hindu wife does not inherit from the estate left by such a Muslim husband as an heir as per Islamic Law. As such the marriage between Mustafa Jaglul Wahid and the Respondent No.3 was not a valid marriage in the eye of Islamic Law but the same was valid as per Special Marriage Act, 1872 and as such the Respondent No.3 as per Islamic Law was not a lawful wife who is entitled to get share of her husband's estate as per Quranic share holder like other Muslim women get share from their Muslim Husbands as per very share portion of a Muslim wife as has been mentioned in the Holy Quran.
- (iv) That it is stated that considering the above Mustafa Jaglul Wahid thought that after his death his second wife will not inherit any estate left by him as his legal heir with the other heirs of him. Yet the second wife of Mustafa Jaglul Wahid has been taking care of him in his late life, so she should not be deprived of his entire assets and at the same time Mustafa Jaglul Wahid also did not want to deprive of his other heirs as well and as such only to protect interest of all the heirs and his second wife as well, he made a Wasayat on 03.03.2016 mentioning clearly that the schedule mentioned property of the

said Wasiyat deed will be under the ownership of his second wife i.e the Respondent No.3 without any hindrance from any quarters including his heirs. The schedule mentioned property of the Wasiyat deed of Mustafa Jaglul Wahid is the house in question entirely which he clearly and in unequivocally described in the schedule of the said Wasiyat Deed mentioned above.

- (v) That it is stated that Mustafa Jaglul Wahid in his Wasiyat clearly mentioned which is quoted as “বর্তমান সময়ে আমি অত্র দলিল দাতা বয়োবৃদ্ধ অবস্থায় উপনীত হইয়াছি। মানব জীবন ক্ষণস্থায়ী ও ভংগুর, কখন কাহার জীবন প্রদীপ নিভিয়া যায়, তাহা এ জগ-ত কেহ বলি-ত পা-র না সুতরাং আমার জীবনকা-লর নিম্ন তফসিল বর্ণিত সম্পত্তিসহ সকল সম্পত্তি যাহা বিদ্যমান আছে তাহার কিয়দাং-শর সু-ব্যবস্থা করিয়া যাওয়া আমার একান্ত কর্তব্য ও দায়িত্ব। যাহাতে আমার অবর্তমানে নিম্ন তফসিল বর্ণিত সম্পত্তি লইয়া আমার পরবর্তী ওয়ারিশগ-ণর ম-ধ্য কোন প্রকার ঝগড়া, বিবাদ মামলা মোকদ্দমা সৃষ্টি না হয়, সেই জন্য আমার সুবিচার ও জ্ঞান মতে নিম্ন তফসিল বর্ণিত আমার অর্জিত ভূমি অদ্য হাজিরান মজলি-শ উপস্থিত স্বাক্ষরকারী সাক্ষীগ-ণর মোকা-বলায় আমার জীবর বরাব-র অছিয়ত দলিল সহি সম্পাদন করিয়া দিলাম। অত্র অছিয়ত নামা দলিল সম্পূর্ণরূপে আমার মৃত্যুর পর কার্যকরী হই-ব। অত্র অছিয়ত নামা দলিল সম্পাদন করতঃ আমি দলিল দাতা স্বীকার ও অংগীকার করি-তছি যে, নিম্ন তফসিল বর্ণিত যে সম্পত্তি আমার জীবর বরাবরে অছিয়ত করিয়া দিলাম দলিল, ইহা-ত আমার ওয়ারিশগ-ণর সম্পূর্ণ সম্মতি রহিয়া-ছ। অত্র অছিয়তকৃত সম্পত্তি আমার মোট অর্জিত সম্পত্তির ১/৩ (তিন ভাগের এক) অংশর বেশি নয় বরং আমার নিম্ন তফসিল বর্ণিত জমি ছাড়াও আমার ঢাকা ও দে-শর বাড়ীতে স্থাবর আরও অনেক সম্পত্তির মালিক রহিয়াছি। অত্র অছিয়ত নামা দলিল আমার মৃত্যুর পর সম্পূর্ণরূপে কার্যকর ও বলবৎ হই-ব।” In the Wasiyat deed Mustafa Jaglul Wahid unequivocally mentioned that he made the Wasiyat only 1/3 of his total property and in the said Wasiyat all the heirs have consented. In the specific recital made in the wasiyat only one interpretation left to do by all concerns that is after the death of Mustafa Jaglul Wahid his second wife i.e the Respondent No.3 has become owner of the schedule mentioned property of the Wasiyat deed which is the house in question, so no second interpretation is possible as to ownership of the said house in question unless and until the Wasiyat deed is declared invalid by any competent authority.

- (vi) That it is stated that as per Islamic Law a competent person can execute Wasiyat to any stranger up to 1/3 of his total property without any consent of the heirs. If more than 1/3 property is included in the Wasiyat deed, in that case after the death of the testator the consent of the heirs are required. Beside the above, if any, Wasiyat is made within the heirs whatever the portion of property is under the Wasiyat, consent of the other heirs are mandatory and in the absence of such consent from other heirs, and if any Wasiyat is made within the heirs will be null and void. So primarily a capable Muslim can execute a Wasiyat deed in favour of any stranger other than his heirs up to 1/3 of his entire property without any consent of his heirs. Islamic Law empowered a Muslim unconditionally to dispose of his 1/3 property by way of Wasiyat.
- (vii) That it is stated that supporting the contention made in the forgoing paragraph a number of Islamic Scholars wrote books on Islamic Law including Syed Amieer Ali and Molla. In their books the scholars also mentioned that a Wasiyat also can be made in favour of non Muslim but the same Wasiyat cannot be for a forbidden purpose of Islam. The said contention specially executing Wasiyat in favour of a stranger also has been discussed and addressed by our Appellate Division in a case reported LNJ (AD) 2017(1) Page-27 between Noorjahan Begum and Others Vs Aminul Huq and others. In the present case the second wife of Mustafa Jaglul Wahid being Hindu woman was not a heir of his left out assets as per Islamic Law as such he validly made the above mentioned Wasiyat complying law. In the present Wasiyat, all pre-conditions for validity of Wasiyat have been fulfilled by the testator.
- (viii) That it is stated that the house in question of Mustafa Jaglul Wahid has been made Wasiyat in favour of his second wife i.e the Respondent No.3 and after the death of Mustafa Jaglul Wahid the Respondent No.3 has become owner of the said house absolutely because Wasiyat made under personal law required no Letter of Administration

for implementing the same. None of the heirs of Mustafa Jaglul Wahid can validly claim ownership of the said house keeping the Wasiyat deed valid. Beside the above the house in question is a dwelling house cannot be partitioned between the heirs and stranger as per section 4 of the Partition Act, 1893. Since second wife of Mustafa Jaglul Wahid after his death cannot inherit property of her late husband with the other heirs as such she is a stranger and even if the dwelling house becomes subjected to be partitioned between the heirs and stranger, in that case buy off option is available for the parties and in the absence of non availing the said option by any party, only then partition of a dwelling house can be made otherwise not. But two parts of stranger having enmity against one another cannot be compelled to live in a dwelling house at any score of consideration either judicial or otherwise.

- (ix) That it is stated that as it is mentioned above, for a long time the above mentioned two daughters kept no communication with their late father. On top of that, after having second wife, the two daughters became furious and on 24.11.2019 they came to the house of Mustafa Jaglul Wahid with unknown 2/3 persons; on that day the two daughters tried to attack their father and the Respondent No.3. The said two daughters showed their anger by using abusive words against their late father and the Respondent No.3 in the presence of the unknown persons they brought with them. Mr. Mustafa Jaglul Wahid seeing the aggressive attitude of his daughters apprehended that his daughters might cause any harm to him as well as his second wife in future. Besides, the above the aggressive daughters also may take possession of the house in question by driving out his second wife i.e the Respondent No.3 in his absence. On this apprehension, Mr. Mustafa Jaglul Wahid filed a General Dairy bearing No. 1676 dated 19.12.2019 in Gulshan Police Station.
- (x) That it is stated that in the said General Dairy Mustafa Jaglul Wahid clearly mentioned regarding his apprehension which is quoted as under “আমার ২



মেয়ে যথাক্রমে মুশফিকা মোস্তফা ওরফে ফারিবা এবং মোবা-শ্বরা মোস্তফা ওর-ফ ফারিহা যাহারা দীর্ঘ ১৫ বৎসর আমার সহিত তাহা-দর সার্বিক সম্পর্ক বিচ্ছিন্ন করিয়া রাখিয়া তাহা-দর মাতার সহিত বাড়ী নং ২৩/বি, সড়ক নং-১১২, গুলশান-২, ঢাকা ১২১২-তে বসবাস করিয়া আসি-ত-ছ। তাহারা হঠাৎ করিয়া গত ২৪/১১/২০১৯ ইং তারিখ রাত্র ৮.৩০ গটিকার সময় অজ্ঞাত নামা ২/৩ জন লোকসহ আমার বাসায় আসিয়া আমরা কিছু বুঝিয়া উঠি-ত না পারার আ-গই আমার মে-য়রা আমার বাসার দা-রায়ান মোঃ বশির আহ-মদ এর সম্মু-খ আমা-ক অকথ্য ভাষায় গালি-গালাজ করতঃ বলি-ত থা-ক যে, আমি নাকী নারী লিপ্সু ব্যক্তি, বিভিন্ন ধরনের বেশ্যাদের সহিত রাত্রি যাপন করিয়া থাকি, বাসার কাজের মেয়েদেরকেও ছাড়ি না। তাহারা শুধুমাত্র আমাকেই উত্তরূপে অশ্রাব্য ভাষায় গালি-গালাজ করিয়াই ক্ষান্ত হয় নাই, উপরন্তু তাহারা আমার স্ত্রী অঞ্জু কাপুর ওয়াহিদকে কুত্তি, বেশ্যা, খানকি বলিয়া গালাগাল করতঃ সে নাকি অবৈধভা-ব আমার সহিত বসবাস করিয়া আসি-ত-ছ এবং আমার সেবায়ত্ত না করিয়া আমা-ক মারিয়া ফেলি-ত চাহি-ত-ছ ম-র্ম প্রকাশ করি-ত থা-ক। এমতাবস্থায় আমি আমার মেয়েদেরকে অঞ্জু কাপুর ওয়াহিদ এর সহিত আমার বিবাহের রেজিষ্ট্রিকৃত কাগজ পত্রাদি প্রদর্শন করিলে পর তাহারা নিশ্চুপ হইয়া পড়িয়া সঙ্গীয় লোকজনসহ চলিয়অ যায় এবং চলিয়া যাওয়া-কাল এই ম-র্ম আমা-দর-ক চরম হুমকি প্রদর্শন করিয়া যায় যে, তাহারা সু-যাগ ও সুবিধা ম-ত পুনরায় আমার বাসায় আসিয়া আমার স্ত্রী অঞ্জু কাপুর ওয়াহিদকে জোরপূর্বক বাহির করিয়া দি-ত কিংবা তাহা-ক মারিয়া ফেলি-তও কুষ্ঠিত হই-ব না।” Just after his death, his every apprehension has come true.

- (xi) That it is stated that before death on 10.10.2020 Mustafa Jaglul Wahid was sick and had to spend huge amount for his treatment purpose; during his ill period the daughters were seen no where beside their father and even after his death an mentionable amount also had to spend for burial purpose and all the mentioned activities were done by the Respondent No.3 without any assistance from anybody including the daughters mentioned above. Just after completing the funereal of Mustafa Jaglul Wahid, the daughters came in the scene and started threatening the Respondent No.3 in clear language that she should leave now from Bangladesh; if she stays anymore dire consequence will have to be faced. The Respondent No.3 took the threat into consideration and filed a General Dairy with Gulshan Police Station bearing G.D No. 831 dated 13.10.2020.

- (xii) That it is stated that the daughters of Mustafa Jaglul Wahid clearly knew that there is a valid document of title in the hand of the Respondent No.3 which already conferred ownership of the house in question in her favour. If the daughters filed any suit or take shelter under law that may be decided against them as such they staged the drama which attracted attention of the medias and the same ultimately reached to the court to get legal protection without approaching court by themselves. The court using its extra ordinary jurisdiction passed necessary order with a view to protecting interest of the daughters of Mustafa Jaglul Wahid visibly infringed by the Respondent No.3. It is to be noted that the daughters of Mustafa Jaglul Wahid by this time became major as per law and if they would suffer any legal grievance for not getting into the house of their father, in that case, a legal grievance easily could have been met up by framing appropriate suit before competent court of law, not the way it was done virtually seems the same have been done in an improper way bypassing legal system of the country. Without approaching the court the daughters approached a fanciful way to get into the house which they in no way legally can do beside the above, they also legally cannot claim and get into the house in question as of right treating the same as their father's property until and unless the Wasiyat deed is valid.
- (xiii) That it is stated that Mustafa Jaglul Wahid was a captain in profession and he travelled frequently abroad and since he was financially solvent and was interested to keep valuable materials, show piece under his control and as thus he has furnished his house with a number of valuables which are also assets of that house in question but the two daughters of Mustafa Jaglul Wahid with their family members have been residing into the said house and also other friends of them frequently have been visiting them which created threat to that house to lose its valuable belongings and memories of Mustafa Jaglul Wahid.

- (xiv) That it is stated that since Mustafa Jaglul Wahid left other assets which as per his statement more than twice of the house, he made Wasiyat in favour of his second wife and the heirs easily can partition the same within themselves keeping respect to the wishes of Mustafa Jaglul Wahid. Beside the above, as it is mentioned above, the house being dwelling house cannot be partitioned between the two stranger groups who are strangers to each other. Since the house in question has been validly handed over to the Respondent No.3 by executing a legal document, unless and until the document be declared illegal the title of the said house in question will remain under the Respondent No.3, and the court also without following due course cannot declare the Wasiyat deed illegal and compelled the Respondent No.3 to live with the daughters of Mustafa Jaglul Wahid in the said house she owned legally; it is stated that late Mustafa Jaglul Wahid has a property in Dhanmondi at House No.15, Road No. 7, Dhanmondi R/A, Dhaka-1205; of course the daughters and their mother were aware of it and also about his properties in Munshigonj; Mushfiqua Mustafa wrote to the tenant on 17.12.2020 directing the tenant to make payment of the rent of the said property to her as she being the legal heir of the landlord entitles to it; it needs to be pointed out that late Mustafa Jaglul Wahid had 5 brothers and 3 sisters who are also legal heirs of his properties along with Respondent Nos. 3 and 4 and therefore, she cannot take the rent unilaterally depriving of other legal heirs.

He next submits that the Respondent No 3 wrote to the Special Marriage Registrar on 03.02.2021 requesting her to provide certain documents in relation to their marriage registered on 31.07.2013; in response to her letter, the office of the Registrar provided her with the copy of the notice dated 16.07.2017 under Section 4 of Special Marriage Act, 1872 and the declaration under Section 10 of the said Act.

He then submits that this respondent has every reason to believe that the Respondent Nos. 4 and 5 obtained those

documents from the record which were not presented before the court on 03.02.2021 suppressing the relevant documents before this Hon'ble court and therefore, a direction is required from this Hon'ble court to produce the case docket from the office for ends of justice.

He lastly submits that for the proper disposal of the Rule, it is necessary to bring forth the entire record of the marriage and therefore, in absence of those documents, this court may not pass an appropriate record.

Mr. Manzill Murshid, the learned Advocate appearing for the Respondent Nos. 04 and 05, submits that an FIR No. 25 dated 20.12.2020 was lodged by Respondent No. 04 with Gulshan Police Station primarily basing on the bank statement from City Bank which she received on 15.12.2020; later on, Respondent Nos. 04 and 05 came to know from different reliable sources that Respondent No. 03 is involved with money laundering with the money that she has withdrawn from City Bank, Gulshan Avenue Branch and other sources; with this information, Respondent No. 04 lodged a complaint related to suspected money laundering to the Criminal Investigation Department (CID) on 28.12.2020 with a prayer for investigation; CID has, therefore, received the application for further investigation on the grounds of money laundering and during investigation, the Respondent No. 3 was arrested and the case is still pending.

He next submits that the Respondent No. 3 has admitted that she is the nominee of the bank account maintained by Late Mustafa Jaglul Wahid; however, the money BDT. 1,40,00,000 (One Crore Forty Lac Taka) was withdrawn on the power of a mandate and not as a nominee; Section 11 (d) of Power of Attorney Act, 2012, provides that power of attorney (mandate) ceased to be in effect as soon as the executants dies; in this case, Mr. Wahid died on 10th October, 2020 and the fund of BDT 1,40,00,000 (One Crore forty Lac Taka) was withdrawn from the bank account on 11th October 2020 without providing the information of Mr. Wahid's death on 10th October, 2020; therefore, the justification for the withdrawal of the money based on the exercise of a nominee has not taken place and by way of depriving the Respondent Nos. 4 and 5, Ms. Anju Kapur (Respondent No. 3) withdrew money and committed fraud.

He then submits that as per statements made by Respondent No.3, the marriage between Mustafa Jaglul Wahid and Respondent No. 3 was registered on 31.07.2013 under The Special Marriage Act, 1872 and the Respondent No.3 also claimed the property in question by virtue of Will executed on 03.03.2016; the preamble of The Special Marriage Act, 1872 describes that “it is expedient to provide a form of marriage for persons who do not profess the Christian, Jewish, Hindu, Muslim, Parsi, Buddhist, Sikh nor Jaina religion”; Section 2 of The Special Marriage Act, 1872 indicates that marriages may be celebrated under this Act between persons neither of whom professes the Christian or the Jewish or the Hindu or the Muslim or the Parsi or the Buddhist or the Sikh or the Jaina religion or between persons each of whom professes one or other of the following religions, that is to say, the Hindu, Buddhist, Sikh or Jaina religion; it is evident from the marriage document submitted by Respondent No.3 (as of annexure 1 and A-1 to the affidavit-in-opposition) that during marriage Mustafa Jaglul Wahid belongs to Muslim religion and Ms Anzu Kapur belongs to Hindu religion, so as per the provision of The Special Marriage Act, 1872, such marriage is not permitted and hence it is illegal and void.

He candidly submits that moreover as per section 10 of the said law, both the bride and the bridegroom have to sign a declaration which reads as ‘I do not profess the Christian, Jewish, Hindu, Muslim, Parsi, Buddhist, Sikh or Jaina religions’ or ‘I profess the Hindu, or the Buddhist or the Sikh or the Jaina religion’ but it is absent in the marriage document; in other way, 14 days notice has to be served before solemnizing such marriage as per section 4 of the said law but it was not done, hence the marriage is illegal and void.

He strongly submits that since marriage of Anzu Kapur with Late Mustafa Jaglul Wahid is not legal, so there is no scope to claim any property as a wife under a Will executed on 03.03.2016 (as of annexure-2 to the affidavit-in-opposition); rather two daughters namely Mushfiqua Mustafa and Mubashshara Mustafa of late Mustafa Jaglul Wahid will inherit the property; moreover, the property in question is a leasehold property and without RAJUK’s permission, it cannot be transferred, so the transfer by way of Will is not valid; as per law, any Will has to be probated but in the instant case it has

not done. In the eye of law, the Will is not valid. Hence the claim of property under Will is not maintainable. It was done with a malafide and ulterior ill motive in order to deprive the daughters of late Mustafa Jaglul Wahid from their inheritance.

Mr. Ruhul Quddus, the learned Advocate for the Respondent No.06, submits that the Respondent No. 3 sworn an affidavit in reply against the affidavit submitted by Mushfiqua Mustafa stating some false, fabricated story and also maligned and defamed the goodwill of the Respondent No. 6 and her father late A.M. Agha Yusuf; Mr. Agha Yousuf not only established himself as a renowned businessman and an industrialist but he made immense contributions in the development of Bangladesh both before and after the Liberation War; he also contributed to enhancing the export market and the economic structure of the country for which his company has won many trophies and awards.

He then submits that the allegations that are placed against Respondent No. 6 and her late father in the affidavit-in-reply sworn by Anju Kapur are nothing but full of lies, fabrication, and jealousy to tarnish Respondent No. 6's and her father's goodwill for their immoral personal benefit.

He next submits that in the affidavit in reply sworn by Anju Kapur stated in page 17 paragraph 19(i) and (ii) that the Respondent No.6's father Late A.M. Agha Yusuf made properties in Gulshan and Dhanmondi with his corrupted money, whereas all the property and assets were built by her father's hard-earned money; the false statement proves that out of sheer jealousy, the said respondent is throwing haywire arguments to malign the success and goodwill earned by an honest man throughout his lifetime, which is even till date sustainable and recognized even 17 years after his death.

He categorically submits that in the affidavit in reply sworn by Anju Kapur, stated in page 23 at paragraph 26 that this respondent's marriage to late Capt. Mustaf Jaglul Wahid took place in 1991; the said marriage between this respondent and Mustafa Jaglul Wahid actually took place in January 1984 and this respondent got divorce in the year of 2005; it is highly objectionable that they have raised question about the respondent's integrity and the legitimacy of their daughters, Mushfiqua Mustafa and Mubashshara Mustafa.

He lastly submits that the claimed marriage of Respondent No. 3 registered on 31.07.2020 under the Special Marriage Act, 1872 does not come within the ambit of the Special Marriage Act, 1872 and as such, the marriage allegedly taken place was null and void according to section 2 of the Special marriage Act, 1872 and the Islamic Shariah Law.

Mr. Mirza Sultan-Alraza, the learned Advocate appearing for the City Bank, submits that on 21.11.2016, Mr. Mustafa Jagll Wahid of Account No. 2701216584001 changed his nominee and nominated Ms. Anju Kapur Wahid as his new nominee of the said account. On 16.08.2020 (Sunday), Mr. Mustafa Jaglul Wahid submitted his mandate application to the Customer Service manager, Ms. Ayesha Humaira Ahmed, City Bank Limited to nominate Ms. Anju Kapur Wahid as mandate of the said account who is his 2nd wife as per the documents submitted to the bank; Mr. Wahid showed his sickness supported by some medical papers of Bangladesh and Indian hospital (annexed to the affidavit-in- compliance) while nominating mandate in his account; as per requirement, Mr. Wahid signed on Mandate application form, verified the signature of mandate person in application form and submitted individual information form of Anju Kapur Wahid, Photo of Anju Kapur Wahid attested by Mr. Wahid, Passport of Ms. Anju Kapur Wahid, Marriage Registrar's Certificate and Notarized Affidavit of Declaration etc; after receiving all documents, aforesaid Customer Service Manager put the "Received" seal and also the seal of "Customer physically present at Branch"; but she wrote the date as 15.08.2020. On the both seal which is an unintentional mistake; she single-handedly put both seal and wrote both dates at same time inadvertently. Since the Gulshan Avenue Branch is the busiest branch of the bank and due to huge work pressure, she unintentionally made the said mistake.

He next submits that after filing and endorsing all mandate related documents, as per bank's policy and process, branch sent all documents to bank officer i.e. Service Delivery Unit on same day for final execution; Bank office received the same on 17.08.2020 and executed the mandate application, did the image (Signature) uploaded in the software; accordingly, they put the seal as "Image Done 17 Aug, 2020".

He then submits that since Mr. Mostafa Jaglul Wahid was too sick, he was sitting in his car outside the Branch and his wife took the mandate instruction form and filled up the same sitting in the car; the overwriting in the name spelling of the last part of name in account title's place was made by them; the said Customer Service Manager ensured the presence of Mr. Wahid sitting in the car just outside the branch office; considering that the account number was clearly understandable, signature of the account holder matched with bank record, presence of account holder, account holder being sick, branch official Ms. Ayesha Humaira Ahmed considered or overlooked the slight overwriting in the last name Wahid.

He vigorously submits that the aforesaid Ms. Anju Kapur Wahid withdraw the money from the account of Mr. Wahid on the very next day after his death hiding the information of death of Mr. Wahid to the bank officials and since Mr. Wahid gave mandate to Ms. Anju Kapur Wahid to operate his bank account about two months; earlier being present in the bank, the bank officials had no reason to suspect such activities of Ms. Anju Kapur Wahid and they performed all their functions duly and diligently.

He lastly submits that the City Bank Limited prays for unconditional apology before this Hon'ble Court for aforesaid inadvertent mistake and undertakes hereby to act more efficiently and sincerely in their official duty.

Mr. J. K. Paul, the learned Advocate appearing on behalf of the Special Marriage Register, submits that he is serving as a marriage registrar in the office of the special marriage registrar as mentioned in the order dated 02.03.2021 in above mentioned Suo Moto Rule. He also submits that according to the provisions of law (Special Marriage Act-1872) the bride and bridegroom sent a notice to me on 16.07.2013 to hold a marriage between them in my presence and according to the requirements of Section 4 of Special Marriage Act, 1872. He lastly submits that the bride and bridegroom appeared before me along with their witnesses including one learned Advocate named Mr. Habibur Rahaman, who is also a witness in affidavit as well as in the marriage register and also both of them submitted their declarations under Section 10 of the Act and by



following all the requirements, their marriage was solemnized in my presence along with the witnesses.

Mr. Md. Lutfor Rahman, the learned Advocate appearing on behalf of the applicant Nos. 1 and 2, submits that the daughters of Mustafa Jaglul Wahid inherited  $\frac{2}{3}$  of the properties left by him as per Islamic Law of Inheritance, the remaining properties of late Mustafa Jaglul Wahid will be inherited by the brothers and sisters in the 1:2 ratio; that is 2(two) sisters will inherit equal share of one brother and thus the properties of late Mustafa Jaglul Wahid will be distributed among his heirs; as per Islamic law of inheritance, the applicants got ownership of a portion of the house in question along with other left out properties of him as such the applicants have interest in the subject matter of this Rule. He then submits that the applicants are heirs of late Mustafa Jaglul Wahid and legally entitled to some portion of share in the subject matter of the Rule as such they are the necessary parties in the Rule; if the Rule be disposed of in their absence, in that case, they will be deprived of placing their case before the court and thus they may be affected by the order of the court and their claim may remain unadjudicated.

He lastly submits that the applicants are legal heirs of late Mustafa Jaglul Wahid and thus they are joint owners of the properties left by him unless and until partitioned by metes and bounds took place among the heirs of him; in the instant Rule, the subject matter is a house owned by late Mustafa Jaglul Wahid in which right of entrance of the daughters of him were denied by his wife who is not owner of the said house as heirs of him; so to enforce the fundamental right of the daughters of late Mustafa Jaglul Wahid to enter his paternal house, the instant Rule has been issued but for the pendency of the Rule others legal heirs including the applicant's right over the property specially the house in question are denied by the concerned police station; so, considering the force of the Rule, the applicants are also necessary parties of the Rule and their presence is necessary for proper and effective disposal of the same.

Mr. Ahmad Musanna Chowdhury, the learned Advocate for Mustafa Shamim wahid, submits that Mustafa Jaglul Wahid died on 10.10.2022 leaving behind his two daughters Musfiqua Mustafa and Mubashshara Mustafa respectively the Respondent

Nos. 4 and 5, four brothers, namely Mustafa Kamal Wahid, Mustafa Shamim Wahid, Mustafa Khasru Wahid and Ferdous Wahid. He further submits that although other legal heirs of Mustafa Jaglul Wahid are necessary as well as proper party in this Suo Motu Rule but the Respondent Nos. 3, 4 and 6 intentionally did not disclose their name and other legal heirs of Mustafa Jaglul Wahid to deprive them of the property.

Mr. AF Hassan Arif, Senior Advocate, Supreme Court of Bangladesh as Amicus Curiae, submits that late Mustafa Jaglul Wahid was professing the Mohammedan religion and Ms. Anju Kapur was professing the Hindu religion before their marriage; they celebrated and registered their marriage on 31.07.2013 under the provisions of the Special Marriage Act, 1872; the Advocate for Respondent Nos.4 and 5 raised questions about legality of marriage between them and said that the marriage between late Mustafa Jaglul Wahid and Ms. Anju Kapur is illegal and null and void; on this point, he submits that after examination of the Affidavit-in-Opposition of the Respondent No.3 and marriage certificate, it shows that on 31.07.2013, Mr. Mustafa Jaglul Wahid and Ms. Anju Kapur on solemn oath stated in the said Affidavit about marriage that they were professing the Muslim faith and the Hindu faith respectively; according to the provisions of section 2 of the Special Marriage Act, 1872, this act is not applicable for a Muslim and a Muslim cannot marriage a non-Muslim; so, the marriage in question was not a regular marriage.

He next submits that the solemn affirmation on oath about marriage dated 31.07.2013 between late Mustafa Jaglul Wahid and Ms. Anju Kapur was not proper; because, the mandatory provisions of sections 2, 4, 6, 10 and 11 of the Special Marriage Act, 1872 were not complied with to fulfill its requirements; in this regard, he cited a case law reported in 18 DLR 509, Muhammad Mustafizur Rahman Khan vs. Mrs. Rina Khan and others, wherein it has been laid down that the requirements of sections 4, 10 and 11 of the Act 1872 are not performed, then the special marriage, there under, is void.

He then referred ‘Article 259 at page 336 and Article 267 at page 341 of Mulla’s Mohammedan Law, 20<sup>th</sup> Edition’ and submits that the question arose whether wasiynama (Will) executed by Mustafa Jaglul Wahid in favor of Anju Kapur dated 03.03.2016 is valid and legal documents or not; in this regard,

he submits that a marriage between a Muslim man and a Hindu woman is not prohibited and as such not void (fasid) but entitling the wife only to claim the dower but not the right of inheritance from her husband [Article 259 at page 336 and Article 267 at page 341 of Mulla's Mohammedan Law, 20<sup>th</sup> Edition]; so, Anju Kapur has no right to the property of late Mostafa Jaglul Wahid.

He lastly submits that late Mustafa Jaglul Wahid executed a wasiynama (Will) in favor of his wife Anju Kapur not to others; Mr. Jaglul Wahid was believed that Anju Kapur is his legal wife, as per provisions of sections 2, 4, 6, 10 and 11 of the Special Marriage Act 1872, the solemn affirmation on oath about marriage dated 31.07.2013 between late Mustafa Jaglul Wahid and Ms. Anju Kapur was not proper, so it cannot be said that Anju Kapur is legal wife; hence, Anju Kapur has no right to the property of late Mustafa Jaglul Wahid.

Mr. Kamal Ul Alam, the learned Senior Advocate, Supreme Court of Bangladesh as Amicus Curiae, submits that it appears that late Mustafa Jaglul Wahid was professing the Mohammedan religion and Ms. Anju Kapur was professing the Hindu religion before their marriage stated to have been celebrated and registered on 31.07.2013 under the provisions of the Special Marriage Act, 1872 ('Act of 1872'); it however appears that Respondent No. 3 Ms. Anju Kapur in paragraph 5(1) of her Affidavit-in-Opposition dated 08 November 2020 (Page- 33 of the same) clearly stated on oath that Mr. Mustafa Jaglul Wahid and the deponent therein Ms. Anju Kapur tied their knot on 30.07.2013 under the Special Marriage Act, 1872 which was registered on 31.07.2013 by the Special Marriage Registrar and annexed thereto the copy of the notarized Affidavit dated 30 July 2013 as Annexure- 1A and the copy of the stated Marriage Certificate dated 31 July 2013 annexed as Annexure- 1 thereto; it further appears from the said sworn Affidavit dated 31.07.2013 Annexure- 1A that both Mr. Mustafa Jaglul Wahid and Ms. Anju Kapur on solemn oath stated in the said Affidavit that they were professing the Muslim faith and the Hindu faith respectively; this solemn affirmation on oath just date before the date of the solemnization of the stated marriage on 31.07.2013 violates the mandatory provision of sections 2, 4, 6, 10 and 11 of the said

‘Act of 1872’ where under any marriage between a Mohammadan bridegroom and a Hindu bride cannot be celebrated or solemnized and as such, it is submitted that on this count alone, the stated marriage on 31.07.2013 between Mr. Mustafa Jaglul Wahid being a Mohammadan religion and Ms. Anju Kapur being a Hindu religion, is void on the face of it.

He next submits that in view of the above facts, the submission of the learned Advocate for the Respondents Nos. 4-5 so far as it relates to the marriage Registrar’s Certificate dated 31.07.2013 Annexure- 1 is concerned does not seem to be correct and based on evidence on the record but the submission relating to the Affidavit dated 30.07.2013 Annexure- 1A seems to be correct and based on law; the next submission of the learned Advocate of the respondents no. 4 and 5 is that the mandatory declaration to be made by the Bridegroom and the Bride in the prescribed Form under section 10 of the said ‘Act of 1872’ is absent in the marriage documents and that the service of notice before marriage upon the Registrar as mandatorily required under section 4 of the Act of 1872 was not made, hence the said marriage is illegal and void; there being presently no evidence on the record to show that the service of notice was made as required under section 4 and the Declaration was made as required under section 10 of the Act of 1872 and as such if, at the time of hearing of the matter, the concerned party fails to adduce any evidence as aforesaid than only in such case the learned Advocate for the Respondents Nos.4-5 would be correct in making the submissions as aforesaid.

He then submits that on examination of the Wasiyat dated 03.03.2016 (Annexure- 2 to the Respondent No. 3’s Affidavit-in-Opposition), it transpires that Mr. Mustafa Jaglul Wahid executed the said Wasiyat by making statements therein on oath that by religion he is a Muslim and his wife Ms. Anju Kapur the recipient under the Wasiyat is a Hindu by religion; a Mohammedan can by Will (Vasiyyat) dispose of one third of the surplus of his/her estate, after payment of funeral expenses and debts, to his/her heir which however will not be valid unless the other heirs assent thereto [Article 117 at Page- 135 of Mulla’s said Treatise] and s/he can also dispose of one third of his/her entire estate to a non- heir and bequest of one third to a

non-heir would be valid without any assent from the heirs but bequest in excess of one third to non-heir cannot take effect unless all the heirs consent thereto after the death of the testator [Article- 118 at Page- 139 of Mullah's Mohammedan Law, 20th Edition]; in the unreported case of Mohammad Salim -Vs.- Shamsudeen, the Indian Supreme Court held that a marriage between a Hindu woman and a Muslim man is merely irregular and not void disentitling her only from right of inheritance from her said husband but the issues from such wedlock legitimate entitling them to inherit from their Muslim father.

He strongly submits that in view of the above position of law relating to right of bequest by a Mohammedan to a non-heir, if Ms. Anju Kapur, who being a Hindu wife is a non-heir, upon adducing evidence succeeds in proving that there was a valid and lawful bequest by Mr. Mustafa Jaglul Wahid under the Wasiyat dated 03.03.2016 in her favour, than she as a non-heir named legatee thereunder would be, it is submitted, entitled to lodge her claim only for 1/3rd portion of the property thereunder.

He categorically submits that a Mohammedan Will may, after due proof, be admitted into evidence even no probate had been obtained and if the estate there under vests in the executor than he will have all the power of an executor under section- 211 of the Succession Act, 1925 [Article- 131 at page- 145 and Article- 40 at page 34 of Mulla's Mohammedan Law 20th Edition]; in the case of H. Venkatachala Iyengar -Vs.- B.N. Thimmajamma and others reported in AIR 1959(SC) 443 (Para- 18) the Indian Supreme Court held that under Mohammedan law a written Will requires standard of proof as contemplated under sections 67 and 68 of the Indian Evidence Act; the said Wasiyat dated 03.03.2016 [Annexure- 2] being a written Will, a party who desires to rely on it needs to adduce evidence to prove its execution under sections 67 and 68 of the Evidence Act and without such proof, it cannot be adduced into evidence.

He lastly submits that Under Muslim law a bequest may be made of any property which is capable of being transferred [Article -123 of Mulla's Mohamedan Law, 20th Edition]; it appears from the perusal of the Wasiyat dated 03.03.2016 [Annuxure-2] that bequest of the property made there under is a leasehold property of Rajuk and as such person who intends to rely on the bequest of such property under the said Wasiyat

dated 03.03.2016 [Annexure- 2] will be required to adduce evidence to show and prove that the same was transferred by way of the said Wasiyat in terms of the provisions of law and the Lease Agreement with Rajuk otherwise the transfer of the scheduled land under the said Wasiyat would not be, it is submitted, valid in law.

Mr. Md. Nurul Amin, Senior Advocate, Supreme Court of Bangladesh as Amicus Curiae, submits that the Respondent No. 3, Respondent Nos.4 and 5 supplied their Affidavit and Affidavit-in-Reply; according to Respondent No. 3 Anju Kapur and Mostafa Jaglul Wahid got married on 30.07.2013 under the Special Marriage Act, 1872; their further case is that their marriage was registered on 31.07.2013 by the Special Marriage Registrar; her further case is that Mostafa Jaglul Wahid executed a wasiyat (will) to his wife Anju Kapur on 03.03.2016 as contained in Annexure-2; thereafter, Mostafa Jaglul Wahid died on 10.10.2020.

He next submits that the marriage between Mostafa Jaglul Wahid and Respondent No. 3 Anju Kapur solemnized under the Special Marriage Act, 1872; for proper marriage, the provision of the Act, 1872 should be followed strictly; the Respondent No. 3 did not produce any such declaration before this Hon'ble Court to see whether the provisions of the Act, 1872 were followed or not; and to see whether sections 10 and 11 of the Act, 1872 were followed at the time of solemnization of the marriage.

He then submits that it is necessary to see whether Annexure-A and Annexure-A1 fulfilled the conditions of sections 10 and 11; in Annexure-1, three witnesses viz. Md. Abdul Rouf, Md. Abdur Rahim and Bokul Roy put their signature but in Annexure-1A, two witnesses viz. Md. Kamrul Islam and Habibur Rahman put their signatures and according to section 10, three witnesses should be present for solemnization of the marriage, but it is evident from Annexure-A1, two witnesses were present; moreover, according to section 11, the persons who were present at the time of solemnization of the marriage as witnesses, the same persons have to be present at the time of declaration before the Registrar, so it is clear from the Annexure-1 and 1A that the marriage was not solemnized legally.

He strongly submits that it is necessary to see whether the second part of the first question as to the marriage between Mostafa Jaglul Wahid and Anju Kapur was valid or void; it is admitted that Mostafa Jaglul Wahid was Muslim and the Anju Kapur was Hindu by religion; the Respondent No. 3 stated in their Affidavit-in- Reply that according to Mohammedan Law, marriage is not valid; now we will see whether the marriage between them are valid or void according to the Special Marriage Act, 1872; Section 2 of the 1872 Act provides that marriage may be celebrated under this Act between persons neither of whom professes the Christian or the Jewish or the Hindu or the Muslim or the Parsee or the Buddhist or the Sikh or the Jain religion or between persons of whom professes one or other of the following religions i.e. the Hindu, Buddhist, Sikh, Jain religion; according to section 2 of the 1872 Act, marriage may be solemnized between persons who do not professes the Christian, Jewish, Hindu, Muslim, Parsee, Buddhist, Sikh or Jain by religion; according to the Special Marriage Act, 1872, a marriage cannot be solemnized between Hindu and Muslim since the provisions of section 11 are mandatory provision and these formalities are not, in fact, performed and on this ground, the marriage is void; in this regard, a case law reported in 18 DLR 509, Muhammad Mustafizur Rahman Khan vs. Mrs. Rina Khan and others may be referred.

He lastly submits that the first part of the second question is that whether wasiyat (Will) executed by Mostafa Jaglul Wahid in favor of Anju Kapur dated 03.03.2016 is valid based on legal documents or not; since these documents are registered, it has strong presumption though rebuttable; prima facie this wasiyat is a valid documents until and unless it is declared void by the proper court of law and the second question of the second part is whether the Respondent No.3 is entitled to the property of Mostafa Jaglul Wahid on the basis of the wasiyat or not, but it is presumed that another question would arise if the wasiyat is valid; what Quantum of share would Anju Kapur get?; a will is document in which a person specifies the method to be applied in the management and distribution of his estate after his death; so far as Mohammedan Law is concerned, a testator may lawfully transfer one third of his property to any person (third party), other than his heirs; any transfer in excess of one third

would not be valid unless the heirs consented after the death of the testator; in this case, the heirs of Mostafa Jaglul Wahid i.e. the Respondent Nos. 4 and 5 did not give consent to the will; since Mostafa Jaglul Wahid was Muslim, he can transfer his property also to the stranger; regarding this principle, we will get support from the decision as reported in the Indian Law Report, Vol. 42 Alahabad series, page- 497 Mohammad Junaid vs. Aulia Bibi; 6 LNJ (2017) (AD) 27- Noorjahan Begum and others VS. Aminul Huq and others; in these cases their lordships observed in giving effect to the will of a Mohammedan which contains bequest to heirs and also to strangers; the bequest principle to be followed is that the bequest to the heirs will be invalid, unless each case they arrested by the other heirs, but the bequest will be valid to the extent of one third of the testator's property; so, from the analogy of two decisions, a Mohammedan can transfer his share to the strangers by dint of will; in view of the above, his submission is that the Wasiyat is valid and Respondent No.3 is entitled to get one third share of the property.

Mr. M. Qumrul Haque Siddique, Senior Advocate, Supreme Court of Bangladesh as Amicus Curiae, submits that, the if alternative forum is open for the parties, then Article 102 of the Constitution of Bangladesh is not maintainable on grounds of fundamental rights; so, the constitutional court has no right to interfere regarding this matter and this Suo Moto Rule is not applicable for the parties.

After submission of Mr. M. Qumrul Haque Siddique, the learned Advocate for Respondent Nos.4 and 5 opposes the submission and submits that this court have right to issue Suo moto rule as per provisions of Rule 10(1) of chapter XIA of the Supreme Court of Bangladesh (High Court Division) Rules 1973 (amended in 2012) and he cited para No. 329 of the case of Tayeeb vs Bangladesh reported in 67 DLR (AD) 2015, about issuing Suo moto rule; he also submits that as per judgment "the High Court Division shall exercise such power sparingly" if reasonable causes subsist.

We have gone through the news report published in the newspaper and the contents thereof. We have also considered all the facts and circumstances of the case and the submissions advanced by the learned Advocates and the learned Deputy Attorney-General for the respective parties.



On going through the materials on records, it is evident from the newspaper and TV reports that Ms. Anju Kapur (2<sup>nd</sup> wife) prevented the Respondents Nos. 4 and 5 (daughters of Mr. Mustafa Jaglul Wahid) from entering their father's house situated at House No. 4, Road No. 95, Gulshan-2, Police Station: Gulshan, Dhaka.

It is admitted that Ms. Anju Kapur is an Indian Citizen and a foreign citizen cannot own the immovable properties that are situated in Bangladesh. The land which was transferred to the Respondent No.3 is that the land which is situated in Bangladesh and to whom it transfers she is an Indian citizen. Article 42(1) of the Constitution of Bangladesh provides that "Subject to any restrictions imposed by law, every citizen shall have the right to acquire, hold, transfer or otherwise dispose of property, and no property shall be compulsorily acquired, nationalized or requisitioned save by authority of law." From Article 42(1), it is clear that the immovable property situated in Bangladesh cannot be owned by any other nationals. Though, Anju Kapur is an Indian citizen and she failed to show papers of Bangladeshi citizenship, so she cannot claim any title of any immovable property situated in Bangladesh. The land was transferred to Respondent No.3 by late Mustafa Jaglul Wahid through a Washiyat (Will) which is not a proper and valid washiyat (will) in the eye of law. So, the Washiyatnama (Will) made by the late Mustafa Jaglul Wahid to Respondent No.3 was made and executed illegally and has of no legal effect.

The statement made by the learned advocate for Respondent No.3 that Ms. Anju Kapur is the legal heir of the late Mustafa Jaglul Wahid and other heirs are alive and they are also entitled to get the property. There is no doubt that this court cannot deprive the legal heirs of the late Mustafa Jaglul Wahid from their property rights which they have acquired after his death. But the learned advocate for the Respondent No.3 has been failed to prove the marriage between late Mustafa Jaglul Wahid and Respondent No.3 as legal under Special Marriage Act, 1872. As per our order, the Special Marriage Registrar appeared before this court and we examined all the documents about marriage and found that the marriage was not solemnized properly under The Special Marriage Act, 1872. Because notice dated 16.07.2017 under Section 4 of Special Marriage Act, 1872 and the declaration under Section 10 of the

said Act were not performed/executed properly. In the above mentioned circumstances, this court cannot accept the marriage between Ms. Anju Kapur and late Mustafa Jaglul Wahid as legal so the Respondent No. 3 has no right to the property of late Mustafa Jaglul Wahid.

We also found that Respondent Nos.4 and 5 are not only the heirs of the late Mustafa Jaglul Wahid; Mustafa Jaglul Wahid after death had left his sisters and brothers as heirs along with his daughters. So all the heirs have legal right on the moveable and immoveable property of late Mustafa Jaglul Wahid as per Muslim law except Anju Kapur. Moreover, this court is not sitting for distribution of share of properties but it may be decided in appropriate forum if the parties desire.

We have examined the record and documents placed by the Bank and it was found that Ms. Anju Kapur withdraw Tk. 1,40,00,000/- on 11.10.2020 from the account of the Late Mustafa Jaglul Wahid after his death on 10.10.2020. The Respondent Nos. 4 and 5 have submitted an allegation for cheating and fraud against the Respondent No. 3, consequently FIR was lodged before the Gulshan Police Station as FIR No. 25 dated 20.12.2020. It is evident that the Respondent No.3 has withdrawn money from City Bank Gulshan Avenue Branch from the account of late Mustafa Jaglul Wahid. Since the matter is pending before the court below, we are not inclined to pass any order in respect of this issue.

Now we will examine whether as per the submissions of the learned advocate for the Respondent Nos.4 and 5, the marriage between late Mustafa Jaglul Wahid and Respondent No.3 is null and void and section 2 of the Special Marriage Act, 1872 is not applicable in the case of Respondent No. 3. As per provision of Special Marriage Act, Marriages may be celebrated under Section 2 of Special Marriage Act, 1872 between persons neither of whom professes the Christian or the Jewish, or the Hindu or the Muslim or the Parsi or the Buddhist, or the Sikh or the Jaina religion, or between persons each of whom professes one or other of the following religions, that is to say, the Hindu, Buddhist, Sikh or Jaina religion upon the following conditions: –

(1) neither party must, at the time of the marriage, have a husband or wife living:

(2) the man must have completed his age of eighteen years, and the woman her age of fourteen years, according to the Gregorian calendar:

(3) each party must, if he or she has not completed the age of twenty-one years, have obtained the consent of his or her father or guardian to the marriage:

(4) the parties must not be related to each other in any degree of consanguinity or affinity which would, according to any law to which either of them is subject, render a marriage between them illegal.

1st Proviso- No such law or custom, other than one relating to consanguinity or affinity, shall prevent them from marrying.

2nd Proviso- No law or custom as to consanguinity shall prevent them from marrying, unless a relationship can be traced between the parties through some common ancestor, who stands to each of them in a nearer relationship than that of great-great-grand-father or great-great-grand-mother, or unless one of the parties is the lineal ancestor, or the brother or sister of some lineal ancestor, of the other.”

As per the above provision of the marriage under section 2 of the said act is not applicable for a Muslim man with a non-Muslim woman. The marriage was registered on 31.07.2013 between Respondent No. 3 and Mustafa Jaglul Wahid and the Respondent No.3 has submitted marriage documents as of annexure 1 and A-1 in his affidavit-in-opposition. On the other hand, for a marriage under the Special Marriage Act, 1872, the mandatory provisions are sections 4, 6, 10, 11 and 13. Section 4 provides that when a marriage is intended to be solemnized under this Act, one of the parties must give notice in writing to the Registrar before whom it is to be solemnized. The Registrar to whom such notice is given must be the Registrar of a district within which one at least of the parties to the marriage has resided for fourteen days before such notice is given. Such notice may be in the form given in the First Schedule to this Act. Section 6 provides objection to marriage within 14 days of notice under section 4, Section 10 of the said law provides that before the marriage is solemnized, the parties and three witnesses shall, in the presence of the Registrar, sign a declaration in the form contained in the second schedule to this Act. If either party has not completed the age of twenty-one years, the declaration shall also be signed by his or her father or

guardian, except in the case of a widow, and, in every case, it shall be countersigned by the Registrar. Section 11 provides that the marriage shall be solemnized in the presence of the Registrar and of the three witnesses who signed the declaration. It may be solemnized in any form, provided that each party says to the other, in the presence and hearing of the Registrar and witnesses, "I [A], take the [B], to be my lawful wife (or husband). We found that the provisions of the above-mentioned law and rules have not been complied with in the instant marriage. Hence the marriage between the Respondent No. 3 and Mustafa Jaglul Wahid has no legal application in the eye of law.

We examined all the documents submitted before this court by the parties about marriage solemnized between Mr. Jaglul Wahid and Ms. Anju Kapur and also examined the provisions of law of the Special Marriage Act, 1872. But we do not find any valid document which can prove that the marriage is valid under the Special Marriage Act, 1872. The documents submitted by the Respondent No.3 regarding the marriage between Mr. Jaglul Wahid and Ms. Anju Kapur clearly shows that it has not executed by following the mandatory provisions of the Special Marriage Act, 1872. As per section 10 of The Special Marriage Act, 1872, both the bride and the bridegroom have to sign a declaration stating that 'I do not profess the Christian, Jewish, Hindu, Muslim, Parsi, Buddhist, Sikh or Jaina religions' or 'I profess the Hindu, or the Buddhist or the Sikh or the Jaina religion' but it was not followed by them. On the date of solemn oath they were possessing the Muslim faith and the Hindu faith respectively. Moreover, as per section 4 of the said Act, the parties have to serve 14 days' notice before solemnizing such marriage but it was also not followed. Hence the marriage is illegal and void and not covered with the provisions of the Special Marriage Act, 1872.

On the query of this court, the learned Advocate for the Respondent Nos.4 and 5 has submitted that there is no scope to claim any property by the Respondent No. 3 as a wife of Mr. Jaglul wahid based on a Will executed on 03.03.2016 (as of annexure-2 to the affidavit-in- opposition), since marriage of them is not Valid. Moreover, the property in question is a leasehold property and without RAJUK's permission, it cannot

be transferred, so the transfer by way of Will is not valid in the eye of law.

We agree with the submission of the learned advocate for Respondent Nos.4 and 5 that the Respondent No. 3 has not acquired any title over the property based on the Wasiyat dated 03.03.2016 [Annexure-2]. Moreover the property is a leasehold property of Rajuk but without having permission from RAJUK, it was transferred by way of Wasiyat, hence it is not valid in the eye of law. The marriage registered on 31.07.2020 under the Special Marriage Act, 1872 does not come within the ambit of the Special Marriage Act, 1872 and as such, the marriage allegedly taken place was null and void according to section 2 of the Special marriage Act, 1872 and the Islamic Shariah Law.

The learned Advocate for the applicants raises question about the distribution of share of the property of the deceased Late Jaglul wahid. After death, Mustafa Jaglul Wahid left two daughters, mother, brothers and sisters. The daughters and other heirs of Mustafa Jaglul Wahid will inherit the properties left by him as per Islamic Law of Inheritance. Be that as it may, 2(two) sisters will inherit equal share of one brother and thus the properties of late Mustafa Jaglul Wahid will be distributed among his heirs. We have issued Suo motu rule while right of the deceased was denied and not allowing the daughters to enter their father's house. We are not deciding anything in this case about the distribution of the property of the deceased. Moreover, there is a specific law in respect of inheritance of the deceased property and in case of any dispute of that issue there is appropriate forum for solution. So, we are not passing any order of that issue but the parties may take steps before the competent court if they so desire.

The Respondent No.3 claims that she is the legal wife of late Mr. Mustafa Jaglul Wahid. On the other hand, the learned advocate of Respondent Nos. 4 and 5 raises a question of validity about the marriage of the Respondent No. 3 on the ground that marriage between Mr. Mustafa Jaglul Wahid and Ms. Anju Kapur is illegal and void as per Special Marriage Act, 1872. We have considered the submissions made by the learned advocates for the respective parties, especially the amici curiae. We have scrutinized section 2 of the Special Marriage Act, 1872 and it is found that no Muslim man can solemnize any marriage under this section. We have also considered the

provisions of sections 2, 4, 6, 10, 11 and 13 of the Special Marriage Act. 1872 and found that there is no scope to solemnize marriage between Mr. Jaglul Ahmad and Respondent No. 3 under those provisions. It is decided in a case reported in 18 DLR Page-509, in the case of Muhammad Mustafizur Rahman Khan vs. Mrs. Rina Khan, that no marriage will be valid if the provisions of sections 4, 10 and 11 the Special Marriage Act, 1872 are not complied with. In this particular marriage, no proper notice under section 4 was served and no declaration forms were signed by the parties and three witnesses. Hence, due to non-compliance with the legal requirements as per the specific provisions of law, the marriage between Mr. Mustafa Jaglul Wahid and Ms. Anju Kapur is void.

We have found that marriage between the Respondent No.3 and Late Mustafa Jaglul Wahid was not legal, so there is no scope to claim any property as a wife based on a Will executed on 03.03.2016. Rather the Respondent Nos. 4 and 5 i.e daughters of late Mustafa Jaglul Wahid are valid heirs and they will inherit the property of late Mustafa Jaglul Wahid in accordance with law and they have right to enter the property of their father late Mustafa Jaglul Wahid.

On the other hand, we have considered the submissions of Amici curiae about the Washiyat (Will) of Late Mostafa Jaglul Wahid as well as argument of the learned Advocate for Respondent Nos. 4 and 5. We have found merit in the submissions. Though the property is leasehold property from RAJUK, so he had to transfer the property with the permission obtaining from RAJUK but admittedly such permission was not obtained. Therefore, no right has been created on the said transferred property of late Mustafa Jaglul Wahid by the Respondent No.3.

The Gulshan police is directed to withdraw the police force from the particular house but directed to monitor the security in future of the Respondent Nos. 4 and 5.

**With the aforesaid observations and directions, the Rule is disposed of.**

Communicate the judgment and order to the concerned respondents, at once.

-----