

Artha Rin Suit No. 845 of 2023

Bangladesh Form No. 3701

HIGH COURT FORM NO.5 (2)

HEADING OF JUDGMENT IN ORIGINAL SUIT/CASE

DISTRICT- DHAKA

IN THE COURT OF ARTHA RIN ADALAT NO. 1, DHAKA

Present : Mr. Md. Hasan Zaman,
Judge (Joint District Judge)

Date of Judgment : 1st day of March, 2025

Artha Rin Suit No. 845 of 2023

Jamuna Bank Limited, Moulvibazar BranchPlaintiff

-Versus-

Md Sojib Hossain Joy and 05 othersDefendants

This case came up for final hearing on : 21.08.2024

In presence of :

Mr.Mohammad Mizanur Rahman.....Advocate for Plaintiff.

Mr.Md Mahabubur RahmanAdvocate for Defendants.

And having stood for consideration to this day, the court delivered the following judgment:-

The plaintiff Bank filed this present suit under the **Artha Rin Adalat Ain, 2003** for recovery of **Tk. 77, 70,316 (Taka Seventy Seven Lacs Seventy Thousand Three Hundred Sixteen only)** as on **22.05.2022**.

The suit was filed on 12.06.2022 before the **Artha Rin Adalat No. 2**, Dhaka, being registered as **Artha Rin Suit No. 556 of 2022**. Subsequently, by order dated 19.07.2023 passed by the learned District Judge, Dhaka the said suit was transferred to this Court, where it has been re-registered as **Artha Rin Suit No. 845 of 2023**.

Plaintiff's Case in Brief

1. The plaintiff, **Jamuna Bank Limited**, is a banking company duly incorporated under the Companies Act, 1994 and governed by the provisions of the Bank Companies Act, 1991. The defendant No.1 is the sole proprietor of business concern namely “ **M/S NEW SOJIB AUTO** ” as well as borrower & guarantor while the defendant No.2-6 are guarantors of the credit facilities availed of by defendant No.1 from the plaintiff bank.

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2. At the request of defendant No.1, the plaintiff bank sanctioned a loan facility of **TK.95.00 Lacs** only under **SME JAMUNA SWABOLOMBI** in favor of the defendant No.1 vide Sanction letter dated **28.04.2019**. The defendant No.1 accepted sanction letter along with the terms and conditions stipulated therein and executed various charge documents in favor of the plaintiff bank. As security for the aforesaid investment facilities, the defendant Nos.2-6 personally guaranteed the loan.

3. The plaintiff bank duly disbursed the sanctioned investment facilities which were availed of and enjoyed by the defendant No.1 in the course of its business activities. However, the defendants, with mala fide intent, failed to repay the investment amounts within the stipulated periods. Despite repeated requests, reminders, and letters from the plaintiff bank, the defendants neglected and failed to adjust the outstanding liabilities.

4. As on **22.05.2022**, the total liabilities of the defendants stood at **Tk. 77,70,316/-** inclusive of accrued interest. Although on several occasions the defendants acknowledged their liabilities, they deliberately failed to make payments. Consequently, the plaintiff issued a **Legal notice** dated **22.12.2021**, however, the defendants failed to comply with the said notice and did not contact the plaintiff bank in this regard.

5. The plaintiff bank could not realize its dues despite of several demand notice and legal notice. It is to be mentioned here that an amount of **TK (2613813 + 2853523)** was adjusted on several occasions against the credit facility. The defendants' communications and conduct have made it evident that they will not settle the outstanding liabilities unless compelled by due process of law. As of 22.05.2022, the admitted liability of the defendants stood at **Tk.77,70,316 /-**. Having failed in all attempts to recover its dues amicably, the plaintiff bank has compelled to file this instant suit.

Defendant's Case :

6. The **Defendant No.1** has contested the suit by filing a Written Statement wherein it is stated, inter alia, that the Plaintiff-Bank has arbitrarily imposed interest upon the Defendants without properly calculating the same in accordance with law and the terms of the sanction, which action is illegal, void, and not sustainable in the eye of law. Due to the outbreak of the global pandemic, namely COVID-19, the business establishment of the Defendants remained closed for a considerable period, as a result of which the loan installments could not be paid regularly. Subsequently, owing to the global instability caused by the Russia-Ukraine war and the ensuing worldwide economic downturn, the Defendants suffered substantial business losses and failed to recover from such financial setbacks.

7. In the circumstances stated above, if the entire accrued interest on the sanctioned loan is waived and the loan is rescheduled, the Defendants shall be in a position to revive their business operations and repay the rescheduled loan within the stipulated time. It is

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further submitted that Defendant No. 1 repeatedly requested the Bank to waive the interest and accept repayment of the principal amount; however, the Bank paid no heed to such requests. The plaintiff bank has instituted the present suit claiming an exorbitant and unjustified amount of interest. Defendant No.1 further alleges that the bank obtained several blank charge documents from them with ulterior motives. The defendants deny any mala fide intention or attempt to misappropriate the loan amount. In light of the foregoing facts and circumstances, the defendants pray that the instant suit be dismissed with costs.

Issues:

8. The following issues has been framed for proper adjudication of the case :
- 1) Whether the suit is maintainable in it's present form and prayer?
 - 2) Whether the plaintiffs have any cause of action for filing the suit ?
 - 3) Whether the suit is barred by Limitation ?
 - 4) Whether the plaintiff Bank is entitled to recover the claimed amount from the defendants?
 - 5) Whether the plaintiff Bank is entitled to obtain a decree as prayed for?

Discussions and Decisions:

9. To prove the plaint case, the plaintiff examined 01 witnesses namely **Rakib Raihan as P.W.1** before this court. **During examination of P.W.1** the following documents were produced and proved, which have been marked as Exhibits:-

1) Letter of Authority	Exhibit-1
2) Application and Sanctioned Letter	Exhibit-2 and 2/1
3) Reminder Letters	Exhibit- 3 Series
4) Legal Notice	Exhibit-4
5) Charged Documents	Exhibit-5 Series
6) Bank Statement	Exhibit-6

10. On the other hand, to prove the defendant's case, the defendants examined **no witness and produced no documents** before the court.

Decision with Reasons

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11. Issue no. 1, 2 and 3 : Whether the suit is maintainable in its present form and prayer? + Whether the plaintiffs have any cause of action for filing the suit ? + Whether the suit is barred by limitation?

All these issues are taken up together for the sake of brevity and convenience.

Upon careful consideration of the plaint, the written statement and the evidences appearing on record, it appears that although the defendants challenged the maintainability of the suit, they have not adduced any evidence in support of such objection. On the other hand, the plaintiff is a duly incorporated banking company under the Companies Act, 1994 and, being a financial institution, is lawfully entitled to institute a suit for recovery of its dues under the provisions of the Artha Rin Adalat Ain, 2003. The plaint has been presented by way of affidavit as mandated under **Section 6(4) of the said Ain**, duly accompanied by **ad valorem court fees** and relevant charge documents. No legal infirmity is discernible in the presentation of the plaint. Therefore, the suit is clearly maintainable both in law and in fact. This issue is thus decided in favour of the plaintiff.

12. As regards the cause of action, the plaint sufficiently discloses grounds for bringing the instant suit. It appears from the plaint that, upon the application of the defendant No.1, the plaintiff bank sanctioned credit facilities in favour of the defendant No.1. The said facilities were secured by execution of charge documents and personal guarantees. However, the defendants defaulted in repayment of loan installments as per terms of the sanction letters. The default persisted and the outstanding liabilities accumulated to the tune of **Tk. 77,70,316/-**. Despite repeated reminders, the defendants failed to discharge the said liabilities. Ultimately, the plaintiff issued a legal notice on 22.12.2021 through its learned advocate, calling upon the defendants to adjust the outstanding dues. The defendants, however, did not comply. Having no other efficacious remedy, the plaintiff was compelled to institute the present suit. The cause of action thus arose on and from 22.12.2021, and the instant suit having been filed on 12.06.2022, is well within the statutory period of limitation. In view of the above, it is held that the instant suit is properly maintainable, is founded upon a sufficient cause of action, and is not barred by limitation. All the aforesaid issues are therefore answered in favour of the plaintiffs.

13. Issue No : 4 and 5 : Whether the plaintiff Bank is entitled to recover the claimed amount from the defendant? + Whether the plaintiff Bank is entitled to obtain a decree as prayed for?

All these issues are taken up together for the sake of brevity and convenience. On perusal of the plaint schedule, it appears that the plaintiff **Jamuna Bank Limited** has claimed against the defendants a sum of **Tk. 77,70,316/-** inclusive of accrued interest up to

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22.05.2022. Admittedly the plaintiff is a banking company duly incorporated under the Companies Act, 1994 and is governed by the provisions of the Bank Companies Act, 1991. It is also admitted that defendant No. 1 is **the borrower and Guarantor and the** defendant Nos. 2-6 stand as guarantors respectively in respect of the credit facility availed by the defendant No.1 from the plaintiff bank.

14. The plaintiff has sought recovery of **Tk. 77,70,316/-** as outstanding as on 22.05.2022. In terms of Section 6(4) of the Artha Rin Adalat Ain, 2003, a plaint filed with an affidavit is admissible as substantive evidence. In further support of its claim, the plaintiff examined **Rakib Raihan as P.W.1**, who duly deposed in line with the plaint and corroborated the documentary evidence submitted therewith.

15. From the loan related documents submitted by both parties it appears that on request of the Defendant No.1, the Plaintiff Bank, sanctioned a loan facility of **TK.95.00 Lacks** in favor of the defendant No.1 vide Sanction letter dated 28.04.2019. The loan Sanction Letter **[Exhibit-2]** proves the facts to be true. The defendant did not deny the receipt of the said loan facilities during cross-examination of P.W.1.

16. Upon overall review, it is evident that the Defendant No.1 had availed **Tk. 95,00,000/-** from the Plaintiff Bank as sanctioned loan facility. In view of charge documents **[Exhibit-5 Series]** corroborates the authenticity of the loan facilities availed by the Defendant No.1. Considering these, it is established that Defendant No.1 availed the said loan from the Plaintiff Bank in the name of his concern “**M/S NEW SOJIB AUTO**”

17. From “legal notice” issued by the Plaintiff Bank **[Exhibit-4]**, it is evident that Defendant No.1, after receiving the aforesaid loan facility, subsequently defaulted in repayment. A review of the Legal Notice **[Exhibit-4]** shows that as of 12/12/2021, the total amount due to the Plaintiff Bank, including interest/profit, was **TK. 99,92,703/-**. Thereafter plaint was amended and the Plaintiff claimed a total of **77,70, 316/-** up to 22/05/2022, which included both imposed and un-imposed profits across the accounts. Examination of the account statement of “**New Sojib Auto**” submitted by the Plaintiff **[Exhibit-6]** substantiates the Plaintiff’s claim. Although the Defendants asserted that they had made partial repayments towards the loan with interest, they failed to produce any witness or documentation to support such assertions.

18. The materials on record further reveal that the loan became classified due to persistent default on the part of Defendant No.1, who also failed to make any payment during the pendency of the suit. Through consistent oral testimony and cogent documentary evidence, the Plaintiff has successfully established that **Tk. 77,70, 316/-** remains unpaid and outstanding.

19. Under Section 6(5) of the Artha Rin Adalat Ain, 2003, as Defendant No.1 is the principal borrower and garrantor, Defendant No.2-6 are the guarantors, all defendants are jointly and severally liable for the repayment of the Plaintiff’s outstanding dues.

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20. Accordingly, upon comprehensive evaluation of the plaint, written statements, depositions of witnesses, cross-examinations, and all documents on record, this Court holds that the Plaintiff has succeeded in proving its claim. Issues No.4 and 5 are therefore decided in favour of the Plaintiff, who is entitled to recover Tk. **77,70,316/-** from the Defendants, jointly and severally.

In result the case succeeded.

Court Fee paid is correct

Hence,

It is Ordered

That the present suit be decreed on contest against Defendant Nos. 1 and ex-party against the other defendants with costs for an amount of **Tk. 77, 70,316 (Taka Seventy Seven Lacs Seventy Thousand Three Hundred Sixteen only) up to 22/05/2022**. The Plaintiff shall be entitled to receive the said amount together with interest or profit as applicable under the prevailing laws or rules from **12/06/2022**, i.e., the date of filing of the suit, until full realization.

The Defendants are directed to pay the decree amount, together with interest or profit, in favor of the Plaintiff within sixty (60) days of the pronouncement of this judgment. In the event of default, the Plaintiff shall be entitled to recover the decree amount through lawful proceedings before the Court.

If the Defendants have made any payments during the pendency of the suit, the Plaintiff is directed to adjust the same in accordance with the law.

Typed & Corrected by Me

**Md. Hasan Zaman
Judge (Joint District Judge),
Artha Rin Adalat No-1 ,Dhaka**

**Md. Hasan Zaman
Judge (Joint District Judge),
Artha Rin Adalat No-1 ,Dhaka.**