

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

Present:

Mr. Justice Md. Badruzzaman.

And

Mr. Justice Sashanka Shekhar Sarkar

FIRST MISCELLANEOUS APPEAL No. 370 OF 2017

Selim @ Md. Selim Miah and others.

...Appellants.

-Versus-

Bangladesh House Building Finance Corporation
and others.

....Respondents.

Mr. Md. Hasinur Rahman, Advocate

... For the appellants

Mr. Mohammad Saiful Islam, Advocate

... For respondent No. 1

Heard on: 05.05.2024.

Judgment on: 06.05.2024.

Md. Badruzzaman, J

This appeal is directed against judgment and order dated 06.08.2017, passed by learned District Judge, Sherpur in Miscellaneous Case No. 7 of 2015 allowing the case filed by respondent No. 1.

Facts, relevant for the purpose of disposal of this appeal, are that the respondent No. 1, Bangladesh House Building Finance Corporation, Regional Office Jamalpur, (in short HBFC), filed an application before the learned District Judge, Sherpur being Miscellaneous Case No. 7 of 2015 under Article 27 of Bangladesh House Building Finance Corporation Order 1973 (P.O 7 of 1973) for recovery of money amounting to Taka 7,79,144.40 as on 31.12.2014

along with 10% interest upon said amount with 3% penal interest, till recovery of said amount. The case of respondent No. 1, in brief, is that respondent -opposite party Nos. 2-3 and predecessor of the appellants and respondent Nos. 4-17, namely Johurul Haque Talukder applied for loan from HBFC for construction of residential building and the respondent approved Taka 1,71,000/ in three categories vide sanction letters being Memo No. 3143 dated 10.12.1977, Memo No. 249 dated 24.06.1978 and Memo No. 2074 dated 13.03.1984 but they received Tk. 1,00,000.00 and for security of loan amount, executed and registered three mortgage deeds being Nos. 20226, 12558 and 8490 dated 24.12.1997, 18.07.1978 and 18.04.1984 respectively. There was stipulation in the sanction letters that the borrowers would pay three phases of amount within 20, 20 and 25 years in installments of Taka 1234.58, 1814.79 and 657.73 per month respectively and the installments were due to be paid from 01.06.1978, 02.03.1979 and 01.02.1986. But the borrowers did not pay the installments regularly for which outstanding dues stood at Taka 7,79,144.44 as on 31.12.2014. The borrowers constructed residential building in the mortgaged property and have been possessing the same by residing and letting it to the tenants. Respondent No. 1 vide letters and final notice asked the borrowers to pay the amount but they did not pay any heed to the request. It has also been mentioned in the application that earlier the HBFC filed Artha Rin Suit in a wrong forum and thereafter, withdrawn the suit and filed the instant proceeding after serving legal notice on 26.08.2014 to them before the learned District Judge for recovery of the outstanding dues.

Opposite party Nos. 8, 12 (appellant Nos. 1-2) and 13 filed written objection on 20.4.2016 to contest the miscellaneous case contending that they did not get any legal notice or any notice from the HBFC. Though the HBFC sanctioned Taka 1,71,000/- as loan but did not disburse said amount in time for which they could not construct the building and they have incurred financial loss. Johurul Haque Talukder paid Taka 50,000/- before his death and after his death the opposite parties paid Taka 50,000/- on 25.05.2013, Taka 46,000/- on 20.06.2013 and Taka 10,000/- on 20.8.2023. The opposite parties are residing in the building constructed with the loan amount and they did not let the house to anybody else and in the meantime, the opposite parties by 3 (three) installments paid total Taka 1,06,000/-. Since, the opposite parties sustained loss they could not pay off the outstanding dues and if they were allowed three years' time they would pay the outstanding dues.

During trial of the miscellaneous case, two witnesses were examined on behalf of HBFC and one witness (appellant Abdul Mannan) was examined on behalf of the opposite parties. The HBFC produced letter of authority (Exhibit-1), the statements of the loan account (Exhibit-2 series), the registered mortgaged deeds (Exhibit-3 series) and the statement of account for the years 2001-2002 to 2016-2017 (Exhibits-5, 6 and 7). On the other hand, the opposite parties did not produce any documentary evidence to prove their claim. The learned District Judge, after considering the evidence and materials on record, allowed the miscellaneous case in favour of the HBFC directing the opposite parties to pay the amount as has been sought for by HBFC in the miscellaneous case by judgment and order dated 06.08.2017. Being aggrieved by said judgment and order dated

06.08.2017 some of the opposite party Nos. 8, 12 and 15 have preferred this miscellaneous appeal.

Bangladesh House Building Finance Corporation (HBFC), respondent No. 1, has entered appearance by filing Vokatnama.

The appellants filed a supplementary affidavit stating that during pendency of the appeal, they paid Taka 1,50,000/- on 25.04.2024 and after payment of the installments, the total outstanding dues recoverable from the appellants is Taka 10,34,224.02 and they are now ready to pay the outstanding dues if they are allowed to pay the same in installments. In support of such deposit, they submitted deposit slip dated 25.4.2024 (Annexure X).

We have heard the learned Advocates for the respective parties, perused the impugned judgment and the evidence adduced by the parties. From the evidence on record, it appears that P.W.1, Md. Usman Gani, was the authorized officer of HBFC deposed in supporting the contention of the application filed before the learned District Judge. He categorically stated that against 3 (three) sanction letters the predecessor of the appellants availed Taka 1,71,000/- as credit facilities from HBFC for construction of a building and the loanee mortgaged the property by 3 (three) registered mortgage deeds. He also stated that since the opposite parties did not pay the outstanding dues the HBFC by several notices requested them to pay the outstanding dues. But they did not pay the installments as per sanction letters. He produced loan documentary evidence including account statements which were marked as Exhibits-2, 2ka, 2kha, the mortgaged deeds as Exhibits-3, 3ka and 3kha. He also produced the latest account statements from 2001-2002 to 2016-2017 in respect of three loan accounts which were marked as Exhibits 5, 6 and 7. The

opposite parties cross-examined the P.W.1, contending that they submitted false bank statement. But they did not produce any documentary evidence to substantiate their claim. Except oral testimony, the opposite parties could not prove that they have paid amount to the HBFC which was not deducted from the outstanding dues. P.W.2, Md. Ruhul Amin also deposed on behalf of the HBFC and submitted the latest statement of account in regards loan. O.P.W.1, Md. Abdul Mannan (appellant No. 2) deposed on behalf of himself and opposite party Nos. 8, 12 and 13. He admitted that his father took loan in three categories amounting to Taka 1,71,000/-. The petitioner filed Artha Rin Suit No. 7 of 2012 claiming Taka 3,61,483.11 and during lifetime, the original loanee paid Taka 50000/- and after his death they paid Taka 50,000/-, 46,000/- and 10,000/-. Except this oral testimony, the opposite parties could not produce any deposit slip or any other document to show such payment against the loan.

On perusal of the materials on record, it appears that the loan which has been obtained by the predecessor of the present appellants is admitted fact and they could not pay the outstanding dues as per sanction letters. Though they claimed that they paid total Tk. 1,06,000/- against the loan but they could not submit any paper to show such payment.

In that view of the matter, we find that the learned District Judge upon proper assessment of evidence and materials on record rightly passed the impugned judgment and accordingly, we find no reason to interfere.

However, it appears that during pendency of this appeal, the appellants deposited Tk. 1,50,000/- (Taka one lakh fifty thousand)

against the outstanding dues which may be deducted at the time of final calculation.

Accordingly, we find no merit in this appeal.

In the result, the appeal is dismissed, however, without any order as to costs.

The order of stay granted earlier is hereby vacated.

Lastly, we are of the view that since the Bangladesh House Building Finance Corporation (HBFC) is a statutory organization, it should recover the outstanding dues after deducting the amount paid by the appellants and their predecessor against the loan at the time of final adjustment during execution proceeding.

Send down the LCR along with a copy of this judgment to the Court below at once.

(Justice Md. Badruzzaman)

I agree.

(Mr. Justice Sashanka Shekhar Sarkar)