ARM 975 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: 21th day of September, 2026.

Artha Rin Suit No. 975 of 2023.

Bank Asia Limited----------Plaintiff
-Versus-
Md. Zahirul Alom Alias Dr. Md. Zahirul Islam & others---Defendants

This case came up for final hearing on: 22.05.2025, 22.04.2026, 18.08.2026.

In presence of:
Mr. Arife Billah----------Advocate for Plaintiff.
Mr. Md. Azizur Rahman Shah----------Advocate for Defendant.

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

The plaintiff Bank Asia Limited filed this present suit under the Artha Rin Adalat Ain, 2003 for recovery of Tk. 69,19,893.44/- (Taka Sixty Nine Lac Nineteen Thousand Eight Hundred Ninety Three Point Forty Four) as on 17.08.2022.

Plaintiff's Case in Brief:

The plaintiff, **Bank Asia Limited**, is a banking company duly incorporated under the relevant Companies Act and authorized by Bangladesh Bank. Defendant No.1 is the principal borrower and mortgagor, while Defendant Nos.2 is personal guarantors, and they are jointly and severally liable for repayment of the plaintiff's dues.

Upon the application dated 02.07.2013, the plaintiff sanctioned in favour of Defendant No.1, vide sanction letter dated 09.10.2013, a composite Overdraft facility of Tk.35,00,000/- at 18% interest per annum and an SME Term Loan of Tk.15,00,000/- at 17% interest per annum for meeting working-capital

requirements. The defendants accepted the terms and conditions of the sanction letter and availed the said facilities. Subsequently, the Overdraft liability was rescheduled on 20.06.2019 and again on 04.01.2021, while the Term Loan liability was rescheduled on 30.12.2020.

The credit facilities were secured by various loan and security documents, including Demand Promissory Note, General Loan and Collateral Agreement, Letters of Hypothecation and Continuity, Undertaking for Monthly Instalment, Letter of Disbursement, Memorandum of Deposit of Cheques and Personal Guarantees. The facilities were further secured by mortgage of the defendant No.1's properties under Deed Nos.11187 dated 10.10.2013 and 712 dated 26.01.2021, together with corresponding Powers of Attorney.

Despite repeated demands, the defendants failed to liquidate their outstanding liabilities. The plaintiff thereafter served legal notice dated 12.01.2021 demanding payment. Subsequently, in compliance with section 12 of the Artha Rin Adalat Ain, 2003, the plaintiff attempted to realize the dues by auctioning the mortgaged properties through publication of notice in the national daily *Jaijaidin* on 03.06.2022, but the auction failed for want of bidders.

Consequently, having exhausted the available remedies, the plaintiff instituted the suit for realization of its outstanding dues amounting to **Tk.69,19,893.44/- as on 17.08.2022**, together with applicable interest and other lawful charges.

On the other hand, Defendant No.1 has contested the suit by filing a Written Statement, contending, inter alia, that the suit is not maintainable in its present form and manner and that the plaintiff has no valid cause of action to institute the same. It is stated that Defendant No.1 is the proprietor of a business concern namely, "M/s. Shamsul Haque Sizing", engaged in yarn sizing/processing and marketing thereof under the requisite licence and permission of the competent regulatory authority.

It is further stated that Defendant No.1 used to procure raw materials from the local market, process yarn at his own factory and market the finished products in the domestic market. For carrying on such business, he took on lease approximately 70 decimals of land situated at Kalagachhia under Araihazar Upazila, Narayanganj, from one Moniruzzaman and established his factory thereon. Although the lease was subsisting, the landowner allegedly evicted Defendant No.1 and caused closure of the factory, compelling him to remove his machinery and keep the same in an unprotected condition in the open air. Consequently, his business suffered severe loss and disruption.

Defendant No.1 claims that he duly informed the plaintiff-bank of the said circumstances. The representatives of the plaintiff-bank allegedly inspected the premises, took photographs and became aware of the actual condition of the business. Despite such loss, Defendant No.1 arranged fresh capital from various personal sources, resumed his business and continued making monthly instalment payments towards the bank's dues. He further asserts that substantial amounts of the loan were already repaid. Accordingly, he contends that the statement of accounts relied upon by the plaintiff is erroneous and motivated, and prays for dismissal of the suit.

Issues:

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?
4) Whether the plaintiff Bank is entitled to recover the claimed amount from the defendants?

5) Whether the plaintiff Bank is entitled to obtain a decree as prayed for?

Discussions and Decisions:

To prove the plaint case, the plaintiff examined 01 witnesses namely **Aman Ullah 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) Application of loan, sanction Letter	**Exhibit-2 Series**
3) Charge Documents	**Exhibit-3 Series**
4) Deed of Mortgage & IGPA	**Exhibit-4 Series**
5) Paper Publication	**Exhibit-5**
6) Legal Notice with Postal Receipt	**Exhibit-6 Series**
7) Account statement	**Exhibit-7**

On the other hand, to prove the defendant's case, the defendant examined a witness namely Zahirul Alom **as D.W.1** before this court**. During examination of**

D.W.1 the following documents were produced and proved, which have been marked as Exhibits:-

i) Deposit Slip	**Exhibit-Ka**
ii) Money Receipt	**Exhibit-Kha**
iii) Statement of Account	**Exhibit-Ga**
iv) Chalan	**Exhibit-Gha**

Decision with Reasons

Issue nos. 1-3:

All these issues are taken up together for the sake of brevity and convenience. Upon careful consideration of the plaint, written statement and evidence on record, it appears that although the defendants challenged the maintainability of the suit, they adduced no evidence in support thereof. The plaintiff, **Bank Asia Limited**, being a banking financial institution duly incorporated under the relevant laws, is competent to institute the instant suit for recovery of its dues under the Artha Rin Adalat Ain, 2003. The plaint has been duly presented on affidavit in compliance with section 6(4) of the Ain, accompanied by requisite ad valorem court-fees and relevant charge documents. No legal infirmity is found in its presentation. Accordingly, the suit is maintainable.

As to cause of action, the plaint discloses that, upon the application of defendant No.1, the plaintiff sanctioned credit facilities, secured by charge documents and personal guarantees. The defendants defaulted in repayment, resulting in outstanding dues of Tk.69,19,893.44 as on 17.08.2022. Despite repeated demands and legal notice dated 12.01.2021, the dues remained unpaid, compelling the plaintiff to institute the suit. The cause of action arose from the sanction and subsequent default, and the suit filed on 17.08.2022 is within limitation. Accordingly, the issues are decided in favour of the plaintiff.

Issue No: 4 & 5 :

All these issues are taken up together for the sake of brevity, convenience, and because they are closely interlinked both on facts and in law. It is admitted and undisputed that the plaintiff is a duly incorporated scheduled banking financial institution, legally competent to institute and maintain the present suit for realization of financial claims arising out of sanctioned credit facilities advanced in the ordinary course of its business. It further appears from the record that Defendant No.1, namely Md. Zahirul Alom Alias Dr. Md. Zahirul Islam is the

borrower while Defendant No. 2 executed deed of guarantee securing repayment of the said loan facility and thereby assumed co-extensive liability with the borrower in accordance with law.

In view of Section 6(4) of the Artha Rin Adalat Ain, 2003, the plaint supported by affidavit carries substantive evidentiary value unless rebutted by credible and reliable evidence to the contrary. In support of its claim, the plaintiff examined one witness, namely **P.W.1 Aman Ullah**, who submitted affidavit-in-chief in support of the plaint. His testimony remained materially consistent, coherent, and fully supportive of the plaintiff's pleaded case. Nothing substantial could be elicited in cross-examination to discredit his testimony or weaken the evidentiary value of the plaintiff's case.

From **Exhibit-2/1**, being the sanction letter dated 09.10.2013, it clearly transpires that upon application and request of Defendant No.1, the plaintiff sanctioned a term loan facility amounting to **Tk. 35,00,000.00/- (Taka Thirty Five Lac only)** in favour of Defendant No.1 subject to specified terms and conditions. The charge documents marked **Exhibit-3 series** further establish that the borrower and guarantors executed all necessary security documents, undertakings, repayment commitments, and other binding financial instruments in favour of the plaintiff institution. It further appears from evidence that Subsequently, the Overdraft liability was rescheduled on 20.06.2019 and again on 04.01.2021, while the Term Loan liability was rescheduled on 30.12.2020. Exhibit-2/2 and Exhibit-2/3 proves that facts to be true. Exhibit- 4 series demonstrates that the said facilities were further secured by mortgage of the defendant No.1's properties under Deed Nos.11187 dated 10.10.2013 and 712 dated 26.01.2021, together with corresponding Powers of Attorney. These documents unmistakably prove lawful creation of financial liability and establish beyond doubt that Defendant No.1 duly availed the sanctioned facility and undertook repayment obligations according to agreed terms.

The legal notice with postal receipt marked **Exhibit-6 series** reveal that after availing the said facility, Defendant No.1 failed to maintain regular repayment and gradually committed persistent default. The documentary record further demonstrates that despite repeated reminders, notices, and demands issued by the plaintiff, the defendants failed to regularize the account or liquidate the overdue liability. The legal notice also sufficiently establishes that the plaintiff demanded repayment before institution of the suit in accordance with law.

The statement of account marked **Exhibit-7**, maintained in the ordinary course of financial business, clearly reveals that as on **17.08.2022** the total outstanding dues stood at **Tk. 69,19,893.44/-**, inclusive of accrued interest. Such statement of account carries presumptive evidentiary value, particularly when regularly maintained in course of business, and in the present case the defendants failed to produce any contrary statement, independent audit, payment reconciliation, or documentary material capable of dislodging the correctness of the plaintiff's financial claim.

The principal defence of the defendant is that the defendant No.1 repaid an aggregate amount of **Tk. 51,67,855**- against the credit facility. which was not reflected in the account statement. In support of such contention, he produced bank statement and deposit slip marked **Exhibit-Ka, Kha, Ga and Gha** which clearly demonstrate that before filing of the suit the defendant no.1 paid of Total TK 16,21,000/- upto 02.07.2025. Though the defendant claims that more TK 34,96,855/- has been deposited in the 1st Joint Metro Session Court in Sessions case No.26289/2022 arising out of CR case No.54/2022 but that amount was not yet received by the plaintiff bank. Thus it cannot be said that substantial part of the loan has been adjusted by the defendant No.1. It appears that after 17.08.2022, i.e., after the date up to which the plaintiff prepared its statement of account, the defendant made payments amounting to TK.25,000/- on 19.02.2026 [Exhibit-Kha], and Tk. 25,000/- on 04.05.2026 towards the loan account. But that payment dated 04.05.2026 has no proof of evidence from defendant side. Since the payment of TK.25,000/- was made subsequent to the date of the plaintiff's statement of account, it 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. 25,000/- from the outstanding amount of Tk. 69,19,893.44/-, the amount lawfully recoverable by the plaintiff stands at Tk. **68,94,893.44/-.**

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. 25,000/-, which have already been duly adjusted.

Accordingly, this Court holds that the plaintiff has successfully established its claim to the extent of **68,94,893.44/- (Taka Sixty Eight Lakh Ninety Four Thousand Eight Hundred Ninety-Three point Forty Four 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 Defendant No.1 and ex-party against the other defendants with costs for an amount of **68,94,893.44/- (Taka Sixty Eight Lakh Ninety Four Thousand Eight Hundred Ninety-Three point Forty Four 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 17.08.2022, 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

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