ARM 1125 of 2023

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: 22th day of September, 2026

Artha Rin Suit No.1125 of 2023.

Lankabangla Finance Limited----------Plaintiff

-Versus-

Mrs. Tahera Khanom----------Defendants

This case came up for final hearing on: 20.08.2025, 09.09.2025, 21.09.2025, 11.11.2025, 12.04.2026.

In presence of :
Mr.Raju Howlader Palash----------Advocate for Plaintiff.
Md. Atikul Islam----------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. **19,18,438.13** (Taka Nineteen Lac Eighteen Thousand Four Hundred Thirty Eight Point Thirteen) outstanding up to 31.10.2019 against the defendant.

The suit was filed on 20.11.2019 before the **Artha Rin Adalat No. 2**, Dhaka, being registered as **Artha Rin Suit No. 1007 of 2019**. 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. 1125 of 2023**.

Plaintiff's Case in Brief:-

The case of the plaintiff, in substance, is that the plaintiff, **Lankabangla Finance Limited**, is a Financial Institution duly incorporated under the relevant laws of Bangladesh. Defendant No.1 is the principal borrower and beneficiary of the Personal Loan and

subsequent Home Loan/Mortgage facilities sanctioned by the plaintiff, while defendant No.1 is also the mortgagor. Defendant Nos.2 and 3 stood as personal guarantors and thereby undertook to remain jointly, severally and personally liable for repayment of the loan liabilities. Pro-forma defendant No.4, namely **Greeha Nirman Builders Limited**, is the developer company and a party to the Tripartite Agreement dated 14.07.2009, and its presence has been stated to be necessary for the effective and proper adjudication of the suit.

It is stated that, upon the application of defendant No.1 dated 20.06.2009, the plaintiff sanctioned a Personal Loan Facility of **Tk.18,00,000/-** by its Sanction Letter dated 07.07.2009. Pursuant thereto, defendant No.1 entered into a Tripartite Agreement with the plaintiff and defendant No.4 on 14.07.2009, and the sanctioned loan was thereafter duly disbursed and availed by defendant No.1. In respect of the said facility, defendant No.1 executed the requisite charge documents, including the Demand Promissory Note, Letter of Continuation and Loan Agreement, all dated 15.07.2009, while defendant Nos.2 and 3 executed Letters of Personal Guarantee of the same date.

Subsequently, upon further request of defendant No.1, the plaintiff sanctioned an additional **Home Loan/Mortgage Facility of Tk.8,00,000/-** by Sanction Letter dated 07.07.2010, which was duly accepted and availed by defendant No.1. The requisite loan documents and personal guarantees were executed on 11.07.2010. As security for the credit facilities, defendant No.1 also executed a registered Deed of Mortgage being No.10383 and an Irrevocable General Power of Attorney being No.10384, both dated 03.08.2010 and registered with the Mirpur Sub-Registry Office, Dhaka.

The plaintiff alleges that defendant No.1 subsequently became highly irregular and defaulted in repayment despite repeated demands and reminders. Defendant Nos.2 and 3, notwithstanding their obligations as personal guarantors, also failed to discharge the outstanding liability. Although the defendants allegedly acknowledged the loan liabilities and made commitments for repayment, they failed to regularize the accounts.

Ultimately, the plaintiff issued a legal notice dated 04.11.2019 through its nominated lawyer, calling upon the defendants to adjust the outstanding dues within three days of receipt thereof, but the defendants allegedly failed to comply. Consequently, the plaintiff was constrained to institute the suit for recovery of its outstanding dues.

According to the plaintiff, the outstanding liability stood at **Tk.19,18,438.13** as on 31.10.2019, together with accrued and up-to-date interest thereon, which the defendants are jointly and severally liable to pay to the plaintiff. In order to recovery of the said amount the plaintiff has filed the instant suit.

The Defendant Nos.1-3 entered appearance and contested the suit by filing a Written Statement contending, inter alia, that the suit is not maintainable in its present form and

manner, is devoid of lawful cause of action and is bad for defect of parties. On merits, it is stated that Defendant No.1 availed a loan facility of Tk.18,00,000/- from the Plaintiff Financial Institution for purchasing a 1050 sft. flat, repayable by monthly installments of Tk.19,463/- over 180 months from August, 2009 to August, 2024. The defendant claims to have regularly paid the installments, except for a few installments which could not be paid due to financial difficulties and increased family expenses, particularly expenses relating to her daughter's education.

It is further contended that, on 18.05.2022, after institution of the suit, the plaintiff amended the plaint and incorporated another loan facility of Tk.8,00,000/- allegedly availed in July, 2010. According to the defendants, the said facility was also being repaid as per schedule and was payable up to August, 2025; hence, the Defendant No.1 was not a defaulter. The defendants allege that inclusion of the said facility was made with mala fide intention to harass them.

The defendants further contend that no demand, reminder or legal notice was served upon them before institution of the suit and that the plaintiff's statement of account contains erroneous calculations and excessive interest. They also challenge the admissibility of the charge documents and statements of account under the Stamp Act, 1899 and the Bankers' Books Evidence Act, 1891.

It is further claimed that the defendants have paid approximately Tk.33,00,000/- towards adjustment of the loan liabilities, but the plaintiff improperly adjusted such payments towards excessive interest. They therefore seek appointment of an auditor to determine the actual dues and pray for opportunity to repay the same by installments. Accordingly, the Defendant Nos.1-3 prayed for dismissal of the suit with costs.

Issues:

1) Whether the suit is maintainable in it's present form and prayer?
2) Whether the plaintiff has any cause of action for filing the suit?
3) Whether the suit is barred by limitation ?
4) Whether the plaintiff is entitled to recover the claimed amount from defendants?
5) Whether the plaintiff is entitled to obtain a decree as prayed for?

Evidence Adduced:

In support of the case, the plaintiff examined one witness, namely P.W.1, Omar Faruk who submitted affidavit-in-chief in support of the plaint and proved the documents: Power of Attorney (Exhibit-1), Loan Application, Sanction Letter & Charge Documents (Exhibit-2

Series), Legal Notice and postal receipt (Exhibit-3 Series) and Statement of Account (Exhibit-4).

On the other hand, to prove the defendant's case, the defendant examined a witness namely **Tahera Khanom as D.W.1,** During examination of D.W.1 **t**he documents produced and proved have been marked as **Exhibits:-Ka Series.**

Discussions and Findings

Issue no. 1-3 :

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.

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 institution 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. 19,18,438.13/-.** Despite repeated reminders, the defendants failed to discharge the said liabilities. Ultimately, the plaintiff issued Legal notice on 04.11.2019, 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 04.11.2019, and the instant suit having been filed on 20.11.2019, 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.

Issue No : 4 & 5

All the issues are taken up together for the sake of brevity and convenience as they are closely interconnected.

Upon careful consideration of the pleadings, oral evidence, documentary exhibits and the entire materials on record, it appears that the plaintiff is a duly incorporated non-banking financial institution legally competent to institute the present suit. It is undisputed that Defendant No.1, **Mrs Tahera Khanom**, availed a Personal loan facility from the plaintiff, while Defendant Nos.2 and 3 executed deeds of guarantee, thereby undertaking co-extensive liability for repayment.

Under Section 6(4) of the Artha Rin Adalat Ain, 2003, the plaint supported by affidavit carries substantive evidentiary value unless rebutted by credible evidence. The plaintiff examined P.W.1, **Md Omor Faruque**, whose testimony remained consistent and unshaken in cross-examination. **Exhibit-2/1**, the Sanction Letter dated 07.07.2009, establishes that the plaintiff sanctioned a Mortgage/Home loan of Tk.18,00,000/- in favour of Defendant No.1. In pursuant thereto a loan agreement [Exhibit-2/5] was executed between the parties. Exhibit 2/6 shows that a tripartite agreement was also executed among the developer and the parties. Exhibit-2/11 the Sanction Letter dated 07.07.2010, establishes that the plaintiff sanctioned a Mortgage Finance loan of Tk.8,00,000/- in favour of Defendant No.1. Exhibit-2 series further proves execution of guarantee deeds and other charge documents, thereby conclusively establishing the financial relationship and repayment obligations. In view of Exhibit- 2/18 and Exhibit-2/17 proves that the said loan was also secured by mortgage of immovable property vide deed of Mortgage No.10383 dated 03.08.2010 and General Power of Attorney No. 10384 dated 03.08.2010.

Exhibit-3 series demonstrates that after availing the facility, Defendant No.1 defaulted in repayment despite repeated reminder letters and legal notice demanding liquidation of the outstanding dues. Exhibit-4, the statement of account maintained in the ordinary course of business, reveals that as on **31.10.2019** the outstanding liability stood at **Tk.19,18,438.13/-** inclusive of accrued interest. Such statement of account carries considerable evidentiary value as it has been maintained in the regular course of business. The defendant has not produced any independent statement of account, audit report, settlement certificate or other reliable evidence showing that the entries contained therein are inaccurate, manipulated or incorrectly calculated. Consequently, there is no legal basis for disbelieving the plaintiff's statement of account.

The principal defence of the defendant is that the defendant No.1 repaid an aggregate amount of Tk. 32,73,673/- against the credit facility which was not reflected in the account statement. In support of such contention, he produced 18 Nos. of deposit slip marked **Exhibit-Ka series** which clearly demonstrate that after **31.10.2019, i.e.,** after the date up to which the plaintiff prepared its statement of account, the defendant made several payments

amounting to **TK. 5,89,266/- from 31.08.2020 to 28.01.2026** towards the loan account. Since these payments were made subsequent to the date of the plaintiff's statement of account, they could not have been reflected therein. In the interest of fairness, equity and justice, these subsequent payments deserve due adjustment against the decretal claim.

Accordingly, after deducting Tk. **5,89,266/-** from the outstanding amount of Tk. 19,18,438/-, the amount lawfully recoverable by the plaintiff stands at Tk. **13,29,172/-.**

The evidence on record further establishes that due to persistent default in repayment, the defendant's loan account became irregular and the outstanding liability became recoverable in accordance with the terms of the loan agreement and the provisions of the Artha Rin Adalat Ain, 2003. The plaintiff has successfully proved the sanction of the loan, execution of the loan documents, persistent default, service of legal demand and the amount outstanding. On the contrary, the defendant has failed to prove her plea of complete adjustment or full repayment by any reliable and convincing evidence.

Having independently assessed the pleadings, oral testimony, documentary exhibits and the admissions made by the parties, this Court is satisfied that the plaintiff has discharged the burden of proof imposed by law. The defendant has failed to rebut the plaintiff's documentary evidence except to the extent of proving subsequent payments amounting to Tk. **5,89,266/-** which have already been duly adjusted.

Accordingly, this Court holds that the plaintiff has successfully established its claim to the extent of **Tk. 13,29,172/- (Taka Thirteen Lacs Twenty Nine Thousand One Hundred Seventy Two only).** The issues are therefore decided in favour of the plaintiff and against the defendant. The plaintiff is entitled to recover the said amount together with interest, costs and other consequential reliefs in accordance with the provisions of the Artha Rin Adalat Ain, 2003.

In result the case succeeded.

Court Fee paid is correct

Hence,

It is Ordered

That the present suit be decreed on contest on part against the Defendants with costs for an amount of **Tk. 13,29,172/- (Taka Thirteen Lacs Twenty Nine Thousand One Hundred Seventy Two only).**

The Plaintiff shall be entitled to receive the said amount **together with interest or profit as applicable under the prevailing laws or rules from 20.11.2019**, 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.

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Judge (Joint District Judge)
Artha Rin Adalat No-1, Dhaka.