

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

Present:

Mr. Justice S M Kuddus Zaman

And

Ms. Justice Tamanna Rahman Khalidi

First Appeal No.758 of 2018

Al-Aksa Islami Multipurpose Co-operative Society
Limited and others

...Appellants

-Versus-

Md. Mohiuddin Mollah and others

... Opposite parties

Mr. Bivash Chandra Biswas, Advocate with

Mr. Utpal Biswas, Advocate

... For the appellants.

Mr. Muhammad Ashraf Ali, Advocate with

Mr. Md. Shakhawat Hussain Khan, Advocate

... For the respondent Nos.1 and 2.

Heard on 15.07.2026 and 23.07.2026.

Judgment on 26.07.2018.

S M Kuddus Zaman, J:

This First Appeal is directed against the impugned judgment and decree dated 13.01.2015 passed by the learned Joint District Judge, 1st Court, Dhaka in Money Suit No.26 of 2013.

Facts in short are that respondents as plaintiffs instituted above Money Suit for recovery of Taka 5,10,41,500/- alleging that the defendants established a co-operative saving and lending society namely Al-Aksa Islami Multipurpose Co-operative Society Limited and offered lucrative proposals for profits on the savings and the plaintiffs being 181 persons became members of above society and they

individually deposited several amounts of money to above society in total amounting to Taka 5,10,41,500/- by 392 separate money receipts. The defendants did not pay profit for above deposits nor they returned the principal amount of money.

Despite service of process the defendants did not enter appearance in above suit and the learned Joint District Judge fixed the suit for ex-parte hearing. The plaintiffs examined two witnesses and documents of the plaintiffs were marked as Exhibit No.1 series the learned Joint District Judge decreed above suit ex-parte for Taka 5,10,41,500/-.

Being aggrieved by and dissatisfied with above judgment and decree of the trial Court 12 defendants as appellants moved to this Court and preferred this First Appeal.

Mr. Utpal Biswas, learned Advocate for the appellants submits that no summon of above suit was served upon the defendants and they had no knowledge as to above suit. Defendant No.2 was in the prison which has been noted by the learned Joint District Judge vide order No.6 dated 04.04.2014. But the learned Joint District Judge did not pass an order for issuance of process upon above defendant through jail authority. The impugned judgment and order is a non speaking judgment and the learned Joint District Judge neither analyzed any evidence nor calculated the claim of the plaintiffs. The plaintiffs issued a legal notice upon the defendants in which they claimed Taka

4,94,89,500/- . But the learned Joint District Judge passed above decree for Taka 5,10,41,500/- which is not tenable in law. The learned Advocate lastly submits that the ends of justice will be met if the impugned judgment and decree is set aside and the suit is remanded for retrial after giving the defendants an opportunity to contest above suit. The learned Advocate assures that the defendants shall submit written statement within two months and they will not seek adjournments after fixing the suit for pre-emptive hearing.

On the other hand Mr. Muhammad Ashraf Ali, learned Advocate for respondent Nos.1 and 2 concedes that the defendant No.2 was in jail custody and the learned Joint District Judge should have issued process of above defendant through jail authority but the learned Joint District Judge committed an error by not issuing summon of above defendant through jail authority. But the fact remains that the summon of other defendants were published in the newspaper and all the defendants had knowledge as to above suit but since they had no lawful counter claim they deliberately abstained from contesting above suit. The learned Advocate concedes that due to error of the concerned drafting Advocate in the legal notice the total claim of the plaintiffs was erroneously written as Taka 4,94,89,500/- but in fact the plaintiffs are entitled to get Taka 5,10,41,500/- and in support of claim they have submitted 392 money receipts issued by the defendants. If this Court sends the suit for retrial a time table should be mentioned in the

judgment so that the defendants cannot delay retrial of the suit which should be concluded within six months.

We have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record.

As mentioned above the learned Joint District Judge passed the impugned judgment and decree ex-parte. It turns out from the impugned judgment and decree that the same is a non-speaking one and passed in a slip sod manner. The learned Judge did not take the pains of analyzing the evidence on record in view of the claims of the plaintiffs as stated in the plaint and arrive at an independent decision as to the amount of money deposited by the plaintiffs to the Al-Aksa Islami Multipurpose Co-operative Society Limited.

Plaintiff No.1 gave evidence as PW1 for all 181 plaintiffs and he submitted 392 money receipts which were allegedly issued by the defendants to 181 plaintiffs. Above money receipts are private documents and those were required formal prove for admission in to evidence and the learned Joint District Judge was required to examine those money receipts and arrived at a decision as to its correctness and genuinity and calculate the true figure of the money which was deposited by the plaintiffs. It is admitted that in the legal notices the plaintiffs issued upon the defendants on 12.03.2013 the plaintiffs claimed that they deposited Taka 4,94,89,500/- to the defendants but in the suit plaintiff has sought a decree for Taka 5,10,41,500/-.

It is also admitted that defendant No.2 was in jail custody in connection of a Criminal Case but his summon was not sent through the jail authority and in fact summon of defendant No.2 was not served in accordance with law.

The learned Advocate for the appellants has given a commitment on behalf of the appellants that if the suit is remand for retrial they would submit written statement within sixty days and after fixing the suit for pre-emptory hearing they would not seek any adjournment and provide necessary co-operation to the trial Court so that the trial is concluded within six months.

On consideration of above facts and circumstances of the case and evidence on record and the submissions of the learned Advocate for the appellants we hold that the ends of justice will be met if the impugned judgment and decree is set aside and above suit is remanded to the trial Court for retrial after giving the defendants an opportunity to contest the suit.

In the result, this First Appeal is allowed.

The impugned judgment and decree dated 13.01.2015 passed by the learned Joint District Judge, 1st Court, Dhaka in Money Suit No.26 of 2013 is set aside and above suit is remanded to the trial Court for retrial after giving the defendants an opportunity to file written statement and the plaintiffs an opportunity to amend the plaint and adduce further evidence and the defendants adduce evidence in accordance with law.

The learned Joint District Judge is directed to dispose of above suit within six months from the date of receipt of this order.

However, there will be no order as to cost.

Send down the lower Court's record immediately.

Tamanna Rahman Khalidi, J:

I agree.

MD. MASUDUR RAHMAN
BENCH OFFICER