

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 : 19th day of April, 2026

Artha Rin Suit No. 581 of 2023.

Union Capital Limited-----Plaintiff

-Versus-

Mr Md. Mutiur Rahman Bhuiyan and 03 others -----Defendants

This case came up for final hearing on :14.11.2024, 21.07.2025 & 03.03.2026.

In presence of :

Mr. S.M. Mahabubur Rahman Rupom-----Advocate for Plaintiff.

Mr. Md Azadul Alam Sarker-----Advocate for Defendant No.1.

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

The plaintiff **Union Capital Limited** filed this present suit under the **Artha Rin Adalat Ain, 2003** for recovery of **Tk. 40,92,180.00 (Taka Forty Lac Ninety Two Thousand One Hundred Eighty only)** as on **20.06.2023**.

Plaintiff's Case in Brief

1. The plaintiff, **Union Capital Limited**, is a financial investment institution duly incorporated under the Companies Act, 1994 and being governed by and in accordance with the Financial Institution Act, 1993 having license from the Bangladesh Bank. The defendant No.1 is the proprietor of “ **B-Baria Store**” and the principal borrower and Defendant No.2-4 is the personal guarantor of the said loan facilities availed by the defendant No.1.

2. On application of defendant No.1 dated 02.02.2017, the plaintiff financial company sanctioned a **Term finance (SME) facility of TK. 50,00,000.00/-** in favor of the defendant No.1 vide Sanction letter dated **23.02.2017**. Accordingly, a term finance agreement dated 23.02.2017 was executed between the plaintiff and the defendant No.1 narrating the terms and conditions of the loan. 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 Institution. As security for the aforesaid investment facilities, the defendant Nos.2-4 personally guaranteed the loan.

3. Thereafter the said loan was restructured as Term Finance facility for an amount of TK.37,42,335/- in favor of the defendant No.1 vide sanction letter dated 18.012.2018. Accordingly, the loan Agreement was amended on 20.12.2018. But the borrower continued to default the payment of the said credit facility. As per circular of Bangladesh Bank dated 01.11.2020, the plaintiff company further extended deferral facility of overdue installments vide letter dated 10.01.2021. But the defendants neither bothered to adjust the outstanding amount nor took any step towards adjustment of the same.

4. The plaintiff financial institution duly disbursed the sanctioned investment facilities which were availed of and enjoyed by the defendant No.1-4 in the course of its business activities. However, the defendants, with malafide 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.

5. As on **20.06.2023**, the total liabilities of the defendants stood at TK. **40,92,180.00** inclusive of accrued interest. Although on several occasions the defendants acknowledged their liabilities, they deliberately failed to make payments. Consequently, the plaintiff issued final Notice on **26.07.2022** & Legal Notice on **14.02.2023**. However, the defendants failed to comply with the said notice and did not contact the plaintiff bank in this regard.

6. The plaintiff financial institution could not realize its dues despite of several reminders 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 **20.06.2023**, the admitted liability of the defendants stood at **Tk. 40,92,180.00**. Having failed in all attempts to recover its dues amicably, the plaintiff has compelled to file this instant suit.

Defendant's Case :

7. The Defendant No. 1, denying all material allegations, contested the suit by filing a written statement, contending *inter alia* that the suit, as framed and filed, is not maintainable either in law or on facts and is liable to be dismissed in limine for want of cause of action. Defendant No. 1 states that he is the sole proprietor of a business concern styled as “**B-Baria Store**” and has been carrying on his business with due reputation and goodwill. In the ordinary course of his business, Defendant No. 1 availed a loan facility amounting to BDT 50,00,000/- (Taka Fifty Lac only) from Union Capital Limited on 12.09.2013, which he duly repaid on a regular basis in accordance with the agreed terms.

8. Subsequently, on 03.04.2014, Defendant No. 1 obtained a further loan facility of BDT 60,00,000/- (Taka Sixty Lac only) from the present Plaintiff financial institution, which was also repaid regularly and without default for a considerable period of time. Thereafter, on 23.02.2017, Defendant No. 1, in his capacity as proprietor of the said business, executed a loan agreement along with other necessary documents in favour of the Plaintiff financial institution and availed another loan facility amounting to TK. 50,00,000/- (Taka Fifty Lac only). Defendant No. 1 asserts that he duly signed all relevant documents in connection with the said loan.

9. It is emphatically contended that Defendant Nos. 2, 3, and 4 did not execute any charge documents, deeds of guarantee, or any other legally binding instruments in respect of the aforesaid loan. As such, they cannot be treated as guarantors in the eye of law. The Defendant further submits that the averments made in the plaint, supported by certain photocopied documents, alleging that Defendant Nos. 2, 3, and 4 stood as guarantors to the said loan, are wholly false, fabricated, and devoid of any legal basis. Consequently, Defendant Nos. 2, 3, and 4 are entitled to be discharged from all liabilities in connection with the present suit.

10. Defendant No. 1 further submits that while he had been conducting his business successfully and with a good reputation, he suffered severe financial setbacks due to adverse global economic conditions. The situation was further aggravated by the outbreak of the COVID-19 pandemic, which led to prolonged closure of his business operations. As a result of such unforeseen and unavoidable circumstances, Defendant No. 1 became financially distressed and was unable to pay certain installments of the loan in time.

11. Despite of having already repaid a substantial portion of the loan, the Plaintiff institution, without properly accounting for the payments made, has

instituted the present suit claiming an alleged outstanding amount of BDT 40,92,180/-, which is incorrect, inflated, and not legally sustainable. In view of the above facts and circumstances, Defendant No. 1 contends that the present suit is misconceived, not maintainable, and liable to be dismissed with costs.

Issues:

12. 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:

13. To prove the plaint case, the plaintiff examined 01 witnesses namely **Tanjeen Zaman Keya 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 & Loan agreement	Exhibit-3 Series
4) Photocopy of Cheques	Exhibit-4
5) Restructure application and sanction letter	Exhibit-5 Series
6) Personal guarantees and charge documents	Exhibit-6 Series
7) Reminder Letter & Final Notice	Exhibit-7 Series
8) Legal Notice & P.R	Exhibit-8 Series
9) Account statement	Exhibit-9

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

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 non-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. 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. 40,92,180.00**. Despite repeated reminders, the defendants failed to discharge the said liabilities. Ultimately, the plaintiff issued Legal notice on 14.02.2023, 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 14.02.2023, and the instant suit having been filed on 21.06.2023, 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 the issues involved in the present suit are taken up together for the sake of brevity, convenience, and as they are intrinsically interconnected both in fact and in law.

Upon careful scrutiny of the pleadings of the parties, the oral evidence adduced, documentary exhibits produced, and the entire materials available on record, it transpires that the plaintiff, Union Capital Limited, instituted the present suit for realization of outstanding dues amounting to **Tk. 40,92,180.00 (Taka Forty Lac Ninety-Two Thousand One Hundred Eighty)** only, inclusive of accrued interest calculated up to 20.06.2023, against the defendants under the provisions of the Artha Rin Adalat Ain, 2003.

17. It is admitted and remains undisputed that the plaintiff is a duly incorporated scheduled non-banking financial institution, legally competent to institute and maintain the present suit for recovery of financial claims arising out of sanctioned credit facilities extended in the ordinary course of its business. It further appears that Defendant No.1, namely Md. Mutiur Rahman Bhuyan, is the principal borrower, while Defendant Nos.2 to 4 executed deeds of guarantee securing repayment of the said loan facility and thereby undertook co-extensive liability with the principal borrower.

18. In view of Section 6(4) of the Artha Rin Adalat Ain, 2003, the plaint supported by affidavit carries evidentiary value unless rebutted by credible evidence. In support of its case, the plaintiff examined P.W.1, Tanzin Zaman Keya, who submitted affidavit-in-chief affirming the contents of the plaint. His testimony appears consistent, trustworthy, and corroborative of the plaintiff's claim. Nothing material could be elicited during cross-examination to discredit his evidence or weaken the case of the plaintiff.

19. From Exhibit-2/1, being the sanction letter dated 23.02.2017, it is evident that upon application by Defendant No.1, the plaintiff sanctioned a Term Finance (SME) facility amounting to Tk. 50,00,000/- (Taka Fifty Lac) in his favour subject to stipulated terms and conditions. Subsequently, a Term Finance Agreement dated 23.02.2017 was duly executed between the parties. It further appears that Defendant No.1 hypothecated his business goods and stock of the shop under the name "B-Baria Store," and a deed of hypothecation was executed accordingly. The charge documents marked Exhibit-3 series clearly establish that the borrower and guarantors executed all necessary security documents, undertakings, and repayment obligations in favour of the plaintiff, thereby creating a lawful and binding financial liability.

20. It further transpires from Exhibit-5/1 that upon application by Defendant No.1, the loan facility was restructured and converted into an amount of Tk. 37,42,335/-, followed by amendment of the loan agreement on 20.12.2018 (Exhibit-6). Despite such restructuring and subsequent concession, including

deferral facility of overdue installments as evidenced by Exhibit-7 (letter dated 10.01.2021), the borrower continued to default in repayment obligations.

21. The reminder letters and legal notice marked Exhibit-7/3 and Exhibit-8 demonstrate that the plaintiff made repeated demands for repayment. However, the defendants failed to regularize the loan account or liquidate the outstanding dues. The legal notice further establishes compliance with pre-suit requirements under the law.

22. The statement of account (Exhibit-9), maintained in the ordinary course of business, reveals that as on 20.06.2023, the outstanding liability stood at Tk. **40,92,180/-**. Such statement carries presumptive evidentiary value, particularly in the absence of any rebuttal evidence. The defendants failed to produce any contrary statement, independent audit report, or documentary proof capable of disproving the correctness of the plaintiff's financial claim.

23. On the other hand, although the defendants admitted availing the loan facility, they contended that substantial payments amounting to Tk. 48,00,000/- including FDR adjustments were made and that the claim is excessive. They further attributed their default to business losses during the Covid-19 pandemic and alleged filing of criminal cases under the Negotiable Instruments Act. However, these assertions remain unsubstantiated, as no documentary evidence such as payment receipts, bank statements, or reconciliation records were produced in support thereof.

24. It is a settled principle that mere pleading without proof carries no evidentiary value. The defendants, despite contesting the suit, failed to discharge their burden of proof. No credible material has been brought on record to rebut the plaintiff's documentary evidence or to establish full or partial adjustment of the loan liability.

25. It further appears that due to persistent default by Defendant No.1, the loan account became classified and remained unpaid despite repeated demands. Consequently, the plaintiff has successfully established that the liability has lawfully matured and remains 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 otherwise restricted. In the present case, no such limiting condition exists in the guarantee documents. Therefore, Defendant Nos.2 to 4 are jointly and severally liable along with Defendant No.1 for repayment of the decretal amount.

27. Upon comprehensive evaluation of the pleadings, evidence, and surrounding circumstances, this Court finds that the plaintiff has been able to

prove its case by reliable and cogent evidence. Accordingly, all the issues are decided in favour of the plaintiff who is entitled to recover **Tk. 40,92,180/-** 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. 40,92,180/- (Taka Forty Lacs Ninety-Two Thousand One Hundred Eighty only) up to 20/06/2023**. The Plaintiff shall be entitled to receive the said amount together with interest or profit as applicable under the prevailing laws or rules from **21/06/2023**, 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.**