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 August, 2026.

Artha Rin Suit No. 1794 of 2024.

National Bank of Pakistan---Plaintiff

-Versus-

Union Dress Limited and Others--------------------------------------Defendants

This case came up for final hearing on: 01.01.2025, 07.05.2025, 04.08.2026

In presence of :
Naharul Islam--Advocate for Plaintiff.
Md. Kamal Hossain-------------------------------------Advocate for Defendant.

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

This is a suit instituted under the provisions of Artha Rin Adalat Ain, 2003 for realization of defaulted loan amounting to Tk. **17,64,00,356.49** (Taka Seventeen Crore Sixty Four Lac Three Hundred Fifty Six Point Forty Nine) outstanding up to **06.10.2019** against the defendant.

Plaintiff's Case in Brief:-

1) The plaintiff, **National Bank of Pakistan**, is a banking company duly incorporated under the relevant laws and carrying on banking business in Bangladesh, and is legally competent to institute the present suit for realization of its outstanding dues. Defendant No.1 is the principal borrower, while Defendant Nos.1–5 are the mortgagors and guarantors respectively of the credit facility availed by the defendant No.1-3 who are liable, jointly and severally, to repay the outstanding liabilities of the plaintiff .

2) That upon the application dated **24.11.2008** submitted by Defendant Nos.2 and 3, the plaintiff bank, through its Gulshan Branch, sanctioned an **Overdraft Facility of Tk.6,50,00,000/-** in favour of Defendant No.1, namely **M/s. Union Dress Ltd.**, vide Sanction Letter dated **21.12.2008**, carrying interest at the rate of **16% per annum with quarterly rests**, for meeting the working-capital requirements of the borrower.

3) For securing the said credit facility, Defendant Nos.2 and 3 executed **Personal Continuing Guarantees** undertaking to discharge the liabilities of the borrower. They also executed **Deed of Mortgage No.8493 dated 21.12.2008** and **Deed of Mortgage No.8473 dated 17.11.2009**, thereby creating mortgage over the scheduled properties in favour of the plaintiff bank. In furtherance thereof, **Power of Attorney Deed No.8494 dated 21.12.2008** and **Power of Attorney Deed No.8474 dated 17.11.2009** were executed, authorizing the plaintiff bank to take necessary steps for sale of the mortgaged properties in accordance with law.

4) The aforesaid credit facilities were further secured by a **Demand Promissory Note, Letter of Hypothecation of Goods, Irrevocable General Power of Attorney dated 21.12.2008, Letter of Disbursement dated 12.01.2009 and Letter of Guarantee dated 12.01.2009**, all duly executed in favour of the plaintiff bank by the concerned borrower/defendants.

5) Subsequently, upon the request of the borrower dated **19.12.2009**, the plaintiff bank rescheduled the existing liabilities and sanctioned the rescheduled facilities vide Sanction Letter dated **10.01.2010**, whereby the outstanding liabilities were converted into two term-loan accounts amounting to **Tk.7,67,51,071.26** and **Tk.47,05,141.06**, respectively.

6) Despite availing the aforesaid credit facilities and acknowledging their obligations to repay the same, the defendants failed and neglected to discharge the liabilities within the stipulated period. The plaintiff bank made repeated demands and afforded sufficient opportunities to the defendants to regularize the loan accounts and liquidate the outstanding dues, but they persistently failed to make the required payments.Consequently, the plaintiff bank served a **Legal Notice dated 13.10.2019** upon the defendants demanding adjustment and liquidation of the outstanding liabilities. Despite receipt of the said notice the defendants failed to take any effective step towards repayment.

7) Thereafter, in compliance with the provisions of **section 12 of the Artha Rin Adalat Ain, 2003**, the plaintiff bank initiated measures for realization of its dues through sale of the mortgaged properties. Accordingly, auction notices were published in the national daily newspapers **"The Daily Jaijaidin"** and **"The Daily Shomokal"** on **07.01.2020**, fixing a date for auction of the mortgaged properties. However, the auction

could not be successfully conducted as no bidder participated, and consequently the mortgaged properties remained unsold.

8) The plaintiff states that despite repeated demands, notices and opportunities, the defendants failed and neglected to repay the outstanding liabilities. As per the statement of account maintained in the ordinary course of banking business, a sum of **Tk.17,64,00,356.49 (Taka Seventeen Crore Sixty-Four Lac Three Hundred Fifty-Six and Paisa Forty-Nine)** remained outstanding as on 16.10.2019. Having failed to recover the said dues despite repeated demands, the plaintiff was constrained to institute the present suit for realization of its legitimate outstanding claim.

9) ***Defendant No.3 contested the suit by filing written statement contending, inter alia, that*** the suit, in its present form and manner, is not maintainable and that no cause of action arose in favour of the plaintiff. It is stated that Defendant No.1, Union Dress Limited, is a company of which Defendant No.2, Mohammad Habibur Rahman, is the Chairman and Defendant No.3, Md. Kamal Hossain, is the Managing Director. The company was engaged in the business of knitting and production of grey fabrics by procuring yarn from various garment factories and supplying the finished fabrics to them.

10) For expansion of its business, Defendant No.1 approached the plaintiff bank for financial assistance, whereupon the bank sanctioned a loan of Tk.6,50,00,000/- at 13% interest by Sanction Letter dated 01.10.2010. As security, the Chairman executed the relevant personal guarantee, deed of mortgage and power of attorney. Defendant No.3 contends that the company subsequently paid approximately Tk.7,00,00,000/- to the plaintiff bank from time to time.

11) Due to political unrest and adverse business conditions, the company suffered severe financial losses and its production was eventually disrupted. The defendants repeatedly requested rescheduling and further financial assistance, but the bank allegedly failed to release the promised funds in time. Nevertheless, payments were continued from time to time. When Defendant No.2 sought a detailed statement of accounts showing the principal, interest, payments and outstanding balance, the bank allegedly failed to furnish the same.

12) It is further contended that although the bank's legal notice dated 13.10.2019 claimed Tk.17,64,00,356.49/-, no proper statement of account was supplied. Moreover, inconsistency exists between the said notice and the plaint regarding the date of loan application, date of sanction and applicable rate of interest, which, according to the defendant, demonstrates that the claim was arbitrarily calculated.

13) The defendant therefore contends that the plaintiff has failed to disclose any valid cause of action, that the suit is barred by limitation, and that the claimed amount is false and unsupported by proper accounts. It is further stated that the bank had assured the defendants that the matter would be settled after adjustment of the principal and part of

the interest, but instead instituted the suit after a considerable delay. Accordingly, Defendant No.3 prayed for dismissal of the suit with costs.

Issues:

14) On perusal of the plaint, written-statement, documents and previously framed issues, for proper adjudication of the suit, the issues are reframed in the following ways:

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 ?
3) Whether the plaintiff bank is entitled to recover the claimed amount from the defendants?
4) Whether the plaintiff is entitled to obtain a decree as prayed for?

Evidence Adduced:

15) In support of the case, the plaintiff examined one witness, namely **P.W.1, Masum Al-Mahmud**, who submitted affidavit-in-chief in support of the plaint and proved the documents: Power of Attorney (Exhibit-1), Three Sanction Letters (Exhibit-2 Series), Personal Guarantee & Charge Documents (Exhibit-3 Series), Deed of Mortgage & IGPA (Exhibit-4 Series), Legal Notice (Exhibit-5) & Paper Publication & Statement of Account (Exhibit-6 Series).

On the other hand, the defendants examined one witness, namely **D.W.1,** Md. Kamal Hossain who submitted affidavit-in-chief in support of the Written statement but D.W.1 did not any documentary evidence in support of his defence.

Discussions and Findings

16) Issue No.1-3: 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 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. These issues are thus decided in favour of the plaintiff.

17) 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 & 3 , the plaintiff sanctioned credit facilities in favour of the defendant No.1. The said facilities were secured by execution of charge documents, deed of mortgage 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 **17,64,00356.49/-.** Despite repeated reminders, the defendants failed to discharge the said liabilities. Ultimately, the plaintiff issued Legal notice on 13.10.2019, 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 13.10.2019, and the instant suit having been filed on 24.08.2020, 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. All the aforesaid issues are therefore answered in favour of the plaintiffs.

18) **Issue No : 4 & 5 :** Whether the plaintiff institution is entitled to recover the claimed amount from the defendants? + Whether the plaintiff is entitled to obtain a decree as prayed for?

All the issues involved in the suit are taken up together for the sake of brevity, convenience and proper appreciation of the evidence, as the same are closely interconnected both on facts and in law. Upon careful consideration of the plaint, written statement, affidavit-in-chief of P.W.1, his cross-examination, the documentary exhibits produced by the plaintiff, the defence taken by Defendant No.3 and the entire materials available on record, it appears that the plaintiff has instituted the present suit for realization of its outstanding dues arising out of credit facilities sanctioned and availed by Defendant No.1, **M/S Union Dress Ltd.**

19) It is admitted from the pleadings and evidence that Defendant No.1 is the principal borrower. Defendant Nos.2-5 stood as guarantors in respect of the credit facility and executed the necessary guarantee documents. It further appears from the documentary evidence that Defendant Nos.2 and 3 also executed the deed of mortgage and irrevocable general power of attorney in favour of the plaintiff bank as additional security for repayment of the loan liability. Thus, the relationship of borrower, guarantors and secured creditors between the parties has been sufficiently established from the record.

20) The plaintiff examined P.W.1, Masum Al Mahmud, who deposed in support of the plaint and proved the material documents. His evidence remained substantially consistent with the pleadings and documentary evidence. Despite cross-examination, no material contradiction or admission could be elicited from him sufficient to discredit his testimony or to establish that the loan liability had been fully or substantially discharged. The defence has also failed to demonstrate any material defect in the authority of P.W.1 to depose on behalf of the plaintiff bank.

21) Under section 6(4) of the Artha Rin Adalat Ain, 2003, the plaint supported by affidavit is required to be treated as evidence in the manner provided by law. However, such evidence is not immune from scrutiny, and the Court has carefully examined the same in conjunction with the oral and documentary evidence available on record. In the present case, the plaintiff's affidavit evidence finds substantial corroboration from the contemporaneous banking documents produced and exhibited before the Court.

22) From **Exhibit-2,** being the sanction letter dated 21.12.2008, it appears that the plaintiff sanctioned an overdraft facility of Tk.6,50,00,000/- in favour of Defendant No.1, M/S Union Dress Ltd., upon the request and application of Defendant No.2 and subject to the terms and conditions contained therein. Thereafter, the said facility was renewed/restructured by the sanction letter dated 07.01.2010, marked as Exhibit-2/2, whereby the outstanding liabilities were converted into two term-loan accounts amounting to Tk.7,67,51,071.26 and Tk.47,05,141.06 respectively. The documentary evidence thus establishes the existence and continuation of the financial relationship between the parties and the outstanding liability arising therefrom.

23) The charge documents marked as **Exhibit-3 series** further establish that the borrower and the concerned guarantors executed the necessary security documents, undertakings, declarations and repayment commitments in favour of the plaintiff bank. Exhibit-4 series, comprising the deed of mortgage and power of attorney, further establish that additional security was created by Defendant Nos.2 and 3 in favour of the plaintiff bank. The execution of these documents demonstrates that the defendants voluntarily accepted the financial obligations arising from the credit facility and secured the same by creating personal as well as proprietary security.

24) The contention of Defendant No.3 that Defendant No.1 had paid approximately Tk.7,00,00,000/- from time to time has also not been substantiated by any receipt, bank statement, deposit slip, payment schedule, reconciliation statement or other documentary evidence. If such substantial payments had in fact been made in adjustment of the loan liability, the defendants could reasonably have produced documentary evidence showing the dates and amounts of such payments and their adjustment against principal and interest. No such reliable evidence has been placed before the Court.

25) The allegation that the defendants repeatedly requested rescheduling and further financial assistance and that the plaintiff failed to release promised funds in time is also unsupported by any documentary evidence. No rescheduling letter, sanction communication, correspondence or other material has been produced by Defendant No.3 to establish that the plaintiff had undertaken any binding obligation to provide additional funds and thereafter failed to perform the same. Consequently, such assertion remains a mere pleading and cannot, by itself, dislodge the plaintiff's proved claim.

26) The defendants have further alleged that the plaintiff failed to furnish a detailed statement showing the principal, interest, payments and outstanding balance. However, the statement of account has been produced and marked as Exhibit-6. The said statement reflects the transactions and outstanding liability in the loan account maintained by the plaintiff bank in the ordinary course of its banking business. The defendants have not produced any independent statement of account, audited reconciliation, payment records or other documentary material demonstrating that the figures shown in Exhibit-6 are incorrect.

27) It is true that a statement of account produced by a bank cannot be accepted mechanically merely because it has been produced by the plaintiff. The Court must examine whether the same is supported by the surrounding evidence. In the present case, Exhibit-6 is corroborated by the sanction documents, security documents, legal notice and other documentary evidence produced by the plaintiff. The defence, despite having knowledge of the transaction and having participated in the proceedings, failed to produce any reliable material capable of showing that the account was wrongly maintained or that the amount claimed had already been paid.

28) The reminder letters and legal notice marked as Exhibit-5 further demonstrate that the plaintiff demanded payment of the outstanding dues from the defendants before institution of the suit. The defendants have not produced any document showing that the liability had been discharged in response to such demands. Rather, the evidence establishes that the loan account remained unpaid and the defendants failed to regularize the same despite repeated demands.

29) The legal notice dated 13.10.2019 referred to by Defendant No.3 is also consistent with the plaintiff's assertion that a substantial amount remained outstanding at the relevant time. The mere fact that the defendants dispute the amount mentioned in the notice does not make the notice invalid. The correctness of the amount is required to be determined on the basis of the documentary evidence and statement of account, which, in the present case, have not been effectively rebutted by the defence.

30) The Court also takes note of the contention of Defendant No.3 that the company suffered financial losses due to political unrest and adverse business conditions and that its production was disrupted. Such circumstances may explain the financial difficulty of

the borrower, but they do not, in the absence of a legally binding restructuring, waiver, novation or settlement, extinguish the contractual liability to repay the loan. Financial hardship of a borrower cannot by itself absolve the borrower or guarantors from their legally enforceable obligations.

31) The defence of Defendant No.3, therefore, essentially rests upon denial, alleged payments and alleged irregularities in the calculation of the account. None of these allegations has been established by reliable and convincing evidence. It is well settled that a party who asserts a particular fact must establish the same by evidence. In the present case, the defendants have not discharged the evidentiary burden of proving payment, adjustment, settlement, waiver, erroneous accounting or limitation.

32) It further appears that Defendant No.1, after availing the sanctioned financial facility, failed to repay the same according to the agreed terms. The account consequently became irregular and the outstanding liability remained unpaid. The plaintiff, having demanded payment and thereafter instituted the suit, has established a subsisting and enforceable cause of action against the defendants.

33) So far as the liability of the guarantors is concerned, section 6(5) of the Artha Rin Adalat Ain, 2003 recognizes the liability of the guarantor in accordance with the terms of the guarantee. In the present case, Defendant Nos.2-5 voluntarily executed guarantee documents securing the repayment of the credit facility. No convincing evidence has been produced to show that their liability was contractually limited in a manner which would exclude them from liability for the outstanding dues claimed in the suit. Accordingly, their liability follows that of the principal borrower in accordance with the terms of the guarantee documents.

34) The Court has also considered the argument that the plaintiff's claim is excessive or arbitrarily calculated. Exhibit-6, read with the sanction documents and other exhibits, establishes the basis of the plaintiff's claim. The defendants have not placed before the Court any alternative calculation supported by documentary evidence. Therefore, there is no sufficient basis to reject the plaintiff's account merely on the basis of a general allegation of arbitrary calculation.

35) Upon an overall assessment of the evidence, this Court finds that the plaintiff has proved the following essential facts: firstly, that Defendant No.1 obtained the credit facility from the plaintiff bank; secondly, that Defendant Nos.2-5 undertook guarantee obligations in respect of the said facility; thirdly, that Defendant Nos.2 and 3 additionally created mortgage security and executed the power of attorney; fourthly, that the borrower failed to repay the facility according to the agreed terms; fifthly, that the plaintiff demanded repayment before institution of the suit; and sixthly, that a substantial outstanding amount remained due and payable as reflected in Exhibit-6.

36) On the other hand, the defendants have failed to prove full or substantial payment, valid adjustment, settlement, waiver, erroneous accounting or limitation. The written statement of Defendant No.3, though sufficient to contest the suit, has not been supported by evidence of such quality as could rebut the plaintiff's documentary evidence.

37) Accordingly, upon consideration of the pleadings, oral evidence, documentary exhibits and the applicable provisions of the Artha Rin Adalat Ain, 2003, this Court is of the considered view that the plaintiff has successfully proved its claim. The plaintiff is therefore entitled to recover the outstanding amount of **Tk.17,64,00,356.49/- (Taka Seventeen Crore Sixty-Four Lakh Three Hundred Fifty-Six and Paisa Forty-Nine)** from Defendant Nos.1-5 in accordance with law. Thus the issues are accordingly decided **in favour of the plaintiff and against the defendants**.

In result the case succeeded.

Court Fee paid is correct

Hence,

It is Ordered

That the present suit be decreed on contest against the Defendant No.3 and exparte against the rest with costs for an amount of Tk. **17,64,00,356.49 (Taka Seventeen Crore Sixty Four Lac Three Hundred Fifty Six Point Forty Nine) only as on 06.10.2019.**

The Plaintiff shall be entitled to receive the said amount **together with interest or profit as applicable under the prevailing laws or rules from 24.08.2020**, 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 Defendant has 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

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