

Present:
Mr. Justice A.K.M. Abdul Hakim
And
Mr. S.M.Mozibur Rahman

First Appeal No. 01 of 2017

Bangladesh Telecommunication Company Limited
(BTCL)

í .Appellant.

-Versus-

Bangladesh Telecommunication Regulatory
Commission and others

í .. Respondents.

Mr. Kamal ul-Alam Senior, Advocate with
Mr. M. Qumrul Haque Siddique, Advocate with
Mr. Md. Riaz uddin Khan (Reza), Advocate and
Mr. Kazi Mynul Hassan, Advocate

í .For the appellant

Mr. Khandaker Reza-E-Raquib, Advocate with
Ms. Meherunnesa, Advocate and
Ms. Nadeya Nazneen, Advocate

í For the respondent No.1

Mr. Mustafa Niaz Muhammad, Senior Advocate with
Mr. A.M. Amin Uddin, Advocate and
Mr. Md. Golam Noor, Advocate

í . For the respondent No.3

**Heard on 20.02.2018, 06.03.2018, 11.03.2018,
13.03.2018 and Judgment on 22.03.2018.**

A.K.M. Abdul Hakim, J:

This First Appeal at the instance of the plaintiff is directed against the judgment and decree dated 29.09.2016 passed by the learned Joint District Judge, 1st Court, Dhaka in Title Suit No. 124 of 2016 in rejecting the plaint under Order VII rule 11 of the Code of Civil Procedure.

This First Appeal was pending before another Division Bench. Subsequently, by order dated 29.01.2018 this matter was sent to this Court by the Honøble Chief Justice to be heard and disposed of by the Division Bench presided over by A.K.M. Abdul Hakim, J:.

Facts out of which the present appeal arises, in short, are that the Appellant Bangladesh Telecommunication Company Limited (BTCL) as plaintiff instituted Title Suit No. 124 of 2016 in the First Court of Joint District Judge, Dhaka on 22.02.2016 impleading the respondent Nos. 1-3 as defendant Nos. 1-3 for a declaration that the decision dated 16.03.2015 declaring M & H Telecom Ltd., defendant No. 3's entitlement of Taka 18,21,16,649/- (Eighteen crore, twenty one lac, sixteen thousand, six hundred and forty nine) only for January, 2012 to August, 2012 from BTCL by the Dispute Resolution Committee in Dispute (Arbitration) Resolution No. 1/14 is unlawful and without lawful authority and further declaration that letter dated 08.11.2015 rejecting the application for rejection of the decision dated 16.03.2015 is unlawful and without lawful authority. The plaintiff further stated that the Dispute Resolution Committee of Bangladesh Telecommunication Regulatory Commission (BTRC) arbitrarily gave its decision on 16.03.2015 against the plaintiff in the name of Arbitral Award more than Taka 18,00,00,000/- (Eighteen crore) and transmitted the same directly to the BTCL on 24.03.2015 without approval of the commission, who has only jurisdiction to mediate any dispute between the parties under its regulatory domain under section 31(2) clause (iv) of Bangladesh Telecommunication Act, 2001. The further case of the plaintiff is that the said Dispute Resolution Committee of BTRC with serious misconception of law encroached from the authority of mediation to arbitration under the Arbitration Act, 2001 which is clearly evident from the letter issued by BTRC vide Nothi No. 14.32.0000.007.33.654.15.972 dated 08.11.2015. In the plaint the plaintiff further averred that the defendant nos. 1 and 2 conveniently applied Section 44 of the Arbitration Act, 2001 since the BTCL did not file any application for setting aside

Award within 60 days from the receipt of the arbitral award, after expiry of such period, the Award becomes enforceable as decree of the court but no such provision was laid down in Bangladesh Telecommunication Act, 2001 and The Bangladesh Telecommunication Regulatory Commission (Interconnection) Regulations 2004. It was further stated in paragraph No.11 of the plaint that in the Bangladesh Telecommunication Act, 2001 there is no provision of appeal against the decision of Mediation by the Commission. Although BTRC in its letter dated 08.11.2015 referred clause 10(8) of the BTRC (Interconnection) Regulation 2004, but Dispute Resolution Committee did not follow the clause 10(8) of the said Regulation. That the BTRC itself shall have the authority to Dispute Resolution and/or Mediation, but in that case the BTRC, defendant No. 3, must frame and/or adopt Rules for the same and it must be approved by the Government, which was not framed yet. Thus in the absence of any Rules, there is no scope for the Dispute Resolution/Mediation by BTRC. Further there is no scope to conduct Arbitration in the name of Mediation by constituting Dispute Resolution Committee by the BTRC as such they do not have jurisdiction to conduct Arbitration. With these averments the plaintiff filed the suit and prayed for decree.

The defendant No.3, M & H Telecommunication Ltd., Interconnection Exchange Operator appeared in the suit on 30.03.2016. Subsequently, on 16.05.2016 the defendant No. 3 filed written statement and also filed an application under Order VII rule 11 of the Code of Civil Procedure for rejection of the plaint on the ground that suit was barred under the provision of Section 42 and 44 of the Arbitration Act, 2001 and consequently not maintainable. In the application it is stated that although the plaintiff received the Decision/ Award on

24.03.2015 but the plaintiff did not file any application under Section 42 of the Arbitration Act, 2001 for setting aside the arbitral award within 60 days from the receipt of the Award against the decision dated 16.03.2015 passed by the Dispute Resolution Committee in the Dispute (Arbitration) Resolution No. 1/14. It is further stated that Section 44 of the Arbitration Act clearly provides that after expiry of period stipulated in Section 42 for setting aside Arbitration Award, the award shall be enforced under the Code of Civil Procedure, in the same manner as if it were a decree of the court. It was further stated that as per clause 10(8) of the BTRC (Interconnection) Regulation, 2004, clause 19 of IGW licence and clause 18 of the ICX license both the parties are bound to accept arbitral award passed by the Dispute Resolution Committee. Since the plaintiff failed to take steps for setting aside Award as per Arbitration Act, there was no cause of action to file the present suit.

Against the said application the plaintiff as opposite party filed written objection dated 17.08.2016 denied the material allegations made in the application and stating, inter alia, that the said Dispute Resolution Committee of BTRC with serious misconception of law encroached from the authority of Mediation to Arbitration under the Arbitration Act, 2001 which is clearly evident from the BTRC letter dated 08.11.2015. BTRC has authority only to Mediate any dispute between the parties under their regulatory domain of Section 31(2) clause (দ) Bangladesh Telecommunication Act, 2001. In the facts and circumstances, the defendant Nos. 1 and 3 conveniently applied Sections 42 and 44 of the Arbitration Act, 2001 although the BTRC have no jurisdiction to arbitrate the dispute between the parties. Accordingly, the plaintiff prayed for rejection of the

application filed by the defendant No.3 under Order VII, rule 11 of the Code of Civil Procedure.

In due course the application under Order VII, rule 11 of the Code was taken up for hearing and after hearing the parties, the learned Joint District Judge by order dated 29.09.2016 allowed the application, rejected the plaint on the finding that the plaintiff in their plaint clearly admits that arbitration proceeding was commenced and accordingly Dispute (Arbitration) Resolution Committee by Decision dated 16.03.2015 informed its decision to the plaintiff on 24.03.2015 and since the plaintiff after receipt of the Decision/Award on 24.03.2015, did not take any legal steps under the provision of Arbitration Act, they have no scope to file the present suit under the provision of Arbitration Act, consequently the plaint should be rejected. Considering the facts and circumstances, the plaintiff is not entitled to get any relief in the present suit under the Specific Relief Act against the Award passed under the Arbitration Act, 2001.

Being aggrieved by the order dated 29.09.2016 (the order rejecting the plaint is a decree within the meaning of Section 2(2) of the Code of Civil Procedure) the plaintiff preferred the present appeal against the judgment and decree dated 29.09.2016 rejecting the plaint.

Mr. Kamal ul-Alam, learned Senior Advocate appears with Mr. M. Qumrul Haque Siddique, Advocate with Mr. Md. Riaz uddin Khan (Reza), Advocate and Mr. Kazi Mynul Hassan, Advocate on behalf of the plaintiff-appellant. Mr. Kamal Ul Alam, the learned Senior Advocate submits that the suit for declaration to this effect was filed by the plaintiff is maintainable under Section 42 of the Specific Relief Act. Mr. Alam by referring paragraph Nos. 9 and 10 of the plaint submits that there is no averment made in the plaint seeking any declaration about

arbitration award. He next submits that the learned Joint District Judge by the impugned order import some facts which are not averred in four corners of the plaint of the plaintiff. Impliedly, the learned Joint District Judge rejected the plaint on the ground that the suit is barred under the provision of Arbitration Act, 2001. Learned Advocate finally submits that admittedly present dispute was arose between the parties in the year 2012 and clause () of Section 31(2) of the Bangladesh Telecommunication Act, 2001 has been substituted by the Bangladesh Telejogajok (Amendment) Ain, 2010, which came into force on 01.08.2010. So after substituting the said clause in the Telejogajok Ain, the BTRC (Interconnection) Regulation 10(8) have no manner of application in the present case. Basically, his main submission is that an application under Order VII rule 11 of the Code of Civil Procedure should be considered reading the averments made in the plaint itself and there is no scope for the court to travel beyond the plaint to dig out grounds to reject a plaint. As such, he prays that the appeal should be allowed and the order of rejection of the plaint be set aside, so that the suit may proceed in accordance with law. In support of his submissions learned Advocate has referred two decisions reported in *57 DLR (AD) 18* and *11 BLT (AD) 157*. Subsequently, on 11.03.2018 Mr. M. Qumrul Haque Siddique, the learned Advocate for the appellant added that there is no express bar under Section 31(2) clause () of the Bangladesh Telecommunication Act, 2001, as amended on 1st August, 2010 providing ouster of jurisdiction of civil court.

Mr. Khandaker Reza-E-Raquib, the learned Advocate appearing for the respondent No.1 at very outset raised a question that the plaintiff filed the instant suit against the Award not the Decision passed by the BTRC Dispute Resolution Committee dated 16.03.2015. Therefore, there is no scope for the plaintiff to file

the suit. He finally submits that the suit is barred under the provision of Section 31(2) clause (৳) of the Bangladesh Telecommunication Act, 2001 as well as clause 10(8) BTRC (Interconnection) Regulation, 2004 as the present suit is sought to be filed against the Decisions/ Award passed by the Dispute Resolution Committee in Dispute (Arbitration) Resolution No. 1/14 dated 16.03.2015 and the plaintiff did not take any step against the said Award. So there is no scope to file the suit as per provision of Arbitration Act, 2001.

Mr. Mustafa Niaz Muhammad, the learned Senior Advocate and Mr. A.M. Amin Uddin appears on behalf of the respondent No.3. Learned Advocate Mr. Mustafa Niaz Muhammad submits that the suit is barred under Section 31(2) clause (৳) of the Bangladesh Telecommunication Act, 2001, as well as under clause 15 of the ICX operator license dated 25.02.2008. He categorically submits that he will not make any submission in respect of Arbitration Act whether it is applicable in the present case. He clearly admits that there is no ouster clause in Section 31(2) clause (৳) of the Bangladesh Telecommunication Act, 2001. He tried to submit that in exceptional cases like this, recourse may be taken even under Section 151 of the Code of Civil Procedure. In this connection, he referred to a decision in the case of *Abdul Jalil and others-Vs-Islamic Bank Bangladesh Ltd. and others* reported in 53 DLR (AD) 12.

We have perused the plaint, application under Order VII, rule 11 of the Code of Civil Procedure, written objection filed by the plaintiff and considered the submissions made by the learned Advocate of the respective parties.

Before we appreciate the legal aspect involved in this case, we would like to consider whether the proceeding held under Section 31 (2) (̄) of the

Bangladesh Telecommunication Act, 2001 by the BTRC Dispute Resolution Committee is a proceeding of Arbitration or Mediation.

Section 31 (2) (c) provides that *ôí í í í í í í í í Kwgkb D³ we* *wb ÷ úwÉ x Õga" ÷ öö Kwi x cwii x Ges Kwgkxi ga" ÷ i gva" x cö È wj wLZ wvxv %ö sükó c¶MY* *gwb x eva" ÷ wK x |ö* The word *ôga" ÷ ö* and not the word *ôkwj kö* has been used in the said section. Thus the word *ôga" ÷ ö* as used in Section 31 (2) (c) must, in our opinion does not mean Arbitration (*kwj k*). If the proceeding under Section 31 (2) (c) is treated as Arbitration proceeding that would defeat the purpose of the legislation as introduced by the Bangladesh Telecommunication Act, 2001.

The word *ôMediationö* and *ôArbitrationö* are not same. There is clear distinction between Arbitration and Mediation. Arbitration means a reference to the decision of one or more persons, either with or without an umpire of some matter or matters between the parties. So, arbitration is the settlement of a dispute by the decision, not of a regular and ordinary court of law but of one or more persons who are called arbitrators. Arbitrator is primarily a Tribunal to resolve dispute by adjudicative process in accordance with law. Arbitration should proceed by a formal agreement between the parties and there is provision for filing appeal. The essence of arbitration is that the arbitrator decides the case and his award in the nature of a judgment which is latteron incorporated into decree of the court.

Mediation shall mean flexible, informal, non-binding, confidential, non-adversarial and consensual dispute resolution process in which the Mediator shall facilitate compromise of disputes between the parties without directing or dictating the terms of compromise.

In this case, admittedly the BTRC acted as Mediator in the settlement of disputes and records a decision provided under Section 31 (2) (c) of the Act 2001, its act is not that of an Arbitrator, and the decision made by Dispute resolution Committee of BTRC is not an Award. It can have no operation whatever against the plaintiff, BTCL, who never joined in it and further no agreement was executed between the parties.

In order to appreciate the rival contentions, we should refer to the relevant law, which is Order VII rule 11 of the Code of Civil Procedure, same reads as under:

11. The plaint shall be rejected in the following cases:

- (a) Where it does not disclose a cause of action:
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court fails to do so:
- (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
- (d) where the suit appears from the statement in the plaint to be barred by any law:

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not exceed twenty-one days.

Thus the plaint is liable to be rejected where it does not disclose a cause of action, while the relief claimed is under valued, where the relief claimed for is not properly valued but the plaint is written upon insufficient stamp paper and where the suit appears from the statement in the plaint to be barred by any law.

Thus, it is imperative to reject a plaint which from a reading of the plaint it is manifestly vexatious and meritless, in the sense of not disclosing a clear right to

sue, when deficit court fee is not put in or that the suit is insufficiently stamped or otherwise barred by any law.

In view of the averments made in the plaint and the relief sought therein as described above, the pertinent question which call for determination in this appeal is to see whether the learned Joint District Judge committed any illegality in rejecting the plaint.

We have meticulously gone through the averments made in the plaint, it prima facie shows that nothing was averred in the plaint about arbitration award nor about the provision of the Arbitration Act, 2001, rather the suit was filed for declaration that the decision dated 16.03.2015 declaring M & H Telecommunication Limited entitlement of Taka 18,21,16,649/- (Eighteen crore, twenty one lac, sixteen thousand, six hundred and forty nine) only by the Dispute Resolution Committee in Dispute (Arbitration) Resolution No. 1/14 is unlawful and without lawful authority. But learned Joint District Judge illegally passed the impugned order dated 29.09.2016 by which he rejected the plaint, does not show that he at all considered the plaint, rather the learned judge illegally considered the matters extraneous to the plaint, such as plaintiff is not entitled to file the present suit under Section 42 of the Specific Relief Act without taking any legal steps under Arbitration Act, 2001 against the Award. Thus the learned Joint District Judge committed gross error of law in treating the Decision of the Dispute Resolution Committee as Award although that being a Decision and not an Award passed by the Arbitral Tribunal in accordance with the provision Arbitration Act, 2001 or under any arbitration agreement between the parties, is not valid or legal in the eye of law and not binding upon the plaintiff.

Considering the averments made in the plaint, we find that the learned Joint District Judge erred in law as well as fact in passing the impugned Judgment and decree and rejecting the plaint on the misconception that the suit is barred under Section 42 or Section 44 of the Arbitration Act, 2001.

In the instant case we have considered clause (d) of Order VII rule II of the Code of Civil Procedure which provides for rejection of plaint where the suit appears from the statement in the plaint to be barred by any law. In other word the plaint cannot be rejected on the basis of the statement made in the defendant in his pleading (written statement) or in his application under Order VII rule 11 of the Code. The question as to whether the plaint is liable to be rejected being barred by law must be apparent from the statement made in the plaint itself and not from the written statement or any other material other than that has been put in the plaint. Thus this provisions applies when it appears from the statement in the plaint that suit is barred by law providing ouster of jurisdiction of the court.

It is a cardinal principle of law, well settled by the decisions of the Superior Courts of the sub-continent including our apex court that for deciding a question whether a plaint should be rejected under Order VII, rule 11 of the Code of Civil Procedure, the court should confine itself to the averments made in the plaint only and can not ordinarily travel beyond it. The court can not consider the written statement, written objection or any other materials in this connection, rather assume that the statements made in the plaint are correct.

In order to address and consider the submissions advanced by the learned Advocates for respondent No. 1 and respondent No. 3 that suit is barred under Section 32 (2) (c) of 2001, we like to reproduce Section 31(2) (d) of the Arbitration Act, 2001 (2001 Act No. 18 of 2001), which has being substituted by the

regulation (MSR) Act, 2010, published in the Bangladesh Gazette on 01.08.2010 which runs as follows:

(c) কমিশন নর লাই সন্সধারী, পারমিটধারী বা সেবা প্রদানকারী দর ম ধ্য কোন বি রা ধর উদ্ভব হই ল সংশ্লিষ্ট পক্ষগণ যদি উহা নি জ দর ম ধ্য নিস্পত্তি করি ত ব্যর্থ হয়, তাহা হই ল কমিশন উক্ত বি রাধ নিস্পত্তি ত মধ্যস্থতা করি ত পারি ব এবং কমিশন নর মধ্যস্থতার মাধ্য ম প্রদত্ত লিখিত সিদ্ধান্ত সংশ্লিষ্ট পক্ষগণ মানি ত বাধ্য থাকি বা।

From a plain reading of section 31 (2) clause (c) it is clear that if any dispute is arisen between the licensee or permit holder of the commission or service provider if the parties are failed to mitigate/ resolve their dispute within themselves in that case the commission will mediate and through commission there will be a written decision which will be binding upon the parties. It is seen that said Ain does not say about any শালিশ চুক্তি or in respect of appointment of Arbitral Tribunal or anything else.

In this context we have noticed that Section 31(2) (c) of the Bangladesh Telecommunication Act, 2001, has been amended by the amending Act No. 41 of 2010 with effect from 01.08.2010 where jurisdiction of the civil court has not been expressly barred and we have also seen that the jurisdiction of the civil court is not barred by any implication also by creation of the special jurisdiction under the Act.

Clause 15 of the Interconnection Exchange (ICX) Services Operation License dated 25.02.2008 issued by the BTRC, provides that "In the event of any difference or disputes with other Licensees or other Licensed telecom operators and failure to resolve the differences or disputes amicably among themselves, the Licensee shall refer the matter to the Commission for resolution of the same. The decision of the Commission in that regard will be final and binding."

In the ICX license in unequivocal terms made it abundantly clear that the Licensee shall refer the disputes to the BTRC to resolve the same and its Decision will be final and binding but does not envisage about Arbitration to resolve disputes between the parties.

Let us now consider the provision laid down clause 10(8) of the BTRC (Interconnection) Regulation 2004, which came into force in 2004, which speaks about "Dispute Resolution Process". Admittedly the present dispute was arose in 2012. It appears that to resolve disputes between the parties under clause () of Section 31 (2) has been substituted in the বাংলা দশ টেলি যোগা যোগ আইন ২০০১ (Act 18 of 2001) by the Bangladesh Telecommunication (Amendment) Act 2010 which came into force on 01.08.2010. So, after amendment of Bangladesh Telecommunication Act in 2010 there is no existence of BTRC (Interconnection) Regulation, 2004. Further, provisions for savings are not contained in the Amended Act, 2010. Section 99 of the Act 2001 provides Power to make Regulations. Sub-section (1) of Section 99 has been amended by the Bangladesh Telecommunication (Amendment) Act, 2010, to the effect that after the words "GB Aivxi Dk" cjbKx kã,uj i ci the words õmiKvxi ce`p`bµxõ will be added. Thus we find that there is no scope to apply Regulation 10(8) of the Interconnection Regulation, 2004 in the present case as submitted by the learned Advocate for respondent No. 1, BTRC.

The defendant no. 3 has alleged that the suit is barred by Section 42 and 44 of the Arbitration Act, 2001, that is ouster of jurisdiction of the civil court, as the suit is sought to be filed against the decision/ Award dated 16.03.2015 passed by Dispute Resolution Committee declaring defendant no. 3 entitlement of Taka 18,21,16,649/- (Eighteen crore, twenty one lac, sixteen thousand, six hundred and

forty nine). It further appears that in passing the impugned order the learned Joint District Judge has totally misread and misinterpreted the pleadings, prayer of the plaintiff and misconceived the provisions of the Arbitration Act, 2001, erroneously rejected the plaint of the plaintiff.

We have already discussed that nowhere in the Bangladesh Telecommunication Act, 2001 or in the BTRC (Interconnection) Regulation 2004 or in ICX License that in case of any dispute arisen between the parties, the provision of Arbitration Act, 2001 will apply. It also appears from the Decision of Dispute (Arbitration) Resolution 1/14) dated 16.03.2015 that no Award was pronounced or passed by the three members Dispute Resolution Committee rather their finding and Decision was given applying the provision of Section 31 (2) () of Bangladesh Telecommunication Act, 2001 and clause 15 of the ICX License. In the present case we also did not find anything in the record that there was formal agreement between the parties, any Arbitral Tribunal was formed, the tribunal entered into Arbitration proceeding, gave Award and same was filed in court and treated as decree of the court under Section 44 of the Arbitration Act, 2001.

Moreover, Section 54 of the Arbitration Act, 2001 clearly stipulates that the said Act shall not apply to any other law making special provisions for arbitration as such Section 44 of the Arbitration Act has no manner of application in the case of a Decision given by the Dispute Resolution Committee on 16.03.2015 under Section 31(2) (৭) of the Bangladesh Telecommunication Act, 2001.

Section 9 of the Code of Civil Procedure expressly provides that the Courts shall have jurisdiction to try all suits of a civil nature excepting suits of which

their cognizance is either expressly or impliedly barred. The nature of the dispute which was being litigated upon is entirely a civil dispute and can only be decided by competent Court of Civil Jurisdiction.

It is also well settled that the plea of implied bar should be decided on evidence unless the fact disclosed is clearly indicate that the suit is not maintainable.

We have carefully read the decision cited by the learned Advocate for the respondent No. 3 reported in *53 DLR (AD) 2001*, the cited decision got no bearing and applicability in the facts and circumstances of the case in hand in as much as the facts of the case are quite distinguishable from the facts of the instant case.

We have carefully examined the Bangladesh Telejogajok Niyantaran Ain, 2001 but we did not find any provision of appeal in the said Ain against the decision of Mediation passed by the Commission. In this regard reference may be made to the order dated 03.11.2016 passed by the Appellate Division in the case of *Bangladesh Telecommunication Regulatory Commission (BTRC), represented by its Chairman, Dhaka Vs. Pacific Bangladesh Telecom Limited and others in Civil Petition for Leave to Appeal No. 2782 of 2016*, in that case their Lordships clearly observed that- "we have perused the Bangladesh Telecommunication Ain, 2001. We are shocked to note that in the said Ain, there is not provision for resolving any dispute in case any dispute arise regarding the claim by filing appeal/revision/review by the telephone operators although in other revenue laws there are provisions for appeal of other forum. When this fact has been drawn to the attention of learned counsel Mr. Mahbubey Alam and Mr. Sheikh Fazle Noor-Taposh, they assured us that they would advice BTRC to make corresponding amendment incorporating the provision for appeal/ review regarding the

determination of dispute if any arises by its operators against the claim made by the BTRC. í í í í í í í í í í í í í ... It is desirable that there should be a provision for resolving the dispute by way of conciliation or mediation or arbitration or appeal.ö

We have already held in the earlier part of this judgment that learned Joint District Judge acted most illegally in rejecting the plaint on assumption of facts which are not borne out by the plaint, and also not sanctioned by law.

Having regard to the facts and circumstances of the case and the provision of law we find merit in this appeal.

In the result, the appeal is allowed without any order as to costs and the impugned judgment and decree dated 29.09.2016 passed by the learned Joint District Judge, First Court, Dhaka in Title Suit No. 124 of 2016 are hereby set aside.

Send down the Lower Court Records at once.

S.M. Mozibur Rahman, J:

I agree