

1 SCOB [2015] HCD 113**HIGH COURT DIVISION**
(CIVIL REVISIONAL JURISDICTION)

Civil Revision No. 4430 of 2011

Mr. Md. Golam Mostafa, Advocate
... For the petitioner.**A N M Abdul Halim**

... Petitioner.

Mr. Harunnor Rashid Khan, Advocate
...For the opposite- party.

-versus-

The Bangladesh House Building Finance Corporation

... Opposite- party.

Heard on: 12.01.2015 & 27.01.2015.
Date of Judgment: 04.03.2015.**Present:****Mr. Justice A. K. M. Abdul Hakim**
with
Mr. Justice Zafar Ahmed**Bangladesh House Building Finance Corporation Loan Regulations, 1977 and 1996:**
Under both the repealed Regulations, 1977 and Regulations, 1996 the BHBFC is permitted to charge simple interest on all loans, not the penal interest. ...**(Para 26)****Section 115(1) of the Code of Civil Procedure, 1908:****It is now well settled principle of law that in exercise of revisional jurisdiction under section 115(1) of the Code of Civil Procedure, the High Court Division has wide power to do justice in a case and in appropriate case where the order under revision is set aside this Court can pass any consequential order necessitated by the facts of the case.** ...**(Para 34)****Judgment****Zafar Ahmed, J.**

1. In this application under section 115(1) of the Code of Civil Procedure Rule was issued on 23.06.2011 upon the opposite party to show cause as to why the impugned order no. 80 dated 19.08.2010 passed by the learned District Judge, Bogra in Money Execution Case No. 10 of 2000 now pending in the Court of District Judge, Bogra should not be set aside and/ or pass such other or further order or orders as to this Court may seem fit and proper.

2. At the time of issuance of the Rule this Court passed an ad-interim order staying all further proceeding of Money Execution Case subject to payment of a sum of Tk. 2,00,000/- to the decree- holder opposite-party within 6 (six) months. It appears that pursuant to the said order the petitioner on 18.12.2011 paid Tk. 1,00,000/-, on 17.01.2012 Tk. 50,000/-, on 08.02.2012 Tk. 50,000/- and on 08.05.2012 Tk. 50,000/- total Tk. 2,50,000/- in LA/C No. বগ 524, through Sonali Bank, Bogra Branch to the opposite party.

3. Facts, relevant for disposal of the Rule, in brief, are that the opposite party namely Bangladesh House Building Finance Corporation, Regional Office, Bogra (in short the 'BHBFC') as applicant on 30.04.1998 filed Miscellaneous Case No. 30 of 1998 in the Court of District Judge, Bogra under Article 27 of the Bangladesh House Building Finance Corporation Order, 1973 (President's Order No. 7 of 1973, hereinafter referred to as the 'Order, 1973') against the borrower- present petitioner (hereinafter referred to as the 'borrower') praying for amongst others an order for sale of the schedule mentioned property for realization of outstanding dues of Tk. 4,91,142.94 as on 31.01.1998 and for an order to pay interest at the rate of 17.5% with penal interest as per terms and conditions of the mortgage deed till realization of the money.

4. It has been stated in the application of the Miscellaneous Case that on an application of the borrower to construct a building on the scheduled land, the BHBFC opened loan case no. BaGa 524 and after completion of the required formalities granted a loan of Tk. 1,85,000/- in favour of the borrower. Thereafter, as per application of the borrower the BHBFC granted additional loan of Tk. 27,000/-. By accepting the terms and conditions of the loan the borrower on 28.02.1983 and 27.12.1983 respectively executed and registered mortgaged deed in

favour of the BHBFC and the latter vide cheques issued on different dates paid Tk. 1,85,000/- and Tk. 27,000/- total Tk. 2,12,000/- to the borrower, the last cheque being issued on 07.10.1983. With the money given by the BHBFC, the borrower completed the construction of the house.

5. It has further been stated in the said application that as per terms and conditions of the loan the borrower was liable to pay interest at the rate of 13% on both the principal and the additional loan. For the principal loan the payable monthly instalment was Tk. 1,795.59 and for the additional loan the monthly instalment was Tk. 239.44. The borrower obtained the rebate facility and reduction of interest rate given by the Government and the monthly payable instalment was rescheduled at Tk. 3,250.93 which the borrower was liable to pay from 01.07.1994. In spite of repeated reminders by the BHBFC, the borrower failed to pay the principal amount in 43 instalments and the interest in 40 instalments which stood as on 31.01.1998 with penal interest at Tk. 1,32,497.15 and the total amount payable as on 31.01.1998 was Tk. 4,91,142.94.

6. The borrower *i.e.* the present petitioner did not contest the Miscellaneous Case. The BHBFC examined Md. Abdur Rahman as a sole witness and produced sanction letters (exhibit 1, 1(ka)) and mortgage deed (exhibit 2).

7. The Miscellaneous case was heard and disposed of ex-parte and the learned District Judge, Bogra vide order dated 26.11.1998 allowed the same and granted the BHBFC permission to attach the scheduled property and sell the same through auction for realization of Tk. 4,91,142.94 and further to realize interest at the rate of 17.5% till realization of the same.

8. On 24.08.2000 the BHBFC filed Money Execution Case No. 10 of 2000 before the District Judge, Bogra. The borrower entered appearance in the said Execution Case on 14.10.2004.

9. Pending disposal of the Execution case, the borrower on 22.11.2007 filed an application in the Miscellaneous case under section 152 of the Code of Civil Procedure (in short 'CPC') and Article 27(7)(d) of the Order, 1973 for amendment of the operating part of the ex-parte order dated 16.11.1998 passed in the Miscellaneous case thus: মাননীয় আদালতের ২৬.১১.৯৮ তারিখের আদেশের শেষাংশে “প্রার্থকের দাবীকৃত সমুদয় টাকা আদায় কালতক এরপর ১৭½% সুদ পাইবে” তাহা সংশোধিত হইয়া “মার্গেজ দলিলের শর্ত ও কর্পোরেশনের নিয়ম অনুসারে প্রার্থক সুদ পাইবে” লিখিত হইবে। The said application was allowed vide order dated 03.03.2008 passed in the Miscellaneous Case. Thereafter, the BHBFC on 30.07.2009 filed an application in the Execution Case for amendment of the application of the said Execution Case for deleting the words ‘17.5% interest rate’ as mentioned in paragraph nos. 7 and 10 of the said application and inserting the words ‘to realize interest as per terms and conditions of the mortgage deed and rules of the Corporation’ in its place. The Court below vide order dated 19.01.2010 allowed the application of the BHBFC.

10. It appears from the order dated 19.01.2010 passed in the Money Execution Case that a dispute arose as to actual amount of outstanding money due to the BHBFC by the borrower. The relevant portion of the said order dated 19.01.2010 runs thus:

“It appears from the record that there is a dispute about the amount of the claim of decree holder. Two separate statements of account as regards claim of the decree holder H.B.F.C. but the amount mentioned in the calculation sheet of that decree holder and that of judgment are quite different. In order to ascertain the actual claim as per prevalent rules of H.B.F.C. both side are directed to seat together to arrive at a consensus amount of claim of decree holder. To 17.2.10 for filing a consensus amount by both sides.”

11. However, the consensus amount was not filed in the Court. The Court below vide order dated 25.04.2010 directed the BHBFC to submit the actual claim and the BHBFC submitted the same in the Court on 26.05.2010. On 19.08.2010 the statements of account submitted by the BHBFC was taken up for hearing. The borrower prayed for an adjournment of the hearing which was rejected and the statement of account submitted by the BHBFC claiming Tk. 4,42,871.16 as outstanding dues was accepted by the Court. Challenging this order the borrower moved the instant revisional application, obtained a Rule and order of stay.

12. The Rule has been contested by the BHBFC by filing counter affidavit.

13. During the course of hearing both the borrower-petitioner and the BHBFC-opposite party filed several sets of affidavits annexing various types of documents in support of their respective claims. The contesting parties also filed up to date statements of accounts refuting the accounts submitted by the other side.

14. The learned advocate for the borrower-petitioner vehemently argues that the borrower has repaid the full dues and in fact he has paid more and as such the BHBFC may be directed to return the excess money to the borrower. On the other hand, by filing the counter affidavit dated 08.01.2015 the BHBFC claimed that till November 2014 the borrower has paid Tk. 6,92,743.91 which includes Tk. 2,50,000/- paid after issuance of the Rule and the outstanding amount remains at Tk. 3,42,015.99.

15. As per order of this Court the records of the Money Execution Case No. 10 of 2000 have been transmitted to this Court. We also directed the learned Advocate of the BHBFC to produce the relevant file of the loan case and accordingly, learned Advocate produced the same before us.

16. We have perused the revisional application, several sets of affidavits filed by both the parties and documents annexed thereto. We have also perused the records of the Money Execution Case and the loan case.

17. Upon perusal of the above mentioned records a more fundamental question arose other than the issue centered around the dispute in respect of statements of accounts which is whether the ex-parte order dated 26.11.1998 passed in the Miscellaneous Case and the Money Execution Case arising thereof are maintainable.

18. In the Money Execution Case the borrower on 04.06.2009 filed an application under Order XXI, rules 2 and 69 and section 151 of CPC and Article 27(7)(d) of the Order, 1973 (Annexure-F) for staying the auction proceedings to be held on 15.06.2009. In the said application it has been categorically stated that the borrower did not withdraw the additional loan amount of Tk. 27,000/-. It was alleged in the said application that the BHBFC had committed fraud upon the Court.

19. The BHBFC on 30.07.2009 filed a written objection (Annexure-G) denying the allegations of fraud. However, in the said written objection it admitted that it had granted an additional loan amount of Tk. 27,000/- to the borrower, but the latter only received the cheque of Tk. 14,000/- and did not receive the cheque of Tk. 13,000/-. The borrower repaid Tk. 14,000/- with interest in the financial year 1986-87. It was further stated in the written objection that although in the application of the Miscellaneous Case the BHBFC mentioned about the additional loan but it did not claim the said amount, it only claimed the principal loan amount of Tk. 1,85,000/- and interest accrued thereon.

20. In the application of the Miscellaneous Case (Annexure-A) it has been stated *inter alia*:

“প্রার্থক বিভিন্ন তারিখে বিভিন্ন চেকমূলে ১,৮৫,০০০/- টাকা এবং ২৭,০০০/- টাকা একুনে ২,১২,০০০/- টাকা উক্ত ঋণ গ্রহীতাকে প্রদান করেন। প্রার্থক সর্বশেষ ইং ৭/১০/৮৩ তারিখে চেক প্রদান করে এবং প্রতিপক্ষ উক্ত টাকায় যথাসময়ে গৃহ নির্মাণ সম্পন্ন করেন। উল্লেখ্য যে, প্রতিপক্ষ কর্তৃক বাংলাদেশ সরকারের অর্থ মন্ত্রণালয় প্রদত্ত রোয়াত সুবিধা গ্রহণের পরও সরকার কর্তৃক সুদের হার ত্রাস করার ফলে ৩,২৫০.৯৩ টাকা কিস্তি পুনঃ নির্ধারিত হয়। যাহা ১/৭/৯৪ তারিখ হইতে পরিশোধ যোগ্য বটে।
বন্ধকী দলিলের শর্ত মোতাবেক প্রতিপক্ষ ঋণ গ্রহীতা ঋণের শেষ কিস্তির টাকা যে মাসে গ্রহণ করিবে তাহার পরবর্তী ৩য় মাসের প্রথম দিন হইতে মাসিক কিস্তি পরিশোধ করিতে শুরু করিবে। কিন্তু প্রতিপক্ষ প্রার্থক কর্পোরেশনের তলব তাগাদা সত্ত্বেও ৪র্থ মাসের আসল টাকায় মাসিক কিস্তি এবং ৪০ মাসের সুদের কিস্তির টাকা পরিশোধে ব্যর্থ হয়। ঐরূপভাবে প্রতিপক্ষ ৪৩ মাসের আসল এবং ৪০ মাসের সুদের কিস্তির টাকা পরিশোধে ব্যর্থ হইলে ৩১/১/৯৮ ইং তারিখ পর্যন্ত **দত্ত সুদ সহ** বকেয়ার পরিমাণ ১,৩২,৪৯৭.১৫ টাকা।
উক্ত প্রকারে প্রতিপক্ষ প্রার্থক কর্পোরেশনের মাসিক কিস্তির টাকা ও সুদের টাকা পরিশোধে ব্যর্থ হইয়াও মঞ্জুরীপত্র এবং বন্ধকী দলিলের শর্ত ভংগ করিয়াছে। প্রার্থক কর্পোরেশন প্রতিপক্ষ এর নিকট হইতে ৩১/১/৯৮ তারিখ পর্যন্ত সমস্ত পাওনা একযোগে ৪,৯১,১৪২.৯৭ টাকা আদায়ের হকদার হইতেছে।” (emphasis supplied)

21. Our attention has been drawn to a letter lying with the loan case file which is dated 30.04.1992 issued by the Regional Manager, Bogra of the BHBFC. By this letter the borrower was informed about various matters relating to payment of instalments, rates of interest, rebate facility etc. In the said letter it was mentioned that the borrower has taken a loan of Tk. 2,12,000/- from the BHBFC. The relevant portion of the said letter is quoted below:

“উপরোক্ত ঋণ কেসের মাধ্যমে **আপনি অত্র কর্পোরেশন হতে মোট =২,১২,০০০/- টাকা ঋণ গ্রহণ করেছেন।** কর্পোরেশনের বকেয়া/ সম্পূর্ণ ঋণ পরিশোধের সুবিধার্থে গত ২১/৩/৯২ ইং তারিখের অম/অবি/উঃ ব্যাংক-৪/গৃহনির্মাণ-১০/৮৭(অংশ)/৮৩ নং পত্রে বাংলাদেশ সরকারের অর্থমন্ত্রণালয় কতিপয় রোয়াত সুবিধা প্রদান করেছেন যা - নিম্নে উদ্ভূত করা হলঃ-” (emphasis supplied)

22. It clearly appears from the above quoted extracts that the BHBFC claimed that the borrower received the additional loan amount of Tk. 27,000/-. In the application of the Miscellaneous Case the BHBFC did not provide any details or break down of accounts. The application simply states that the borrower failed to repay the loan in 43 monthly instalments and the interest in 40 instalments. Therefore, without any details of accounts and in the absence of any statement that the money claimed excludes the additional loan amount of Tk. 27,000/-, it appears that the total claimed amount includes the additional loan amount of Tk. 27,000/- and the interest accrued thereon.

23. There is another aspect of the case which requires judicial scrutiny. It appears from the application of the Miscellaneous Case that the BHBFC claimed that the total outstanding as on 31.01.1998 stood at Tk. 4,91,142.94 which includes penal interest. The prayer portion of the application as contained in paragraph no. 10(ka) states: “আরজী বর্ণিত ৩১/১/৯৮ ইং তারিখ পর্যন্ত ৪,৯১,১৪২.৯৪ টাকা আদায়ের নিমিত্তে নিম্ন তপশীল বর্ণিত সম্পত্তি দেওয়ানী কার্যবিধি আইনের বিধান অনুযায়ী আদালত যোগে নিলাম বিক্রয়ের আদেশ দিতে মর্জি হয়।” The learned District Judge vide order dated 26.11.1998 allowed the Miscellaneous Case and the prayer 10(ka). So, admittedly the BHBFC claimed penal interest which was allowed by the Court below.

24. Now, the question is whether the BHBFC is permitted under the Bangladesh House Building Finance Corporation Order, 1973, Order, 1973 (President’s Order No. 7 of 1973) and Regulations made there under to claim penal interest.

25. P.O. 7 of 1973 is silent about the nature and rates of interest. Clause (10) of Article 21 of the Order, 1973 states, “The rate of interest chargeable on loans made by the Corporation shall be determined by the Government from time to time.” Under clause 2(c) of Article 37 of the Order, 1973 the conditions subject to which the Corporation may grant loan will be regulated by the Regulation made under the Order. Under regulation 11 of the Bangladesh House Building Finance Corporation Loan Regulations, 1977 (in short the BHBFC ‘Regulations, 1977’) the BHBFC is permitted to charge simple interest on all loan remaining outstanding due to it. Regulations, 1977 has been repealed by the Bangladesh House Building Finance Corporation Regulations, 1996 (in short ‘the Regulations, 1996’) which was published in Bangladesh Gazette on 25.09.1997. Regulation 11 of Regulations, 1996 contains identical provisions to that of Regulation 11 of the repealed Regulations, 1977 *i.e.* simple interest shall be charged on all loan. For ready reference regulation 11 of Regulations, 1996 is quoted below:

“Simple interest shall be charged on all loans remaining outstanding due the House Building Finance Corporation established under the House Building Finance Corporation (Act, viii of 1952) and transferred to & vested in the Corporation with effect on and from the 1st April, 1971.”

26. So, under both the repealed Regulations, 1977 and Regulations, 1996 the BHBFC is permitted to charge simple interest on all loans, not the penal interest.

27. The most shocking aspect of the case, as it appears from the letter dated 16.11.1994 issued by the Regional Manager, Bogra to the borrower which has been lying with the loan case file, is that the BHBFC used to charge penal interest as matter of custom which has been abolished from 01.10.1993. For ready reference paragraph 5 of the said letter is quoted below:

“০১-১০-১৯৯৩ তারিখ হতে দন্ড সুদ এর প্রথা রহিত করা হয়েছে। তবে, সরকারী নির্দেশ অনুযায়ী ১২টির অধিক কিস্তি খেলাপী হলে বকেয়া আসলের উপর ২% অতিরিক্ত সুদ চার্জ করা হবে। এ চার্জকৃত সুদ পরবর্তী জমা হতে প্রচলিত নিয়মে সমন্বয় করা হবে। ভবিষ্যতে সরকার/ কর্পোরেশন এর পরিচালনা বোর্ড কর্তৃক অতিরিক্ত সুদের হার পরিবর্তন করা হলে অথবা দন্ড সুদ প্রথা পুনঃপ্রবর্তিত হলে পরিবর্তিত হারে সুদ পরিশোধ করতে আপনি/ আপনারা বাধ্য থাকবেন।” (emphasis supplied)

28. The BHBFC, in the first place, was not permitted under the law to charge penal interest. Nevertheless, the custom of charging penal interest has been abolished from 01.10.1993. The case was filed on 30.04.1998 by the Regional Office, Bogra. In the application it has been categorically stated that the outstanding dues include penal interest in spite of the fact that the BHBFC had knowledge that law does not permit it to charge penal interest on loans and the custom of charging the same has been abolished from 01.10.1993.

29. Facts narrated above are summarised thus: **firstly**, the BHBFC claimed in the application of the Miscellaneous Case that it gave the borrower additional loan amount of Tk. 27,000/- and accordingly ex-parte order dated 26.11.1998 was passed. Subsequently, in the Execution Case the BHBFC admitted that the borrower in fact availed additional loan of Tk. 14,000/- which he repaid with interest long before filing the case and he did not avail the additional loan of Tk. 13,000/-. In spite of this admission by the BHBFC, it did not take any step to amend the application of the Miscellaneous Case and the ex-parte order, and **secondly**, the BHBFC had knowledge that it is not permitted under the relevant Regulations to charge penal interest on loans and the custom of charging penal interest has been abolished since 01.10.1993. Nevertheless, in the application of the Miscellaneous Case it claimed penal interest on loans which was allowed vide the ex- parte order. In view of this admitted position we have no hesitation to hold that the case of the BHBFC is based upon falsehood and fraud. The BHBFC committed fraud upon both the borrower and the Court.

30. In *S.P. Chengalvaraya Naidu v. Jagannath* (1994) 1 SCC 1 it has been observed,

“The Courts of law are meant for imparting justice between the parties. ... We have no hesitation to say that a person whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation. ... A fraud is an act of deliberate deception with the design of securing something by taking advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. ... A litigant, who approaches the Court, is bound to produce all the documents executed by him, which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the Courts as well as on the opposite party.”

31. In the famous case of *Lazarus Estates Ltd .v. Beasley* (1956) 1 QB 702 Lord Denning said,

“No judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud. Fraud unravels everything.”

32. Bangladesh House Building Finance Corporation is a statutory body created by P.O. 7 of 1973. But unfortunately in the instant case it behaved in an unscrupulous manner like a high street shark loan company. It reminds us of the character ‘Shylock’ as depicted by William Shakespeare in the drama ‘The Merchant of Venice’ written in the late 16th century.

33. We are mindful of the fact that in the instant civil revision filed under section 115(1) of CPC, the borrower has challenged the legality of the order dated 19.08.2010 passed in the Money Execution Case. Neither the Execution proceedings nor the ex- parte order dated 26.11.1998 passed in the Miscellaneous Case, from which the Execution Case arose, has been challenged. But, upon scrutiny of facts, circumstances and laws discussed above, in particular when we have found a definite case of fraud on part of the BHBFC, if we confine ourselves to the impugned order, the same would occasion failure of justice. We have to decide now, what should be the appropriate order that we should pass.

34. It is now well settled principle of law that in exercise of revisional jurisdiction under section 115(1) of the Code of Civil Procedure, the High Court Division has wide power to do justice in a case and in appropriate case where the order under revision is set aside this Court can pass any consequential order necessitated by the facts of the case.

35. In *Jatindra Nath Nandi and ors. v. Krishnadhan Nandi and ors.* 56 CWN 858 it was held,

“In any event, this Court is perfectly competent to see that proper orders are made when the matter comes up in revision before this Court. The mere fact that the plaintiffs did not move should not stand in the way of this Court making an order in accordance with law, as all the necessary parties are represented before us.”

36. In the case of *Md. Shajahan Khan v. Additional Deputy Commissioner (Revenue), Munshiganj and others* 11 BLT (AD) 60 it was held by our apex Court that,

“It is well settled that once the conditions in section 115(1) of the Code of Civil Procedure are satisfied and the High Court's jurisdiction to interfere is established, the proceedings as a whole from start to finish can be scrutinized and any order necessary for doing justice may be passed. There is no limit to the area in which the revisional power is to be exercised by the High Court Division in the facts and circumstances of each case.”

37. In the facts and circumstances of the instant case and in view of the above mentioned decided cases, we are of the opinion that in order to secure the ends of justice the appropriate order that we should pass is to set aside the ex-parte order dated 26.11.1998 passed in the Miscellaneous Case No. 30 of 1998 and the entire proceedings of the Money Execution Case No. 10 of 2010 arising out of the said Miscellaneous Case. However, the BHBFC is at liberty to amend the application of the Miscellaneous Case, if after settling the accounts of the borrower-petitioner, any outstanding arrear remains due to it. In settling the accounts the BHBFC must adhere to the observations made in this judgment and follow the relevant circulars issued time to time by it and comply with the provisions of the BHBFC Regulations, 1996 in particular, clauses (iv), (v), (vii) and (viii) of regulation 10. Be it mentioned here that clause (vii) of regulation 10 has been amended and replaced by a new clause (vii) in 1999 which has been published in the Gazette on 25.07.1999. For ready reference the relevant clauses of regulation 10 of Regulations, 1996 mentioned above are reproduced below:

10 (iv) The total amount of loan with interest & charges shall be recoverable within such period as shall be stipulated in the mortgage deed or agreement of hypothecation or pledge, as the case may be,

or as may be subsequently extended & rescheduled by the Corporation under intimation to the borrower:

10 (v) The nature and rates of interest & the mode of repayment, adjustment thereof will be determined by the Corporation from time to time:

10 (vii) If the borrower does not pay or is not willing to pay IDCP in the manner prescribed in Regulation 10 (vi) above, it may be added to the principal & be repayable by the borrower concerned at monthly instalments along with the monthly instalments fixed initially and in that event the amount of monthly instalments shall be revised and refixed by the Corporation: (this is the original text prior to amendment)

10 (vii) If the borrower does not pay or is not willing to pay IDCP in the manner prescribed in Regulation 10(vi) above, it shall be added to the normal interest and be repayable by the concerned borrower at monthly instalments together with the monthly instalments of loan fixed initially and in that event the amount of monthly instalments of loan shall be revised or refixed by the Corporation: (the amended text)

10 (viii) In case of regular repayment of dues by monthly instalments the principal & interest will be adjusted as per re-payment schedule fixed by the Corporation. In the event of default, the sum of or sums of money repaid or recovered against the loan account concerned, will be adjusted firstly with the defaulted interest including additional interest (if any) and the residue (if any), will be adjusted with the principal. In case of advance payments the amount paid in advance will be adjusted with the principal subject to being readjusted with subsequent defaulted instalments and the balance (if any) with the principal.

38. The term '**IDCP**' referred to in clause (vii) of regulation 10 above means "the interest during construction period *i.e.* the interest chargeable/charged on each amount of the principal advanced to the borrower concerned from the date of delivery of the first cheque to the date of delivery of the last cheque and such other period as may be determined by the BHBFC from time to time. (clause (c) of regulation 1A(1) of Regulations, 1996).

39. '**Principal**': means and includes the total amount of given by the Corporation to a borrower as Loan, plus the amount chargeable as insurance premium/Risk Guarantee Fund subscription, legal charge, IDCP (if any) and other statutory costs (if any). (clause (a) of regulation 1A(1) of Regulations, 1996).

40. '**Normal interest**': means and includes the interest which is not compound and chargeable/charged on the principal as the rate/rates fixed or refixed by the Corporation from time to time. (clause (b) of regulation 1A(1) of Regulations, 1996).

41. The amended application, if any, must comply with the provisions of clause 2 of Article 27 of the P.O. 7 of 1973 which provides that the application shall state the nature and extent of the liability of the borrower and his surety to the BHBFC, the grounds on which it is made and such other particulars as may be prescribed.

42. In the result, the Rule is made absolute. The ex-parte order dated 26.11.1998 passed in the Miscellaneous Case No. 30 of 1998 by the learned District Judge, Bogra and the entire proceedings of the Money Execution Case No. 10 of 2010 arising out of the said Miscellaneous Case now pending in the Court of District Judge, Bogra are set aside. Since the Money Execution case is set aside the BHBFC-opposite party is directed to return Tk. 2,50,000/- (two lacs fifty thousand) to the borrower-petitioner which has been paid to it by the latter after issuance of the instant Rule within a period of 1 (one) month from the date of receipt of this judgment. The BHBFC is at liberty to amend the application of the Miscellaneous Case within a period of 1 (one) month from the date of receipt of this judgment, if after settling the accounts of the borrower, any outstanding arrear remains due to it. On the other hand, if it transpires that the borrower has paid excess money to the BHBFC, the same would be returned to him within this period.

43. Considering the facts and circumstances of the case the BHBFC-opposite party is directed to pay a cost of Tk. 1,00,000/- (one lac) to the borrower-petitioner within a period of 1 (one) month from the date of receipt of this judgment.

44. Send down the judgment and order along with the LCR of Money Execution Case No. 10 of 2010 at once. The learned Advocate for the BHBFC-opposite party is permitted to take back the original file of the loan case.