

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Civil Appellate Jurisdiction)**

First Appeal No. 678 of 2018

In the matter of:

Janata Bank, Janata Bhaban Corporate Branch
110 Motijheel C/A, Dhaka on behalf Deputy
General Manager.

... Appellant

-Versus-

M/S Dynamic Textile Industries Limited. a.
House No. 40/1, Road No. 91, Gulshan North
Avenue, Police Station- Gulshan, Dhaka-1212. b.
Registered Office, Motijheel C/A, P.S. Motijheel,
Dhaka-1000 on behalf Managing Director and
others.

... Respondents.

Mr. S. M. Atikur Rahaman with
Mr. Mohammad Mosfequs Salehin, Advocates
... For the appellant

Mr. Asiful Hoque with
Ms. Shathika Hossain, Advocates
... For the respondent no. 7

Heard on 15.08.2024.
Judgment on 22.08.2024.

Present:

Mr. Justice Md. Mozibur Rahman Miah
And
Mr. Justice Md. Bashir Ullah

Md. Mozibur Rahman Miah, J.

At the instance of plaintiff in Artha Rin Suit No. 93 of 2007, this appeal is directed against the judgment and decree dated 01.11.2018 passed by the learned Judge, Artha Rin Adalat No. 1, Dhaka in the said Artha Rin Suit dismissing the suit against the defendant no. 7.

The short facts leading to preferring this appeal are:

The plaintiff herein the appellant filed the said Artha Rin Suit claiming an amount of taka 27,98,85,852/69 as of defaulted loan against as many as 9 defendants. In the said suit, the defendant nos. 2, 3 and 7 entered appearance and contested the suit by filing written statement and the learned Judge of the Artha Rin Adalat framed as many as 4(four) different issues where the plaintiff examined a single witness where the defendant no. 3, defendant no. 7 and defendant no. 2 examined a single witness each as D.W-1, D.W-2 and D.W-3 respectively. Apart from that, the plaintiff produced several documents which were marked as exhibit nos. '1'-'48'. On the contrary, all those defendants examined several documents which were marked as exhibit nos. 'ka' to 'umo'. Ultimately, the learned Judge of the Artha Rin Adalat, upon considering the materials and evidence on record vide impugned judgment and decree dated 01.11.2018 decreed the suit on contest against the defendant nos. 2, 3 and *ex parte* against the defendant nos. 1, 4, 5, 6, 8 and 9, though dismissed the suit against the defendant no. 7 directing those contesting and non-contesting defendants to pay the decretal amount of taka 27,98,85,852/69 with interest as per section 50(2) of the Artha Rin Adalat Ain, 2003 within a period of 60(sixty) days.

Being aggrieved by and dissatisfied with the said judgment and decree of dismissal of the suit against the defendant no. 7, the plaintiff as appellant then preferred this appeal.

Mr. S. M. Atikur Rahman, the learned counsel appearing for the appellant upon taking us to the observation so made by the learned Judge of the Artha Rin Adalat in the impugned judgment in regard to dismissal of the suit against the defendant no. 7 at the very outset submits that, the learned Judge only on considering that the defendant no. 7 is not a qualifying Director in defendant no. 1-company who held only 240 shares in the company though required 250 shares to become a qualifying Director and arrived at a decision that he cannot be made any defendants in the suit which has no legal basis as holding position of Director in defendant no. 1 has nothing to do with adding as defendant in an Artha Rin Suit so such observation as well as finding cannot sustain in law.

The learned counsel by referring to the exhibited documents in particular, the personal guarantee furnished by the defendant no. 7 and produced by the plaintiff witness no. 1 (P.W-1) that was marked as exhibit- '31' also contends that, since the defendant no. 7 furnished the personal guarantee in favour of the plaintiff as a security to repay the loan, so there has been no scope for the defendant no. 7 to be exonerated of the liabilities towards the plaintiff-bank in repaying the loan vis-à-vis implead as defendant in the suit.

The learned counsel by referring to the testimony of P.W-1 in particular, the cross-examination put by the defendant no. 7 to the said witness also contends that, the said P.W-1 in his cross-examination has

vividly asserted that, the defendant no. 7 is not a Director rather a guarantor so there has been no scope not to add him as defendant and to dismiss the suit against him that is, the defendant no. 7.

The learned counsel by referring to the provision of section 6(5) of the Artha Rin Adalat Ain, 2003 also contends that, that very provision is a mandatory provision of law where it has clearly been asserted who will be made as defendant in an Artha Rin Suit and since it is admitted position that, the defendant no. 7 stands guarantor of the loan availed by the defendant no. 1 so there has been no reason to dismiss the suit against the defendant no. 7. On those scores, the learned counsel finally prays for allowing the appeal by decreeing the suit against the defendant no. 7.

On the contrary, Mr. Asiful Hoque along with Ms. Shathika Hossain, the learned counsels appearing for the respondent no. 7 opposes the contention taken by the learned counsel for the appellant and submits that, though the defendant-respondent no. 7 has given a personal guarantee as a Director but since he was found to have no qualifying share in defendant no. 1-company so the defendant no. 7 had no liability of the loan taken for the defendant no. 1 and the learned Judge has thus rightly dismissed the suit against the defendant no. 7.

By taking us to exhibit-‘Gha’(ঘ) exhibited by the defendant no. 7, the learned counsel further contends that, that very exhibit clearly shows that, the defendant no. 7 has got only 240 shares in the defendant no. 1-company which indicates that, the defendant no. 7 is not any qualifying shareholder to say the least a qualifying Director in defendant no. 1-company and since he is not a qualifying Director so no liability of loan can stand against the

defendant no. 7 for the defendant no. 1-company and therefore, the learned Judge has rightly dismissed the suit against the defendant no. 7.

The learned counsel by referring to the exhibit no. 'Ga'(ग) which is the schedule made under sections 112 and 113 of the Companies Act, 1994 also contends that, in that schedule, the name of the defendant no. 7 has not been there as any Director of the board of directors of the defendant no. 1-company so that very document also proves that, the defendant no. 7 has no liability in defendant no. 1-company when the suit was filed and the learned Judge has rightly dismissed the suit against him and finally prays for dismissing the appeal.

Be that as it may, we have considered the submission so advanced by the learned counsel for the appellant and that of the respondent no. 7 at length. We have also perused the impugned judgment and order in particular, the observation so made by the learned Judge of the trial court who has discussed the qualification of the defendant no. 7 to become a Director in defendant no. 1-company. On going through the observation, we find that, the learned Judge has put his entire emphasis on the point of having qualifying share of the defendant no. 7 and observed that, for exonerating defendant no. 7 from the post of Director of the defendant no. 1-company, the defendant no. 3 who stood Managing Director of the defendant no. 1-company filed several applications to defendant no. 1-company for terminating him as Director which has been marked as exhibit- 'kha'. Apart from that, the defendant no. 3 also wrote letter to the plaintiff-bank (which is exhibit-'cha') seeking termination of personal guarantee given by the defendant no. 7 to it (the bank) and the defendant no.

3 even filed application to the Managing Director as well as the CEO of plaintiff-bank for striking out the name of the defendant no. 7 as Director from the company. But what was the outcome of such endeavours taken by defendant no. 3 could not be found from the entire observation so made by the learned Judge of the trial court in his judgment.

Curiously enough, in the entire judgment, the learned Judge of the Artha Rin Adalat has not touched upon the legal provision on which a party is made a defendant in an Artha Rin Suit provided in section 6(5) of the Ain which is the *sine qua non* for impleading a party as defendant in an Artha Rin Suit. Since the suit was filed under Artha Rin Adalat Ain and it is none but an Artha Rin Suit, so all the procedure and the proceedings of the suit is to be guided by Artha Rin Adalat Ain, 2003 not guided by any other law. Since it is a mandatory provision provided in section 6(5) of the Ain specifying as to who will be impleaded as defendant in an Artha Rin Suit so the Artha Rin Adalat has got no other option to go beyond any provision provided therein the Ain. On top of that, since it is admitted position that, the defendant no. 7 issued a personal guarantee in favour of the defendant no. 1 to secure repayment of loan and that very personal guarantee was existing when the suit was filed and it was also marked as exhibit with no objection from the defendant no. 7 rather in cross-examination to the plaintiff witness no. 1, the defendant no. 7 has rather asserted to have personal guarantee issued by him, so no question can at all arise not to implead him as defendant no. 7 as per section 6(5) of the Ain. But that very vital legal point has clearly been sidetracked by the trial court while dismissing the suit against defendant no. 7.

Regard being had to the above facts and circumstances, we find ample substance to the submission so advanced by the learned counsel for the appellant and we are thus inclined to allow the appeal.

Accordingly, the appeal is allowed however without any order as to costs consequent to, the suit is decreed against defendant no. 7 as well.

The judgment and decree impugned in this appeal so far as it relates to dismissal of the suit against the defendant no. 7 is thus set aside.

The appellant is thus entitled to proceed with the decree against the defendant no. 7.

The order of stay and status quo granted by this court stands recalled and vacated.

Let a copy of this judgment along with the lower court records be transmitted to the court concerned forthwith.

Md. Bashir Ullah, J.

I agree.