

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

First Miscellaneous Appeal No. 249 of 2015

In the matter of:

Mohiuddin Ahmed @ Khokon
Son of Karomuddin Ahmmed @ Badsha Miah,
of Jordan Road, Barisal Sador, Police Station-
Katwali Model Thana, District-Barisal.

... Appellant

-Versus-

Bangladesh House Building Finance corporation
represented by Regional Manager, Regional
Office, Nirala Coimplex-999, Amir Kuthir Lane,
Alekan Road, 919, Amir Kuthir Lane,
Alekan Road, Barisal- 8200

... Respondent

None appeared

...For the appellant

Mr. Mohammad Saiful Islam, Advocate

....For the respondent

**Heard on 11.09.2024, 17.09.2024
and Judgment on 17.09.2024**

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

Md. Mozibur Rahman Miah, J.

At the instance of the defendant (opposite party) in Miscellaneous Case No. 33 of 2013 filed under Article 27 of Bangladesh House Building Finance Corporation order 1973 (PO 7 of 1973), this appeal is directed against the judgment and order dated 29.06.2015 passed by the learned District Judge, Barisal allowing the Case.

The short facts leading to preferring this appeal are:

The present respondent as plaintiff/petitioner filed the aforesaid Miscellaneous Case claiming an amount of taka 11,49,558.69 as of

30.04.2013 stating inter alia that, the present appellant availed a house building loan facility amounting to taka 8,25000/- from the respondent on 26.11.2001 and to secure repayment of the said loan, the appellant also mortgaged the scheduled property for which the loan was taken by the appellant and registered a deed of mortgage on 05.12.2001 in favour of respondent. As the appellant did not come forward to repay the loan, the same has been classified as defaulted loan which stood at taka 11,49,558.69 on 30.04.2013 and thus the Miscellaneous Case was filed.

In the Miscellaneous case, the defendant herein appellant on 29.06.2015 entered appearance and filed an application seeking adjournment for filing written objection and to withdraw the Case from passing ex parte judgment. But vide impugned judgment and order, the learned District Judge by rejecting the said application for adjournment, proceeded with the case and took evidence for the respondent, corporation. After taking evidence of the petitioner's (herein respondent) witness no. 1, ultimately allowed the case ex parte for an amount of taka 11,49,588.69 directing the appellant to pay the said amount within 30 days with interest till its realization.

It is at that stage, the defendant/ opposite party to the case as appellant came before this court and preferred this appeal. On the date of preferring the appeal, this court also stayed the operation of the impugned judgment and order passed dated 29.06.2015 till disposal of this appeal.

On 11.09.2024 this appeal was taken up for hearing which appeared in the list with the name of the learned counsels for both the parties but as the learned counsel for the appellant did not appear to press the appeal we

heard the learned counsel for the respondent and requested him to inform the learned counsel for the appellant to be present today for hearing of the appeal even though we set the matter for passing judgment today yet, the learned counsel for the appellant did not bother to show up to press the appeal.

Be that as it may, we have heard the learned counsel for the respondent and perused the impugned judgment and order. On going through the impugned judgment and order we find that, it is only on 29.06.2015 the appellant entered appearance in the Miscellaneous Case to contest the same and to that end filed an application seeking adjournment enabling him to file written statement but the learned judge turned down the said prayer and proceeded with the case and kept on taking evidence of the witness of the respondent and ultimately allowed the case ex parte. However, on going through the impugned judgment and order we don't find any reason to have assigned by the court below for not giving chance to the appellant for filing written statement and to contest the Miscellaneous Case. So the impugned judgment and order was passed in a very arbitrary manner only to favore the respondent to get the claim it made without bothering to know the grievance or any other inconvenience the appellant may have depriving him to contest the said Miscellaneous Case. Had the appellant given an opportunity to contest the case by providing adjournment of the case for next one or two occasions none of the parties to the case would have prejudiced. But without considering so, the learned judge very whimsically proceeded with the Miscellaneous Case and passed the ex parte order depriving the

defendant-appellant to contest the Miscellaneous Case by placing his defence before the learned judge which we find to be totally unjustified. At that, the learned counsel for the respondent very frankly submits that, it would be wise if the Miscellaneous Case be sent back on remand to the trial court by giving a time frame to dispose of the Miscellaneous Case on merit and on contest. We find the said submission to be pretty wise and reasonable given the loopholes in the impugned judgment because the impugned judgment and order clearly depicts that the learned judge of the trial court has been carried away by sheer whim over applying his judicial mind while passing the impugned judgment and order.

Given above facts and circumstances we don't find any substance to sustain the impugned judgment and order which is liable to be set aside.

Accordingly, the appeal is allowed however without any order as to costs and the case is sent back on remand to the learned District Judge, Barisal.

Invariably the judgment and order dated 29.06.2015 passed by the learned District Judge, Barisal in Miscellaneous Case No. 33 of 2013 stands set aside.

The learned District Judge, Barisal is hereby directed to proceed with the Miscellaneous Case by notifying the learned Advocates for both the parties enabling the appellant to file written objection against the Miscellaneous case by providing him a reasonable time and to dispose of the Miscellaneous Case within a period of 03(three) months from the date of receipt of the copy of this order.

The order of stay granted at the time of admitting the appeal is thus recalled and vacated.

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

Md. Bashir Ullah, J.

I agree.