

Present : Md Hasan Zaman, Judge, Artha Rin Adalat No.1, Dhaka

Order No-25

Dt.29.07.2026

Today is fixed for furnishing the names of the mediators by the parties.

The plaintiff and the proforma defendant No.2 have entered appearance by filing hazira.

It appears from the record that neither of the parties has proposed the name of any mediator.

At this stage, the learned Advocate appearing for the Proforma Defendant No.2 has filed an application under Order I Rule 10 of the Code of Civil Procedure read with section 57 of the *Artha Rin Adalat Ain, 2003*, praying for striking out the name of the Proforma Defendant No.2 from the plaint.

The record is taken up for hearing of the said application.

Learned Advocate for the Proforma Defendant No.2 submits that the petitioner is neither the borrower nor the guarantor nor the mortgagor in respect of the loan in question. It is further submitted that the petitioner does not fall within the ambit of section 6(5) of the *Artha Rin Adalat Ain, 2003* and, therefore, no cause of action exists against it. According to the learned Advocate, the petitioner has unnecessarily been impleaded in the present suit only to harass it socially and economically, which amounts to an abuse of the process of the Court. Accordingly, he prays for allowing the application by striking out the name of the Proforma Defendant No.2 from the plaint.

On the other hand, the learned Advocate appearing for the plaintiff raises no formal objection to the hearing of the application but submits that the Proforma Defendant No.2 has been impleaded on the basis of its contractual obligations arising out of the Tripartite Agreement executed among the parties. He contends that the presence of the petitioner is indispensable for the effective and complete adjudication of the issues involved in the suit.

Heard the learned Advocates for the respective parties. Perused the application, the plaint, the documents annexed thereto, particularly the Tripartite Agreement dated 25.05.2010, and the materials available on record.

The principal question that falls for determination is whether the Proforma Defendant No.2 is either a necessary or, at least, a proper party whose presence before the Court is essential for effectually and completely adjudicating upon and settling all the questions involved in the present suit.

On scrutiny of paragraphs 3 to 5 of the plaint, it transpires that the plaintiff has specifically pleaded that the Proforma Defendant No.2 acted as the broker company in connection with the credit facility availed by Defendant No.1. It is further pleaded that, pursuant to the application submitted by Defendant No.1 through the broker company, the plaintiff sanctioned the loan facility and, on 25.05.2010, a Tripartite Agreement was executed among the plaintiff, Defendant No.1 and the Proforma Defendant No.2.

A careful reading of the said Tripartite Agreement reveals that Defendant No.1 obtained the loan facility through the broker company, namely M/s. Md. Fakhrul Islam Securities Limited. It further appears that Defendant No.1 maintained a Beneficiary Owner (BO) Account with the broker company and agreed to open a linked BO Account with the plaintiff institution for transferring and transmitting the securities liened against the loan facility.

More importantly, the agreement expressly stipulates that, in the event of default by the borrower, the broker company agreed to repay the outstanding loan amount directly to the plaintiff finance company on behalf of the borrower. Such covenant was incorporated as an integral part of the security arrangement governing the transaction. Prima facie, therefore, the Proforma Defendant No.2 assumed a contractual obligation which is directly connected with the loan transaction forming the subject matter of the present suit.

Although the petitioner contends that it is neither a borrower, guarantor nor mortgagor within the meaning of section 6(5) of the *Artha Rin Adalat Ain, 2003*, such contention cannot be conclusively determined at this interlocutory stage without a full-fledged trial. The Court is not presently called upon to adjudicate finally upon the extent or enforceability of the petitioner's liability. Rather, the limited inquiry is whether the pleadings disclose a substantial and bona fide issue involving the petitioner and whether its presence is necessary for the complete and effective adjudication of the dispute.

It is a settled principle of law that, while exercising jurisdiction under Order I Rule 10 of the Code of Civil Procedure, the Court should not strike out a party if the pleadings disclose a direct contractual nexus or if the presence of such party is necessary to avoid multiplicity of proceedings and to enable the Court to effectually and completely adjudicate upon all the matters in controversy.

In the present case, the plaintiff has founded its claim against the Proforma Defendant No.2 upon an express covenant embodied in the Tripartite Agreement.

The rights and obligations arising out of that agreement are inseparably connected with the loan transaction in question.+

Whether such covenant ultimately creates an enforceable liability against the petitioner is undoubtedly a matter to be decided upon evidence at the trial. Premature deletion of the petitioner's name at this stage would deprive the Court of the opportunity to adjudicate all questions arising from the same transaction and may result in multiplicity of litigation.

Accordingly, this Court is of the considered view that the Proforma Defendant No.2 cannot be said to be either a wholly unnecessary or an improperly joined party. On the contrary, having regard to the specific averments made in the plaint and the contractual obligations embodied in the Tripartite Agreement, its presence is necessary for the effective, complete and final adjudication of the issues involved in the present suit.

In view of the discussions made hereinabove, I find no merit in the application filed under Order I Rule 10 of the Code of Civil Procedure.

Hence, it is

Ordered

that the application filed by the Proforma Defendant No.2 under Order I Rule 10 of the Code of Civil Procedure read with section 57 of the *Artha Rin Adalat Ain, 2003* praying for striking out its name from the plaint is **rejected**.

Let the suit proceed in accordance with law.

Inform the parties accordingly.

To-----for furnishing the name of the mediator by parties.

T/C by Me

Md. Hasan Zaman
Judge
Artha Rin Adalat No.1,
Dhaka

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