

Artha Rin Suit No. 1297 of 2024

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 : 9th day of March, 2025

Artha Rin Suit No. 1297 of 2024

National Credit and Commerce Bank Limited, Moghbazar Branch
.....Plaintiff

-Versus-

Newtech Automations Ltd and 02 othersDefendants

This case came up for final hearing on : 02.03.2020; 26.01.2021; 11.03.2021;
17.04.2022; 01.08.2022; 12.10.2022 and 20.10.2025.

In presence of :

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

Mr. Md Shajahan MajumderAdvocate 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. 6,19,53, 268.00/- (Taka Six Crore Nineteen Lacs Fifty-Three Thousand Two Hundred Sixty Eight only) as on 15.01.2015.**

The suit was filed on 15.01.2015 before the **Artha Rin Adalat No. 3**, Dhaka, being registered as **Artha Rin Suit No. 03 of 2015**. Subsequently, by order dated 02.11.2023 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. 1297 of 2024**.

Plaintiff's Case in Brief

1. The plaintiff, **National Credit and Commerce 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, **Newtech Automation Ltd.** is a

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Limited company and Borrower of the credit facility while defendant No.2 is the chairman and Managing Director and the defendant No.3 is the director of the defendant No.1 company as well as guarantors of the credit facilities availed of by defendant No.1 from the plaintiff bank.

2. At the request of defendant No.1, the plaintiff bank sanctioned a loan facility of **TK. 4,90,00,000.00/-** in favor of the defendant No.1 company vide Sanction letter dated **16.07.2007**. Later on the said loan was renewed on 02.02.2009 and further rescheduled on 12.10.2009. Thereafter on various occasions the said loan was again rescheduled. 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.2-3 personally guaranteed the loan. That in order to secure the liabilities of the defendant No.1 with the plaintiff bank, several immovable properties were tagged which were registered mortgage with the plaintiff bank on account of Newtech Bangladesh Ltd a sister concern of defendant No.1 company.

3. The plaintiff bank duly disbursed the sanctioned investment facilities which were availed of and enjoyed by the defendant No.1-3 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 **31.12.20214**, the total liabilities of the defendants in heads of Term Loan and Cash Credit (Hypo) stood at $(4,97,66,540 + 1,21,86,728) = \text{Tk. 6,19,53, 268/-}$ inclusive of accrued interest. Although on several occasions the defendants acknowledged their liabilities, they deliberately failed to make payments. Consequently, the plaintiff issued reminder letters on **24.03.2011, 24.07.2011, 07.02.2013 and 01.04.2013** 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. 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 31.12.2014, the admitted liability of the defendants stood at **Tk. 6,19,53, 268/-**. 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.1-3** have contested the suit by filing a Written Statement wherein it is stated, inter alia, that the company was very regular in repayment of the loan. The Plaintiff-Bank severely hampered the business of the defendant No.1 company. The

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defendant No.1 opened L/C for importing electronic products for this the defendant No.1 needed LTR facilities which the plaintiff bank failed to provide the defendant No.1 on time resulting serious business loss of the defendant No.1. Thereafter the defendant No.1 had to cancel the L/C payment which is against the terms of International banking norms. As a result, there caused long delays to release the imported goods from the port and the defendant No.1 had to pay fine to the port. Furthermore, various clients including SIMENS company cancelled the workorder and the defendant No.1 had to pay compensation for this. Due to political unrest in the year 2006-2009 throughout the country the defendant No.1 failed to run its business.

7. The defendants further aver that considering the unsound financial position partly arising out of the plaintiff's bank delay in opening the L/Cs and partly due to political unrest, it applied to the plaintiff bank for rescheduling the loan facilities with a view to providing it opportunities to repay the loan facilities. Nonetheless the plaintiff bank paid no heed to that application. Nor did they take any step to provide fair terms and conditions in the sanction letter of rescheduling arrangement. Instead the Bank from time to time rescheduled the loan facilities for its own advantage but without allowing the defendants to make profits out of its business. Such rescheduling was in no way advantageous to the defendant No.1 resulting in huge amount of interest which is totally unlawful. 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 have been framed for proper adjudication of the case :
- 1) Whether the suit is maintainable in its 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?

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Discussions and Decisions:

9. To prove the plaint case, the plaintiff examined 01 witnesses namely **Masrur Md Khan Chowdhury 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) Sanctioned Letter dated 16.07.2007	Exhibit-2
3) Sanctioned Letter dated 02.02.2009	Exhibit-3
4) Sanctioned Letter dated 12.10.2009	Exhibit-4
5) Sanctioned Letter dated 01.03.2010	Exhibit-5
6) Sanctioned Letter dated 01.02.2011	Exhibit-6
7) Charged Documents	Exhibit-7 Series
8) Reminder Letters	Exhibit- 8 Series
9) Bank Statement	Exhibit-9 and 10

10. On the other hand, to prove the defendant's case, the defendants examined a witness namely **Abul Kaium Azad as D.W.1** and produced documents before the court.

Decision with Reasons

11. **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 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

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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. 6,19,53,268/-**. Despite repeated reminders, the defendants failed to discharge the said liabilities. Ultimately, the plaintiff issued a Reminder Letters and Final notice on 04.01.2013, 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 04.01.2013, and the instant suit having been filed on 15.01.2015, 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, convenience, and because they are interlinked both in fact and in law. Upon careful perusal of the plaint, written statement, oral evidence, documentary exhibits, and the materials available on record, it appears that the plaintiff, National Credit and Commerce Bank Limited, instituted the present suit for realization of outstanding dues amounting to **Tk. 6,19,53,268/- (Taka Six Crore Nineteen Lac Fifty-Three Thousand Two Hundred Sixty-Eight)** inclusive of accrued interest calculated **up to 31.12.2014** against the defendants under the provisions of the Artha Rin Adalat Ain, 2003.

14. It is admitted and undisputed that the plaintiff is a scheduled banking company duly incorporated under the Companies Act, 1994 and governed by the provisions of the Bank Companies Act, 1991, competent to institute this suit for recovery of financial claims arising out of sanctioned credit facilities. It is further admitted that Defendant No.1, namely **M/S Newtech Automationm Ltd.** is the principal borrower, while Defendant Nos. 2 and 3 executed guarantee obligations securing repayment of the said loan facilities and thereby assumed co-extensive liability with the borrower.

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15. In view of Section 6(4) of the Artha Rin Adalat Ain, 2003, the plaint supported by affidavit constitutes substantive evidence unless rebutted by credible contrary proof. To substantiate its claim, the plaintiff examined **P.W.1, namely Masrur Khan Chowdhury**, whose deposition remained materially consistent with the averments made in the plaint and stood corroborated by documentary evidence exhibited in the case.

16. From **Exhibit-2**, being the sanction letter dated 16.07.2007, it clearly appears that upon request of Defendant No.1, the plaintiff bank sanctioned a credit facility amounting to **Tk. 4,95,00,000/-** in favour of Defendant No.1. Subsequently, **Exhibit-3** reveals that the said facility was renewed on 02.02.2009 in composite form amounting to Tk. 2.75 crore. Thereafter, **Exhibit-4** demonstrates that the facility was rescheduled on 12.10.2009 for Tk. 271.82 lac in favour of M/S Newtech Automationm Ltd.

17. Further examination of **Exhibit-5** establishes that additional credit facilities amounting to Tk. 50 lac + Tk. 30 lac + Tk. 19.77 lac were sanctioned in favour of Defendant No.1 and its sister concern, M/S Newtec Bangladesh Ltd. Exhibit-6 further proves that such facilities were again rescheduled on 01.02.2011. Significantly, during cross-examination of P.W.1, the defendants did not deny receipt of these loan facilities.

18. The charge documents marked **Exhibit-7** series further establish execution of necessary loan securities, undertakings, and binding financial obligations by the borrower and guarantors. These documents clearly corroborate the lawful creation of financial liability and prove beyond doubt that Defendant No.1 lawfully availed the sanctioned facilities from the plaintiff bank.

19. Upon cumulative consideration of all sanctioned facilities, renewals, and rescheduling arrangements, it is evident that Defendant No.1 availed substantial banking accommodation amounting to **Tk. 3,25,02,893/-** under various arrangements from the plaintiff bank and repeatedly acknowledged the subsisting liability through subsequent restructuring arrangements. The reminder letters marked **Exhibit-8** series and the final notice marked **Exhibit-8/Ga** demonstrate that after availing the said facilities, Defendant No.1 committed persistent default in repayment. **Exhibit-8/Ga** specifically reveals that as **on 31.03.2013** the total dues stood at **Tk. 4,53,23,416.92** inclusive of accrued interest.

20. The statement of accounts marked Exhibit-9, maintained in ordinary course of banking business, further reveals that as **on 31.12.2014** the total outstanding dues reached **Tk. 6,19,53,268/-**. Said statement of account carries presumptive evidentiary value and has not been effectively challenged by the defendants through contrary documentary proof.

21. Although the defendants asserted in their written statement and in examination in chief that they had made partial repayments and that the plaintiff bank's delay in opening L/Cs and providing LTR facilities caused business losses, no documentary proof whatsoever has been produced to substantiate such allegations. No bank correspondence, no payment receipts, no independent account statement, no customs record, no port penalty

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documents, and no evidence regarding alleged cancellation of work orders by clients including Siemens were produced before this Court.

22. The defendants further alleged that due to political unrest during 2006–2009 they suffered business loss and that the plaintiff bank rescheduled the facilities in a manner advantageous only to itself. However, such contentions cannot legally absolve repayment liability because the defendants admittedly accepted repeated rescheduling arrangements and continued acknowledging the debt without lodging any contemporaneous legal protest.

23. Moreover, repeated rescheduling itself indicates that the plaintiff bank extended accommodation and financial indulgence to Defendant No.1 on multiple occasions. Had the defendants genuinely suffered due to wrongful conduct of the bank, they could have produced documentary protest, expert financial evidence, or instituted independent proceedings, none of which has been done.

24. This Court also notes that throughout pendency of the suit, the defendants neither made any substantial payment nor produced credible evidence disproving the plaintiff's account statement. Mere allegations unsupported by evidence cannot defeat a banking claim otherwise proved by primary records. The materials on record therefore conclusively establish that the loan account became classified due to continuous default committed by Defendant No.1 and that the outstanding dues remained unpaid despite repeated demands.

25. 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 otherwise restricted by contract. In the present case no such restriction is found. Therefore Defendant Nos. 2 and 3, having executed guarantee obligations, are jointly and severally liable together with Defendant No.1. 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. 6,19,53,268/-** 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. 6,19,53, 268.00/- (Taka Six Crore Nineteen Lacs Fifty-Three Thousand Two Hundred Sixty Eight only) up to 31/12/2014**. The Plaintiff shall be entitled to receive the said amount together with interest

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or profit as applicable under the prevailing laws or rules from **15/01/2015**, 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.**