ARM 80 of 2024.

**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: 21st day of September, 2026.**

## Artha Rin Suit No. 80 of 2024.

Eastern Bank Limited---------- ----------Plaintiff

**-Versus-**

Ms. Sheikh Tahmina Rashid and other ----------Defendants

This case came up for final hearing on: 04.07.2023, 10.08.2023, 18.09.2023, 24.09.2023.

In presence of:
Mr. Swaraj Chatterjee (Bappa)----------Advocate for Plaintiff.
Md. Shawkat Ullah Chowdhury----------Advocate for Defendant No.2.
Md. Moniruzzaman----------Advocate for Defendant No.3.

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

The plaintiff, Eastern Bank Limited filed this present suit under the **Artha Rin Adalat Ain, 2003** for recovery of Tk. **61,18,440.55 (Taka Sixty One Lac Eighteen Thousand Four Hundred Forty Point Fifty Five)** as on 31.10.2017.

The suit was filed on 16.11.2017 before the **Artha Rin Adalat No. 3**, Dhaka, being registered as **Artha Rin Suit No. 1574 of 2017**. Subsequently, by order dated 02.11.2023 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. 80 of 2024**.

**Plaintiff's Case in Brief**

The plaintiff, **Eastern Bank Limited**, is a banking company duly incorporated and licensed under the applicable laws of Bangladesh and is competent to institute the present suit. Defendant No.1, being the principal borrower, and the other defendants, being guarantors, availed and enjoyed the loan facility sanctioned by the plaintiff Bank and became jointly and severally liable for repayment thereof.

At the request of Defendant No.1, the plaintiff initially sanctioned a **UDDOM Loan of Tk. 27,00,000.00** vide Sanction Letter dated **28.05.2015**. Subsequently, upon further request of the defendants, the loan was rescheduled and converted into a Term Loan vide Reschedule Sanction Letter dated **25.04.2016**, whereby an amount of **Tk. 60,15,340.00** was rescheduled for business expansion. Pursuant thereto, the plaintiff disbursed **Tk. 60,29,950.30** on **17.05.2016** in terms of Clause 3(a) of the said Sanction Letter. The defendants accepted the rescheduled facility subject to all its terms and conditions and duly maintained the loan account with the plaintiff.

Although the defendants availed and utilized the loan facility, they failed to repay the installments in accordance with the agreed repayment schedule and the loan account became irregular. Despite repeated demands and reminders, they failed to regularize the account or liquidate the outstanding liability.

Consequently, the plaintiff issued a **legal notice dated 30.10.2017**, duly served upon the defendants, demanding payment of the outstanding dues. Despite such notice, the defendants neither responded nor made any payment. As per the statement of account maintained by the plaintiff in the ordinary course of banking business, the defendants' total outstanding liability stood at **Tk. 61,18,440.55 (Taka Sixty-One Lac Eighteen Thousand Four Hundred Forty and Fifty-Five Paisa)** as on **31.10.2017**. Hence, the plaintiff instituted the present suit for realization of the said outstanding amount together with interest, costs and other lawful reliefs.

**Defendant's Case:**

**Defendant No.2, in her written statement, contended that** the plaintiff Bank did not disburse the sanctioned loan amount to Defendant No.1 according to his requirement and within the stipulated time. Consequently, Defendant No.1 could not properly utilize the loan facility or achieve the intended objectives of his

business. It was further alleged that the plaintiff Bank, by exercising undue control over the business, was attempting to shift the loss allegedly caused by its own acts and omissions upon the defendants. Hence, the suit was liable to be dismissed.

It was further contended that the interest on the previously availed loan had been enhanced on a compound basis and that, due to erroneous accounting by the plaintiff, the amount claimed in the suit had been unlawfully inflated. Despite repeated oral and written requests, the plaintiff failed to provide the defendants with a proper statement of account. Accordingly, the plaintiff's claim was alleged to be neither genuine nor reliable. Defendant No.2 further stated that the business establishment of Defendant No.1, including the shop, was destroyed by fire, causing severe financial loss. Since Defendant No.2 is a housewife, she claimed that she was financially incapable of repaying the loan. She also contended that the loan was insured and, therefore, the plaintiff could recover its dues from the insurer.

In the alternative, Defendant No.2 prayed for waiver of the claimed interest, penal interest, compound interest and penalties and sought rescheduling of only the principal amount by allowing repayment in minimum monthly installments over a period of 12 years. She further alleged that payments had already been made towards the plaintiff's dues, but the plaintiff had unlawfully inflated the interest component and instituted the present suit for recovery thereof.

**Defendant No.3, in his written statement, contended that** he was merely acquainted with Defendant No.1 through business dealings and that he had signed the loan documents only as a witness upon being assured that such signature would facilitate Defendant No.1 in obtaining the loan. He denied having executed any document as a guarantor or surety. According to him, neither Defendant No.1 nor the plaintiff Bank informed him that he would be personally liable for repayment of the loan in the event of default by Defendant No.1.

Defendant No.3 further stated that Defendant No.1 died about two and a half months prior to institution of the suit and that his legal heirs were legally responsible for repayment of the outstanding loan. He alleged that the heirs had been making payments towards the loan liability. He also stated that Defendant No.1's business establishment was damaged by a gas explosion, as a result of which Defendant No.1 sustained burn injuries and subsequently died. Since Defendant No.3 had signed the documents only as a witness and had never

executed any guarantee or surety document, he contended that the suit against him was false, misconceived and liable to be dismissed with costs

**Issues:**

**The following issues have been framed for proper adjudication of the case:**

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?

**Discussions and Decisions:**

To prove the plaint case, the plaintiff examined 01 witnesses namely **G.M Selim Reza 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) Application of loan & Sanction Letter | **Exhibit 4 Series** |
| 5) Legal Notice With Postal Receipt | **Exhibit-5 Series** |
| 6) Account statement | **Exhibit-6** |

On the other hand, to prove the defendant's case, the defendants examined a witness namely **Sheikh Tahmina Rashid as D.W.1 & Ali Ahmed as D.W-2** but they did produce any documents before the court.

**Decision with Reasons**

**Issue no. 1, 2 & 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 sit 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 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. These issues are 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 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 **61,18,440.55/-.** Despite repeated reminders, the defendants failed to discharge the said liabilities. Ultimately, the plaintiff issued Legal notice on 30.10.2017, 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 30.07.2017 and the instant suit having been filed on 16.11.2017, 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.

**Issue No : 3 & 4 :**

Whether the plaintiff institution is entitled to recover the claimed amount from the defendant? + Whether the plaintiff is entitled to obtain a decree as prayed for?

All the issues are taken up together for the sake of brevity, convenience and proper appreciation of the evidence, as they are closely interlinked both on facts and in law.

Upon careful consideration of the pleadings of the parties, the oral evidence adduced by the plaintiff, the documentary exhibits produced in support of its claim, and the entire materials available on record, it appears that the plaintiff is a duly incorporated scheduled banking company and is legally competent to institute and maintain the present suit for realization of its lawful dues arising out of credit facilities sanctioned and disbursed in the ordinary course of its banking business. The evidence on record further establishes that Defendant No.1, **Sheikh Mamun-Or-Rashid**, was the principal borrower, whereas Defendant Nos.2 and 3 executed personal guarantee documents in favour of the plaintiff Bank and thereby undertook liability for repayment of the loan facility in accordance with the terms thereof.

In view of **section 6(4) of the Artha Rin Adalat Ain, 2003**, the plaint, being supported by affidavit, carries evidentiary value unless the same is rebutted by credible and cogent evidence. In the present case, the plaintiff examined **P.W.1 G.M. Selim Reza**, who tendered his evidence by affidavit in support of the plaint. His testimony remained consistent with the pleadings and documentary evidence. Nothing material could be elicited in cross-examination sufficient to discredit his testimony or to demolish the plaintiff's claim. The defendants, on the other hand, could not adduce any independent and convincing evidence sufficient to rebut the plaintiff's documentary and oral evidence.

The **Sanction Letter dated 28.05.2015**, marked as **Exhibit-2(k)**, establishes that, upon the application of Defendant No.1, the plaintiff initially sanctioned a **UDDOM Loan of Tk. 27,00,000.00**. Subsequently, at the request of the defendants, the facility was rescheduled and converted into a Term Loan by the **Rescheduled Sanction Letter dated 25.04.2016**, marked as **Exhibit-4(k)**. The said document establishes that the rescheduled liability was **Tk. 60,15,340.00**, and the subsequent disbursement under the rescheduled facility stood at **Tk. 60,29,950.30**. The charge and security documents, collectively marked as **Exhibit-3 Series**, further establish that the borrower and guarantors executed the requisite loan and security documents in favour of the plaintiff Bank. Thus, the existence of the loan transaction, availment of the facility by Defendant No.1 and the contractual obligations undertaken by the defendants stand satisfactorily proved.

The contention of Defendant No.2 that the plaintiff did not disburse the loan amount within the required time and thereby caused loss to the business of Defendant No.1 is not supported by any convincing documentary or oral evidence. Mere assertion in a written statement, without proof by reliable evidence, cannot dislodge the plaintiff's documentary evidence regarding sanction, rescheduling and disbursement of the loan. No contemporaneous correspondence, complaint, bank record or other reliable material has been produced to establish that the plaintiff wrongfully withheld or delayed disbursement of the sanctioned facility.

Similarly, the allegation that the plaintiff exercised control over the business of Defendant No.1 and thereby caused business losses is wholly unsubstantiated. The banking relationship between the parties, by itself, cannot make the plaintiff responsible for the commercial success or failure of the borrower's business. A borrower who avails a financial facility remains contractually bound to repay the same in accordance with the agreed terms, irrespective of the profitability or otherwise of the business for which the facility was obtained.

The reminder letters and legal notice forming **Exhibit-5 Series** further demonstrate that the plaintiff repeatedly demanded payment and called upon the defendants to regularize the loan account. The **legal notice dated 30.10.2017** was duly issued demanding payment of the outstanding dues. Despite receipt thereof, the defendants failed to discharge their liability. Such conduct lends further support to the plaintiff's case regarding persistent default.

The **statement of account, marked as Exhibit-6**, maintained by the plaintiff in the ordinary course of its banking business, shows that the outstanding liability stood at **Tk. 61,18,440.55 as on 31.10.2017**. The defendants have not produced any alternative statement of account, payment receipts, documentary reconciliation, audit report or other reliable material showing that the amount claimed by the plaintiff is incorrect. In the absence of any credible rebuttal evidence, the statement of account, corroborated by the sanction documents, security documents and demand notices, sufficiently establishes the outstanding liability.

The allegation of Defendant No.2 regarding charging of excessive compound interest, penal interest and other charges also remains unproved. No specific calculation has been produced by her demonstrating the alleged erroneous entries or identifying any particular payment which was omitted from the plaintiff's

statement of account. Her prayer for waiver of interest and rescheduling of the principal amount for 12 years is essentially a prayer for equitable indulgence and does not constitute a legal defence to a duly proved financial claim. Likewise, the fact that Defendant No.2 is a housewife or that the borrower's business suffered loss does not extinguish or suspend the contractual liability arising from the loan transaction.

The plea that the loan was insured and that the plaintiff should recover its dues from the insurer also does not absolve the defendants from their contractual liability. No insurance policy or other reliable evidence has been produced before the Court showing that the entire outstanding liability was covered by insurance or that the plaintiff had already received, or was legally bound to receive, the claimed amount from the insurer. Therefore, such plea cannot defeat the plaintiff's otherwise established claim.

As regards Defendant No.3, his defence is that he signed the relevant documents merely as a witness and did not execute any guarantee. However, this plea is contradicted by the documentary evidence forming **Exhibit-3 Series**. The said documents establish the nature of the obligations undertaken by the parties. A mere denial in the written statement cannot prevail over the contents of duly executed documentary instruments, particularly when Defendant No.3 has failed to establish by reliable evidence that his signatures were obtained merely for witnessing purposes or that the guarantee documents were fabricated, misrepresented or otherwise invalid. His alleged lack of knowledge regarding the consequences of the guarantee cannot, in the facts and circumstances of the case, absolve him from the liability undertaken by him through the executed security documents.

The further contention of Defendant No.3 that Defendant No.1 died prior to institution of the suit and that his heirs are liable to repay the loan does not exonerate a guarantor from his contractual obligation. The liability of the principal debtor and that of a guarantor may coexist, and the existence of liability upon the principal borrower or his estate does not, by itself, discharge the liability undertaken by the guarantor. Moreover, no convincing evidence has been adduced to establish that the outstanding dues had in fact been paid by the legal heirs of Defendant No.1. The alleged death of the borrower and damage to his business by fire or gas explosion are unfortunate circumstances, but they do not by themselves extinguish an existing financial liability.

On an overall assessment of the evidence, it is therefore found that the plaintiff has successfully proved the **existence of the loan transaction, sanction and disbursement of the facility, execution of the relevant loan and guarantee documents, default by the defendants, service of demand notice and the outstanding liability of Tk. 61,18,440.55 as on 31.10.2017**. The defendants have failed to establish any lawful discharge, adjustment, waiver, payment or other circumstance sufficient to defeat or materially reduce the plaintiff's claim.

Accordingly, this Court finds that the plaintiff has been able to prove its case on the balance of probabilities and that the defendants are liable to repay the outstanding dues in accordance with law. The issues are, therefore, disposed of 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 Defendant Nos. 2 & 3 with costs for an amount of Tk. **61,18,440.55 (Taka Sixty One Lac Eighteen Thousand Four Hundred Forty Point Fifty Five) as on 31.10.2017.**

The Plaintiff shall be entitled to receive the said amount **together with interest or profit as applicable under the prevailing laws or rules from 16.11.2017**, 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.**