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 : 17th day of June, 2026

Artha Rin Suit No. 1504 of 2023.

People's Leasing And Financial Services Limited-------------Plaintiff
-Versus-
M/S Nahar International Trading Co. & others--------------Defendant

This case came up for final hearing on: 31.03.2026, 17.05.2026 & 23.05.2026.

In presence of :
Saifullah Mohammad Kausar--------------------Advocate for Plaintiff.
Md. Khaled Hossain----------------------------Advocate for Defendant.

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

The plaintiff **People's Leasing And Financial Services Limited** filed this present suit under the **Artha Rin Adalat Ain, 2003** for recovery of **Tk. 45,00,00,000.00 (**Taka Forty Five Crore**) as on 31.01.2017.**

The suit was filed on 08.02.2017 before the **Artha Rin Adalat No. 2**, Dhaka, being registered as **Artha Rin Suit No. 143 of 2027**. 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. 1504 of 2023**.

Plaintiff's Case in Brief

1. The plaintiff, **People's Leasing and Financial Services Limited**, is a financial institution duly incorporated as a Public Limited Company under the

Companies Act, 1994 and is carrying on its business in accordance with the provisions of the Financial Institutions Act, 1993. The defendant No.1, **M/s Nahar International Trading Co.** is a proprietorship concern engaged in business activities. The defendant No.2 is the proprietor of defendant No.1 and acted as the borrower, mortgagor, and guarantor in respect of the credit facility in question. Defendant No.3 is a mortgagor while defendant No.4 is also a mortgagor whose properties were mortgaged through his attorney, defendant No.2.

2. The plaintiff states that on 05.09.2011, defendant No.2, on behalf of defendant No.1, applied for a loan facility of Tk.15.00 Crore. Upon consideration of the application, the plaintiff sanctioned the said loan facility vide sanction letter dated 18.09.2011. Defendant No.2, acting for defendant No.1, accepted the terms and conditions of the sanction letter and, in furtherance thereof, executed a Loan Agreement with the plaintiff on the same date.

3. To secure the said credit facility, defendant No.2 executed various Charge documents all dated 18.09.2021 in favour of the plaintiff. In addition thereto, defendant No.2, acting as the constituted attorney of defendant No.4 under registered Deeds of Irrevocable General Power of Attorney Nos. 3105 and 7430 both dated 06.07.2011, executed a registered Mortgage Deed being No.3946 dated 20.09.2011.

4. The plaintiff further states that, for strengthening the collateral security of the loan, the defendants agreed to provide additional security. Accordingly, the plaintiff issued an approval letter dated 19.11.2014, and pursuant thereto defendant No.3, namely Rare Holdings Limited, represented by its Managing Director Mr. Sulaiman Rebell, executed a registered Mortgage Deed being No.9769 dated 02.12.2014. Simultaneously, defendant No.3 executed a registered Power of Attorney being No.9770 dated 02.12.2014 authorizing the plaintiff to sell the mortgaged property in the event of default.

5. The plaintiff contends that it duly disbursed the entire loan amount of Tk.15,00,00,000.00 to defendant No.1 through several cheques issued from Prime Bank Limited. The disbursements were duly received and utilized by defendant No.1 in the course of its business operations. Having availed and enjoyed the benefits of the credit facility, the defendants became liable to repay the same in accordance with the agreed terms and conditions.

6. However, despite repeated requests and demands, the defendants failed and neglected to repay the outstanding dues. The plaintiff issued several reminder and demand letters on different dates, including 26.10.2011, 22.12.2011,

07.06.2012, 17.07.2012, 05.08.2012, and 02.07.2014, requesting the defendants to liquidate their liabilities. Nevertheless, the defendants paid no heed to such requests and continued to remain in persistent default.Finding no other alternative, the plaintiff served a final demand notice upon the defendants at their last known addresses. As the defendants remained indifferent and failed to respond, the plaintiff ultimately issued a **Legal Notice dated 26.04.2016** to repay the outstanding dues. Despite receipt of the said notice, the defendants neither replied thereto nor liquidated the outstanding liability.

7. Having exhausted all possible avenues for recovery and the defendants having failed to repay the loan amount together with accrued interest and other charges, the plaintiff was constrained to institute the present suit seeking recovery of Tk.45,00,00,000.00 (Taka Forty-Five Crore) as outstanding and due from the defendants as on 31.01.2017 along with other reliefs as prayed for in the plaint.

Defendant's Case:

8. On the other hand, Defendant Nos. 1 and 2 contested the suit by filing written statement, contending ***inter alia*** that the suit is not maintainable either in law or on facts and that the plaintiff has no valid cause of action to institute the suit. It was further asserted that the suit is hopelessly barred by limitation and is, therefore, liable to be dismissed in limine.

9. It is stated by the defendants that they have long been engaged in the business of purchasing and selling shares in the capital market and have acquired considerable experience and reputation in that field. According to them, for the purpose of conducting such business, they had, on several occasions, availed financial facilities from the plaintiff institution and had jointly participated with the plaintiff in share trading transactions. It was specifically pleaded that all previous liabilities owed by the defendants to the plaintiff had already been fully adjusted and discharged. Nevertheless, despite full settlement of the earlier financial dealings, the plaintiff has filed for recover the same amounts afresh by instituting two separate proceedings before the Artha Rin Adalat, including the present suit.

10. The defendants further averred that the plaintiff and the defendants had a relationship of joint commercial arrangement in relation to investment in the capital market. They jointly operated BO Accounts for the purpose of purchasing and selling shares, whereby the plaintiff institution equally enjoyed the benefits arising from shares, equity participation, and dividends. According to the

defendants, they themselves never received the proceeds arising out of the sale of the shares, as the plaintiff retained and enjoyed the entire sale proceeds.

11. The defendants further pleaded that Defendant No. 2 was widely recognized in the capital market as a skilled and experienced investor and share trader. Owing to his expertise, the plaintiff institution allegedly relied upon his advice and guidance in purchasing and selling shares. It was asserted that the management committee of the plaintiff institution, which was in office in and prior to the year 2011, repeatedly earned substantial profits by conducting share transactions under the advice and supervision of Defendant No. 2.

12. It was further stated that, in recognition of Defendant No. 2's expertise, the then Managing Director of the plaintiff institution, by a letter dated 16.04.2009, requested Defendant No. 2 to arrange the raising of capital amounting to approximately Tk.100 to Tk.150 crore through the sale of preferential shares of the plaintiff institution. The plaintiff also allegedly undertook to pay Defendant No. 2 consultancy fees equivalent to 12.5% of the capital so raised.

13. According to the defendants, acting upon such request, Defendant No. 2 successfully facilitated the raising of approximately Tk.120 crore for the plaintiff institution through the sale of preferential shares in the capital market. In consideration thereof, the plaintiff allegedly paid consultancy commission amounting to Tk.15 crore to Defendant No. 2 by making payments of Tk.5 crore on 22.03.2011, Tk.3 crore on 24.03.2011, Tk.2 crore on 24.03.2011, and Tk.5 crore on 04.04.2011. The defendants emphatically asserted that these payments were made solely towards consultancy commission and were not advanced as any loan or financial accommodation whatsoever.

14. The defendants further alleged that, after a new management committee assumed control of the plaintiff institution, the newly constituted management dishonestly and mala fide attempted to characterize the aforesaid commission payments of Tk.15 crore as a loan advanced to the defendants. It was contended that such re-characterization was undertaken solely with the ulterior motive of unlawfully fastening upon the defendants a fictitious loan liability that had never existed.

15. The defendants further pleaded that, in furtherance of the said design, the new management induced Defendant No. 2 by assuring him that the plaintiff would formally sanction a loan corresponding to the aforesaid amount and advised him to submit a loan application. Acting upon such assurance and on the advice of the plaintiff, Defendant No. 2 submitted, in the name of Defendant No. 1, an application dated 05.09.2011 seeking a loan of Tk.15 crore.

16. It was further stated that, pursuant to the said application, the plaintiff issued a sanction letter dated 18.09.2011 approving a loan facility of Tk.15 crore in favour of Defendant No. 1. The defendants asserted that, in accordance with the terms and conditions contained in the sanction letter, the plaintiff required them to furnish collateral security by way of mortgage of immovable properties before disbursement of the sanctioned loan. Relying upon such representation, the defendants allegedly mortgaged their own immovable properties as well as properties belonging to third parties in favour of the plaintiff institution and executed various security documents, including blank charge documents and other loan documentation, with the legitimate expectation that the sanctioned loan would thereafter be disbursed.

17. However, according to the defendants, despite obtaining mortgages over immovable properties and securing execution of various charge documents and loan instruments, the plaintiff deliberately failed and neglected to disburse any portion of the sanctioned loan. It was categorically asserted that no amount whatsoever was ever released to Defendant No. 1 under the alleged loan facility sanctioned on 18.09.2011.

18. The defendants further contended that the plaintiff's real intention was never to extend any financial accommodation but rather to create a paper transaction in order to convert the earlier commission payment of Tk.15 crore into an ostensible loan liability. They alleged that the plaintiff fraudulently procured the loan application, obtained execution of mortgage deeds and blank charge documents, and fabricated various loan-related documents so as to falsely depict that a loan had been advanced to the defendants, whereas in reality no disbursement of funds had ever taken place.

19. It was further asserted that the plaintiff wrongfully retained the proceeds arising from the sale of shares and failed to pay the defendants the amounts legitimately due to them in respect of such share transactions. Consequently, in order to recover their lawful dues, the defendants instituted Money Suit No. 23 of 2017 before the learned First Joint District Judge, Dhaka, which remains pending for adjudication.

20. Finally, the defendants alleged that the plaintiff, by making false representations regarding the proposed loan facility, obtaining mortgage of valuable properties, securing execution of charge documents, and subsequently fabricating loan records through fraudulent and forged documentation, has instituted the present suit on false, fabricated, and misleading grounds. They,

therefore, prayed that the suit be dismissed with costs as being wholly false, misconceived, and devoid of any legal or factual basis .

Issues:

21. 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 Institution 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:

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

1) Letter of Authority	**Exhibit-1**
2) Loan application and Sanction Letter	**Exhibit-2 Series**
3) Charge Documents	**Exhibit-3 Series**
4) Deed of Mortgage and IGPOA	**Exhibit-4 Series**
5) Legal Notice & Postal receipts	**Exhibit- 5 Series**
6) Bank Statement	**Exhibit-6**

23. On the other hand, to prove the defendant's case, the defendants examined 01 witnesses namely **Solaiman Rubel as D.W.1** before this court. **During examination of D.W.1 t**he following documents were produced and proved, which have been marked as Exhibits:-

1) Consultancy appointment Letter	**Exhibit-Ka**
2) Share related Information of CSE	**Exhibit-Kha**
3) Photocopy of Financial Express	**Exhibit-Kha/1**
4) Judgment of Special Tribunal case No.04/20	**Exhibit-Ga**

Decision with Reasons

25) 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 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.

26) 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.2 on behalf of defendant No.1 company, the plaintiff institution on 18.09.2011 sanctioned a credit facilities for an amount of TK.15.00 Crore in favor of defendants. The said facilities were secured by execution of charge documents and personal guarantees and by way of deed of mortgage. 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. 45.00 crore.** Despite repeated reminders, the defendants failed to discharge the said liabilities. Ultimately, the plaintiff issued a legal notice on 26.04.2016 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 26.04.2016, and the instant suit having been filed on 08.02.2017, 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.

27) **<u>Issue No : 4 and 5 :</u> Whether the plaintiff financial institution is entitled to recover the claimed amount from the defendants? + Whether the plaintiff is entitled to obtain a decree as prayed for?**

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

Having carefully considered the pleadings of the parties, the oral and documentary evidence exhibited and the submissions advanced by the learned Advocates for the respective parties, this Court finds that the principal questions requiring determination are: (i) whether the plaintiff has successfully established the existence of a legally enforceable financial liability against the defendants; (ii) whether the sanctioned loan facility of Tk.15,00,00,000/- was ever actually disbursed in favour of Defendant No.1; (iii) whether the defendants committed default in repayment of any legally recoverable debt; and (iv) whether the defence raised by Defendants No.1 and 2 is sufficient in law and on facts to defeat the plaintiff's claim.

28) At the outset, it is to be noted that the original loan documents could not be produced before this Court as they had been seized by the Investigating Officer in connection with Paltan Police Station Case No.27 dated 21.08.2016, corresponding to Special Case No.04 of 2020. The plaintiff, therefore, produced certified photocopies of those documents, which have been admitted into evidence without any serious objection from the defendants.

29) It is not disputed that the plaintiff is a scheduled non-banking financial institution legally authorized to provide financial facilities and to institute the present suit. It is also admitted that Defendant No.2 is the proprietor of Defendant No.1 and executed the loan documents as borrower, guarantor and mortgagor. Defendants No.3 and 4 also created registered mortgages over their respective properties as collateral security for the proposed loan.

30) The evidence shows that Defendant No.1 applied for a loan of Tk.15,00,00,000/- on 05.09.2011 **(Exhibit-2).** The plaintiff sanctioned the loan on 18.09.2011, and the sanction was accepted by Defendant No.1 on the same day **(Exhibit-3).** A formal Loan Agreement was thereafter executed between the parties, and Defendant No.2 also executed the necessary charge documents acknowledging the terms and conditions of the loan **(Exhibit-3 series).**

31) The evidence further shows that the loan was secured by registered mortgages. Defendant No.3 executed Registered Mortgage Deed No.9769 and Irrevocable Power of Attorney Deed No.9770, both dated 02.12.2014, in favour of the plaintiff **(Exhibits-4 and 4/2).** Defendant No.4 also executed Registered Mortgage Deed No.3946 dated 20.09.2011 as additional security **(Exhibit-4/1).** These documents establish that adequate security was created in favour of the plaintiff in connection with the sanctioned loan.

32) The plaintiff claims that the sanctioned loan of Tk.15,00,00,000/- was disbursed to Defendant No.1 through four cheques issued between 22.03.2011 and 04.04.2011. The defendants do not deny receiving or encashing those cheques. However, they deny that the payments were made as loan disbursement. According to them, the amount was paid as consultancy fees under a separate commercial arrangement, whereby Defendant No.2 agreed to arrange capital for the plaintiff through the issuance and placement of preferential shares.

33) The plaintiff has further relied on the payment request letters **(Exhibit-5 series),** the legal notice dated 26.04.2016 **(Exhibit-5/6),** and the Statement of Account (Exhibit-6). According to the Statement of Account, a sum of Tk.49,68,67,893/- remained outstanding as on 31.01.2017, including interest. Since the total outstanding exceeded 200% of the principal amount, the plaintiff restricted its claim to Tk.45,00,00,000/- in the present suit.

34) Upon careful consideration of the entire evidence on record, this Court finds that the main dispute between the parties is not whether Defendant No.1 received Tk.15,00,00,000/-, because receipt of the said amount is admitted by both sides. The real question is whether the amount was disbursed as the loan sanctioned on 18.09.2011. Unless the plaintiff proves that the amount was released under the sanctioned loan facility, the execution of the loan documents and mortgage deeds alone cannot create a legally enforceable liability.

35) It is an admitted fact that the four cheques amounting to Tk.15,00,00,000/- were issued in March and April, 2011. It is equally admitted that Defendant No.1 applied for the loan only on 05.09.2011 and the loan was sanctioned on 18.09.2011. Thus, the payment was made about six months before the loan

application and sanction. The plaintiff claims that the earlier payment should be treated as the disbursement of the subsequently sanctioned loan, whereas the defendants contend that the payment was made under a different commercial arrangement. Therefore, the nature of this payment is the central issue in the present suit.

36) In support of their defence, the defendants have stated that the amount of Tk.15,00,00,000/- was paid as consultancy fees under a separate business arrangement for collecting capital through selling of preferential shares. They have relied upon **[Exhibit-"Ka"]**, a letter issued by the plaintiff, which shows that the plaintiff had agreed to pay consultancy fees at the rate of 12.5% for arranging capital. This document clearly establishes that the parties had an independent commercial relationship. Although the document does not conclusively prove that the disputed payment was consultancy fees, it certainly supports the defence that the payment may not have been made as a loan.

37) The defendants have also stated that the parties had long-standing business dealings relating to investments in the capital market and BO Accounts. According to them, disputes arose after a change in the management of the plaintiff institution, which ultimately led to the filing of the present suit. They have further relied upon Money Suit No.23 of 2017 filed by them against the plaintiff. Though the pendency of that suit does not prove the defence case, it indicates that there were other commercial transactions between the parties apart from the alleged loan transaction.

38) It is true that the defendants have not produced any payment voucher, receipt, settlement statement or any other document issued by the plaintiff specifically showing that the amount of Tk.15,00,00,000/- was paid as consultancy fees. Therefore, they have failed to conclusively establish the exact nature of the payment. Nevertheless, the evidence produced by them is sufficient to raise a reasonable doubt regarding the plaintiff's claim that the amount was disbursed as a loan.

39) On the other hand, the plaintiff has also failed to prove that the said amount was disbursed as the sanctioned loan. It is an admitted fact that when the four cheques were issued, no loan application had been submitted, no loan had been sanctioned, and no loan documents had been executed. Therefore, there is no contemporaneous document to show that the payment was made under any sanctioned loan facility. This circumstance seriously weakens the plaintiff's case.

40) The plaintiff's own sanction letter further supports this conclusion. The sanction letter **(Exhibit-2/1)** specifically provides that the loan would be

disbursed only after completion of all necessary documentation and submission of a satisfactory CIB report from Bangladesh Bank. Had the plaintiff intended to treat the earlier payment as the sanctioned loan, such an important fact would normally have been mentioned in the sanction letter. However, no such recital is found therein. Rather, the sanction letter clearly shows that the loan was to be released only after fulfilment of the prescribed conditions. Therefore, the Court finds no basis to hold that the payment made six months earlier constituted disbursement of the sanctioned loan.

41) The evidence further shows that after the loan was sanctioned, the defendants executed all the required loan documents and created mortgage security in favour of the plaintiff. However, the plaintiff has not produced any document showing that the sanctioned loan was actually released thereafter. No disbursement voucher, payment instruction, debit or credit advice, bank transfer record, or any other primary banking document has been produced to prove the actual release of the loan. In a case of this nature, where the entire claim depends upon the alleged disbursement of the loan, such evidence is of vital importance. In the absence of any reliable proof of disbursement, the plaintiff's claim cannot be accepted merely on the basis of oral evidence or entries in the statement of account.

42) Another important aspect of the case is the plaintiff's Statement of Account **(Exhibit-6).** According to the statement, the outstanding amount stood at Tk.49,68,67,893/- as on 31.01.2017. However, the reminder letters and legal notice produced by the plaintiff disclose different outstanding figures at different times. Despite claiming such a huge liability, the plaintiff has not produced any transaction-wise ledger, interest calculation sheet, debit-credit statement or any other supporting financial record to explain how the outstanding amount was calculated. The plaintiff has relied only on a consolidated statement of account. In the absence of the supporting records, the correctness of the claimed outstanding amount cannot be properly verified.

43) It is well settled that entries in the books of account of a bank or financial institution are relevant evidence. However, such entries by themselves do not create a legally enforceable liability. Before relying upon the statement of account, the plaintiff must first prove the transaction from which the liability arose. Where the very fact of loan disbursement remains unproved, subsequent accounting entries and calculation of interest cannot, by themselves, establish the existence of a recoverable debt. Therefore, Exhibit-6, standing alone, is not sufficient to prove the plaintiff's claim.

44) The criminal proceedings initiated by the Anti-Corruption Commission also deserve consideration. It appears from the CC of Judgment **[Exhibit-Ga]** that Paltan Police Station Case No.27 dated 21.08.2016, corresponding to Special Case No.04 of 2020, was instituted alleging misappropriation of the same amount of Tk.15,00,00,000/-. By judgment dated 10.10.2022, the learned Special Judge, Special Judge Court No.6, Dhaka acquitted the accused persons, including Defendant No.2. The criminal Court observed that----

" , নাহার ইন্টারন্যাশনাল কোং বাদী প্রতিষ্ঠান পিপলস লিজিং এ ১৫ কোটি টাকা ঋন আবেদন করিলে ১৮/০৯/২০১১ ইং তারিখে কাগজপত্র যাচাই অন্তে উক্ত ১৫ কোটি টাকা ঋন মঞ্জুর হয়। তবে শর্ত পূরণ করতে না পারায় তিনি ঋন পাননি এবং তাহার নামে কোন টাকা ডিসবার্স হয়নি। উক্ত রায়ে স্পষ্ঠত উঠে আসে যে ১৮/০৯/২০১১ ইং তারিখের মঞ্জুরীপত্রের ১৫ কোটি টাকা ঋন চুক্তি সম্পাদনের ০৬ মাস পূর্বেই আসামী কে দেওয়া হয়েছে মর্মে যে দাবি করেন তা রাষ্ট্রপক্ষ মৌখিক বা দালিলিক সাক্ষ্য দ্বারা প্রমাণ করতে পারেননি। বরং আসামীর সাথে পিপলস লিজিং এর ব্যবস্থাপনা পরিচালকের পত্র যাহার স্মারক নং PLFS/PS/SR/2009/517 তারিখ ১৬/০৪/২০০৯ মূলে প্রেপারেন্সিয়াল শেয়ার বিক্রয়ের মাধ্যমে মূলধন সংগ্রহ এবং সংগৃহীত মূলধনের উপর ১২.৫% হারে ১৫ কোটি টাকা ০৪ টি চেক মূলে আসামী কে দেওয়া হয় মর্মে প্রমাণিত হয়। এমতাবস্থায় আসামী মোঃ সোলাইমান রুবেল ১৫ কোটি টাকা ঋন গ্রহণ এবং তাহা পরিশোধ না করিয়া আত্নসাৎ করিয়াছে মর্মে রাষ্ট্রপক্ষের অভিযোগ সন্দেহাতীতভাবে প্রমানিত হয় নাই মর্মে প্রতীয়মান হয়।"

45) It appears from above observation that although the loan was sanctioned, the prosecution failed to prove that the sanctioned loan was ever disbursed in favour of the accused. The Court further found that the amount paid several months before the execution of the loan documents could not be treated as the sanctioned loan and that the defence regarding the commercial arrangement remained unrebutted.

46) This Court is conscious that the findings of a criminal Court are not binding in a civil proceeding. Nevertheless, where both proceedings arise out of the same transaction, the observations of the criminal Court may be taken into consideration along with the other evidence available on record. In the present case, the findings of the Special Judge are consistent with the documentary evidence produced before this Court and lend further support to the defence case.

47) Independently assessing the evidence on record, this Court also finds that although the plaintiff has proved the execution of the loan documents and creation of mortgage security, it has failed to prove that the sanctioned loan of Tk.15,00,00,000/- was ever disbursed after completion of the required formalities. The plaintiff has not produced any primary banking document to establish actual

disbursement, nor has it explained how the payment made six months earlier could legally be treated as disbursement under the subsequently sanctioned loan.

48) It is a settled principle of law that execution of a loan agreement, guarantee or mortgage deed does not, by itself, create a recoverable debt. The plaintiff must prove that the sanctioned loan was actually disbursed in accordance with the terms of the sanction. Once the defendants specifically denied such disbursement, the burden shifted upon the plaintiff to prove the same by reliable and convincing evidence. In the present case, the plaintiff has failed to discharge that burden.

49) Upon an overall assessment of the oral and documentary evidence, this Court finds that while the plaintiff has successfully proved the execution of the loan documents and the creation of mortgage security, it has failed to establish the most essential fact, namely, that the sanctioned loan was actually disbursed in favour of Defendant No.1. On the other hand, the defendants have succeeded in creating a reasonable doubt regarding the true nature of the payment of Tk.15,00,00,000/-. The plaintiff has failed to remove that doubt by producing reliable evidence.

50) In view of the discussions made above, this Court holds that the plaintiff has failed to prove the existence of a legally enforceable financial liability against the defendants. Since the alleged loan disbursement has not been proved, no legally recoverable debt can be said to have arisen under the sanctioned loan facility. Accordingly, Issue Nos.4 and 5 are decided against the plaintiff, and the plaintiff is not entitled to the reliefs claimed in the suit.

In result the case failed.

Court Fee paid is correct

Hence,

It is Ordered

That the present suit be dismissed on contest against Defendant Nos. 1-2 and ex-party against the other defendants without any order as to costs.

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.