ARM 1115 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: 27th day of September, 2026.

Artha Rin Suit No. 1115 of 2023.

Bank Asia Limited----------Plaintiff

-Versus-

HG Aviation Limited & others----------Defendants

This case came up for final hearing on: 12.03.2025, 18.06.2025, 10.11.2025, 22.04.2026.

In presence of:
Mr. Md. Masud Rana----------Advocate for Plaintiff.
Mr. Azizul Hakim----------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. **2,91,15,759.37/- (Taka Two Crore Ninety One Lac Fifteen Thousand Seven Hundred Fifty Nine Point Thirty Seven) as on 21.03.2023.**

Plaintiff's Case in Brief:

The plaintiff, **Bank Asia Limited,** is a banking company duly incorporated under the Companies Act and licensed and authorized by the Bangladesh Bank to carry on banking business in Bangladesh. Defendant No.1 is a private limited company and the principal borrower, while Defendant No.2 is its Managing Director and guarantor, Defendant No.3 is its Chairman and guarantor, and Defendant Nos.4-6 are guarantors in respect of the credit facilities availed and enjoyed by Defendant No.1.
Upon the application of Defendant No.1 dated 18.04.2017, the plaintiff sanctioned (i) One Time L/C (Sight) facility of USD 1.50 million equivalent to Tk. 127.50

million and (ii) One Time Demand Loan facility of Tk. 114.75 million vide Head Office Sanction Letter dated 18.05.2017 and Branch Sanction Letter dated 25.05.2017. Defendant No.1 accepted the terms and conditions thereof and duly availed and enjoyed the sanctioned facilities.

Subsequently, upon further requests of Defendant No.1, the plaintiff, from time to time, rescheduled the outstanding liability. The Demand Loan liability was first rescheduled by converting the same into a Term Loan of Tk. 110.89 million. Thereafter, the Term Loan liability was rescheduled for the second time at Tk. 113.20 million, with an extension of the deferral period for completion of mortgage formalities in respect of 4,209.56 sft. commercial space at "Rangs Arcade", Plot No.10/A, Gulshan Avenue, Dhaka. Subsequently, upon the request dated 24.12.2019, the plaintiff approved the third rescheduling by converting the liability into a fresh Term Loan of Tk. 21.91 million.

The aforesaid facilities were secured by, inter alia, Demand Promissory Notes, Letters of Charge/Lien and Set-off, Letters of Hypothecation, Hypothecation of Debts and Assets, Hypothecation of Fixed Assets, General Loan and Collateral Loan Agreements, Letter of Continuity, and Personal Guarantees executed by the concerned defendants. Defendant Nos.2, 3 and 6, having executed personal guarantees, became personally liable for repayment of the liabilities of Defendant No.1.

Despite availing and enjoying the credit facilities, the defendants failed and neglected to repay the outstanding liabilities within the stipulated period. The plaintiff repeatedly requested and reminded the defendants, including by letters dated 01.10.2018 and 20.06.2021, to liquidate the outstanding dues, but they failed to comply. The defendants also failed to complete the agreed mortgage formalities despite repeated demands.

As a result of such persistent default, a sum of Tk. 2,91,15,759.37, together with accrued interest and other lawful charges, became due and payable by the defendants to the plaintiff. The defendants, on various occasions, acknowledged their liabilities but failed to discharge the same. Finally, the plaintiff served a legal notice dated 03.10.2022 upon the defendants, calling upon them to adjust the outstanding liabilities within 7 (seven) days. Despite receipt of the notice, the defendants failed to pay the outstanding dues. Hence, having no other efficacious remedy, the plaintiff was constrained to institute the present suit for recovery of its lawful dues against the defendants.

The Defendant Nos. 2–6 contested the suit by filing a written statement, contending that the suit is not maintainable in its present form and manner and

that the plaintiff has no valid cause of action against them. Their case, in substance, is that Defendant No.1 had been sanctioned One-time L/C (Sight) of USD 1.50 million equivalent to Tk.12.75 crore and One-time Demand Loan of Tk.11.475 crore by the plaintiff, and that Defendant No.1 had already discharged a substantial portion of its liability. According to the defendants, Defendant No.1 had initially been regular in repayment, but subsequently faced severe business difficulties, including sluggish sales growth. Despite such difficulties, Defendant No.1 made repeated requests for rescheduling and, upon making the required down payments, obtained three rescheduling facilities from the plaintiff. However, the plaintiff allegedly granted only six months' extension on each occasion, although a longer repayment period had been sought. The defendants further state that the outbreak of COVID-19 from March 2020 severely affected Defendant No.1's business, causing continuing losses and making repayment of the rescheduled liability difficult.

The defendants further allege that the plaintiff's classification of their liability and reporting to the CIB adversely affected their ability to obtain further credit facilities and prevented them from taking advantage of Bangladesh Bank's stimulus packages. They also challenge the enforceability of the charge documents and hypothecation deeds, alleging that several material portions remained blank and that the alleged charges over the company's assets were not duly registered with the RJSC as required by law. The personal guarantees of Defendant Nos. 2, 3 and 6 are likewise challenged on the ground that material particulars, including the name of the borrower and the guaranteed amount, were left blank.

The defendants also contend that the suit suffers from misjoinder of parties, asserting that the guarantees of Defendant Nos. 2 and 3 did not cover the subsequent rescheduled arrangements and that Defendant Nos. 4 and 5 were never validly made guarantors. They therefore contend that the impleadment of Defendant Nos. 2–6 is contrary to section 6(5) of the Artha Rin Adalat Ain, 2003.

Finally, the defendants dispute the plaintiff's claim amount and allege material discrepancies between the Schedule of Claim and the loan account statement, including alleged duplication and arbitrary imposition of interest, discrepancies regarding excise duty, and an inaccurate statement of repayments. They accordingly contend that the outstanding liability requires proper verification and

audit on the basis of actual disbursement, repayment and lawful interest. On these grounds, they pray 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 **Md. Saiful Islam as P.W.1** before this court. During examination of P.W.1 the following documents were produced and proved, which have been marked as Exhibits:-

1) Letter of Authority	Exhibit-1
2) sanction Letters	Exhibit-2 Series
3) Charge Documents	Exhibit-3 Series
4) Letter of Personal Guarantees	Exhibit-4 Series
5) Letter of Reminders	Exhibit-5 Series
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 Shareef **Md. Moinul Akbar as D.W.1** before this court. But he did not produce any documents before the court.

Decision with Reasons

Issue nos. 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 banking company duly incorporated under the Companies Act of Bangladesh 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.

1) 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 bank 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 2,91,15,759.37/- (Taka Two Crore Ninety One Lac Fifteen Thousand Seven Hundred Fifty Nine Point Thirty Seven) as on 21.03.2023. Despite repeated reminders, the defendants failed to discharge the said liabilities. Ultimately, the plaintiff issued Legal notice on 03.10.2022, 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 03.10.2022, and the instant suit having been filed on 23.03.2023, 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: 4 & 5 : Whether the plaintiff Bank is entitled to recover the claimed amount from the defendant? + Whether the plaintiff Bank is entitled to obtain a decree as prayed for?

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

It is admitted and undisputed that the plaintiff is a duly incorporated scheduled banking institution, while Defendant No.1 is the principal borrower and Defendant Nos.2–6 executed deeds of guarantee securing repayment of the loan facility availed by Defendant No.1. By execution of the said guarantee documents, Defendant Nos.2–6 assumed liability for repayment of the outstanding dues in accordance with the terms of the guarantees and the applicable law.

In view of Section 6(4) of the Artha Rin Adalat Ain, 2003, the plaint, being supported by an affidavit, carries evidentiary value, subject to rebuttal by credible and reliable evidence. In support of its case, the plaintiff examined P.W.-1, Md. Saiful Islam, who filed his affidavit-in-chief reiterating and substantiating the material averments of the plaint. His testimony remained consistent, coherent and substantially unshaken in cross-examination. Nothing material could be elicited from him so as to discredit his testimony or to materially weaken the plaintiff's case.

The documentary evidence adduced by the plaintiff also substantially corroborates the testimony of P.W.-1. From Exhibit-2 Series, comprising the Head Office Sanction Letter dated 18.05.2017 and the Branch Sanction Letter dated 25.05.2017, it appears that the plaintiff sanctioned a loan facility of Tk. 127.50 million in favour of Defendant No.1. Subsequently, upon the request of Defendant No.1 dated 13.11.2018, the plaintiff rescheduled the liability for the first time, whereby the demand loan liability of Tk. 116.15 million was converted into a Term Loan facility of Tk. 110.89 million, pursuant to the Head Office Sanction Letter dated 30.06.2018 and the Branch Sanction Letter dated 10.07.2018.

Thereafter, the said Term Loan liability was further rescheduled for the second time, amounting to Tk. 113.20 million, pursuant to the Head Office Sanction Letter dated 26.12.2018 and the corresponding Branch Sanction Letter dated 26.12.2018. Subsequently, for the third time, the loan liability of Tk. 30.51 million was rescheduled by converting the same into a fresh Term Loan facility of Tk. 21.91 million pursuant to the Head Office Sanction Letter dated 30.12.2019 and the Branch Sanction Letter dated 02.01.2020, subject to the terms and conditions stipulated therein.

The Charge Documents marked as Exhibit-3 Series and Exhibit-4 Series further establish that the borrower and the guarantors executed the necessary security documents, undertakings, repayment commitments and other binding financial instruments in favour of the plaintiff. These documents, read together with the

sanction letters and the testimony of P.W.-1, establish the existence of the loan transaction and the contractual obligations undertaken by the defendants.

The Legal Notices marked as Exhibit-5 and Exhibit-6 further demonstrate that, after availing the loan facility and despite the successive rescheduling arrangements, Defendant No.1 failed to maintain regular repayment and committed persistent default. The documentary evidence shows that repeated demands and notices were issued by the plaintiff calling upon the defendants to regularize the loan account and liquidate the outstanding liability. The defendants, however, failed to comply with such demands. The issuance of the legal notices also establishes that the plaintiff demanded repayment prior to institution of the suit.

The Statement of Account marked as Exhibit-7, maintained in the ordinary course of banking business, reveals that as on 21.03.2023 the total outstanding liability stood at Tk. 2,91,15,759.37/-, inclusive of accrued interest. The said statement of account is duly corroborated by the other documentary evidence on record and the testimony of P.W.-1. The defendants have not produced any contrary statement of account, payment receipts, deposit slips, reconciliation statement, audit report or any other documentary evidence capable of dislodging the correctness of the plaintiff's account. In the absence of any credible evidence to the contrary, the statement of account, read with the supporting documents, sufficiently establishes the outstanding liability claimed by the plaintiff.

On the other hand, the defendants contested the suit by filing written statement and, significantly, admitted that Defendant No.1 had availed the loan facility from the plaintiff Bank. Their principal contention is that the plaintiff's claim is exaggerated and based upon an incorrect statement of account. However, despite making such assertions, the defendants failed to adduce any documentary evidence in support of their plea. No money receipt, deposit slip, independent account statement, payment reconciliation or other financial document has been produced to demonstrate that the amounts claimed by the plaintiff had already been paid or adjusted.

It is well settled that a mere pleading or assertion, unsupported by evidence, cannot displace a claim established by cogent oral and documentary evidence. In the present case, the defendants, though they contested the suit, failed to establish by reliable evidence either that the outstanding amount had been fully or substantially adjusted or that the plaintiff's statement of account was erroneous. No material evidence was also brought on record to demonstrate any substantial

payment during the pendency of the suit. Thus, the plea of exaggerated claim remains a mere assertion without evidentiary foundation.

It further appears from the materials on record that, notwithstanding the successive rescheduling arrangements, Defendant No.1 continuously failed to discharge the repayment obligations, resulting in classification of the loan account and accumulation of outstanding dues. Despite repeated demands and opportunities, the defendants failed to regularize the account or liquidate the outstanding liability. Accordingly, this Court finds that the plaintiff has successfully established that the loan liability became due and payable and remained outstanding.

So far as the liability of Defendant Nos.2–6 is concerned, the guarantee documents marked in evidence establish that they voluntarily executed guarantees in respect of the loan facility availed by Defendant No.1. In view of Section 6(5) of the Artha Rin Adalat Ain, 2003, read with the terms of the guarantee documents, the guarantors are liable for repayment of the outstanding dues in accordance with their contractual obligations. No material has been placed before the Court showing that their liability was restricted or otherwise excluded by any specific term of the guarantee documents. Consequently, Defendant Nos.2–6 cannot escape their liability merely by reason of being guarantors.

Upon an overall assessment of the plaint, written statement, affidavit evidence, oral testimony of P.W.-1, cross-examination, sanction letters, charge documents, legal notices, statement of account and the other materials on record, this Court finds that the plaintiff has been able to establish the loan transaction, the contractual obligations of the defendants, the persistent default and the outstanding liability by credible and reliable evidence. Conversely, the defendants have failed to substantiate their defence by any convincing documentary or oral evidence.

Accordingly, the issues under consideration are answered in favour of the plaintiff. The plaintiff is entitled to recover **Tk. 2,91,15,759.37/- (Taka Two Crore Ninety-One Lac Fifteen Thousand Seven Hundred Fifty-Nine and Paisa Thirty-Seven) as on 21.03.2023**, together with such further interest and other lawful charges, if any, as may be admissible under law, from the defendants in accordance with their respective liabilities under the loan and guarantee documents.

In result the case succeeded.

Court Fee paid is correct

Hence,

ARM 1115 of 2023.

It is Ordered

That the present suit be decreed on contest against Defendant No.2-6 and ex-party against the other defendants with costs for an amount of Tk. **2,91,15,759.37/- (Taka Two Crore Ninety One Lac Fifteen Thousand Seven Hundred Fifty Nine Point Thirty Seven) as on 21.03.2023.**

The Plaintiff shall be entitled to receive the said amount together with interest or profit as applicable under the prevailing laws or rules from **23.03.2023**, 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.