

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 : 15th day of April, 2026

Artha Rin Suit No. 74 of 2025.

The City Bank Limited-----Plaintiff

-Versus-

Mr. Md. Shirajul Islam and 02 others -----Defendants

This case came up for final hearing on :22.02.2022, 25.04.2022 &
04.07.2022.

In presence of :

Mr. Swaraj Chatterjee (Bappa)-----Advocate for Plaintiff.

Mr. Ferogul Islam (Feroz)-----Advocate for Defendant Nos.1 & 2.

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

The plaintiff **The City Bank Limited** filed this present suit under the
Artha Rin Adalat Ain, 2003 for recovery of **Tk. 1,38,99,508.65 (Taka One
Crore Thirty Eighty Lac Ninety Nine Thousand Five Hundred Eight Point
Sixty Five)** as on **31.01.2020**.

Plaintiff's Case in Brief

1. The plaintiff, The City Bank Limited, is a scheduled bank duly
incorporated under the Companies Act, 1994 and governed by the provisions of

the Bank Companies Act, 1991. The defendant No. 1 is the principal borrower, mortgagor, and guarantor; the defendant No. 2 is a mortgagor and guarantor; and the defendant No. 3 is a guarantor of the credit facilities availed by defendant No. 1.

2. At the request of defendant No. 1 dated 23.10.2013, the plaintiff sanctioned certain credit facilities in favour of the defendants vide sanction letter dated 29.12.2013 for a total sum of Tk. 150.00 lac, comprising Overdraft (OD) facility of Tk. 100.00 lac and Revolving Short Term Loan (RSTL) facility of Tk. 50.00 lac for meeting business overhead expenses. Subsequently, upon application dated 08.01.2015, the said facilities were renewed with enhancement vide sanction letter dated 11.02.2015 for a total sum of Tk. 315.00 lac, consisting of OD Tk. 215.00 lac and RSTL Tk. 100.00 lac. The said facilities were further renewed on 29.02.2016 for the same amount and structure.

3. Thereafter, the aforesaid facilities were cancelled on 19.06.2017, and a fresh RSTL facility of Tk. 100.00 lac was sanctioned in favour of the defendants vide sanction letter dated 19.06.2017. Consequently, no overdraft liability subsists, and the present outstanding pertains solely to the said term loan facility.

4. The defendants duly accepted the sanction letters along with the terms and conditions contained therein and, in acknowledgment thereof, executed necessary charge documents in favour of the plaintiff bank. As security for the said facilities, defendant Nos. 2 and 3 executed personal guarantees. Furthermore, the defendants executed a registered Deed of Mortgage being No. 648 and an Irrevocable General Power of Attorney (IGPOA) being No. 649, both dated 30.01.2024, in favour of the plaintiff bank.

5. The plaintiff bank duly disbursed the sanctioned facilities, which were availed of and enjoyed by the defendants in the course of their business operations. However, in breach of the agreed terms and conditions and with malafide intent, the defendants failed to repay the outstanding amounts within the stipulated time. Despite repeated requests, reminders, and communications from the plaintiff, the defendants neglected and defaulted in adjusting their liabilities.

6. As on 31.01.2020, the total outstanding liability of the defendants stood at Tk. 1,38,99,508.65 (Taka one crore thirty-eight lac ninety-nine thousand five hundred eight and paisa sixty-five) only, inclusive of accrued interest. Although the defendants, on several occasions, acknowledged their liabilities, they deliberately failed to regularize or repay the same. Consequently, the plaintiff issued a reminder letter dated 11.09.2018 and a legal notice dated 29.04.2019, calling upon the defendants to repay the outstanding dues. However, the

defendants failed to comply with the said notice and did not respond to the plaintiff bank.

7. Despite repeated demands, reminders, and legal notice, the plaintiff bank has been unable to realize its lawful dues. The conduct and communications of the defendants clearly demonstrate their unwillingness to liquidate the outstanding liabilities unless compelled by due process of law. As such, having exhausted all amicable means of recovery, the plaintiff has been constrained to institute the present suit for realization of its dues amounting to Tk. 1,38,99,508.65 as on 31.01.2020, along with further interest and costs.

Defendant's Case :

8. On the other hand, the defendant Nos. 1 and 2 contested the suit by filing written statement contending *inter alia* that the suit of the plaintiff is not maintainable in its present form and manner, and that there is no cause of action for filing the suit. The defendants further assert that the suit is bad for defect of parties and is barred by limitation.

9. It is stated that the defendant No. 1, having established business concerns namely *M/s Momina Dairy Industries* and *M/s Momina Logistic Point*, had been carrying on business by setting up a factory in the Dhanmondi area of the capital city. During the course of such business, the defendant No. 1 availed a loan of Tk. 3,65,00,000/- from the plaintiff bank on 01.02.2014, which was fully repaid on 30.05.2017, as also admitted in paragraph No. 3 of the plaint. Subsequently, on 01.06.2017, the defendant No. 1 availed a further loan of Tk. 1,00,00,000/-.

10. Against the said loan, the defendants mortgaged the properties described in Schedule 'B'-I, II, III in favour of the plaintiff bank. It is further contended that, as per the demand of the plaintiff bank, the defendant deposited Tk. 2,00,000/- being 2% of the loan amount for the purpose of rescheduling; however, despite receiving the said amount, the bank failed to reschedule the loan.

11. The defendants further state that after availing the said loan of Tk. 1,00,00,000/-, while the business was ongoing, the defendant suffered financial losses due to natural calamities and other unavoidable circumstances; nevertheless, the defendant paid an amount of Tk. 8,00,000/- to the plaintiff bank.

12. It is further alleged that, without providing reasonable opportunity to repay the principal loan, the plaintiff bank, with mala fide intention and in a non-cooperative manner, instituted the present suit with an ulterior motive to cause wrongful loss and financial ruin to the defendant. Moreover, in respect of the same loan, the plaintiff bank also instituted a case under Section 138 of the

Negotiable Instruments Act, being C.R. Case No. 887 of 2019, which has been registered as Sessions Case No. 26365 of 2019 and is presently pending before the Court of the Additional Metropolitan Sessions Judge, 2nd Court. In view of the above facts and circumstances, the defendants submit that the plaintiff is not entitled to the reliefs as prayed for, and accordingly pray that the suit be dismissed with costs.

Issues:

13. On perusal of the plaint, written-statement, documents and previously framed issues, for proper adjudication of the suit, the issues are reframed in the following ways:

- 1) Whether the suit is maintainable in its present form and prayer?
- 2) Whether the plaintiff has 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:

14 To prove the plaint case, the plaintiff examined 01 witnesses namely **Fahim Haider 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 of loan and Sanctioned Letter | Exhibit-2 series, |
| 3) Charge Documents | Exhibit-3 Series |
| 4) Deed of Mortgage No 648 & IGPA No.649 | Exhibit-4 series |
| 5) Application and Sanction letter | Exhibit-5 series |
| 6) Deed of Mortgage No 1236 & IGPA No.1237 | Exhibit-6 Series |
| 7) Renewal Sanction letter | Exhibit-7 |
| 8) Application and Sanction letter | Exhibit-8 Series |

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|------------------------|-------------------|
| 9) Charge documents | Exhibit-9 Series |
| 10) Legal Notice & P.R | Exhibit-10 Series |
| 11) Paper Publication | Exhibit-11 series |
| 12) Account statement | Exhibit-12 |

15. On the other hand, to prove the defendant's case, the defendant examined a witness namely **Md. Shirajul Islam as D.W.1**, but he did not adduced any evidence in support of his case.

Decision with Reasons

14. Issue no. 1, 2 and 3 : Whether the suit is maintainable in it's 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 financial Institution which 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.

15. 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 and mortgage of properties. 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 **1,38,99,508.65/-**. Despite repeated reminders, the defendants failed

to discharge the said liabilities. Ultimately, the plaintiff issued Legal notice on 29.04.2019, 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 29.04.2019, and the instant suit having been filed on 05.03.2020, 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.

16. 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, convenience, and because they are closely interlinked both on facts and in law.

Upon careful consideration of the pleadings of the parties, the oral evidence adduced, documentary exhibits produced, and the entire materials available on record, it appears that the plaintiff bank, instituted the present suit for realization of outstanding dues amounting to **Tk. 1,38,99,508.65/** inclusive of accrued interest calculated up to **31.01.2020**, against the defendants under the provisions of the Artha Rin Adalat Ain, 2003.

17. It is admitted and undisputed that the plaintiff is a duly incorporated scheduled bank institution, legally competent to institute and maintain the present suit for realization of financial claims arising out of sanctioned credit facilities advanced in the ordinary course of its business. It further appears from the record that Defendant No.1, namely **Md Sirajul Islam** , is the principal borrower and mortgagor, while Defendant Nos.2 and 3 executed deeds of mortgage and guarantee securing repayment of the said loan facility and thereby assumed co-extensive liability with the borrower in accordance with law.

18. In view of Section 6(4) of the Artha Rin Adalat Ain, 2003, the plaint supported by affidavit carries substantive evidentiary value unless rebutted by credible and reliable evidence to the contrary. In support of its claim, the plaintiff examined one witness, namely **P.W.1 Fahim Haider** , who submitted affidavit-in-chief in support of the plaint. His testimony remained materially consistent, coherent, and fully supportive of the plaintiff's pleaded case. Nothing substantial could be elicited in cross-examination to discredit his testimony or weaken the evidentiary value of the plaintiff's case.

19. It appears from the documentary evidence (Exhibit-2 and 2/Ka, Exhibit-5 and 5/Ka, and Exhibit-7) that the plaintiff initially sanctioned credit facilities amounting to Tk. 150.00 lac in favour of Defendant No.1 on 29.12.2013, comprising OD Tk. 100.00 lac and RSTL Tk. 50.00 lac. Subsequently, upon the defendant's application, the facilities were renewed and enhanced on 11.02.2015 to Tk. 315.00 lac (OD Tk. 215.00 lac and RSTL Tk. 100.00 lac), and later renewed again on 29.02.2016 under the same terms and structure.

20. It further appears from Exhibit-8/Ka that the aforesaid facilities were cancelled on 19.06.2017, and a fresh RSTL facility of Tk. 100.00 lac was sanctioned. The charge documents (Exhibit-3 series and Exhibit-9 series), along with the registered Deed of Mortgage and Irrevocable General Power of Attorney (Exhibit-4 series and Exhibit-6 series), clearly establish that the defendants executed all necessary security and loan documents, thereby creating a valid and enforceable financial liability in favour of the plaintiff.

21. The reminder letters and legal notices (Exhibit-10 and 10/Ka series) reveal that Defendant No.1 failed to maintain regular repayment and became a persistent defaulter. Despite repeated demands and notices, the defendants did not regularize the loan account or repay the outstanding dues, and the legal notice confirms that demand was duly made prior to filing of the suit.

22. The statement of account (Exhibit-12), maintained in the ordinary course of business, shows that as of 31.01.2020 the total outstanding liability stood at Tk. 1,38,99,508.65, inclusive of accrued interest. In absence of any rebuttal evidence or contrary material from the defendants, the said statement carries strong evidentiary value and substantiates the plaintiff's claim.

23. On the other hand, the defendants contested the suit by filing a written statement. They admitted that Defendant No.1 had initially availed a loan facility of Tk. 3.65 crore from the plaintiff institution, which, according to them, was fully repaid in the year 2017. Subsequently, Defendant No.1 availed another credit facility amounting to Tk. 1.00 crore in the same year. In connection with the said credit facility, the defendants mortgaged the scheduled property, allegedly valued at Tk. 10 crore. The principal defence of the defendants is that Defendant No.1 remained regular in repayment and paid a total sum of Tk. 8,17,496/- towards loan installments. They further contended that the plaintiff's claim is inflated, exaggerated, and based on an incorrect and manipulated statement of account. However, despite raising such assertions, the defendants failed to produce any documentary evidence, such as money receipts, account

reconciliation statements, bank deposit slips, or other financial records, in support of their claims.

24. This Court observes that mere pleadings, in the absence of supporting evidence, carry no evidentiary value. Although the defendants contested the suit, they failed to adduce any credible or reliable documentary evidence to establish full or partial adjustment of the loan installments or to disprove the statement of account maintained by the plaintiff. It is further noted that, during the pendency of the suit, the defendants neither made any substantial payment towards the outstanding dues nor submitted any reasonable or bona fide proposal for repayment. Mere denial or unsubstantiated allegations cannot defeat a financial claim that is otherwise supported by primary documentary evidence.

25. It further appears from the materials on record that due to continuous default committed by Defendant No.1, the loan account became classified and remained unpaid despite repeated demands. The plaintiff has therefore successfully established that the outstanding liability lawfully matured and remained recoverable.

26. Under Section 6(5) of the Artha Rin Adalat Ain, 2003, the liability of guarantors is co-extensive with that of the principal borrower unless restricted by specific contractual terms. In the present case, no such limiting clause is found in the guarantee documents. Consequently, Defendant Nos.2 and 3, having voluntarily executed deed of mortgage and guarantee obligations, are jointly and severally liable together with Defendant No.1 for repayment of the decretal dues.

27. Upon comprehensive evaluation of the plaint, written statement, oral depositions, cross-examination, documentary exhibits, and all surrounding circumstances, this Court finds that the plaintiff has been able to prove its claim by reliable oral and documentary evidence. Accordingly, the issues under consideration are decided in favour of the plaintiff who is entitled to recover **1,38,99,508.65/-** 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 & 2 and ex-party against the other defendants with costs for an amount of **Tk. 1,38,99,508.65** (**Taka One Crore Thirty Eighty Lac Ninety Nine Thousand Five Hundred**

Eight Point Sixty Five) up to 31/01/2020. The Plaintiff shall be entitled to receive the said amount **together with interest or profit as applicable under the prevailing laws or rules from 05/03/2020**, 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.**