

Artha Rin Suit No. 324 of 2022

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 : 30th day of March, 2026

Artha Rin Suit No. 324 of 2022

IPDC Finance Limited,
represented by its Managing Director and CEO.....Plaintiff

-Versus-

Yasmin Akter and 06 others.....Defendants

This case came up for final hearing on : 22.09.2025

In presence of :

Mr. Mohammad Saiful HaqueAdvocate for Plaintiff.

Mr. A K M Motahar HossainAdvocate for Defendants.

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

The plaintiff financial institution filed this present suit under the **Artha Rin Adalat Ain, 2003** for recovery of **Tk. 1,07,73,608.09/- (Taka One Crore Seven Lacs Seventy-Three Thousand Six Hundred Eight point Nine only) as on 05.02.2019.**

The suit was filed on 11.02.2019 before the **Artha Rin Adalat No. 2**, Dhaka, being registered as **Artha Rin Suit No. 100 of 2019**. Subsequently, by order dated 13.06.2022 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. 324 of 2022**.

Plaintiff's Case in Brief

1. That the plaintiff, IPDC Finance Limited, is a duly incorporated non-banking financial institution under the provisions of the Companies Act, 1994 and is carrying on business under the relevant laws governing financial institutions in Bangladesh. That Late

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Abu Saleh, proprietor of M/s. Saleh Enterprise, approached the plaintiff financial institution seeking a lease finance facility amounting to **Tk. 1,00,20,000.00 (Taka One Crore Twenty Thousand only)**. Upon consideration of his application, the plaintiff issued an offer letter dated 19.09.2016 sanctioning the said lease facility subject to certain terms and conditions. In pursuance thereof, a lease agreement dated 10.10.2016 was duly executed between the plaintiff and Late Abu Saleh.

2. That pursuant to the execution of the said agreement, the plaintiff duly disbursed the lease finance facility of Tk. 1,00,20,000.00 in favour of Late Abu Saleh, proprietor of M/s. Saleh Enterprise, for the purpose of procurement of four (04) units of excavators. Late Abu Saleh accepted all terms and conditions of the facility and, in token thereof, executed all requisite charge documents and security papers in favour of the plaintiff institution. As collateral security for the said lease facility, the leased assets were registered in the name of the plaintiff institution, comprehensive insurance coverage over the leased assets was obtained in favour of the plaintiff, and Defendant No.1, being the spouse of Late Abu Saleh, executed a personal guarantee securing repayment of the facility. In addition thereto, Late Abu Saleh mortgaged the scheduled property described in **Schedule-C** in favour of the plaintiff by executing Mortgage Deed No.2814 dated 29.09.2016 along with Irrevocable Power of Attorney Deed No.2815 dated 29.09.2016.

3. That thereafter Late Abu Saleh enjoyed and availed the said financial facility until his demise on 31.01.2018, leaving behind Defendant No.1, his widow, one son and four daughters, namely Defendants No.2 to 6, as his legal heirs and successors. After the death of Late Abu Saleh, Defendants No.1 to 6, and defendant No.7 a mother being his lawful heirs and legal successors, inherited his business, estate, and mortgaged properties and thereby became liable to discharge the outstanding financial obligations incurred by the deceased borrower. Defendant No.1 additionally remains liable as personal guarantor under the loan transaction.

4. That following the death of the principal borrower, the plaintiff repeatedly communicated with the defendants and requested them to regularize and repay the outstanding liabilities. However, despite repeated reminders, demands, and correspondence, the defendants failed, neglected, and refused to liquidate the dues within the stipulated time. That as on 05.02.2019, the total outstanding liability under the lease facility stood at **Tk. 1,07,73,608.09 (Taka One Crore Seven Lakh Seventy-Three Thousand Six Hundred Eight and Paise Nine only)**, inclusive of accrued interest.

5. That although on several occasions the defendants acknowledged the subsisting liability, they intentionally defaulted in making payment. Consequently, the plaintiff issued a Final Demand notice dated 14.10.2018 demanding adjustment of the dues, but the defendants neither complied with the said notice nor took any effective step to settle the

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liability. Despite of all lawful demands and amicable efforts, the plaintiff failed to recover its dues, and from the conduct and communications of the defendants it became apparent that they were unwilling to repay the outstanding amount unless compelled through due process of law. That having exhausted all possible avenues for amicable settlement, and the outstanding admitted liability remaining unpaid, the plaintiff has been constrained to institute the present suit for realization of its lawful dues.

Defendant's Case :

6. **On the other hand, defendant Nos. 1 to 7, contested the suit by filing a written statement, contended, *inter alia*, that the suit is not maintainable either in law or on facts and that no valid cause of action arose for institution of the present case. They further asserted that the suit is barred by limitation. The defendants stated that after the death of the principal borrower, late Abu Saleh, who expired on 31.01.2018, his sole legal heirs were impleaded in the present suit, namely his widow, defendant No.1, Mrs. Yasmin Akter, and defendant Nos. 2 to 6, being his minor sons and daughters and defendant No.7 his mother.**

7. It has been specifically pleaded that immediately after the death of late Abu Saleh, representatives of the plaintiff visited the residence of the defendants and exerted pressure upon them regarding repayment of the outstanding loan liabilities of the deceased borrower. In such circumstances, the defendants contacted the plaintiff's Chattogram office and sought clarification regarding the actual liabilities left by the deceased principal borrower. However, according to the defendants, the plaintiff did not furnish any proper statement of account, supporting documents, or loan-related papers; rather, they merely informed the defendants that an amount of Tk. 1,03,43,324/- was allegedly outstanding against late Abu Saleh.

8. The defendants further averred that thereafter, without obtaining consent from the defendants and without any lawful notice or prior intimation, the plaintiff forcibly took possession of **four Excavators** from the construction worksite previously operated by late Abu Saleh. Subsequently, the plaintiff again approached the defendants and demanded payment of the loan amount. In response thereto, the defendants requested the plaintiff to sell the four excavators described in Schedule-"Ka" and adjust the sale proceeds against the outstanding loan liability.

9. According to the written statement, the plaintiff then advised the defendants to discuss the matter further at the plaintiff's office. Thereafter, upon communication with the plaintiff's office, the defendants were informed that the private motor vehicle described in Schedule-"Ga", which had been used personally by late Abu Saleh, should also be handed over for adjustment of the loan liability. The plaintiff allegedly assured the defendants that the said vehicle along with the four excavators would be sold and the sale proceeds adjusted

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against the outstanding dues, and that any surplus amount, if remaining after adjustment, would be returned to the defendants.

10. The defendants further stated that in addition to the aforesaid movable assets, they also requested the plaintiff to sell the mortgaged land described in Schedule-"Kha", the title deeds and relevant land documents of which were already lying with the plaintiff, and to adjust the proceeds thereof against the loan account. It is their case that the plaintiff agreed to such proposal. Acting upon such understanding, the defendants handed over the original documents of the private car belonging to late Abu Saleh, and the plaintiff itself assessed the value of the said vehicle at Tk. 28,00,000/-.

11. It has further been alleged that after taking possession of the said vehicle and relevant documents, the plaintiff ceased communication with the defendants and never informed them whether the scheduled assets had been sold or whether the loan account had been adjusted accordingly. The defendants specifically alleged that since March 2018, the plaintiff retained possession of the four excavators but intentionally refrained from selling them and from adjusting the loan liability, and instead, with mala fide intention, instituted the present suit by inflating the claim through addition of interest, penal interest, and other unjustified charges.

12. It has been further pleaded that the four excavators previously generated daily rental income of Tk. 32,000/-, which amounted to monthly earnings of Tk. 9,60,000/-, and that such income had been the principal source for repayment of the deceased borrower's liabilities as well as maintenance of the family. According to the defendants, by taking possession of the excavators, the plaintiff effectively stopped that income stream, thereby seriously impairing both repayment capacity and family subsistence.

13. The defendants claimed that from March 2018 up to 23.04.2020, being the date of filing of the written statement, they were deprived of rental earnings for 24 months, amounting to Tk. 2,30,40,000/-, which according to them constitutes direct financial loss attributable solely to the plaintiff's conduct, and such amount is liable to be adjusted against the plaintiff's claimed dues.

14. It has also been contended that considering the cumulative value of the four excavators, approximately Tk. 1,74,00,000/-, the mortgaged land measuring 14.5 decimals described in Schedule-"Kha" having an approximate market value of Tk. 80,00,000/-, the private car valued at Tk. 28,00,000/-, together with rental loss of Tk. 2,30,40,000/-, the aggregate value stands at Tk. 5,12,40,000/-. According to the defendants, if such assets and losses are properly adjusted, no outstanding liability remains payable to the plaintiff.

15. The defendants further asserted that despite repeated requests by the defendants and their relatives to settle the entire claim through sale of the mortgaged land for which power of attorney had already been executed in favour of the plaintiff, the plaintiff failed to take

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effective steps for sale of the property and instead instituted the present suit. It is also alleged that only after institution of the suit did the defendants come to know that the plaintiff attempted auction sale of the secured assets long afterwards by publishing notices in two obscure and non-circulating newspapers containing allegedly false and misleading particulars, with a deliberate intention to frustrate fair sale of the assets. According to the defendants, such conduct clearly demonstrates negligence, failure, incompetence, and mala fide intention on the part of the plaintiff, and that such acts were committed to conceal mismanagement and facilitate misappropriation of the secured assets by the plaintiff's officials, thereby causing irreparable loss to the defendants. On the basis of the aforesaid assertions, the defendants prayed for dismissal of the suit with costs.

Issues:

16. 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 plaintiff has any cause of action for filing the suit ?
 - 3) Whether the suit is barred by Limitation ?
 - 4) Whether the plaintiff Financial Insatitution is entitled to recover the claimed amount from the defendants?
 - 5) Whether the plaintiff is entitled to obtain a decree as prayed for?

Discussions and Decisions:

17. To prove the plaint case, the plaintiff examined 01 witnesses namely **Md Jahirul Haque 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) Loan Application, Offer Letter Lease Agreement	Exhibit-2 Series
3) Charged Documents	Exhibit-3 Series
4) Letter of Personal guarrantee	Exhibit-4
5) Certificate of Lease Execution	Exhibit- 5 Series
6) Dead of Mortgage and IPOA	Exhibit- 6 Series

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7) Letter of Disbursement	Exhibit- 7
8) Call Back Notice and Final Notice	Exhibit-8 Series
9) Paper Publication	Exhibit-9
10) Account Statement	Exhibit-10

18. On the other hand, to prove the defendant's case, the defendants examined 01 witnesses namely **Yesmin Akter as P.W.1** before this court. **During examination of P.W.1** the documents such as Certificate of guardianship and Letter of Authorization were produced and proved, which have been marked as Exhibits: **Ka and Kha.**

Decision with Reasons

19. **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 non banking financial institution 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.

20. 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 Late Abu Saleh predecessor of defendants No.1-7, the plaintiff institution sanctioned Lease credit facilities in favour of Late Abu Saleh. The said facilities were secured by execution of charge documents and personal guarantees and mortgage of immovable properties. However, on the demise of Abu Saleh, his heirs the defendants defaulted in repayment of loan

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installments as per terms of the Agreements. The default persisted and the outstanding liabilities accumulated to the tune of **Tk. 1,07,73,608.09/-**. Despite repeated reminders, the defendants failed to discharge the said liabilities. Ultimately, the plaintiff issued a Call back notice on 04.09.2018 and a Final Notice on 14.10.2018, 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 14.10.2018, and the instant suit having been filed on 11.02.2019, 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.

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

All the issues having been taken up together for the sake of brevity, convenience, and avoidance of repetition, this Court now proceeds to examine whether the plaintiff has been able to establish its claim in accordance with law and whether the defendants have succeeded in rebutting the same by legally admissible evidence.

22. At the outset, it appears from the pleadings, oral evidence, and documentary exhibits that the plaintiff, **IPDC Finance Limited**, is a duly incorporated non-banking financial institution governed by the relevant laws of the country and is competent to institute the present suit under the provisions of the Artha Rin Adalat Ain, 2003 for recovery of financial dues arising out of a lease finance transaction.

23. From the uncontroverted testimony of P.W.1 read together with **Exhibit-2 and Exhibit-2/Ka**, it is clearly established that Late Abu Saleh, proprietor of **M/s. Saleh Enterprise**, approached the plaintiff institution seeking lease finance facility of **Tk.1,20,00,000/-** for business purposes and that upon due appraisal the plaintiff sanctioned the facility through offer letter dated **19.09.2016** subject to specific terms and conditions duly accepted by the borrower. Subsequently, by executing the formal **deed of Agreement and lease agreement dated 03.10.2016** evidenced by **Exhibit-3 and Exhibit-3/Ka**, the contractual relationship between the parties attained full legal enforceability.

24. It further appears that pursuant to such agreement the plaintiff disbursed the sanctioned lease amount for acquisition of 04 (four) Excavators, and corresponding charge documents, lease undertakings, and security instruments were duly executed by the borrower acknowledging his liability. **Exhibit-3/Ka** further reveals that the leased assets remained registered under the plaintiff's ownership and were covered by first party

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comprehensive insurance, thereby preserving the financial security of the lending institution.

25. The evidence further establishes that besides the primary lease security, additional collateral securities were lawfully created. **Exhibit-4** demonstrates that Defendant No.1 executed a personal guarantee undertaking liability in the event of default. **Exhibit-6** and **Exhibit-6/Ka** further prove that Late Abu Saleh mortgaged immovable property described in **Schedule-C** of the plaint through registered mortgage deed and executed irrevocable power of attorney in favour of the plaintiff, thereby creating legally enforceable collateral security over immovable property.

26. The admitted fact of death of Late Abu Saleh on 31.01.2018 has not been disputed by the defendants. It is equally admitted that Defendant Nos.1 to 7 are his widow, son, and daughters and mother who succeeded to his estate and inherited the business interest, mortgaged property, and financial obligations attached thereto. Under settled legal principle, legal heirs who inherit estate remain liable to satisfy enforceable financial obligations of the deceased borrower to the extent of assets inherited by them. Therefore, the liability did not extinguish upon death of the principal borrower.

27. The principal defence advanced by the defendants is that after death of the borrower, the plaintiff allegedly took possession of four excavators and one motor vehicle and thereafter failed to adjust the value of such assets against the outstanding liability. However, this defence remains largely unsupported by legally acceptable proof. Although allegations have been made that the plaintiff retained possession of excavators and did not sell them promptly, no documentary proof of actual market value, no independent valuation report, no proof of tender sale, and no legally admissible account adjustment calculation have been produced by the defendants.

28. Similarly, the assertion that the excavators generated monthly income of Tk.9,60,000/- and that loss of such income should be adjusted against the plaintiff's claim is purely hypothetical and unsupported by business records, tax documents, rental contracts, account books, or any independent witness competent to establish actual earnings. In absence of cogent proof, such claimed loss remains speculative and cannot defeat a contractual financial liability proved by written documents.

29. The defendants further contended that the mortgaged land and vehicle ought to have been sold by the plaintiff for adjustment of dues. However, mere assertion of possible sale value cannot legally extinguish the debt unless actual sale is completed and sale proceeds are credited. The record does not disclose any completed sale yielding realized proceeds sufficient to discharge the liability.

30. On the contrary, Exhibit-8 proves issuance of Call Back notice by the plaintiff requiring repayment of dues. The defendants admittedly failed to comply with such

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demand. Exhibit-10, being the statement of account maintained in regular course of financial business, shows that as on 05.02.2019 the total outstanding liability stood at Tk. **1,07,73,608.09/-** inclusive of accrued interest and contractual charges.

31. The defendants challenged the interest calculation as excessive and arbitrary, yet they failed to submit any contrary account statement, expert audit, financial reconciliation, or mathematical contradiction capable of displacing the plaintiff's account. In financial litigation under the *Artha Rin Adalat Ain*, once a lending institution produces duly maintained accounts supported by affidavit and oral testimony, the burden shifts upon the borrower or guarantors to demonstrate concrete discrepancies. Such burden has not been discharged in the present case.

32. Under Section 6(4) of the *Artha Rin Adalat Ain, 2003*, the statements made in the plaint, when supported by affidavit, carry evidentiary value and constitute substantive evidence unless the same are effectively rebutted by the defendants through cogent and reliable materials. In the instant suit, the testimony of P.W.1 has fully supported and corroborated the plaint case in all material particulars. Moreover, nothing substantial has emerged during cross-examination to discredit the oral testimony of P.W.1 or to undermine the authenticity and evidentiary value of the documentary evidence adduced by the plaintiff.

33. It further appears from the record that the principal borrower, late Abu Saleh, having died, left behind Defendant Nos. 1 to 7 as his legal heirs. Upon his death, the said defendants succeeded to his estate and, to the extent of the assets inherited, also succeeded to the liabilities attached thereto. Accordingly, they remain jointly and severally liable for repayment of the outstanding dues. In view of the executed deeds of guarantee, mortgage security, and their succession to the estate of the deceased borrower, Defendant Nos. 1 to 7 clearly come within the ambit of enforceable liability under the law.

34. This Court further observes that during the entire pendency of the suit, the defendants neither made any partial repayment toward liquidation of the outstanding liability nor came forward with any definite proposal for restructuring of the loan supported by actual payment. Their defence has mainly been founded upon allegations of negligence on the part of the plaintiff and assertion of an inflated claim; however, such allegations have remained wholly unsubstantiated, no documentary evidence having been produced in support thereof.

35. Conversely, the plaintiff has been able to satisfactorily establish, through oral and documentary evidence, the lawful sanction of the finance facility, execution of the lease agreement, creation of guarantee and mortgage securities, actual disbursement of the finance facility, persistent default in repayment, issuance of Call back notice, and the precise outstanding dues as reflected in the regularly maintained statement of accounts.

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36. Accordingly, upon careful consideration of the oral testimony, documentary exhibits, statutory presumptions, and the surrounding facts and circumstances, this Court is satisfied that the plaintiff has successfully proved its outstanding amount of TK. **1,07,73,608.09/- as on 05.02.2019**, which remains legally due and recoverable and that the defendants are jointly and severally liable to repay the said amount under the provisions of the Artha Rin Adalat Ain, 2003. Hence, all the issues are decided in favour of the plaintiff, and the suit deserves to be decreed.

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. 1-6 and ex-party against the other defendants with costs for an amount of **Tk. 1,07,73,608.09/- (Taka One Crore Seven Lacs Seventy Three Thousand Six Hundred Eight point Zero Nine only) up to 05/02/2019**. The Plaintiff shall be entitled to receive the said amount together with interest or profit as applicable under the prevailing laws or rules from **11/02/2019**, 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.**