

Present- Md. Hasan Zaman, Judge (Joint District Judge)
Artha Rin Adalat No-1, Dhaka

Order No- 65

Today is fixed for hearing of the petition and F.P.H.

Date- 22.07.2026

The plaintiff and the defendant No.2(c) are present by filing hazira.

The record is taken up for hearing of the petition filed by the defendants under **Order VII Rule 11 read with Section 151 of the Code of Civil Procedure and Section 57 of the Artha Rin Adalat Ain, 2003**, praying for rejection of the plaint.

Learned Advocate for the defendants submits that the plaint is liable to be rejected as the suit was instituted beyond the period contemplated under Section 46 of the Artha Rin Adalat Ain, 2003. It is further contended that the plaint was presented without the affidavit contemplated under Section 6(4) of the Ain and, therefore, the suit is not maintainable.

Conversely, the learned Advocate for the plaintiff vehemently opposes the petition and submits that the plaint clearly discloses a valid cause of action, the suit is maintainable in law and is not barred by any statutory provision. It is further submitted that an identical application under Order VII Rule 11 CPC had earlier been rejected by this Court on **15.08.2006**, yet the defendants have once again filed a similar application solely with a view to protract the proceedings. Learned Advocate further argues that the provision of Section 46 is merely directory and not mandatory and that the defect, if any, regarding affidavit has already been cured with the leave of the Court. Accordingly, he prays for rejection of the petition with exemplary costs.

Heard the learned Advocates for both sides. Perused the petition, the plaint and the entire materials available on record.

At the outset, it is well settled that while considering an application under **Order VII Rule 11 CPC**, the Court is confined to the averments made in the plaint and the documents relied upon by the plaintiff. The defence taken by the defendants or disputed questions of fact cannot be considered at this stage.

Rejection of a plaint is an exceptional power which can only be exercised where the plaint, on its face, falls squarely within any of the contingencies enumerated in Rule 11.

Having carefully examined the plaint, I find that it unmistakably discloses a complete cause of action. The plaintiff financial institution has sought recovery of the outstanding loan advanced to the defendants upon their failure to repay the same despite repeated demands. Therefore, the plaint cannot be said to be devoid of cause of action.

The principal objection raised by the defendants relates to **Section 46 of the Artha Rin Adalat Ain, 2003**. This contention is devoid of legal substance. The Hon'ble High Court Division in **Md. Sahabuddin Khan Vs. Bangladesh, represented by the Secretary, Ministry of Law, Justice and Parliamentary Affairs and others, reported in 28 BLD (HCD) 294**, has authoritatively held that the provision contained in Section 46 prescribing the time for filing suits by banks and financial institutions is **directory and not mandatory**. The statute nowhere provides that non-compliance with Section 46 extinguishes the right of the financial institution to institute a suit or renders the plaint liable to rejection. Consequently, the contention that the suit is liable to be rejected on this ground is legally misconceived and untenable.

Equally without merit is the objection regarding the affidavit under **Section 6(4)** of the Ain. The plaint was duly verified and accepted by the Court at the time of institution. Subsequently, the procedural defect, if any, stood cured with the leave of the Court. More importantly, the defendants never raised any objection at the initial stage. The plaintiff has already examined its witness upon oath, whose evidence has been fully tested through cross-examination. The suit has long since crossed the stage of institution and has reached the stage of defence evidence. It is a settled proposition that procedural requirements intended to regulate the mode of institution cannot be invoked at such a belated stage to defeat a substantive cause of action, particularly when no prejudice has been caused to the defendants.

The record further reveals that an **application under Order VII Rule 11 CPC had been rejected by this Court on 15.08.2006**. The defendants have once again approached the Court with another petition of nearly **twenty-two years**

from the institution of the suit and after completion of the plaintiff's evidence. Such conduct unmistakably demonstrates an abuse of the process of the Court.

It further appears from the record that the suit has remained pending primarily due to repeated adjournments sought by the defendants. The plaintiff concluded its evidence long ago. Since **09.05.2006**, the suit has remained at the stage of recording defence evidence. The defendants have repeatedly failed to produce their witnesses despite numerous opportunities.

Moreover, this Court, by order dated **22.02.2026**, specifically directed the defendants to conclude their evidence, failing which appropriate legal consequences would follow. Instead of complying with the said direction, the defendants have chosen to file the present application, which, in the opinion of this Court, is nothing but another attempt to obstruct and delay the disposal of the suit.

The record further discloses that the **Hon'ble High Court Division in Writ Petition No.8436 of 2006** directed expeditious disposal of the suit within six months. Despite such direction, the defendants have continuously adopted dilatory tactics, frustrating the mandate of the superior Court and unnecessarily prolonging the litigation.

The judicial process cannot be permitted to be abused by filing repetitive and meritless applications intended solely to delay the conclusion of a long-pending trial. The Court is under a duty to prevent abuse of its process and to ensure that justice is not defeated by frivolous and vexatious proceedings. The present application is manifestly devoid of merit, legally unsustainable and constitutes a clear abuse of the process of the Court.

Accordingly, I hold that the plaint does not attract any of the grounds contemplated under **Order VII Rule 11 CPC**. The plaint discloses a valid cause of action and is not barred by any provision of law warranting its rejection.

Hence, it is

ORDER

The petition filed by the defendants under Order VII Rule 11 read with Section 151 of the Code of Civil Procedure and Section 57 of the Artha Rin Adalat Ain, 2003 is hereby rejected on contest with exemplary costs of Tk. 5,000/- (Taka Five Thousand only), payable by the defendant.

Let the suit be fixed on **12.08.2026** for payment of Cost of Total TK(5000+5000) = 10,000 and **F.P.H. (defence evidence)**.

The defendants are directed to produce all their witnesses positively on the next date without seeking any unnecessary adjournment.

It is made clear that in default of adducing defence evidence on the next date, the evidence of the defendants shall stand closed without any further reference to the Court, and the suit shall thereafter be fixed for arguments and judgment in accordance with law.