

**Present:**  
**Mr. Justice Nozrul Islam Chowdhury**

**and**

**Mr. Justice Mohammad Ullah**

**First Appeal No. 356 of 2011 with**

**Civil Rule No. 171(F) of 2012 and**

**Civil Order No. 2 of 2012**

Union Insurance Co. Ltd.  
BCIC Bhaban (17<sup>th</sup> Floor)  
30-31, Dilkusha Commercial Area  
P.S.- Motijheel, Dhaka and others  
.....Defendant-Appellants.

**-Versus-**

Mohammad Golam Kibria.  
Son of late Mohammad Abdul Majid,  
Aziz Palace, Apartment No. 401,  
55/A, Siddeswari Lane,  
P.S. Ramna, Dhaka.  
.....Plaintiff-Respondent.

Mr. Mahabub Ali, Advocate with  
Mr. Md. Sagir Anowar, and  
Mr. Mahbubur Rahman, Advocates  
..... For the Defendant-Appellants.

Mohammad Golam Kibria (in person),  
.....For the Plaintiff-Respondent.

**Hearing on 11.02.2013 and 10.03.2013**

**and**

**Judgment on 11.03.2013.**

**Mohammad Ullah, J.**

This appeal at the instance of the defendants, is directed against the judgment and decree dated 16.8.2011 passed by the learned Joined District Judge, 5<sup>th</sup> Court, Dhaka in Money Suit No. 20 of 2006.

For disposal of the appeal necessary facts are briefly stated below:

The respondent-Mohammad Golam Kibria as plaintiff instituted Money Suit No. 20 of 2006 impleading the appellants as defendants seeking a decree for realization of Tk.6,51,850/- (six lac fifty one thousand eight hundred fifty) only as his arrear salary and benefit as mentioned in the schedule of the plaint.

The plaintiff instituted the above money suit on the averments that the defendant No. 1 is an Insurance Company with the name and style of Union Insurance Co. Ltd. registered on 24.8.2000 as a Public Limited Company with the office of Registrar of Joint Stock Companies and Firms having prior approval of the Government for the purpose of doing general insurance business. The said company was also registered with the Chief Controller of Insurance in the month of September, 2000. Plaintiff was the Managing Director of the said company from its inception and on 28.9.2000 the plaintiff got approval from the Chief Controller of Insurance. Plaintiff was serving in the defendants company from September, 2000 up to 5<sup>th</sup> July, 2004 and thereafter he left the insurance profession on 6<sup>th</sup> July, 2004. The Board of Directors of the Company made delay in fixing the remuneration of the plaintiff and after repeated requests the Board of Directors in its 26<sup>th</sup> meeting held on 15.3.2004 fixed the salary of the plaintiff @ Tk.40,000/- (forty thousand) only per month and house rent @ Tk.20,000/- (twenty thousand) only per month to be paid from September, 2000. On the basis of this fixation the total

remuneration of the plaintiff from September, 2000 to 5<sup>th</sup> July, 2004 for 46 months 5 days stood Tk.27,69,676/- (twenty seven lac sixty nine thousand six hundred seventy six) only, out of that amount plaintiff received from the company at different times up to October, 2005 a total of Tk.21,17,826/- (twenty one lac seventeen thousand eight hundred twenty six) only as confirmed by the company by its letter dated 15<sup>th</sup> November, 2005. Thus the plaintiff is entitled to get Tk.27,69,676 – 21,17,826 = Tk.6,51,850/- (six lac fifty one thousand eight hundred fifty) only as his arrear salary from the company. Plaintiff by his letter dated 12.01.2005 requested the defendant No. 2 (Managing Director) to pay his arrears, with copy of it to defendant No. 3 (Chairman of the company). In reply the defendant No. 2 by his letter dated 17<sup>th</sup> January, 2005 informed the plaintiff that the matter would be placed before the Board of Directors in its next meeting and to be intimated him of its decision in due course, but the defendant No. 2 did not respond to the request of the plaintiff. Plaintiff continued to write to defendant No. 2 in this regard with copy to defendant No. 3 and in reply to one of these letters dated 25.8.2005, the Assistant Secretary of the Company confirmed the plaintiff by his letter dated 29.8.2005 that the matter would be placed in the next Board Meeting of the Company and the decision of the Board of the Company would be informed to the plaintiff, but in vain. Plaintiff being dissatisfied with the above conduct of defendant No. 2 directly approached defendant No. 3 being the Chairman of the company by a

letter dated 18.10.2005 requesting him to make payment of the entire dues by 25<sup>th</sup> October, 2005, because of his urgent need of money with copy of the letter to all Directors of the Company, but unfortunately the defendant No. 3 also kept silence and did not respond to the request of the plaintiff. Plaintiff finding no other alternative on 14.12.2005 served legal notice upon the defendant No. 2 demanding to pay his balance remuneration of Tk.6,51,850/- (six lac fifty one thousand eight hundred and fifty) only within 15 days from receipt of the legal notice. Defendant No. 2 received the notice on 15.12.2005, but has not yet complied with the demand of the plaintiff. Defendant No. 1 on 28.12.2005 replied to the notice of the plaintiff stating inter alia that the matter is still lying with the Board and as soon as the decision is taken by the Board the plaintiff be informed accordingly, but none of the defendants has taken any initiative to pay the arrears of the plaintiff till filing of the suit. Defendants with evil motive of harassing the plaintiff illegally holding up the payment of his dues causing great financial loss and mental suffering to him though the company has available means to make the payment and hence the suit.

The defendants entered appearance and contested the suit by filing a joint written statement denying the averments of the plaint stating inter alia that the suit is not maintainable in its present form, no cause of action to institute the suit, suit is barred by law of limitation and the suit is hit by principle of estoppel, waiver and acquiescence. The other averments of the defendants are that the plaintiff at a time was the Director and

Managing Director of the defendant-company, but he did not disclose the same to the plaintiff. In the 26<sup>th</sup> meeting of Board of Directors held on 15.3.2004 there was specific 7 agenda, but no agenda of fixation of the remuneration of plaintiff was taken. Since the plaintiff was the Managing Director of the Company, by misusing the power fraudulently fixed his remuneration at Tk.40,000/- (forty thousand) only as basic salary and Tk.20,000/- (twenty thousand) only as house rent per month to be paid from the month of September, 2000 as arrear basis in the heading of miscellaneous agenda. Plaintiff intentionally has taken away his appointment letter from his personal file in his service period in an ill motive and he did not disclose the terms, conditions and remunerations of his appointment letter and did not write any letter to the Board of Directors as well as Controller of Insurance about his fixation of remuneration and as such the plaintiff is not entitled to get arrear salary as prayed for and hence the suit is liable to be dismissed.

On the pleadings, the learned Joint District Judge, 5<sup>th</sup> Court, Dhaka framed as many as 4 (four) issues to determine the suit. Among them the principal issue was that whether the plaintiff is entitled to get a money decree as prayed for.

At the trial plaintiff examined himself as P.W. 1 and the defendants examined one witness as D.W. 1, besides the plaintiff exhibited a series of documents including the minutes of 26<sup>th</sup> meeting of Board of Directors of

the defendants company held on 15.3.2004 which were marked as exhibits 1-9 in the suit.

The trial court on consideration of the material evidence on record placed before it, decreed the suit holding that the plaintiff has been able to prove the suit and the trial court also directed the defendants to make payment of Tk.6,51,850/- (six lac fifty one thousand eight hundred fifty) only to the plaintiff within 30 days, failing which the plaintiff would be entitled to realize the decretal amount in accordance with law.

The unsuccessful defendants as appellants preferred the instant First Appeal being aggrieved by and dissatisfied with the above judgment and decree dated 16.8.2011.

During pendency of this appeal the plaintiff-respondent also preferred a Memorandum of cross-objection invoking Order 41 Rule 22 of the Code of Civil Procedure which was registered as Civil Order No. 2 of 2012 seeking for interest at the rate of 15% per annum on the decretal amount to mitigate his mental and financial sufferings caused by the irresponsible act of the defendant-appellants.

Eventually, the plaintiff put the decree into execution through Money Execution Case No. 5 of 2011 before the court of Joint District Judge, 5<sup>th</sup> Court, Dhaka for realization of the decretal amount and the appellants as petitioners by filing an application prayed for staying operation of the said execution proceedings and a separate Rule being

Civil Rule No. 171(F) of 2012 was issued on 28.2.2012 by this Court. By the aforesaid Rule issuing order dated 28.2.2012 further proceedings of Money Execution Case No. 5 of 2011 of the Court of Joint District Judge, 5<sup>th</sup> Court, Dhaka was stayed till disposal of the instant First Appeal subject to payment of Tk.1,00,000/- (one lac) only from the decretal amount to the plaintiff.

Mr. Mahabub Ali, the learned Advocate appearing with Mr. Sagir Anowar and Mr. Mahbubur Rahman on behalf of the appellants having placed the impugned judgment and other materials on record submits that the trial court below committed error of law and facts and without applying its judicial mind passed the impugned judgment and thereby decreed the suit which is liable to be set aside.

The learned Advocate for the appellants submits further that the trial court failed to consider the minutes of 26<sup>th</sup> Board Meeting of the Company that there was no agenda for fixation of remuneration of the plaintiff and the plaintiff being the then Managing Director of the Company fraudulently noted his salary and other facilities with retrospective effect in the heading of miscellaneous agenda and as such the impugned judgment and decree of the trial court below should be set aside.

The learned Advocate for the appellants lastly submits that the trial court failed to consider a circular date 18.7.2001 issued by the Insurance Directorate, People's Republic of Bangladesh in which qualification of

Managing Director of an Insurance Company was embodied and the Managing Director must have aged between 40 to 65 and in the instant case the age of the plaintiff was about 70 years at the relevant time and he was not legally entitled to hold the post of Managing Director of the defendants-company, thus he is not entitled to get benefit as a Managing Director of the Company.

Mr. Mohammad Golam Kibria, the respondent appearing in person, on the other hand having supported the judgment and decree of the trial court below and having placed other materials on record particularly minutes of 26<sup>th</sup> Board Meeting of the Company (exhibit-1) submits that he served as the Managing Director of the defendant-company from its inception and no salary for him was fixed, upon repeated request, in the 26<sup>th</sup> Meeting of Board of Directors the salary and the house rent of the plaintiff were settled with retrospective effect and the trial court having considered all the exhibited documents produced before him has rightly arrived at a finding that the plaintiff admittedly acted as a Managing Director of the defendants-company and he is entitled to get his arrear on the basis of decision of Board Meeting of the Company.

Mr. Kibria, submits further that there is nothing to disturb the finding of fact of the trial court on the question of arrear salary of him and as such the appeal should be dismissed with costs.



Mr. Kibria, lastly submits that the trial court should have allowed the interest at the rate of 15% per annum on the decretal amount till realization thereof and as such he filed a Memorandum of cross-objection invoking under Order 41 Rule 22 of the Code for seeking an order of 15% interest per annum on the decretal amount and this court for ends of justice and equity should allow such interest in favour of him to mitigate his mental and financial sufferings caused by the irresponsible act of the defendants.

Now to deal with the contentions raised by the learned Advocates of the contending parties we feel it necessary to decide first whether the impugned judgment and decree of the trial court below is liable to be interfered with. For coming to appropriate decision about sustainability of the impugned judgment and decree we need to assess and examine the evidence on record.

The plaintiff testified in support of his claim and reiterated the facts of the plaint and in his cross-examination he did not disclose any incriminating material, besides the plaintiff produced series of documents including the minutes of 26<sup>th</sup> Board Meeting of the defendant-company and the statement of his salary issued by the defendant-company which were marked as exhibits 1 to 9 in the suit.

On the other hand, Mir. Sarafat Ali as the Assistant Manager, Finance of the defendant No.1-Company deposed on behalf of the defendants as D.W.1 stating that the defendant No.1-Company was

registered on 24.08.2000 with the Joint Stock Companies and got approval on 28.9.2000 from the Chief Controller of Insurance. He also stated that the plaintiff was the Managing Director of the defendant No.1-Company. This D.W.1 in cross-examination stated that: “মিসলিনিয়াস ৮ নং এ সিদ্ধান্ত হয় গোলাম কিবরিয়া বেতন ভাতা ও সুযোগ সুবিধার বিষয় । ৮ এর (i) এর প্যারা সঠিক আছে।”

We have heard the learned Advocates of the appellants and Mr. Mohammad Golam Kibria (respondent) appearing in person on his behalf, perused the evidence on record including the judgment of the trial court wherefrom it transpires that the defendants-company contested the suit contending inter alia that in the 26<sup>th</sup> meeting of the Board of Directors held on 15.3.2004 there was specific 7(seven) agenda but no agenda of fixation of remuneration of the plaintiff was there and the plaintiff being the then Managing Director of the defendants-company by misusing his power fixed his remuneration at the rate of Tk.40,000/- as basic salary and Tk.20,000/- as house rent per month to be paid from the month of September, 2000 as arrear basis in the heading of miscellaneous agenda of the meeting and as such the plaintiff is not entitled to get decree as prayed for as arrear of his salary.

We have carefully examined the minutes of 26<sup>th</sup> Board Meeting of the appellants company as produced by the plaintiff as exhibit-1 and have found that the said meeting was presided over by the Chairman of the Company (defendant No. 3) and its 11 Directors were present in the

meeting and 4 (four) decisions were taken including fixation of remuneration of the plaintiff in its miscellaneous agenda which are quoted below:

No. 8 Miscellaneous.

Under this item the following decisions were taken:

(i) *The long pending matter of fixation of the remuneration of Mr. Mohammad Golam Kibria, the incumbent Managing Director of the company, was taken up. After discussion the meeting fixed his remuneration at Tk.40, 000/- as basic salary and Tk.20, 000/- as house rent per month to be paid from the month of September, 2000. He will use the car during his leave.*

(ii).....

(iii).....

(iv).....

There being no other subject for consideration, the meeting was adjourned with a vote of thanks to the chair.

Sd/Illegible

(Muzaffar Hossain Paltu)

Chairman of the meeting and the Board of

Directors of Union insurance Co. Ltd.

15.03.2004

It also reveals that D.W.1 did not controvert or deny the authenticity of the minutes of 26<sup>th</sup> meeting of the Board of Directors of the defendants-company and the company did not deny about service of the plaintiff in the company from its inception i.e. from September, 2000 up to July 5, 2004 as the Managing Director of the Company. It is apparent from the minutes of 26<sup>th</sup> meeting of the Board of Directions of

the defendant-company that the company made delay in fixing the remuneration of the plaintiff.

The D.W. 1 in his deposition stated that “অত্র মামলার বাদী মোঃ গোলাম কিবরিয়া কোম্পানীর একজন ডাইরেক্টর ছিলেন এবং এম, ডি হিসাব দায়িত্ব ছিল। মেমোরান্ডাম অব আর্টিকেল এর ১ নং ক্রমিকে বাদী উদ্ভাঙ্গা পরিচালক ছিলেন।” In cross-examination this D.W. 1 stated that “মিসলিনিয়াস ৮ নং এ সিদ্ধান্ত হয় গোলাম কিবরিয়া বেতন ভাতা ও সুযোগ সুবিধার বিষয় ৮এর (i) এর প্যারা সঠিক আছে।”

So, the Board of Directors of the appellant No.1- Company in its 26<sup>th</sup> meeting held on 15<sup>th</sup> March, 2004 by a resolution fixed the salary of the respondent at the rate of Tk.40,000/- and house rent at the rate of Tk.20,000/- total remuneration being Tk.60,000/- per month, effective from September, 2000 is proved (exhibit-1). It is also proved that the respondent served the appellant-company as the Managing Director of the Company from September, 2000 up to 5<sup>th</sup> July, 2004 and the plaintiff received a total amount of TK. 21,17,826/-from the company at different times up to October, 2005 as found from a letter dated 15.11.2005 issued by the appellants company (Exhibit-2).

But the plaintiff was entitled to get the salary and the house rent a total of Tk.27,69,676/- during his service period i.e. 46 months 5 days. Now the plaintiff-respondent is entitled to get Tk.27,69,761-21,17,826= Tk.6,51,850/- from the appellants -company as arrear salary and benefit.

On scrutiny of the materials on record we find that the learned Joint District Judge passed a well reasoned judgment applying his judicial mind to the materials placed before him.

On scrutiny of the judgment, decree and other evidence on record particularly the minutes of 26<sup>th</sup> Board Meeting of the respondent-company, exhibit-1 and the statement of salary issued by the appellant-company, exhibit -2 we also find that the judgment and decree of the trial court in no way can be interfered by this Court.

In this connection it may be pointed out that when the D.W.1 admitted that the plaintiff-respondent held the post of Managing Director of the defendant-company, in the same voice the defendant-appellants cannot say the appointment and the performance of the plaintiff-respondent as the Managing Director of the Company was illegal. It is also pertinent to point out that during service of the respondent the appellant-company did not raise any question about the age of the respondent but when he left his office and filed the suit for realization of his arrear, the appellant-company for the first time raised this question which is beyond the canons of equity and justice and judicial ethics as well. Moreover, the circular of the Directorate of Insurance dated 18.7.2001 imposing restriction about age of the Managing Director of Insurance Company was issued after joining of the plaintiff as the Managing Director of the defendant-company and hence the same is of no avail.

Now the question is whether the respondent is entitled to get interest at the rate of 15% per annum on the decretal amount as claimed by the respondent in a cross-objection invoking Order 41 Rule 22 of the Code of Civil Procedure. We have noticed that the respondent filed money suit as back as in the year 2006 for realization of arrear salary and benefit and the suit was decreed in the year 2011 and the paper book of the instant First Appeal had been prepared at the cost of the respondent although it ought to have been done by the appellants and as such we feel it proper and equitable to grant interest at the rate of Taka 10% per annum for the balance decretal amount in favour of the respondent from the date of pronouncement of this judgment till realization thereof.

In view of what has been stated above, we do not find merit in this appeal. Accordingly, the appeal is dismissed with cost of Tk. 50,000/- (fifty thousand) as condition precedent and the connected Civil Rule No. 171(F) of 2012 and the Civil Order No. 2 of 2012 are also disposed of accordingly.

Send copy of this judgment to the court concerned along with lower court record at once for proceeding with execution case in accordance with law.

**Nozrul Islam Chowdhury, J:**

**I agree.**