

17 SCOB [2023] HCD 168

**HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)**

Writ Petition No. 2869 of 2020

Md. Shahin Ikbal

.....Petitioner

Vs.

**General Certificate Officer, Office of
the Deputy Commissioner, Rajshahi
District, Rajshahi and others**

.....Respondents

**Mr. Dewan Md. Abu Obyed Hossain,
Advocate**

...for the Petitioner

**Mr. Shamim Khaled Ahmed with
Mr. M. Mohiuddin Yousuf, Advocates**

...for the Respondent No. 3

Heard on: 15.09.2021 and 03.11.2021

Judgment on: 05.01.2022

Present:

Mr. Justice Abu Taher Md. Saifur Rahman

And

Mr. Justice Md. Zakir Hossain

Editors' Note:

For a defaulted loan of 250,000/- taka a certificate case was instituted against the petitioner-certificate-debtor and he was ordered to pay Tk. 5000/- per month as repayment of loan on 05.02.2008. Thereafter, as per order of the Certificate Officer, the certificate debtor deposited entire amount of the certificate in deferent installments. The Certificate Officer on 01.02.2016 wanted to know from the certificate holder about the outstanding dues of the certificate debtor. The certificate holder informed in reply that till then Tk. 5,07,766.00 was outstanding. In the above backdrop, challenging the legality and propriety of the certificate proceeding, the petitioner rushed to the High Court Division and obtained the Rule and stay. High Court Division found that as per section 5(5) of the Artha Rin Adalat Ain 2003 the certificate proceeding does not suffer from jurisdictional defect raised by the petitioner but the Certificate Officer without any objective satisfaction and only on the basis of improperly filed requisition letter and without considering as to whether the entire outstanding dues as claimed by the respondent-Bank is actually due at the relevant time, started certificate proceeding which is illegal. Consequently, the Court quashed the certificate proceeding.

Key Words:

Section 4, 6, 16 of the Public Demands Recovery Act, 1913; Section 5(5) of the Artha Rin Adalat Ain, 2003; Certificate proceeding; Certificate Officer; Writ of certiorari; Calculation of interest;

Section 5(5) of the Artha Rin Adalat Ain, 2003:

On meticulous and meaningful reading of the aforesaid provision of the Ain, 2003, it is as clear as day light that the legislature has consciously given option for shopping the forum either to file Artha Rin Suit or Certificate Case for speedy realization of the outstanding amount which does not exceed Tk. 5 lacs. The jurisdiction of the Certificate Officer is in addition but not in derogation to the jurisdiction of the Artha Rin Adalat;

therefore, the certificate proceeding does not suffer from jurisdictional defect raised by the petitioner. Consequently, the issue stands decided in the negative. (Para 16)

Section 4, 6 and 16 of the Public Demands Recovery Act, 1913:

Section 16 of the PDR Act refers to interest, costs and charge which are recoverable in respect of every certificate which has been filed under section 4 or section 6. In other words, these include the amounts which are leviable from time to time in respect of the certificate after it has been filed. It should be noted that upto the stage of filing of a certificate under section 4 or 6 whatever sums become due are entered in the certificate, and they are-

- (i) actual amount due,
- (ii) interest, if any, from the date when the amount becomes due to the date of filing of the certificate (the inclusion of the interest shall be done by the Requiring Officer or the Department concerned), and amount of ad-valorem court-fees paid (this is in respect of certificate filed under section 6).

Clause (a) of section 16 refers to interest leviable on the demands in the certificate calculated at the rate of $6\frac{1}{4}$ % from the date of signing of the certificate to the date of realization i.e., the actual recovery of the demands. (Para 19)

Section 16 of the Public Demands Recovery Act, 1913:

By and large after filing the Certificate Case, the calculation of interest has to be made in accordance with section 16 of the PDR Act. If the contention of the respondent-Bank is accepted that the interest and charges are recoverable on the certificate amount upto the date of realization as per the mandate of section 16 of the PDR Act, then it would be safely concluded that the interest imposed during the pendency of the Certificate Case was also unlawful and unjustified. (Para 25)

Sections 5 and 6 of the Public Demands Recovery Act, 1913:

Duty of the Certificate Officer:

Before starting Certificate Case, it is the duty of the Certificate Officer to see as to whether the requisition is filed in a prescribed form under section 5 of the PDR Act and whether the provision of section 6 of the PDR Act has been complied with. In this case, the Certificate Officer without any objective satisfaction and only on the basis of improperly filed requisition letter and without considering as to whether the entire outstanding dues as claimed by the respondent-Bank is actually due at the relevant time, the Certificate Officer started certificate proceeding. Prescribed Form means the forms appended in the PDR Act. The Schedule-II, Rule 84 prescribes the various forms. Form No. 1 clearly spells out that the Certificate Officer has to give certificate that the amount stated in the requisition letter is recoverable and is recovered by suit is not barred by law. (Para 28, 29)

It is true that a certificate tantamounts to decree. It cannot be denied that the Certificate Officer's position is like an Executing Court for enforcing the decree of the Civil Court. (Para 30)

When Executing Court can go behind the decree:

The *ratio* that Executing Court cannot go behind the decree is not absolute. It has got four exceptions; the Executing Court may refuse to execute the decree, if it is found that

the decree was passed by the Court having no jurisdiction or it is made against dead man or the decree is tainted with apparent fraud. (Para 32)

Interest should be imposed as per law:

It cannot be denied that during the pendency of the execution case, the lender Bank or FIs may impose interest, but that interest should be as per law. But the interest, costs and other incidental expenses incurred during the execution proceeding is the discretion of the presiding officer, who presides over certificate proceedings and such discretion has also to be exercised judiciously, carefully, cautiously and not whimsically. (Para 34)

A writ of certiorari is available in case of violation of the principles of natural justice or where there is an error of law apparent on the face of record:

A writ of certiorari controls all courts, tribunals, and other authorities when they purport to act without jurisdiction, or in excess of it. It is also available in case of violation of the principles of natural justice or where there is an error of law apparent on the face of record. If the Court or executing authority does not perform its obligation in accordance with law, the writ of certiorari may be invoked. In the meantime 12 years have already been elapsed, if this small borrower goes for appeal or revision as embodied in PDR Act itself, it may take another 12 years and it will not yield him any positive, effective and speedy result. Moreover, without being any final decision by the Certificate Officer, it would not possible to take resort of Appeal. Therefore, we hold our view that the writ of certiorari is an appropriate and efficacious remedy in this case in hand. Since the starting of certificate proceeding is not in accordance with law; therefore, the entire proceeding is liable to be quashed to secure the ends of justice.

(Para 35)

Section 45 and 49 of the Bank Company Ain, 1991:

Experience shows that the calculation of interest is a very challenging job and at times, we find that the Bank officials are not so vigilant and not so diligent in calculating interest; therefore, Bangladesh Bank should exercise its power as embodied under section 45 and 49 of the Bank Company Ain, 1991 to inspect the case as to the calculation of interest by FIs at least on random basis. Bangladesh Bank should examine as to whether the interest calculated is in accordance with law or not. Mere denial or no objection as to calculation of interest by the borrower does not *ipso facto* give validity of the statement as to interest. (Para 36)

JUDGMENT

Md. Zakir Hossain, J:

1. At the instance of the petitioner, the Rule Nisi was issued calling upon the respondents to show cause as to why the proceedings of the Certificate Case No. 80 of 2006-2007 (Agrani) now pending before the General Certificate Officer, Rajshahi (Respondent No. 1) after adjustment of certificate claim by the petitioner should not be declared to have been made without lawful authority and is of no legal effect and as to why the respondent No. 3 should not be directed to determine how much actual amount is payable by the petitioner to respondent No. 3 in Certificate Case No. 80 of 2006-2007 and/or pass such other or further order or orders as to this Court may seem fit and proper.

2. At the time of issuance of the Rule, this Court was further pleased to stay the operation of the proceedings of the Certificate Case No. 80 of 2006-2007 for a period of 3(three) months, later on it has been extended for a further period of 3(three) months.

3. Facts leading to the issuance of the Rule are, in brief, as follows:

The respondent No. 3, Agrani Bank Ltd., in short 'the Bank', filed a requisition to the General Certificate Officer, Rajshahi on 14.08.2007 for realizing of Tk. 4,16,756.00 including the Court fees of Tk. 9,572.00. On the basis of the requisition submitted by Manager of the Bank, Wapda Branch, Boalia, Rajshahi, the Certificate Officer filled up the prescribed form as appended to the rules by her order dated 09.01.2020 and on the basis of the filled up requisition, the concerned General Certificate Officer started Certificate Case No. 80 of 2006-2007 by its order being No. 1, dated 12.09.2007 against the petitioner.

4. The certificate debtor, the instant petitioner received Tk. 2,50,000.00 as Cash Credit (Hypo) loan for running furniture business from the Bank on 28.08.2005 and the period of repayment of loan money has been expired on 27.08.2006 and the certificate debtor i.e. the borrower failed to repay the loan. Thereafter, the certificate holder i.e. the Bank issued a notice to through its appointed lawyer and having received the same, the certificate debtor did not pay heed to this. After that, the certificate holder i.e. the Bank filed requisition for realizing Tk. 4,16,756.00. Being satisfied with the requisition, the General Certificate Officer started the aforesaid proceeding and issued notice upon the certificate debtor. Having received the notice issued under section 7 of the Public Demands Recovery Act, 1913 (the PDR Act), the certificate debtor entered appearance in the certificate proceeding and prayed for depositing the certificated amount by way of installment Tk. 10,000.00 per month and having considered the petition of the certificate debtor, the General Certificate Officer was pleased to allow the certificate debtor for depositing Tk. 5,000.00 *per mensem* by her order being No. 04 dated 05.02.2008 and thereafter, as per order of the Certificate Officer, the certificate debtor deposited entire amount of the certificate in deferent installments. Thereafter, the Certificate Officer by his/her order 69, dated 01.02.2016 wanted to know the certificate holder that what amount of the certificate debtor is still outstanding. Having received the order of the Certificate Officer, the certificate holder informed the Certificate Officer that till then Tk. 5,07,766.00 was outstanding. In the above backdrop, challenging the legality and propriety of the certificate proceeding, the petitioner rushed to this Court and moved the aforesaid petition and obtained the Rule and stay therewith.

5. Mr. Dewan Md. Abu Obyed Hossain, the learned Advocate appearing on behalf of the petitioner, took us through the writ petition, affidavit-in-opposition and the relevant laws involved in this case and submits that the Artha Rin Adalat has got an exclusive jurisdiction to try the claim of the Financial Institutions, in short 'the FIs', including the Bank; therefore, the Certificate Officer has got no jurisdiction to entertain any certificate proceeding against the petitioner. He further contends that the Artha Rin Adalat Ain, 2003 in short the Ain, 2003 is a special law and obviously it will get primacy over the PDR Act. He also contends that if there is a conflict arises between the two special laws, obviously the latter shall get primacy.

6. He next submits that the calculation of the interest is absolutely illegal and beyond the purview of the loan sanction letter and the existing law of the land. He further contends that without thorough examination of the requisition letter of the Bank Manager, the Certificate Officer started certificate proceeding flouting the provision of the PDR Act; therefore, the same is liable to be turned down to secure the ends of justice, otherwise it will entail serious

loss to the poor petitioner, who by mortgaging his only homestead took Tk. 2,50,000.00 in different times for running his small furniture business.

7. He further submits that the calculation of the interest made by the Bank palpably repugnant to the sanctioned letter. He next submits that the respondent-Bank admitted that in the meantime, the petitioner paid Tk. 6,83,756.00 and therefore, the continuation of the certificate proceeding is nothing but abuse of law. He further submits that certificate tantamounts to decree of the Civil Court, but on perusal of the entire order sheets, it would be as clear as day light that almost half of the dozens of the Certificate Officers dealt with the aforesaid Certificate Case, but none exercised his/her judicial discretion and conscience to dispose of the Certificate Case and thereby the very purpose of more than century old PDR Act has been frustrated. He further submits that the very initiation of certificate proceeding is absolutely contrary to the provision of the PDR Act. He further submits that the certificate holder-Bank in order to grasp the homestead of the petitioner put undue pressure upon the petitioner and took various devices by lapse of one year from the date of disbursement of loan money of Tk. 2,50,000.00. He further submits that in no circumstances, the Bank cannot claim more than 200% of the principal amount in view of section 47 of the Ain, 2003. Finally, he submits that the small entrepreneur cannot continue its business due to holding like the leech by Bank and other FIs and thereby, the borrower by lapse of time became destitute.

8. Per contra, Mr. Shamim Khaled Ahmed, the learned Senior Advocate along with Mr. M. Mohiuddin Yousuf, appearing on behalf of the respondent-Bank, submits that since the petitioner has got alternative remedy within the bounds of the PDR Act; therefore, the Writ Petition is not maintainable and as such, the Rule is liable to be discharged.

9. He further submits that any order passed by the Certificate Officer is appealable; therefore, this Court has got no jurisdiction to entertain the instant writ petition in order to settle down the disputed question of facts. He next submits that the respondent-Bank filed the said Certificate Case for realization of the principal amount of Tk. 2,50,000.00 along with interest and charges in view of section 16 of the PDR Act. He further submits that the calculation of the interest and charge made by the Bank shall presume to be correct, who will say it is incorrect heavy burden lies upon him and since the petitioner did not raise any objection as to calculation made by the Bank, cannot be agitated in the writ Court.

10. Mr. Ahmed next submits that in view of the *proviso* of sub-section 5 of section 5 of the Ain, 2003, the Certificate Officer can start certificate proceeding to recover the outstanding dues of the Bank or FIs as mentioned therein; therefore, the contention of the petitioner that the Certificate Officer has got no jurisdiction to entertain the certificate proceeding.

11. Taking thread from paragraph No. 12 of affidavit-in-opposition dated 12.09.2021, he further submits that as per section 16 of the PDR Act, interest and charge are recoverable on the certificate amount upto the date of realization; therefore, the certificate debtor is in no way escape from the liability to pay the accrued interest during the pendency of the certificate proceeding and in support of his contention, he relies on the decision of the case of *M/s. R. B. H. M. Jute Mills, Katihar and others v. Certificate Officer, Katihar and others*, reported in AIR 1967 SC 400 para 2 and *M/s. Khardah Co. Ltd. v. State of West Bengal and others* reported in AIR 1969 Cal. 184 para 2.

12. He further submits that section 47 of the Ain, 2003 has no manner of application in an execution proceedings filed under the PDR Act. In support of his contention he relies on the case of *Bangladesh House Building Finance Corporation and another v. Amena Khatun and another* reported in 12 ADC 336 para 6.

13. In order to fortify his submission, Mr. Ahmed banked on the decisions of the case of *Rupali Bank Ltd. v. Md. Shamsur Ali and others* reported in 69 DLR (AD) 366 and *Rajib Traders v. Artha Rin Adalat as well as Joint District Judge, Additional Court, Jessore and another* reported in 68 DLR (AD)10.

Now the moot issues are-

- (i) whether the writ petition is maintainable challenging the legality of the certificate proceeding;
- (ii) whether the Certificate Officer is entitled to entertain Certificate Case for realizing the outstanding dues of the respondent Bank;
- (iii) whether the impugned Certificate Case was duly filed following the procedures as laid down under section 5 and 6 of the PDR Act;
- (iv) whether the interest calculated by the respondent-Bank was made in accordance with law and if so whether the calculation of interest is correct;
- (v) whether the certificate proceeding is liable to be quashed.

14. We have perused the entire materials on record and the submission advanced by the learned Advocates of the parties and the legal position intricately involved in this case with great care and attention and seriousness as it deserves in order to give answer to the aforesaid issues.

15. All of the issues are intricately related to each other; therefore, they are taken up together for final and complete adjudication of the dispute arisen in the case.

Section 5(5) of the Ain, 2003 may be read as follows:

(৫) *The Public Demands Recovery Act, 1913 (Act No. III of 1913)* এর বিধানে যাহা কিছুই থাকুক না কেন, এই আইনের অধীন অর্থ ঋণ আদালত কর্তৃক আদায়যোগ্য ঋণ “সরকারী পাওনা” হইলেও উহা আদায়ার্থ মামলা এই আইনের অধীন আদালতেই দায়ের করিতে হইবে:

তবে শর্ত থাকে যে, বাংলাদেশ কৃষি ব্যাংক, রাজশাহী কৃষি উন্নয়ন ব্যাংক ও রাষ্ট্রীয় মালিকানাধীন অন্যান্য আর্থিক প্রতিষ্ঠান কর্তৃক অনূর্ধ্ব ৫,০০,০০০ টাকার (পাঁচ লক্ষ টাকা) দাবী সম্বলিত মামলাসমূহ অর্থ ঋণ আদালতে দায়ের না করিয়া *The Public Demands Recovery Act, 1913* এর বিধান অনুযায়ী সার্টিফিকেট মামলা হিসাবেও দায়ের করা যাইবে।

16. On meticulous and meaningful reading of the aforesaid provision of the Ain, 2003, it is as clear as day light that the legislature has consciously given option for shopping the forum either to file Artha Rin Suit or Certificate Case for speedy realization of the outstanding amount which does not exceed Tk. 5 lacs. The jurisdiction of the Certificate Officer is in addition but not in derogation to the jurisdiction of the Artha Rin Adalat; therefore, the certificate proceeding does not suffer from jurisdictional defect raised by the petitioner. Consequently, the issue stands decided in the negative.

17. The Manager of the Bank in his requisition letter dated 14.08.2007 addressing to the General Certificate Officer may be read thus in *verbatim*:

বরাবর

জেনারেল সার্টিফিকেট অফিসার

রাজশাহী।

বিষয়ঃ সার্টিফিকেট মামলা দায়েরের প্রসঙ্গে।

প্রিয় মহোদয়,

শিরোনামে বর্ণিত বিষয়ে অত্র শাখার খেলাপী ঋণ গ্রহীতা প্রতিষ্ঠান মেসার্স শাহীন ফার্নিচার মার্ট/মালিক শাহীন ইকবাল, পিতা- মৃত মোঃ শুকুর উদ্দীন শেখ অত্র শাখা হতে ২৮/০৫/২০০৫ ইং তারিখে ২,৫০,০০০/- (দুই লক্ষ পঞ্চাশ হাজার) টাকা সিসি (হাইপোঃ) ঋণ গ্রহণ করেন। ঋণের মেয়াদ ২৭-০৮-২০০৬ ইং তারিখে উত্তীর্ণ হলেও তিনি ঋণটি পরিশোধ করেন নাই। ইতিমধ্যে তার সংগে ব্যক্তিগতভাবে এবং পত্রের মাধ্যমে তাগাদা দেওয়া হয়েছে। সর্বশেষ ২১-৫-২০০৭ ইং তারিখে উকিল নোটিশ দেওয়া হয়েছে। বর্তমানে ব্যাংকের পাওনা ৪,০৭,১৮৪+৯,৫৭২= ৪,১৬,৭৫৬/- (চার লক্ষ ষোল হাজার সাতশত ছাপ্পান্ন) টাকা।

অতএব, মোঃ শাহীন ইকবাল, পিতা- মৃত মোঃ শুকুর উদ্দীন শেখ-এর নামে সার্টিফিকেট মামলা দায়ের করার জন্য বিশেষভাবে অনুরোধ করা হ'ল।

আপনার বিশ্বস্ত,
মোঃ আজিজুর রহমান
ব্যবস্থাপক
এসপিও এন্ড ম্যানেজার
অগ্রনী ব্যাংক লি.
ওয়াপদা ব্রাঞ্চ, রাজশাহী
(Underlined for emphasis)

18. Having received the requisition, the Certificate Officer filled the prescribed form. In the prescribed form, he stated that the total outstanding is Tk. 4,16,756.00 including *ad valorem* Court fees of Tk. 9,572.00 and thereafter on 12.09.2007, the Certificate Officer took cognizance and started Certificate proceedings so far it relates to the said Certificate Case. Section 5 of the PDR Act may read as follows:

5. (1) *When any public demand payable to any person other than the Collector is due, such person may send to the Certificate-officer a written requisition in the prescribed form:*

Provided that no action shall be taken under this Act, on a requisition made by a land mortgage bank registered or deemed to be registered under the Co-operative Societies Act, 1940, or an assignee of such bank, unless the requisition be countersigned by the Registrar of Co-operative Societies, Bangladesh.

(2) *Every such requisition shall be signed and verified in the prescribed manner, and, except in such cases as may be prescribed, shall be chargeable with the fee of the amount which would be payable under the Court-fees Act, 1870, in respect of a plaint for the recovery of a sum of money equal to that stated in the requisition as being due.*

Section 6 of the PDR Act runs as follows:

6. *On receipt of any such requisition, the Certificate-officer, if he is satisfied that the demand is recoverable and that recovery by suit is not barred by law, may sign a certificate, in the prescribed form, stating that the demand is due; and shall include in the certificate the fee (if any) paid under section 5, sub-section (2); and shall cause the certificate to be filed in his office.*

Schedule II, Rule 1 of the PDR Act may be read thus:

1. *Signature and verification of requisition for certificate: Signature and verification of requisition for certificate-(1) Every requisition made under section 5 shall be signed and verified at the foot by the person making it.*

(2) *The verification shall state that the person signing the requisition has been satisfied by inquiry that the amount stated in the requisition is actually due.*

(3) The verification shall be signed by the person making it and shall state the date on which it is signed.

(Underlined for emphasis)

19. Section 16 of the PDR Act refers to interest, costs and charge which are recoverable in respect of every certificate which has been filed under section 4 or section 6. In other words, these include the amounts which are leviable from time to time in respect of the certificate after it has been filed. It should be noted that upto the stage of filing of a certificate under section 4 or 6 whatever sums become due are entered in the certificate, and they are-

(iii) actual amount due,

(iv) interest, if any, from the date when the amount becomes due to the date of filing of the certificate (the inclusion of the interest shall be done by the Requiring Officer or the Department concerned), and amount of ad-valorem court-fees paid (this is in respect of certificate filed under section 6).

Clause (a) of section 16 refers to interest leviable on the demands in the certificate calculated at the rate of $6\frac{1}{4}\%$ from the date of signing of the certificate to the date of realization i.e., the actual recovery of the demands.

20. In this respect, we may read the provision of section 16 in verbatim:

16. There shall be recoverable, in the proceedings in execution of every certificate filed under this Act-

(a) interest on the public demand to which the certificate relates, at the rate at which interest may, by law, be chargeable on the public demand on the date of the signing of the certificate or at the rate of six and a quarter per centum per annum, whichever is higher, from the date of the signing of the certificate up to the date of realization,

(b) such costs as are directed to be paid under section 45, and

(c) all charges incurred in respect of-

(i) the service of notice under section 7, and of warrants and other processes, and

(ii) all other proceedings taken for realizing the demand.

Section 45 and 46 of the PDR Act may be read thus:

45. Subject to such limitation as may be prescribed, the award of and cost of and incidental to any proceeding under this Act shall be in the discretion of the officer presiding, and he shall have full power to direct by whom and to what extent such costs shall be paid.

(Underlined for emphasis)

46. If the Certificate-officer is satisfied that any requisition under section 5 was made without reasonable cause, he may award to the certificate-debtor such compensation as the Certificate-officer thinks fit;

and the amount so awarded shall be recoverable from the certificate-holder under the procedure provided by this Act for recovery of costs.

Section 47 and 50 of the Ain, 2003 run as follows:

৪৭। (১) বর্তমানে প্রচলিত অন্য কোন আইন বা পক্ষগণের মধ্যে সম্পাদিত সংশ্লিষ্ট চুক্তিতে যাহাই থাকুক না কেন, এই আইনের অধীন মামলা দায়েরের ক্ষেত্রে, কোন আর্থিক প্রতিষ্ঠান কোন ঋণ গ্রহীতাকে প্রদত্ত আসল ঋণের উপর দায় এমনভাবে আরোপ করিয়া আদালতে মামলা দায়ের করিবে না, যাহাতে আদালতে উত্থাপিত উক্ত সমুদয় দাবী আসল ঋণ অপেক্ষা ২০০% (১০০+২০০ = ৩০০ টাকা) এর অধিক হয়।

(২) উপ-ধারা (১) এ বর্ণিত মতে আসল ঋণ অপেক্ষা ২০০% এর অধিক অনুরূপ দাবী আদালত কর্তৃক গ্রহণযোগ্য হইবে না।

(৩) এই ধারার বিধানটি এই আইন বলবৎ হইবার এক বৎসর পর কার্যকর হইবে:

তবে শর্ত থাকে যে, কোন আর্থিক প্রতিষ্ঠান, ইচ্ছা করিলে, এই ধারা কার্যকর হইবার পূর্বেই, এই ধারার বিধান অনুসরণ করিতে পারিবে।

৫০। (১) ধারা ৪৭ এর বিধান সাপেক্ষে, এই আইনের অধীন কোন আদালত, ঋণ প্রদানের দিবস হইতে মামলা দায়েরের দিবস পর্যন্ত সময়কালে কোন ঋণের উপর আর্থিক প্রতিষ্ঠান কর্তৃক আইনানুগভাবে ধার্যকৃত সুদ, বা, ক্ষেত্রমত, মুনাফা বা ভাড়া হ্রাস, মাফ বা নামঞ্জুর করিতে পারিবে না।

(২) অর্থ ঋণ আদালত কর্তৃক প্রদত্ত ডিক্রীর বিরুদ্ধে বিবাদী-দায়িক পক্ষ কোন আপীল, রিভিশন, আপীল বিভাগে আপীল বা অন্য কোনরূপ দরখাস্ত কোন উচ্চতর আদালতে দায়ের না করিলে, মামলা দায়েরের দিবস হইতে ডিক্রীর টাকা আদায় হইবার দিবস পর্যন্ত সময়ের জন্য ডিক্রীকৃত টাকার উপর ১২% (বার শতাংশ) বার্ষিক সরল হারে, কোন আপীল, রিভিশন বা অন্য কোন দরখাস্ত কোন উচ্চতর আদালতে দায়ের করিলে পূর্বোক্ত সময়কালের জন্য ১৬% (ষোল শতাংশ) বার্ষিক সরল হারে, এবং আপীল বা উচ্চতর আদালতের ডিক্রী বা আদেশের বিরুদ্ধে আপীল বিভাগে আপীল করিলে, পূর্বোক্ত সময়কালের জন্য ১৮% (আঠার শতাংশ) বার্ষিক সরল হারে, উপ-ধারা (৩) এর বিধান সাপেক্ষে, সুদ, বা, ক্ষেত্রমত, মুনাফা আরোপিত হইবে।

(৩) উপ-ধারা (২) এর বিধান সত্ত্বেও উচ্চতর আদালত আপীল, রিভিশন, আপীল বিভাগে আপীল বা অন্য কোন দরখাস্তে আপীলকৃত বা বিতর্কিত ডিক্রী বা আদেশের গুণগত পরিবর্তন করিয়া কোন আদেশ বা ডিক্রী প্রদান করিলে, উক্ত আদালত, উপরি-উল্লিখিত সংশ্লিষ্ট বর্ণিত সুদ বা মুনাফার হার আপীল বা দরখাস্তকারীর ক্ষেত্রে প্রযোজ্য হইবে না মর্মে আদেশ প্রদান করিতে পারিবে।

(৪) এই ধারার পূর্ববর্তী উপ-ধারাসমূহে ভিন্নতর যাহা কিছুই থাকুক না কেন, ধারা ৪১ ও ৪২ এর বিধান অনুযায়ী বিবাদী-দায়িক কর্তৃক নির্ধারিত পরিমাণ টাকা বা, ক্ষেত্রমত, জামানত জমা করিয়া উচ্চতর আদালতে আপীল বা রিভিশন দায়ের করিবার সুযোগ থাকা সত্ত্বেও যদি কোন বিবাদী-দায়িক অনুরূপ নির্ধারিত পরিমাণ টাকা বা, ক্ষেত্রমত, জামানত জমা না করিয়া নিম্ন আদালতের আদেশ বা ডিক্রীকে প্রত্যক্ষ বা পরোক্ষভাবে তর্কিত করিয়া হাইকোর্ট বিভাগে রীট আবেদন দায়ের করেন এবং উক্ত রীট আবেদন হাইকোর্ট বিভাগ বা আপীল বিভাগ কর্তৃক খারিজ হয়, তাহা হইলে উপ-ধারা (২) এ উল্লিখিত সময়ের জন্য ২৫% বার্ষিক সরল হারে সুদ বা, ক্ষেত্রমত, মুনাফা আরোপিত হইবে।

21. Apparently, the interest calculated by the Bank is found to be illegal and unreasonable for a prudent man; therefore, we have tried with all our might and main to find out the actual interest before starting the Certificate Case. It appears from the record that the certificate proceeding has been started before 14 days of conclusion of two years from the date of disbursement of loan. Admittedly, on perusal of the sanctioned letter (Annexure-2 to the supplementary Affidavit), it appears that the total loan limit is Tk. 2,50,000.00 cash credit hypo with 12% interest, but it can be increased time to time. It appears from Bank Statement that during 28.08.2005 to 30.09.2007, the Bank admittedly imposed 12% interest (Annexure-4).

22. It cannot be denied that CC (Hypo) loan has not been disbursed at a time. But in several dates, Tk. 2,50,000.00 was disbursed. For the sake of argument, if it is taken as granted that the entire amount was disbursed on 28.08.2005; nevertheless, the calculation of interest as shown in the requisition letter is absolutely illegal. The principal amount is admittedly Tk. 2,50,000.00. From 28.08.2005 to 31.12.2005 total 126 days and within 126 days the interest stands at Tk. 10,500.00. From 01.01.2006 to 31.12.2006 total 365 days i.e. within 365 days the interest stands at Tk. 30,000.00 and from 01.01.2007 to 14.08.2007, total

126 days and accordingly, within 126 days the interest stands at Tk. 10,500.00. The total interest is Tk. 51,000.00. If the interest is added with the principal amount that will be Tk. (2,50,000+51,000)= 3,01,000.00; but unfortunately, the Manager of the Bank by his requisition letter (Annexure-A) dated 14.08.2007 claimed Tk. 4,07,184.00 and with Tk. 9,572.00 as Court fees. The Manager of the Bank claimed more money almost Tk. (4,07,184-3,01,000) = 1,06,184.00 which was not due at the relevant time and accordingly, more Court fee was paid which the Bank was not supposed to pay as if to make free with another's money. Since the borrower has to pay the Court fees; therefore, he did not care about this. The requisition letter itself is vague, indefinite and unspecified; rather it is a lumpsum calculation resulting in gross illegality.

23. Now, it is crystal clear that the amount claimed by the Bank was not due at the relevant time but the Certificate Officer without exercising its conscience started the Certificate Case which is unfortunate.

24. After filing the Certificate Case, the Bank imposes highest interest as to the quantum of 14.50% and accordingly, the interest calculated (Annexure-4) may be looked into for better appreciation:

ক্রমিক নং	সময়কাল	সুদের হার	মন্তব্য
(ক)	(খ)	(গ)	(ঘ)
১	২৮/০৮/২০০৫ ইং হইতে ৩০/০৯/২০০৭ ইং পর্যন্ত	১২%	
২	০১/১০/২০০৭ ইং হইতে ৩১/০৩/২০১১ ইং পর্যন্ত	১৪.৫০%	
৩	০১/০৪/২০১১ ইং হইতে ১৮/১০/২০১১ ইং পর্যন্ত	১৪%	
৪	১৯/১০/২০১১ ইং হইতে ২২/১১/২০১১ ইং পর্যন্ত	১২%	
৫	২৩/১১/২০১১ ইং হইতে ৩০/০৯/২০১৪ ইং পর্যন্ত	১৬%	
৬	০১/১০/২০১৪ ইং হইতে ৩১/১২/২০১৫ ইং পর্যন্ত	১৫%	
৭	০১/০১/২০১৬ ইং হইতে ৩১/০৩/২০১৭ ইং পর্যন্ত	১৪%	
৮	০১/০৪/২০১৭ ইং হইতে ৩০/০৯/২০১৭ ইং পর্যন্ত	১২%	
৯	০১/১০/২০১৭ ইং হইতে ৩১/১২/২০১৭ ইং পর্যন্ত	১১%	
১০	০১/০১/২০১৮ ইং হইতে ৩১/০৩/২০১৮ ইং পর্যন্ত	১২%	
১১	০১/০৪/২০১৮ ইং হইতে ৩০/০৯/২০১৯ ইং পর্যন্ত	৯%	

25. By and large after filing the Certificate Case, the calculation of interest has to be made in accordance with section 16 of the PDR Act. If the contention of the respondent-Bank is accepted that the interest and charges are recoverable on the certificate amount upto the date of realization as per the mandate of section 16 of the PDR Act, then it would be safely concluded that the interest imposed during the pendency of the Certificate Case was also unlawful and unjustified.

26. In the Certificate Case, the Certificate Officers passed as many as 105 orders till 13.11.2019. On perusal of the entire order sheets, it transpires that the Certificate Officer allowed the certificate debtor to deposit the certificated amount by installment and accordingly, he deposited more money for which certificate was issued. In this Case, during the tenure of more than 12(twelve) years a considerable number of Certificate Officers took over the charge of dealing with the aforesaid Certificate Case, but they failed to conceive the very purpose of the PDR Act. They did not take positive step in order to dispose of the Certificate Case with utmost sincerity, may be due to lack of their adequate knowledge regarding more than century old PDR Act and Rules therewith.

27. Within the four walls of the order sheets, we do not find that none of the Certificate Officer attempted to dispose of the Certificate Case in accordance with section 14 of the PDR Act; rather she or he kept it pending for indefinite period.

28. Now, we see another aspect of this case that before starting Certificate Case, it is the duty of the Certificate Officer to see as to whether the requisition is filed in a prescribed form under section 5 of the PDR Act and whether the provision of section 6 of the PDR Act has been complied with. In this case, the Certificate Officer without any objective satisfaction and only on the basis of improperly filed requisition letter and without considering as to whether the entire outstanding dues as claimed by the respondent-Bank is actually due at the relevant time, the Certificate Officer started certificate proceeding.

29. Prescribed Form means the forms appended in the PDR Act. The Schedule-II, Rule 84 prescribes the various forms. Form No. 1 clearly spells out that the Certificate Officer has to give certificate that the amount stated in the requisition letter is recoverable and is recovered by suit is not barred by law.

30. It is true that a certificate tantamounts to decree. It cannot be denied that the Certificate Officer's position is like an Executing Court for enforcing the decree of the Civil Court.

31. In the case of *Kalipada Ray v. Mukunda Lal Ray*, reported in 34 CWN 131, it was observed as follows:

"A certificate under the Public Demands Recovery Act is considered as equivalent to a decree of a Civil Court. A decree in the form in which the certificate was issued if made by a Civil Court must undoubtedly be held not binding on the minors whose interest is sought to be affected by it. In the case of minors there is a provision in the Public Demands Recovery Act, which has been held a complete code in itself a point to which the Civil Procedure Code has been made applicable."

32. The *ratio* that Executing Court cannot go behind the decree is not absolute. It has got four exceptions; the Executing Court may refuse to execute the decree, if it is found that the decree was passed by the Court having no jurisdiction or it is made against dead man or the decree is tainted with apparent fraud.

33. For better appreciation and understanding, we should meaningfully go through the section 14 of the PDR Act, which runs as follows:

14. Subject to such conditions and limitations as may be prescribed, a Certificate-officer may order execution of a certificate-

(a) by attachment and sale, or by sale (without previous attachment), of any property, or

(b) by attachment of any decree, or

(c) by arresting the Certificate-debtor and detaining him in the civil prison, or

(d) by any two or all of the methods mentioned in clauses (a), (b) and (c).

Explanation to clause (d).-The Certificate-officer may, in his discretion, refuse execution at the same time against the person and property of the certificate-debtor.

34. It cannot be denied that during the pendency of the execution case, the lender Bank or FIs may impose interest, but that interest should be as per law. But the interest, costs and other incidental expenses incurred during the execution proceeding is the discretion of the presiding officer, who presides over certificate proceedings and such discretion has also to be exercised judiciously, carefully, cautiously and not whimsically.

35. It cannot be denied that a writ of certiorari controls all courts, tribunals, and other authorities when they purport to act without jurisdiction, or in excess of it. It is also available in case of violation of the principles of natural justice or where there is an error of law apparent on the face of record. If the Court or executing authority does not perform its obligation in accordance with law, the writ of certiorari may be invoked. In the meantime 12 years have already been elapsed, if this small borrower goes for appeal or revision as embodied in PDR Act itself, it may take another 12 years and it will not yield him any positive, effective and speedy result. Moreover, without being any final decision by the Certificate Officer, it would not possible to take resort of Appeal. Therefore, we hold our view that the writ of certiorari is an appropriate and efficacious remedy in this case in hand. Since the starting of certificate proceeding is not in accordance with law; therefore, the entire proceeding is liable to be quashed to secure the ends of justice.

36. Experience shows that the calculation of interest is a very challenging job and at times, we find that the Bank officials are not so vigilant and not so diligent in calculating interest; therefore, Bangladesh Bank should exercise its power as embodied under section 45 and 49 of the Bank Company Ain, 1991 to inspect the case as to the calculation of interest by FIs at least on random basis. Bangladesh Bank should examine as to whether the interest calculated is in accordance with law or not. Mere denial or no objection as to calculation of interest by the borrower does not *ipso facto* give validity of the statement as to interest. On the face of the record, we find that the calculation of interest is wrongly made in the case in hand.

37. The Certificate Officers who dealing with the Certificate Case are not well aware as to the latest position of law; therefore, they should impart comprehensive training on certificate proceeding so that they may handle the cases of public importance effectively.

38. The PDR Act is a self-contained, exhaustive and consolidated Act. It provides the speedier and easier procedure in matters of realization of various kinds of dues which are basically undisputed in nature such as fines, fees, rent, rates, land revenue and charges payable to the government, local authorities and Court of wards. Cases involving dispute in which the debtor reasonably can demonstrate some facts denying his liability to pay the dues, should invoke protection under the jurisdiction of Civil Court by instituting a suit therefore. The primary condition for the issuance of certificate is the satisfaction of the Certificate Officer that the demand is due from the debtor. This involves the question of application of the mind of the Certificate Officer for the purpose of summary determination of the right of certificate-debtor. The nature of dues that are realizable under the certificate procedure has been described in Schedule I of the PDR Act. The very foundation for the exercise of jurisdiction for the purpose of realization of dues under the certificate procedure by the Certificate Officer, is based on a condition precedent that if any demand does not come and fall within the purview of the nature of demands described in Schedule I of the Act, the Certificate Officer must cease to act under the PDR Act.

39. The Ain, 2003 was enacted for speedy recovery of outstanding loan of the FIs including the Bank. Being special law is directed towards special objects, special measure i.e. speedy realization of the loan money from the borrower gives rise to special cause of action and itself provides for the methods of enforcement of such rights conferred by that Act. The nature and function of the Artha Rin Adalat coupled with power and authority clearly indicate that it is special forum of limited jurisdiction and not an ordinary Civil Court.

40. Our penultimate conclusion is that-

- i. *Court cannot just remain as silent spectator to a glaring primacy illegality in calculation of the interest, costs and charge etc.;*
- ii. *In a Certificate Case, the provision of section 50 of the Ain, 2003 so far it relates to interest, profit cannot be applicable rather the provision of section 16 and 45 of the PDR Act shall apply, otherwise it will frustrate the purpose of empowering the Certificate Officer in disposing Certificate Case filed by FIs for recovery of a small amount not more than Tk. 5 lacs;*
- iii. *The Certificate Officer acted in flagrant violation of some provisions of the PDR Act, therefore, the entire proceedings before the Certificate Officer was without jurisdiction, then the High Court Division in exercise of its extraordinary jurisdiction as enshrined under Article 102 of the Constitution may quash the certificate proceeding as an appropriate case;*
- iv. *The Certificate Officer has absolute domain to determine the interest, costs and charges therewith; this power cannot be circumvented by FIs;*
- v. *The purpose of awarding compensation to the judgment debtor is undoubtedly laudable; because it was incorporated to protect the unfortunate judgment debtor as a safety bulb, but it is seldom found in practice;*
- vi. *Admittedly, the certificate holder sanctioned loan of Tk. 2,50,000.00 and in the meantime, the petitioner paid Tk. 6,83,756.00; nevertheless, the Certificate Officer kept the Certificate Case alive, therefore, the same is repugnant to the provision of law and has hopelessly frustrated the very purpose of the special enactment;*
- vii. *From the order sheets of the Certificate Case, the Certificate Officer passed as many as 105 orders between 12.09.2007 to 13.11.2019 and the Certificate Officer without awarding civil imprisonment issued warrant of arrest against the petitioner several times and thereby, negated the provisions of the PDR Act which is highly deprecated;*
- viii. *The order sheets demonstrate that the Certificate Officers are not well aware as to the PDR Act and other allied Rules; therefore, they kept the Certificate Case pending for indefinite period without conceiving the very purpose of the PDR Act; therefore, Bangladesh Civil Service Administration Academy, Shahbagh, Dhaka may arrange two weeks long special course for the Certificate Officers in order to equip them in this particular law so that the outstanding dues of the FIs may be recovered speedily by exercising the power bestowed upon the Certificate Officers within the four walls of the PDR Act. It is our considered view that if meritorious and laborious officers belonging to BCS admin cadre are trained up and posted as Certificate Officer, it will undoubtedly yield very positive result and as such the long pending Certificate Cases be disposed of speedily;*
- ix. *The experience shows that after taking small amount of loan, the borrowers are getting poorer and on the other hand, the big sort are getting richer having received huge amount of loan and the Bank and FIs are at times found very reluctant in pursuing the legal action against them causes are best known to the authority of the*

FIs; on the other hand, in order to catch up a small fry the Bank incurs money more than the loan sanctioned by it for litigation;

x. The petitioner as a small furniture businessman of the locality upon receiving Tk. 2,50,000.00 in different times by mortgaging his homestead got involved in the long drawn legal net by the Bank authority within 2(two) years;

xi. The requisition has not verified by the Manager of the Bank as per the mandate of the Schedule II, Rule I and therefore, the very initiation of the Certificate Case is absolutely illegal and unfounded;

xii. The facts and circumstances of the cases reported in 12 ADC 336; 68 DLR (AD)10 and 69 DLR (AD) 366 referred to by the respondent-Bank are distinguishable from the case in hand. In this respect, we are tempted to discuss the observations of Lord Denning in the matter of applying judicial precedent which have become locus classicus:

“Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo, J.) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.

...

Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it.”

xiii. The continuation of certificate proceeding shall be an abuse of the process of the Law and in the meantime, the very initiation of the certificate proceeding is baseless and unfounded; therefore, by applying our judicial conscience and activism, we hold the view that the certificate proceeding should be buried at this stage in order to save money, time and energy of the parties to the said proceeding. Accordingly, we find merit in this Rule and the same is legally bound to be made absolute. Consequently, the Certificate Case No. 80/2006-2007 pending before the General Certificate Officer, Rajshahi is liable to be quashed.

41. In the result, the Rule is made absolute, however, without passing any order as to costs. The earlier order of stay granted by this Court, thus stands vacated and recalled.

42. We do hereby quash the Certificate Case No. 80/2006-2007 pending before the General Certificate Officer, Rajshahi.

43. The respondent No. 3, the Bank, is directed to redeem the mortgage property of the petitioner by executing and registering a deed of redemption in favour of the petitioner within 2 months from the date of receiving the copy of the judgment and handed over the relevant documents to the petitioner.

44. Let a copy of the judgment be communicated to (i) the Governor of Bangladesh Bank, (ii) the Rector of Bangladesh Civil Service Administration Academy, Shahbagh, Dhaka and (iii) the Managing Director of Agrani Bank Ltd. for taking necessary step as per the observations appended to the body of the judgment.