

Present:  
Mr. Justice Md. Iqbal Kabir  
And  
Mr. Justice Md. Riaz Uddin Khan

First Appeal No. 306 of 2016

Janata Bank Limited

....Appellant

Versus

Poresh Chandra Das dead being his heirs:  
1(a) Rita Rani Das-1(c) Lipika Rani Biswas

....Respondents

Mr. Md. Arife Billah, Advocate with

Mr. Md. Zamil Anwar, Advocate

....For the Appellant

Mr. Chanchal Kumar Biswas, Advocate with

Ms. Umme Masumur Nesa, Advocate

....For the Respondent Nos. 1(a)-1(c)

Judgment on 03.02.2026.

Md. Iqbal Kabir, J:

At the instance of the plaintiff as appellant, this appeal is directed against the judgment and decree dated 29.06.2016 (decree signed on 10.07.2016) passed by the learned Joint District Judge, First Court, Faridpur in Money Suit No. 07 of 2013, thereby, dismissing the suit on contest with cost of Tk. 10,000/- (Tk. Ten Thousand).

The plaintiff, Janata Bank Limited, filed a money suit to recover Tk. 94,19,590.13 from the defendant, who was employed as a security guard at the bank's Faridpur Branch. On 19.02.2010 at about 10:00 p.m., the defendant took over security duty from two other guards. Before that, on 18.02.2010, the Branch Manager had kept Tk. 94,11,290.13 and prize bonds worth Tk. 8,300/- in the vault and handed over its three keys to three responsible officers, namely Sheik Iman Ali (Assistant Manager), Md. A. Sobhan Munshi (HBO) and Md. Sirajul Islam (Chief Cashier), respectively. On 20.02.2010 at about 9.00 a.m., Md. Asad Ullah, the branch manager was informed about the incident of theft in the bank. After getting such information, the branch manager, along with Md. Sadek Khan, Sheikh Iman Ali, Md. Hafizur Rahman and along with other staff, interned in the bank and saw that the Almira, Table, Drawer, Cash Counter Drawer and the lock of the vault were opened. Even the Iron Grill into the vault and the Iron Safe were also opened and there was no money. However, on

query, the defendant failed to give a satisfactory explanation, leading the manager to suspect that he, along with other miscreants, had committed the theft/robbery. Therefore, F.I.R was lodged on 20.02.2010, and a departmental proceeding was initiated against him. The defendant was suspended, and an inquiry was conducted by the Deputy General Manager. The bank concluded that the defendant was involved in the theft/robbery; therefore, by a letter dated 25.07.2013, it directed him to return the theft/robbery amount. As he refused, the bank filed the suit for recovery of the money.

The defendant contested the suit by filing a written statement denying all material allegations made in the plaint. He contended that he joined the plaintiff bank as a guard on 01.12.1987 and was made permanent on 01.12.1998 due to satisfactory service. On 04.02.2008, he was transferred as support staff to the Faridpur Branch. According to the defendant, although there were five guards, the authority intentionally assigned him duty alone on the date of the alleged incident. On 18.02.2010, the Branch Manager illegally kept an excessive amount of money in the vault without informing the higher authority, the local police, or enhancing security arrangements. The defendant further alleged that the Branch Manager and other officials went on picnics on 15.01.2010 and again on 19.02.2010 and after returning to Faridpur around 10:00 p.m., the Branch Manager and other key holders of the vault entered the bank and stayed there for a long time. The Branch Manager provided food and cold drinks to the defendant, but the defendant became unconscious after consuming the same. However, the officials left the premises without taking any care. The next morning i.e., on 20.02.2010, another guard found the defendant unconscious and informed his family. After receiving medical assistance, the defendant regained consciousness. Subsequently, the Branch Manager entered the bank, expelled the defendant's relatives, disposed of the Tiffin box and bottle, and handed over the defendant to the police. The defendant alleged that the Branch Manager and other key holders intentionally rendered him unconscious and misappropriated the money from the vault. He further claimed that the police tortured him and his son, conducted an unlawful search of his

house, and recovered Tk. 27,000/- and two prize bonds, seizing only Tk. 5,000/- . The police threatened the defendant that his son was in their custody. The police by torturing the defendant and his son, forcefully tried to collect the confessional statements of the defendant. Under coercion and torture, the police forced him to sign a blank paper for a confessional statement under section 164 of the Code of Criminal Procedure. Later, the defendant applied through the Jail Super for cancellation of the confessional statement, which was also reported in newspapers. On these grounds, the defendant asserted that the suit was filed based on false statements and prayed for its dismissal.

During the trial, the plaintiff examined 3(three) witnesses and submitted some documents which were marked as Exhibit Nos. 1- 6 and on the other hand defendant examined 1(one) witness, to prove their respective case.

However, after hearing the parties, the learned trial Court by judgment and decree dismissed the suit. Being aggrieved by and dissatisfied with the aforesaid judgment and decree, the plaintiff, as appellant, filed the instant Appeal.

Mr. Md. Arife Billah, learned Advocate, with Mr. Md. Zamil Anwar, learned Advocate for the appellant, submits that from the conversation with the defendant, it is clear to them that the defendant No. 1, along with some others, made a plan and committed the alleged robbery. He further submits that the defendant No. 1 acknowledges the activities which has done by him.

Mr. Chanchal Kumar Biswas, the learned Advocate for the respondent Nos. 1(a)-1(c), contends that section 9 of the Code of Civil Procedure, 1908, confers jurisdiction upon civil courts to try all suits of a civil nature, including disputes relating to property or office. However, the present suit does not fall within the category mentioned above. According to him, from the averments made in the plaint, it is evident that the plaintiff instituted the suit for recovery of money allegedly taken through acts amounting to theft or robbery. Such acts constitute offences under the Penal Code, 1860 and are inherently criminal in nature. Since the cause of action arises out of an alleged criminal offence, the claim cannot be adjudicated in a civil court. On that count, he argued that the

money suit is not maintainable, under section 9 of the Code of Civil Procedure, and the trial Court rightly held the suit to be non-maintainable. Consequently, the appeal is liable to be dismissed.

He further submits that the plaint clearly states that the defendant allegedly took the money from the bank vault by way of theft or robbery. Thus, the central issue in the suit is whether the defendant committed theft or robbery. Therefore, such a matter falls within the jurisdiction of the criminal Court, and the civil Court has no authority to investigate or determine whether the defendant committed a criminal offence. Accordingly, the suit for recovery of the alleged stolen money is misconceived and not maintainable, and the First Appeal should be dismissed.

Mr. Chanchal further contends that the Division Bench of this Court in Criminal Revision No. 4641 of 2023, whereby the sole defendant was acquitted of the charge of alleged theft, the very basis of the plaintiff's claim has been rendered untenable. He argued that since the criminal Court, upon proper appreciation of evidence, conclusively found that the allegation of theft was not proved, the foundation of the present civil suit, being recovery of money allegedly obtained through theft/robbery, no longer subsists. As such, the suit is not maintainable in the eyes of the law.

He next submits that the learned trial Court, while passing the impugned judgment, rightly found that P.W.1 stated in his deposition that when he was present at the bank, he saw that the gate, door, almirah, table drawer, and vault were found open. P.W.1 and P.W.2 both admitted that there were three separate keys and that all three keys were required together to open the vault. However, admittedly, the vault was found open and not broken, and it is also admitted that the defendant did not possess any of the keys. In such circumstances, without any breaking of the lock of the vault, the manner in which the defendant allegedly stole/robbery the money was not proved at all. Accordingly, the findings of the trial Court regarding the opening of the vault without a key by the defendant are well-founded.

He further submits that the authority itself was negligent in not following the prescribed rules regarding the keeping of excess money in the vault, and to avoid the consequences of such negligence, the instant suit was filed. Therefore, the instant First Appeal is liable to be dismissed.

He finally submits that, under the facts and circumstances stated above, the appeal may kindly be dismissed and the judgment and decree of the learned trial Court be affirmed. Mr. Chanchal Kumar Biswas, the learned Advocate appearing for the respondent Nos. 1(a)-1(c) by submitting a decision sought compensation as the respondent suffered a lot. In response to the submission and cited decision, Mr. Md. Arife Billah, learned Advocate for the appellant, submits that the present case is not similar to the cited decision made by the learned Advocate Mr. Chanchal Kumar Biswas.

This Court heard the learned Advocates for the parties, went through the memo of appeal, judgments of the trial Court below, and the evidence lying with the lower Court records.

It is pertinent to note that an issue/question has been raised and that was whether the theft/robbery of money from the bank vault by the defendant falls under the civil suit or not. Respondent of this case argued that the question relates to the alleged occurrence is fall under the criminal liability, which has to be decided by a criminal Court.

In order to appreciate the alleged contention, we should first consider the plaint along with the relevant provision, i.e., section 9 of the Code of Civil Procedure.

This appeal arises from a money suit, admittedly a money suit falling under a suit of civil nature. Therefore, we have to determine based on which allegation the money suit was filed. On our scrutiny, it finds that the plaintiff Bank in their plaint states that:

“বাদী ব্যাংকের উর্দ্ধতন কর্তৃপক্ষ দৃঢ়ভাবে নিশ্চীত হইয়াছেন যে, ১ নং বিবাদী উক্ত টাকা ও প্রাইজবন্ড চুরি ডাকাতির মাধ্যমে আত্মসাৎ করিয়া নিজেই লাভবান হইয়াছেন। তাই বাদী ব্যাংকের উর্দ্ধতন কর্তৃপক্ষ ১ নং বিবাদীর নিকট হইতে উল্লেখিত টাকা ও প্রাইজবন্ড আদায়ের জন্য দেওয়ানী আদালতে মানি স্যুট দায়ের করার নিমিত্ত বাদীকে নির্দেশ প্রদান করেন। বাদী উক্ত নির্দেশ প্রাপ্ত হইয়া বিবাদীকে বিগত ইং ২৫/০৭/২০১৩ তারিখে বাদী ব্যাংকে পাইয়া তাহাকে ৯৪,১৯,৫৯০/১৩ (চুরানব্বই লক্ষ উশিন হাজার পাঁচশত নব্বই টাকা তের পয়সা) টাকা ব্যাংকে প্রদান করিতে বলিলে ১ নং বিবাদী উক্ত টাকা প্রদানে অস্বীকার করায় বাদী ব্যাংক বাধ্য হইয়া অত্র মোকদ্দমা দায়ের করিলেন।”

From the above content, it appears that the allegation which had brought against the defendant, i.e., the defendant took money by theft/robbery. Further, it appears that the suit has been filed for the recovery of money that was allegedly theft/robbery. According to the Penal Code, 1860, theft or robbery is a criminal offence. Therefore, the claim arises out of a criminal offence, not a civil dispute.

Section 9 of the Code of Civil Procedure:

“9. The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature, excepting suits of which their cognizance is either expressly or impliedly barred.

Explanation.- A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.”

Section 9 of the Code of Civil Procedure, 1908, gives jurisdiction to civil courts to try “all suits of a civil nature”. The language of the section is so unambiguous that it does not require any interpretation to conclude that this section is limited only to civil disputes. However, theft and robbery do not fall under civil nature; they are primarily matters of criminal law. Criminal matters involve offences against the State or society, not just private rights. Offences like theft and robbery are punishable under statutes such as the Penal Code, 1860, where the State prosecutes the offender, and the objective is punishment (e.g., imprisonment, fine), not merely compensation. These acts are considered offences against society at large and therefore are dealt with by criminal courts, not civil courts. A criminal offence does not fall within this category of civil dispute; criminal offences cannot be tried under Section 9 of the CPC because that section applies only to civil cases. Because criminal matters are specifically assigned to criminal courts under the Cr.P.C, the jurisdiction of civil courts is impliedly barred. Civil cases deal with private rights like property or money, while criminal cases deal with offences against society and are tried under criminal law. Criminal matters are handled by criminal Courts under the Criminal Procedure Code, and civil Courts have no power to punish offenders. Therefore, criminal offences are implicitly barred from being tried under Section

9 of the CPC. Following section 9 of the Code of Civil Procedure, 1908, the civil Courts can try suits of a civil nature; the plaint itself shows that the suit has been filed for the recovery of money which was allegedly theft. Theft or robbery is a criminal offence, not a civil dispute. This is a question of criminal liability, which can only be decided by a criminal Court. A civil Court has no jurisdiction to decide whether the defendant committed theft/robbery or not. Therefore, the present suit for recovery of alleged theft/robbed money is misconceived and not maintainable.

It is admitted that the Bank Manager kept a huge amount of money in the vault beyond the permitted limit without informing or seeking permission from the higher authority. The record further reveals that the Bank authority did not arrange for additional security despite storing such a large amount of cash.

However, it is pertinent to note that this Court finds from the plaint that the vault was found open at the time of the alleged occurrence. P.W.s in their depositions clearly stated that they saw the gate, door, almirah, table drawer and the vault all open. Both P.W-1 and P.W-2 admitted in their evidence that the vault could be opened only by using three separate keys, and those keys were kept in three different officers of the bank. It also admitted that the defendant had neither possession nor knowledge of the keys that were required to open the vault, which is a highly secured and heavy safe, and as per banking rules, it cannot be opened without the use of multiple keys. Authority admitted that those keys were in others' possession. In the absence of any evidence showing that the locks of the vault were broken or tampered with, it is not reasonable to hold that the defendant could have opened the vault and stolen/robbery the money. Further, it is alleged that on the relevant day there was a picnic, and several officers remained on the premises until night. In such a sensational case involving the alleged looting of Tk. 94,00,000/- and above, the police submitted a charge sheet against only two accused persons, including the defendant No. 1, without conducting any meaningful investigation into the opening of the vault. However, the police failed to initiate any effective

inquiry to ascertain how the vault was opened, particularly when the keys were supposed to be in the custody of the bank officials.

It is indeed unfortunate that despite the looting of a substantial amount of money from the bank, the prosecution and the investigating agency failed miserably to bring the real culprits to justice. However, the conviction and sentence of defendant No. 1 were set aside on the ground of serious doubt regarding his involvement under the Penal Code. It is reasonable to infer that the vault was opened by someone having access to the keys, and the money was subsequently looted. However, the authority chose to implicate only defendant No. 1, without properly investigating the role of other persons, particularly those who had custody of the vault keys and those officials who re-entered the bank after returning from the picnic on the date of the occurrence. This gives rise to a reasonable apprehension that there was an intention to shield the actual offenders. The authority pursued this appeal solely to project defendant No. 1 as the culprit, while ignoring the possible involvement of others. Such conduct amounts to an abuse of the process of the Court and results in wastage of valuable judicial time by pursuing a vexatious and groundless proceeding.

In the result, the appeal is dismissed with costs.

Further, the maximum limit of compensatory costs prescribed under section 35A of the Code of Civil Procedure, 1908, is, in the facts of this case, insufficient to serve the ends of justice. Accordingly, this Court, in exercise of its inherent power under section 151 of the said Code, considers it appropriate to impose exemplary costs.

Therefore, the appellant is directed to pay an additional sum of Tk. 50,000/- (Taka fifty thousand) as compensatory costs for causing harassment and suffering to the respondents. The entire amount of costs shall be paid in favour of the respondent Nos. 1(a)-1(c).

The impugned judgment and decree dated 29.06.2016 (decree signed on 10.07.2016) passed by the learned Joint District Judge, First Court, Faridpur

in Money Suit No. 07 of 2013, dismissing the suit on contest with cost of Tk. 10,000/- (Tk. Ten Thousand), is hereby maintained.

Send down the lower Court records with a copy of this judgment to the Court below at once.

Md. Riaz Uddin Khan, J:  
I agree.