

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL APPELLATE JURISDICTION)

Present:

**Mr. Justice Md. Mozibur Rahman Miah
and**

Mr. Justice Md. Bashir Ullah

First Miscellaneous Appeal No. 211 of 2019

In the matter of:

Bangladesh House Building Finance Corporation, Zonal
Office, Rajshahi.

---Plaintiff-Appellant.

-Versus-

Most. Rowshan Ara Begum

--- Defendant-Respondent.

Mr. Sikder Mahmudur Razi, with
Mr. Md. Zahirul Islam, Advocates

---For the Appellant.

Not represented --- For the respondent.

Heard on 28.08.2024

Judgment on: 29.08.2024

Md. Bashir Ullah, J

At the instance of the plaintiff in Miscellaneous Case No. 40 of 2013, this appeal is directed against the judgment and order dated 17.06.2019 passed by the learned District Judge, Rajshahi in the aforesaid case dismissing the same.

The salient facts leading to preferring this appeal are:

Bangladesh House Building Finance Corporation, Zonal Office, Rajshahi (briefly “the Corporation”) as plaintiff filed the said Miscellaneous case for realisation of Taka 11,22,682.77 from the defendant contending *inter alia* that, the defendant applied to the

plaintiff, Corporation for a loan to construct a house in the scheduled land. Then the plaintiff sanctioned Taka 4,10,000/- in favour of the defendant with interest at the rate of 10% per annum on 09.02.1983 under sanction letter no. Raj/118. Subsequently, the plaintiff sanctioned another loan amounting to Taka 47,000/-. The said loan was scheduled to be repaid within 30 years with monthly installment at Taka 3548.45. However, the defendant failed to repay the loan amount as per condition of the sanction letter and thus, the default loan amount with interest stood at Taka 9,93,093.84 and that of another at Taka 1,29,588.93 totaling at Taka 11,22,682.77 and hence the plaintiff prayed for a decree for the realisation of the said amount with interest.

The defendant contested the suit by filing a written objection denying all material averments so made in the plaint. It has been stated that there is no cause of action to file the suit. The case has been filed suppressing the facts as earlier, the plaintiff filed Miscellaneous Case No. 88 of 1992 before the Subordinate Judge and Artha Rin Adalat, Rajshahi for realisation of Taka 8,08,897.23 and the Miscellaneous Case was allowed on 03.10.1993. The defendant adjusted entire liability by paying Taka 9,14,400/-. After repayment, the defendant requested the plaintiff to return the mortgage deed and other documents as there is no liability. However, the plaintiff did not return the deed and documents.

When the defendant sent a legal notice to the plaintiff, Corporation through her lawyer on 06.04.2015 and as the plaintiff did not return the documents the defendant then filed Other Class Suit No. 122 of 2016 before the Senior Assistant Judge, Sadar Court, Rajshahi for

getting the deed and documents lying with the plaintiff, Corporation. The plaintiff did not mention in its plaint about the Miscellaneous Case No. 88 of 1992 and Other Class Suit No. 122 of 2016. Hence, the defendant prayed for dismissing the suit.

The trial Court framed as many as 04(four) different issues and in course of the trial, the plaintiff examined 01(one) witness and defendant examined 01 (one) witness and both parties adduced documentary evidence in order to prove their respective cases.

Upon hearing, the parties and on perusal of the pleadings, the learned District Judge, Rajshahi dismissed the miscellaneous case on 17.06.2019.

Being aggrieved by and dissatisfied with the judgment and order dated 17.06.2019 passed by the District Judge, Rajshahi the plaintiff as appellant then preferred the instant appeal.

Mr. Md. Zahirul Islam, the learned Advocate appearing on behalf of the plaintiff-appellant submits that, the learned District Judge, Rajshahi erred in law and fact in passing the impugned judgment and order and therefore the impugned judgment and order is liable to be set aside.

He next submits that, the learned District Judge did not provide any cogent findings on assessing the evidence on record and without considering the documentary evidence dismissed the miscellaneous case by the impugned judgment and order and as such the impugned judgment and order is liable to be set aside. With such submission, the learned Advocate finally prays for allowing the instant Appeal.

None represented on behalf of the opposite party.

We have heard the learned Advocate for the appellant, perused the memorandum of appeal, impugned judgment and order passed by the trial Court and other materials on record.

We find from the deposition of OPW 1 Md. Mamun who stated in his chief that, the defendant adjusted the entire liability, complying with the judgment and decree passed in Miscellaneous Case No. 88 of 1992 filed earlier even then the plaintiff filed the miscellaneous case against the defendant. The PW 1 Farzana Hossen, Principal Officer (Law) could not deny the claim of the defendant. PW 1, further stated in her cross-examination that, বিগত ০৩/১০/১৯৯৩ খ্রিঃ তারিখে ৮৮/৯২ নং অর্থঋণ মোকদ্দমার রায় ও ডিক্রি হইতে পারে। গত ৬/১১/৯৩ খ্রিঃ তারিখে ১ম কিস্তির টাকা দেওয়া হইতে পারে। ঐ মোকদ্দমায় তাহাদের দাবী ৮,০৮,৮৯৭.২৩ টাকা ছিল কিনা বলিতে পারবেন না। প্রতিপক্ষ ৯,১৪,৪০০/- টাকা পরিশোধ করিয়াছেন কিনা জানেন না। ঋণের টাকা পরিশোধ সাপেক্ষে বন্ধকী কাগজপত্র ফেরত দেওয়ার কথা ছিল কিনা বলতে পারবেন না। কাগজপত্র ফেরতের জন্য ৬/৪/১৫ খ্রিঃ তারিখে তাদেরকে লিগ্যাল নোটিশ দেওয়া হয় কিনা জানেন না। লিগ্যাল নোটিশ দেওয়া সত্ত্বেও কাগজপত্র ফেরত না দেওয়ায় সদর সিনিয়র সহকারী জজ আদালতে অঃ প্রঃ ১২২/১৬ নং মোকদ্দমা এই মামলার প্রতিপক্ষ দাখিল করে কিনা জানেন না। এই মোকদ্দমায় হাউজ বিল্ডিং ফাইন্যান্স কর্পোরেশন জবাব দাখিল করে কিনা জানেন না।

Since the plaintiff earlier filed Miscellaneous Case No. 88 of 1992 before the then Subordinate Judge and Artha Rin Adalat, Rajshahi, it cannot file Miscellaneous Case No. 40 of 2013 before the District Judge, Rajshahi on similar issue.

The District Judge, Rajshahi very rightly observed that অর্থঋণ আদালতের ৮৮/৯২ নং মোকদ্দমার রায় ও ডিক্রিতে অসম্ভব হইয়া থাকিলে দরখাস্তকারী উক্ত রায় ও

ডিক্রির বিরুদ্ধে আইনানুগ পদক্ষেপ গ্রহণ করিতে পারিতেন। কিন্তু তাহা করেন নাই। উক্ত মোকদ্দমার রায় ডিক্রিতে আদালতের পর্যবেক্ষনে কোন ভুল থাকিলে তাহার বিরুদ্ধে উচ্চ আদালতে প্রতিকার প্রার্থনার সুযোগ ছিল। কিন্তু হাউজ বিল্ডিং ফাইন্যান্স কর্পোরেশন তাহাও করেন নাই। ... হাউজ বিল্ডিং ফাইন্যান্স কর্পোরেশন তাহাদের বার্থ্যতার দায়ভার গোপন করিয়া অত্র মিস কেস আনয়ন করিয়াছে, যাহা অনাকাঙ্ক্ষিত ও অনভিপ্রেত।

It appears that, the case was filed by suppressing the facts so the subsequent Miscellaneous Case is barred by the principle of *res-judicata* and the case should not have been filed at all which is unfortunate and unwarranted as no one shall be vexed twice when the issue has been fairly and finally decided in a former suit. Once an issue has been finally decided it cannot be re-agitated by the same parties.

Given the above facts and circumstances, we do not find any illegality or impropriety in the impugned judgment and order, which calls for no interference by this Court. Therefore, we do not find any substance in the appeal.

Resultantly, the appeal is dismissed, however without any order as to cost.

The judgment and order dated 17.06.2019 passed by the learned District Judge, Rajshahi in Miscellaneous Case No. 40 of 2013 is thus sustained and affirmed.

Let a copy of the judgment along with the lower Court's record be transmitted to the concerned Court forthwith.

Md. Mozibur Rahman Miah, J.

I agree.