In the Supreme Court of Bangladesh
High Court Division
(Civil Appellate Jurisdiction)

First Appeal No. 18 of 2019
With
Civil Rule No. 611 (F) of 2018

Shirajul Islam Mollah and another.
……. Plaintiff-Appellants.
Vs.
Bangladesh Bank and others.
…Respondents.
Mr. Md. Faizullah with
Mr. Moushumi Rahman, Advocates
…For the plaintiff-appellants.
Mr. Miraj Rana, Advocate
…For the respondent and Opposite Party No. 7.
Mr. Tirtha Salil Pal, Advocate
..For the respondent No.17.
Mr. Mohammad Rokonuzzaman, Advocate
..For the Opposite Party No. 14.
Mr. Mohammad Salim Miah, Advocate
..For the Opposite Party No.17A.
Mr. Md. Arife Billah, Advocate
..For the Opposite Party No.12.
Mr. Khan Mohammad Shameem Aziz, Advocate
..For the Opposite Party No.4.
Mr. Mamunur Rashid, Advocate
..For the Opposite Party No.10.

First Appeal No. 616 of 2018
With
Civil Rule No. 596(F) of 2018

M/S Abdul Wahab
……. Plaintiff-Appellant.
Vs.
Bangladesh and others.
…Respondents.
Mr. Kamal Ul Alam with
Mr. A.S.M. Shahriar Kabir, Advocates
…For the plaintiff-appellant.
Mr. Md. Kamrul Alam (Kamal) Advocate
…For the respondent and Opposite Party No.6.

Mr. Muhammad Ali Akkas Chowdhury,
Advocate
..For the respondent and Opposite
Party No.07.

First Appeal No. 617 of 2018
With
Civil Rule No. 594(F) of 2018

M/S Anisur Rahman
……. Plaintiff-Appellant.
Vs.
Bangladesh and others.
…Respondents.
Mr. Kamal Ul Alam with
Mr. A.S.M. Shahriar Kabir, Advocates
…For the plaintiff-appellant.
Mr. Md. Kamrul Alam (Kamal) Advocate
…For the respondent and Opposite
Party No.6.
Mr. Muhammad Ali Akkas Chowdhury,
Advocate
..For the respondent and Opposite
Party No.07.

First Appeal No. 618 of 2018
With
Civil Rule No. 595(F) of 2018

M/S Sathi Traders
……. Plaintiff-Appellant.
Vs.
Bangladesh and others.
…Respondents.
Mr. Kamal Ul Alam with
Mr. A.S.M. Shahriar Kabir, Advocates
…For the plaintiff-appellant.
Mr. Md. Kamrul Alam (Kamal) Advocate
…For the respondent and Opposite
Party No.6.
Mr. Muhammad Ali Akkas Chowdhury,
Advocate
..For the respondent and Opposite
Party No.07.

First Appeal No. 521 of 2018
With
Civil Rule No. 612(F) of 2018

Rezviul Ahsan
……. Plaintiff-Appellant.
Vs.
Bangladesh Bank and others.
…Respondents.
Mr. Muhammad Saifullah Mamun, Advocate
…For the plaintiff-appellant.
Mr. M. Miraj Rana, Advocate
…For the respondent and Opposite Parties Nos.3 and 4.
Mr. Shakhawat Hossain, Advocate
..For the Opposite Party No. 6.

First Appeal No. 83 of 2021
With
Civil Rule No. 262(F) of 2019

Acorn Limited and another.
……. Plaintiff-Appellants.
Vs.
Bangladesh Bank and others.
…Respondents.
Mr. Md. Nazmul Huda, Advocates
…For the plaintiff-appellants.
Mr. M. Miraz Rana, Advocate
…For the respondent and Opposite Party No.16.
Mr. Mahin M. Rahman, Advocate
..For the Opposite Party No. 24.
Mr. K.S. Salah Uddin Ahmed, Advocate
..For the Opposite Party No. 7.
Mr. A. Al Masud Begh, Advocate
..For the Opposite Party No. 25.
Mr. Tirtha Salil Pal, Advocate
..For the Opposite Party No. 13.

Present (Physically in Court):
Mr. Justice Sheikh Hassan Arif
And
Mr. Justice Ahmed Sohel

Heard (Physically and virtually) on 14.03.2021, 15.03.2021, 16.03.2021 and 18.03.2021.
Judgment on: 04.04.2021.

SHEIKH HASSAN ARIF, J

1. Since the questions of law and facts involved in the aforesaid appeals are almost same, they have been taken up together for hearing and are now being disposed of by this common judgment.

1.1. These appeals, at the instance of the plaintiffs, are directed against orders and decrees dated 28.11.2018, 25.09.2018, 25.09.2018, 25.09.2018,16.08.2018 and 21.04.2019 respectively passed by the Joint District Judge, Fifth Court, Dhaka, Joint District Judge, First Court, Jessore, Joint District Judge, First Court, Jessore, Joint District Judge, First Court, Jessore, Joint District Judge, First Court, Jessore, Joint District Judge, Fifth Court, Dhaka and Joint District Judge, Fifth Court, Dhaka respectively rejecting/dismissing the plaints/suits in Title Suit Nos. 720 of 2018, 125 of 2018,126 of 2018, 124 of 2018, 467 of 2018 and 222 of 2019 followed by decrees drawn-up therein on 28.11.2018, 01.11.2018, 01.11.2018, 01.11.2018, 20.08.2018 and 24.04.2019 respectively.

2. <u>Back Ground Facts:</u>

2.1. <u>First Appeal No. 18 of 2019:</u>

The appellants, as plaintiffs, filed Title Suit No. 720 of 2018 before the Fifth Court of Joint District Judge, Dhaka against Bangladesh Bank and some other creditor banks, financial institutions and Bangladesh Election Commission seeking following reliefs:

(a) Pass a decree declaring the classification and publication as well as treating and showing the names of the plaintiffs in the CIB report of Bangladesh Bank as loan defaulters is illegal, malafide and not binding upon the plaintiffs and the

plaintiffs are entitled to have their CIB report be published as regular/unclassified.

(b) Award costs of the suit in favour of the plaintiffs:

(c) Grant such other or further relief or reliefs which as to your honour may seem fit and proper under law and equity.

2.1.1. It has been stated in the plaint that the plaintiffs were Director and Chairman of the pro-forma defendant No.18, People's Leasing and Financial Services Ltd. (in short "People's Leasing"). Subsequently, they resigned and their resignations were approved by the board of the People's Leasing. Accordingly, 'Form-XII' with the Joint Stock Companies and Firms was updated and People's Leasing inducted new director and chairman in their place. However, due to liabilities of the People's Leasing, it's name was referred to Bangladesh Bank by the creditor banks and/or financial institutions concerned categorizing it's liability as bad/loss and, accordingly, the names of People's Leasing and its directors including the names of the plaintiffs were published in the Credit Information Bureau Report of Bangladesh Bank (CIB report); that the creditor banks most arbitrarily sent the names of the plaintiffs along with others to the CIB and, accordingly, the same was arbitrarily published in the CIB report showing the plaintiffs as defaulters; thus, such sending of names to CIB and publication of plaintiffs' names in

CIB were illegal and arbitrary and, accordingly, the same should be declared as such.

2.2. <u>First Appeal Nos. 616, 617 and 618 of 2018:</u>

The appellants in these appeals, as plaintiffs, filed Title Suit Nos. 125 of 2018,126 of 2018 and 124 of 2018 respectively before the First Court of Joint District Judge, Jessore against the Government of Bangladesh, Bangladesh Bank and some creditor banks seeking following reliefs:

(a) *To declare that the plaintiff is not a loan defaulter and the defendants are liable to pay the interest imposed by the pro-forma defendants for delay payment under the fertilizer subsidy programme;*

(b) *Your Honour further be pleased to direct the defendant Nos. 3 to 5 not to show and publish the names of the plaintiff as defaulter in the CIB list till disposal of the suit;*

(c) *Pending hearing of the suit, your honour further be pleased to pass an order of injunction restraining the defendant Nos. 3 to 5 from publication, circulation and enlisting the name of the plaintiff as defaulter in the CIB list till disposal of the suit;*

(d) *To make the order or orders as prayed for absolute and for the ends of justice after hearing the parties and considering the cause shown, if any and or pass such other or further order or orders as your honour may deem fit and proper.*

And for this act of kindness your plaintiffs as in duty bound shall ever pray.

2.2.1. They have commonly stated in the plaints that they were fertilizer business enterprises. Pursuant to a government circular issued through the Ministry of Agriculture, being Memo No. 12.031.040.02.21.276(1).206-872 dated 08.11.2010, Clause 15, they opened L.Cs for importing fertilizers from abroad on the assurance given in the said circular that the government would subsidise such imports on quarterly basis. However, when the plaintiffs imported the said fertilizers, the government failed to pay the subsidy amount to the creditor banks and, accordingly, the creditor banks imposed interests on the plaintiffs' such L.C. amounts. Finding no way, the plaintiffs filed Writ Petition No. 7566 of 2014 before the High Court Division, whereupon the High Court Division, vide a common judgment dated 31.03.2016, directed the government to resolve the issue without further delay.

2.2.2. That the government, against the said judgment of the High Court Division, went to the Appellate Division, but the Appellate Division did not interfere into the same. Even then, since the government did not resolve such issues regarding delay of payment of fertilizer subsidies, the creditor banks started treating the plaintiffs as defaulters and, accordingly, their names were sent to CIB of Bangladesh Bank and were published

therein. That the plaintiffs were not defaulters under Section 5 (Ga Ga) of the Bank Companies Act, 1991 and that the liability of the plaintiffs did not come within the definition of 'loan' as provided by Section 2(ga) of the Artha Rin Adalat Ain, 2003. Therefore, the plaintiffs filed the suits seeking the reliefs mentioned above.

2.3. <u>First Appeal No. 521 of 2018.</u>

The appellant, as plaintiff, filed Title Suit No. 467 of 2018 before the Fifth Court of Joint District Judge, Dhaka against Bangladesh Bank, some creditor banks/ financial institutions and a Private Limited Company seeking following reliefs:

(a) To pass a decree declaring publication of the name of the Plaintiff in the CIB Report of Bangladesh Bank classifying him as defaulter borrower as illegal, malafide and not binding upon the plaintiff.

(b) Award costs of the suit in favour of the plaintiff

(c) To pass a decree of any other relief to which the Plaintiff is entitled to as per law and equity.

(d) Further or other relief to which Plaintiff is entitled to as per equity

And for this act of kindness the Plaintiff as in duty bound shall ever pray.

2.3.1. In the plaint, the plaintiff has stated that he is the Director of the defendant No.10 (MAM Power Ltd.), and the said MAM Power

obtained certain credit facilities from the defendant-creditor banks and financial institutions as against which the said company repaid certain amounts. However, because of the emergency declared in Bangladesh in 2007, the plaintiff and his father were illegally arrested and detained in jail in connection with various criminal cases and, subsequently, they became exonerated from those criminal cases and got the said liability rescheduled with the creditor banks on condition of paying certain down payments. That the MAM Power repaid certain amount of money as down payments and installments, but the creditor banks filed Artha Rin suit against it and obtained decrees therein. That because of the harassment during emergency, the company became financially weak and as such became irregular in making payment of installments. In the circumstances, the name of the plaintiff was referred to the CIB of Bangladesh Bank and, accordingly, the same was published in the CIB report. Hence, he filed the said suit seeking above mentioned reliefs.

2.4. <u>First Appeal No. 83 of 2021:</u>

The appellants, as plaintiffs, filed Title Suit No. 222 of 2019 before the Fifth Court of Joint District Judge, Dhaka against Bangladesh Bank, some creditor banks and financial institutions seeking following reliefs:

(a) Pass a decree of declaration that the report of the Credit Information Bureau of Bangladesh Bank showing/publishing the names of the plaintiffs as defaulter borrowers is illegal, malafide and not binding upon the plaintiffs.

(b) Costs of the suit in favour of the plaintiffs.

(c) Pass such other or further relief or reliefs which the plaintiffs may be entitled in law and equity.

And for this act of kindness, the Plaintiffs as in duty bound shall ever pray.

2.4.1. In the plaint, it has been stated that plaintiff No.2 is the director of plaintiff No.1-company. That plaintiff No. 1-company has share in defendant No.4-financial institution, which obtained loan from some banks and financial institutions (defendant Nos. 6-25); that because of default of the said defendant Nos.4 and 5, the names of the plaintiffs were sent to the CIB of Bangladesh Bank and, accordingly, the same were published therein which were depriving the plaintiffs of their rights to obtain credit facilities from different banks and financial institutions and as such they were suffering huge loss. That the plaintiffs are not defaulter within the meaning of the definition given by Section 5 (Ga Ga) of the Bank Companies Act, 1991 and that Articles 42 to 48 of the Bangladesh Bank Order, 1972 and Section 5 (Ga Ga) of the Bank Companies Act, 1991 are absolutely

unconstitutional, ultravires and violative of fundamental rights of the plaintiffs. That since the said banks and financial institutions have options to file Artha Rin Suits and/or criminal cases under Negotiable Instruments Act, the names of the plaintiffs were sent to CIB illegally. Accordingly, they filed the said suit seeking above mentioned reliefs.

2.5. Along with the above suits, some of the plaintiffs filed applications seeking temporary injunction restraining the defendants, in particular the Bangladesh Bank, from publishing their names in the CIB. The Courts below then fixed dates for maintainability hearing of the said suits and, vide impugned orders mentioned above, rejected the said plaints, or dismissed the suits, as being not maintainable followed by drawing-up of impugned decrees.

2.6. Being aggrieved by such orders and decrees, the plaintiffs preferred the instant appeals. Immediately after admission of the appeals, they filed applications seeking injunction restraining the Bangladesh Bank from publishing their names in the CIB report. Thereupon, this Court, vide different orders, issued the connected Rules and passed ad-interim injunction restraining Bangladesh Bank from publishing the names of the appellants in the CIB report for certain periods, which were subsequently extended time to time.

2.7. Thereafter, on applications by the respondent-banks and/or financial institutions, requirement of lower court records, preparation of paper books and service of notices on non-contesting respondents/opposite parties have been dispensed with by this Court vide different orders in order for early hearing of the appeals and, accordingly, the instant appeals and connected Rules have been made ready for hearing.

3. <u>Submissions:-</u>

3.1. Mr. Kamal-Ul-Alam, learned senior counsel, Mr. A.S.M. Shahriar Kabir, Mr. Mohammad Saifullah Mamun, Mr. Faizullah, and Mr. Md. Nazmul Huda, learned advocates appearing for different appellants in different appeals, have commonly and separately made the following submissions:

(a) That Article 41 of the Bangladesh Bank Order, 1972 speaks of acts done 'in good faith' by the Bangladesh Bank and its Officials. Therefore, whether the acts of publication of the names of the plaintiffs in the CIB report of Bangladesh Bank were done in good faith or not could only be decided by evidence to be adduced by the parties during trial. Therefore, without giving such opportunity of trial to the plaintiffs, the Courts below have illegally rejected/dismissed their plaints/suits particularly when some of the plaintiffs have alleged that they were not defaulters at all and as such their names were not

required to be sent by the creditor banks and financial institutions concerned to the Bangladesh Bank for publication of the same in the CIB.

(b) That in First Appeal Nos. 616, 617 and 618 of 2019, it has been specifically submitted by Mr. Kamal-Ul-Alam, learned senior counsel, that the plaintiffs in the suits concerned imported fertilizers by opening LCs with the creditor banks on the assurance given by the government through a circular that such imports would be subsidised. But since the government did not comply with such promise, the plaintiffs therein became defaulters not because of their own faults, but because of the latches of the government. Therefore, according to him, the Court below ought to have disposed of the suits on merit after giving opportunities to the plaintiffs to adduce evidences.

(c) According to Mr. Alam, since the plaintiffs in the plaints concerned specifically mentioned about the judgments of this Court in some writ petitions directing the government to resolve the issues with the plaintiffs and since the government did not resolve such issues in defiance of the said order of this Court, the plaintiffs had cause of action before the Court below to seek redress against the government to establish that they became defaulters

because of the latches on the part of the government. However, the Court below, at the very initial stage of the suit and even without issuing summons on the defendants, having dismissed the said suits on the ground of maintainability, the impugned decrees should be set aside by this Court.

(d) Further referring to the impugned orders in the said appeals, Mr. Alam submits that even the reasons for rejection of plaints have not been stated by the Courts below in clear terms. Therefore, according to him, the impugned orders are non-speaking orders and as such should be set aside.

(e) Learned advocates for the appellants commonly submit that it has been decided by our Appellate Division that a plaint may only be rejected on the ground of maintainability in exercise of power under Order XIV, rule 2 of the Code of Civil Procedure after framing of issues and it has also been decided by the Appellate Division that a plaint cannot be rejected before submission of written statement. In this regard, they have referred to two decisions of our Appellate Division in **Fazlur Rahman vs. Rajab Ali, 30 DLR(SC)(1978)-30 ("Fazlur Rahman's Case")** and **Ismat Zerin vs. World Bank-11 MLR (AD)-58** ("**Ismat Zerin's Case").**

(f) Learned advocates for the appellants then forcefully submit that the issues involved in these appeals have already been exhaustively decided by a division bench of the High Court Division comprising their Lordships Mr. Justice A.K.M. Abdul Hakim and Madam Justice Fatema Najib in **Morshed Khan vs. Bangladesh Bank, 72 DLR(2020)-744 ("Morshed Khan's Case",** in short**)**. According to them, the said division bench has decided therein that the plaints cannot be rejected at an initial stage, as has been done in the present cases, and that the plaints cannot be rejected before filing of written statements by the defendants.

(g) They further submit that the said division bench in **Morshed Khan's case** has also decided that the plaints can only be rejected after framing of issues on the preliminary point of maintainability under Order XIV, rule 2 of the Code of Civil Procedure. Therefore, according to them, if this bench of the High Court Division finds any reason to disagree with the said decision, it may refer these appeals to the Hon'ble Chief Justice for constitution of a larger bench.

(h) They further submit that once a suit is instituted properly, it is incumbent upon the Court to issue summons on the

defendants. However, in the instant cases, the Courts below have illegally rejected the plaints concerned on the ground of maintainability without even issuing summons on the defendants. Therefore, according to them, the impugned orders and decrees suffer from gross illegality and should be interfered with by this Court. In support of their such submissions, they have referred to some decisions of this Court, which have been relied upon by the said division bench in **Morshed Khan's Case** (to be discussed later). Learned advocate Mr. Shahriar Kabir has also referred to an unreported decision of Karnataka High Court of India in Karnataka Industrial Corporation vs State of Karnataka and others. (Regular First Appeal No. 14 of 2019 [Dec/INJ].

3.2. As against above submissions, Mr. Tirtha Salil Pal, Mr. Mohammad Rokonuzzaman, Mr. Mohammad Salim Miah, Mr. Md. Arife Billah, Mr. Khan Mohammad Shameem Aziz, Mr. Mamunur Rashid, Mr. Md. Kamrul Alam (Kamal) Mr. Muhammad Ali Akkas Chowdhury, Mr. Shakhawat Hossain, Mr. Md. Nazmul Huda, Mr. M. Miraz Rana, Mr. K.S. Salah Uddin Ahmed and Mr. A. Al Masud Begh, learned advocates appearing for different-respondent banks and/or financial institutions, have made the following submissions:

(i) That the Civil Court is empowered under Order VII, rule 11 read with Section 151 of the Code of Civil Procedure to reject a plaint at any stage, including at initial stage, if, on the very averments of the plaints, it is found that the suit is barred by law and/or the plaintiff does not have any cause of action. Therefore, according to them, since the very averments in the plaints concerned clearly show that the reliefs sought by the plaintiffs are barred by Article 41 of the Bangladesh Bank Order, 1972, the Courts below have committed no illegality in rejecting the said plaints/suits.

(ii) That the very averments in the plaints concerned do not disclose any cause of action for seeking a declaration of legal character as provided by Section 42 of the Specific Relief Act, 1877. This being so, although the Courts below have not specifically mentioned such reason, this Court, under appellate jurisdiction, may entertain such reason and, accordingly, hold that the plaints concerned do not disclose any cause of action and as such the same have been rightly rejected by the Courts below.

(iii) That although the impugned orders are not well-reasoned ones, this Court, under appellate jurisdiction, can fill-up any vacuum therein by assigning reasons as to why the suits concerned were not maintainable from the very beginning on the ground that they were barred by law and

that the plaints did not disclose any cause of action to seek declaration as to any legal character of the plaintiffs.

(iv) That the relationship between the plaintiffs/ their stake holder institutions and the creditor banks/ financial institutions are contractual relationship and as such the said suits seeking specific declaration as regards such contractual relationship alleging breach of such relationship were not maintainable at all. Therefore, according to them, although the Courts below did not assign such specific reason, this Court may affirm the impugned orders and decrees by assigning such reasons.

(v) That the decision in **Morshed Khan' Case** was given in ignorance of law and decisions of our Appellate Division and as such this Court, upon considering the applicable laws, facts and circumstances involved in the present cases, may ignore the said decision.

4. **Deliberations and Findings of the Court:**

4.1. Upon hearing the learned advocates for the parties and considering the materials on record, it appears that various points for determination have surfaced in the instant appeals. They are as follows:

A. Whether a plaint may be rejected under Order VII, rule 11 and/or Section 151 of the Code of Civil Procedure, 1908

on maintainability ground at the very initial stage of a suit even before issuance of summons on the defendants and/or without any application from the defendants for such rejection.

B. Whether a plaint may only be rejected after framing of issues by setting a preliminary issue on maintainability ground under Order XIV, rule 2 of the Code of Civil Procedure.

C. Whether the plaints concerned in the instant appeals were liable to be rejected under Order VII, rule 11 and/or Section 151 of the Code of Civil Procedure on the ground that they were barred by law and/or they did not disclose any cause of action.

4.2. To address the points mentioned above, let us first examine the relevant provisions of law relating to plaint. The term "Plaint" has not been defined by the Code of Civil Procedure, 1908 ("the Code", in short). However, paragraph: [65.204] of the **Halsbury's Laws of India** has tried to give meaning to the term by referring to the definition of "Plaint" as given by Black's Law Dictionary (6th Edn.) to the effect that it is a complaint or a form of action [See also Assan vs. Pathumma 1899 ILR-22 Mad-494; Girija Bai vs. A Thakur Das AIR 1967 Mys 217]. The term 'plaint' has also been defined by **Ain-Sobdokosh** (আইন-শব্দ-

কোষ) of Muhammad Habibur Rahman and Anisuzzaman, Onno Prokash (2006) in the following terms [see page 800]:

> ‘‘আদালতে বাদীর নালিশের লিখিত বিবরণ, যাহা আদালতের কর্মকর্তা কর্তৃক সিলমোহর পূর্বক আদালতের নথিতে অন্তর্ভূক্ত করা হয় এবং যাহার ভিত্তিতে বিবাদীর প্রতি সমন জারি সহ পরবর্তী কার্যধারা চালু হয়’’।

4.3. On the other hand, Section 26 of the Code merely provides that every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed. Order IV of the Code deals with the procedures relating to institution of suits. Rule 1(1) of Order IV, amongst other, provides that every suit shall be instituted by presenting a plaint to the Court or such officer as it appoints in this behalf, and rule 2 of Order IV provides that the Court shall maintain a register of suits in the form of book which will be called “register of civil suits” and particulars of every suit shall be entered in the said book and such entries shall be numbered in every year according to the order in which the plaints are admitted. Orders VI and VII of the Code contain detailed provisions as regards pleading and plaint respectively. Rule 1 of Order VI merely provides that ‘pleading’ shall mean plaint or written statement. However, the said Order contains detailed provisions regarding contents, forms, verification etc. of such pleadings. Again, while rule 16 of Order VI has empowered the Court to strike out or amend any matter in the pleading which may be unnecessary or scandalous or which may tend to prejudice, embarrass or delay the fair trial of the suit, rule 17 of

the said order has incorporated provisions for amendment of pleadings at any stage of the proceedings for the purpose of determining the real questions in controversy between the parties.

4.4. The next Order, namely Order VII, of the Code contains provisions specifically detailing the particulars of plaint, provisions applicable to documents relied-on in plaint etc. However, we will only refer to the relevant provisions therefrom. Rule 1 of Order VII may become relevant at one point of our deliberation and as such the same is reproduced below:

Order VII

Plaint

"Particulars to be contained in plaints:

1. The plaint shall contain the following particulars:-

(a) ………………………………...

(b) ………………………………

(c) ………………………………

(d) ………………………………

(e) the facts constituting the cause of action and when it arose;

(f) the facts showing that the Court has jurisdiction;

(g) the relief which the plaintiff claims;

(h) …………………….and

(i) ……………………."

(Underlines supplied)

4.5. Again, rule 10 of Order-VII contains provisions relating to return of plaint. According to this provision, the plaint shall, at any stage of the suit, be returned if the same is presented to the wrong Court allowing thereby to present the same in the correct Court.

4.6. Since rule 11 of Order-VII of the Code is one of the most talked-about provisions in these appeals, the same is reproduced below:

"Rejection of Plaint

11. The plaint shall be rejected in the following cases:-

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Curt to correct the valuation within a time to be fixed by the Court, fails to do so:

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so:

(d) where the suit appears from the statement in the plaint to be barred by any law

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not exceed twenty-one days."

(Underlines supplied)

4.7. However, rule 12 of Order-VII provides that in rejecting a plaint, it is incumbent for the judge to record the reasons, and according to rule 13 of Order-VII, such rejection of plaint shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of same cause of action. Therefore, it appears from the above provisions under Order-VII rule 11 of the Code that by the words "shall be rejected", the law has made it obligatory for the Court to reject a plaint under this provision for the above four reasons [Clauses (a) to (d)]. However, clauses (a) and (d) are most relevant in the present appeals, which are: (a) If the plaint does not disclose a cause of action, and (b) Where the suit appears from the statement in the plaint to be barred by any law. Apart from above, it appears from Order VII, in particular rules 7 and 8 of Order VII, that every plaint shall specifically state the relief that the plaintiff claims either simply or in the alternative, and according to Rule 8, where the plaintiff seeks to rely in respect of several distinct claims or causes of action founded upon separate and distinct grounds, the said grounds shall be stated as far as may be separately and distinctively.

4.8. Now, let us go back to the provisions under Order-IV of the Code, which may be read with rule 55 of the Civil Rules and Orders, Volume-1. It appears that these provisions impose a duty on the *sheristader* of the civil Court concerned to examine

the plaint immediately upon its presentation to find out whether all requirements of law have been complied with, and he shall particularly examine, amongst others, whether the plaint compiles with the requirements of Order-VII, rules 1, 2, 3, 4, 6, 7 and 8. Thereupon, if it is found that the plaint has not complied with the said requirements, the *sheristader*, or the officer examining the plaint, shall refer the same to the presiding Judge of the Court if he thinks that the plaint should be returned or rejected for any reason. Upon such reference from the *sheristader*, or officer examining the plaint, it will then for the judge concerned to deal with the matter.

4.9. Therefore, it appears from the above provisions that once a plaint is presented to the office of the Court concerned, both the officer concerned and the Judge have duty, before issuance of any summons, to ascertain as to whether any cause of action has been pleaded, any relief has been claimed against the defendants and to determine whether the plaint should be rejected in lemine or returned. This legal obligation of the Court was affirmed by the Calcutta High Court long ago in **Shadhu vs. Dhirendro Nath, AIR 1928 Cal 425**.

4.10. However, to see whether the plaint discloses any cause of action or whether the suit is barred by law, the Court, at this stage, cannot go beyond the averments in the plaint and the accompanying documents relied upon therein, and the Court

has to presume the facts stated in the plaint as correct [see Abdul Malek Sawdagar vs. Mahbubey Alam, 57 DLR (AD) 18; Abdul Khair vs. Shan Hosiery 10 BLC (AD) 8 and Eastern Bank vs. Subordinate Judge 49 DLR 531; Sanjoy Kaushish vs V.C. Kaushiah, AIR 1992 Del 118;]. Therefore, it appears that a duty is cast upon the Court by Order VII rule 11 of the Code, in particular by the word "shall" mentioned therein, to reject a plaint where the same is hit by any of the infirmities enumerated in rule 11 of the said Order even without intervention of the defendants. However, as stated above, the averments in the plaint and the documents relied upon in the Plaint are the only materials which can be looked into by the Court at this stage. Thus, a plaint may be rejected at the earliest opportunity under Order VII, rule 11 in a fit case even after it has only been numbered and registered as a suit **[see Kishore vs. Saddal 1890 ILR-12, All-553, Venkatesa vs Ramasami (1895) ILR 18 MAD 338, Kazi Shahajan vs. Khalilur Rahman 54 DLR (AD) 125 etc.]** In this regard, we have also examined the decision in the unreported **Civil Revision No. 3929 of 2014** (Aa. Na. Ma. Selim Ullah vs. Kamrun Nahar) wherein one of us was the author judge. In that case a suit was filed seeking, amongst others, cancellation of a registered partition deed and contesting facts were pleaded by the parties. Considering this aspect, this Court held that the plaint therein cannot be rejected under Order VII, rule 11 of the Code mainly on the point that the grounds

mentioned for rejection of plaint were *"absolutely the subject matter of evidence"*. Therefore, this decision has no relevance in deciding the cases in hand.

4.11. This being the law, starting of trial or settlement of issues in the suit is not a pre-condition for such an action in a such case. However, when a plaint cannot be rejected merely on the averments in the plaint and documents relied upon therein on the ground of lack of cause of action or the same being barred by law, only then the Court shall proceed for issuance of summons, written statements to be field by the defendants and then, in a fit case, it may become obligatory for the Court to take recourse to Order XIV rule 2 of the Code after framing of issues to settle preliminary issue of maintainability of the suit, if settlement of such issue is found to be enough for settlement of the entire suit or part of it. Therefore, it appears that there is no specific bar in the Code against rejection of plaint at the initial stage i.e. before issuance of summons. Rather, it appears from the above the discussions that it is obligatory for the Court to examine the plaint to check if the same complies with the requirements of the law, in particular Order VII of the Code, which includes relief claimed by the plaintiff, whether such relief is founded on legal cause of action and to check if a suit seeking such relief is barred by law. There are even decisions of the superior courts of this subcontinent including our Superior Court

in support of rejection of plaint in exercise of inherent power of the Court under Section 151 of the Code if the same is not specifically barred by law. We find clear support of this proposition in **Burmah Eastern Case, 18 DLR 709**. Further reliance may be made on the decision in **Chairman Rajuk vs. Abul Hossain, 50 DLR (1998) 249**, in particular the view of the hon'ble third judge at paragraph-34 of the reported case.

4.12. Let us now address the specific submission put forward by the learned advocates for the appellants to the effect that a suit may only be dismissed on maintainability ground after framing of issues by setting a preliminary issue thereon in view of the provisions under Order XIV rule 2 of the Code. In this regard, learned advocates have referred to a decision of our Apex Court in **Fazlur Rahman's case**. Order XIV, rule 2 is reproduced below:

Orders XIV

Issue of law and of fact:

2. Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement

of the issues of fact until after the issues of law have been determined.

4.13. It appears that the above provision is contained under Order XIV of the Code with the heading "SETTLEMENT OF ISSUES AND DETERMINATION OF SUIT ON ISSUES OF LAW OR ON ISSUES AGREED UPON". Therefore, the very title of this Order-XIV suggests that the stage for the application of the provisions under this Order arrives only after submission of written statements by the defendants and framing of issues. While rule-1 of Order-XIV deals with 'framing of issues' on the pleadings of the parties, namely material proposition of fact or law as affirmed by one party and denied by other, rule 2 has made it obligatory for the Court to dispose of the issue of law first and thereby postpone the settlement of issues of facts if it is of the opinion that the case or any part thereof may be disposed of on such disposal of issue of law. Therefore, apparently, we do not find any connection and/or clash between the provisions under Order VII, rule 11 and the provisions under Order-XIV, rule 2 of the Code given the apparent position that the provisions under Order-XIV are taken recourse to by the Court after filling of written statements by the defendants and framing of issues. Thus, it has got nothing to do with the rejection of plaint under Order-VII, rule 11 of the Code at the initial stage of the suit.

4.14. In this regard, we have carefully examined the decision in **Fazlur Rahman's case**. It appears from the very facts of that case that the plaintiff therein filed a suit before a civil Court in respect of an election dispute, particularly when there was tribunal constituted by the concerned special law for disposal of such disputes. In the said suit, upon an application by the plaintiff, the Court somehow granted ad-interim injunction restraining publication of election result and fixed a date for hearing of temporary injunction application filed by the plaintiff and maintainability issue of the suit. On the said fixed date, the Court rejected the injunction application of the plaintiff, but the maintainability issue of the suit was not disposed of inadvertently. However, in rejecting the said application for temporary injunction, the Court, in its elaborate discussion, specifically observed that the suit itself was not maintainable. Thereafter, with some other steps having been taken by the parties, issues were framed by the Court. At this stage, our the then Supreme Court, in disposing of a Civil Petition for Special Leave to Appeal arising therefrom, held that it was obligatory for the Court below to dispose of the preliminary issue of maintainability first under Order XIV rule 2 of the Code of Civil Procedure. After reproducing the provisions under Order-XIV, rule-2 of the Code, our Supreme Court, in that case, observed under paragraph-21 of the reported case as follows:

“21. The statutory mandate, as is contained in the above quoted rule, clearly directs that if the Court is of opinion that the suit or any part thereof may be disposed of on an issue of law only, it shall try that issue first even without settling the issues of fact. The whole object of this provision seems to be that if there is any issue of law on which the entire suit may be disposed of it is the duty of the Court to try that issue first at the earliest opportunity so that the Court may not be unnecessarily bogged down in a complicated trial of the issue of t fact requiring much time and involving heavy expenditure. The general principle is not doubt that the issues in a suit shall not be tried in parts but should be disposed of together. But the provision of Order 14, rule 2 of the Code is a kind of exception to the said general rule. Under the said rule of Order 14, after the filing of the written statement the Court may take up the hearing of an issue of law as a preliminary issue for decision if it is of opinion that the decision on such issue shall dispose of the entire suit or parts thereof, and may postpone even the settlement of issue of fact until the disposal of the said issue of law. The compliance with this rule is particularly obligatory when the issue of law raises the question of jurisdiction of the Court to try the suit, as is in the present case.”

4.15. A careful examination of the said decision in **Fazlur Rahman’s case** rather reveals that our the then Supreme Court has encouraged the settlement of issue of law, on which the entire suit may be disposed of, at the earliest opportunity so that the Court might not be unnecessary bogged-down in a complicated trial of issue of facts requiring much time and involving heavy expenditures. This underlying view of our Supreme Court

becomes more clear when we come accross the following observation therein as made in paragraph 23 of the reported case:

> *23. ………………………In the present case it appears that the <u>Court rightly set down the hearing of the suit before framing the issues formally on an issue of law as to the maintainability of the suit which goes to the root of the litigation and raises the question of jurisdiction of the Court to</u> try the dispute. It, however, appears that subsequently this question was completely lost sight of for some time, but as soon as it was brought to the notice of the learned Sub-ordinate Judge, he became alive to it and set down the hearing of the suit on the question of its maintainability indicated above.*
>
> *(Underlines supplied)*

4.16. Therefore, it appears that there is nothing in **Fazlur Rahman's case** which indicates that a plaint or suit cannot be rejected or dismissed at the earliest opportunity, i.e. even before issuance of summons, if it is found that the plaint does not disclose any cause of action or that the suit is barred by law, particularly when such conclusion may be reached by merely reading the averments in the plaint and documents relied upon therein. Rather, this decision has encouraged such practice of early disposal of issue of law which goes to the root of jurisdiction and disposal of which will save time and shall save the Court from

being bogged-down in protracted procedures of settling the issues of facts after submission of written statements etc. In this regard, we have also examined the decision of a single bench of this Court in **Abdul Hamid Shaikh vs. Sree Ram Krishna Dev, 48 DLR (1996) 367** wherein the trial Court dismissed the suit of an Asram at the time of disposal of temporary injunction application. In a miscellaneous appeal arising therefrom before the High Court Division, the said single bench presided over by his Lordship Mr. Justice Muhammad Ansar Ali disapproved such practice mainly on the ground that the said suit, being a suit for declaration of title, confirmation of possession etc. in respect landed property, so many incidental issues were involved therein which needed evidences to be adduced by the parties. Therefore, the decision in that case also does not have relevance in deciding the cases in hand.

Examination of Plaints in Question:

4.17. With the above legal position in mind, let us now turn to the Plaints concerned in the instant appeals. It appears that the basic reliefs, as sought by the plaintiffs in the Plaints, are as follows:

(a) A declaration that they are not loan defaulters.

(b) Declaration that publication of their names in the CIB of Bangladesh Bank as loan defaulters is illegal, malafide and not binding upon them.

(c) In First Appeal Nos. 616, 617 and 618 of 2018, declaration that the defendants (not specified) are liable to pay interests imposed by the creditor banks in respect of the credit facilities obtained by the plaintiffs.

4.18. The above reliefs, as claimed by the plaintiff-appellants, are basically based on their averments in the respective plaints to the effect that they, or their stake-holder institutions (স্বার্থ সংশ্লিষ্ট প্রতিষ্ঠান), obtained certain credit facilities from some of the defendant banks and/or financial institutions and that for various reasons—such as bad business situation, creditors negligence or negligence and default of 3rd parties including the government—repayment of such liabilities became defaulted and, accordingly, the said creditor banks or financial institutions treated them as loan defaulters and sent their names to Bangladesh Bank, whereupon the Bangladesh bank published their names as defaulters in its CIB report. They have also stated in some plaints that in consequence of such publication, they are suffering devastating effects in their businesses. Therefore, only on a plain reading of the averments in the above plaints including the reliefs sought therein (relief is part of plaint as per Order VII rule 11 of the Code), the said plaints and the reliefs sought therein seem to be hit by two provisions of law, namely Article 41 of the Bangladesh Bank Order, 1972 and Section 42 of the Specific Relief Act, 1887.

4.19. However, before coming to a definite conclusion, we need to know the practical mechanism as to how a person becomes defaulter-borrower in Bangladesh in respect of any credit facilities provided by a creditor bank or financial institution. As per the statements in the plaints, either the plaintiffs or their stake holder institutions (স্বার্থ সংশ্লিষ্ট প্রতিষ্ঠান) have obtained certain credit facilities from different defendant banks or financial institutions and for whatever reasons, they, or the said stakeholder institutions, have defaulted in repayment of loan. It is also admitted in the plaints that they, or their stakeholder institutions, obtained such credit facilities by entering into contracts with the said defendant banks or financial institutions, which are generally known as 'sanction letters'. Therefore, when they, or their said stakeholder institutions, defaulted in repayment as per the terms of the said contracts, they naturally became defaulters. Although these types of relationships between the borrowers and creditors are contractual relationships, the State has intervened to some extent by way of various legislations enacted in Parliament basically in order for protection of public money and to prevent the unscrupulous borrowers from abusing the process of obtaining such credit facilities from different banks and/or financial institutions given that Bangladesh has a very bad reputation as regards siphoning off public money from banks and financial institutions by some habitual borrowers. Therefore, although the said borrowers

became defaulters in their day to day repayment process, all such defaulters were not dealt with by such statutes. Only the 'defaulter-borrowers' (খেলাপী ঋণ গ্রহীতা), as defined by Section 5 (Ga Ga) of the Bank Companies Act, 1991, became the subject matter of concern for the creditor banks and financial institutions as because the relevant law, in particular Section 27 Ka Ka of the Bank Companies Act, 1991, has imposed an obligation on the said creditor banks or financial institutions to send the names of those 'defaulter-borrowers' to the Bangladesh Bank. The said relevant two provisions, namely Sections 5 (Ga Ga) and 27 Ka Ka of the Bank Companies Act, 1991 are also quoted below:

৫(গগ) ""খেলাপী ঋণ গ্রহীতা" অর্থ কোন দেনাদার ব্যক্তি বা প্রতিষ্ঠান বা কোম্পানী যাহার নিজের বা স্বার্থ সংশ্লিষ্ট প্রতিষ্ঠানের অনুকূলে প্রদত্ত অগ্রীম, ঋণ বা অন্য কোন আর্থিক সুবিধা বা উহার অংশ বা উহার উপর অর্জিত সুদ বা উহার মুনাফা বাংলাদেশ ব্যাংক কর্তৃক জারীকৃত সংজ্ঞা অনুযায়ী মেয়াদোত্তীর্ণ হওয়ার ৬ (ছয়) মাস অতিবাহিত হইয়াছে;

ব্যাখ্যা।– এই দফার উদ্দেশ্য পূরণকল্পে কোন ব্যক্তি বা , ক্ষেত্রমত, প্রতিষ্ঠান বা কোম্পানী অন্য কোন প্রতিষ্ঠানের পরিচালক না হইলে অথবা উক্ত প্রতিষ্ঠানে তাহার বা উহার শেয়ারের অংশ ২০% এর অধিক না হইলে অথবা উক্ত প্রতিষ্ঠানের ঋণের জামিনদাতা না হইলে , উক্ত প্রতিষ্ঠান তাহার বা উহার স্বার্থ সংশ্লিষ্ট প্রতিষ্ঠান বলিয়া গণ্য হইবে না;

২৭কক। খেলাপী ঋণ গ্রহীতার তালিকা, ইত্যাদি। (১) প্রত্যেক ব্যাংক –কোম্পানী বা আর্থিক প্রতিষ্ঠান , সময় সময়, উহার খেলাপী ঋণ গ্রহীতাদের তালিকা বাংলাদেশ ব্যাংকে প্রেরণ করিবে।

(২) উপ-ধারা (১) এর অধীন প্রাপ্ত তালিকা বাংলাদেশ ব্যাংক দেশের সকল ব্যাংক–কোম্পানী ও আর্থিক প্রতিষ্ঠানে প্রেরণ করিবে।

(৩) কোন খেলাপী ঋণ গ্রহীতার অনকূলে কোন ব্যাংক-কোম্পানী বা আর্থিক প্রতিষ্ঠান কোনরূপ ঋণ সুবিধা প্রদান করিবে না।

(৪) আপাততঃ বলবৎ অন্য কোন আইনে যাহা কিছুই থাকুক না কেন, খেলাপী ঋণ গ্রহীতার বিরুদ্ধে ঋণ প্রদানকারী ব্যাংক-কোম্পানী বা, ক্ষেত্রমত, আর্থিক প্রতিষ্ঠান প্রচলিত আইন অনুসারে মামলা দায়ের করিবে।

4.20. Therefore, it appears from the above provisions that certain borrowers, directors/ share holders of borrower establishments or guarantors of such credit facilities are treated as 'defaulter-borrowers', and it is the statutory obligation of the banks and financial institutions to send their names to the Bangladesh Bank. Not only that, once they are treated as defaulter-borrowers as per the above definition, the banks and financial institutions in Bangladesh are debarred from granting any credit facilities in their favour. In the above way, once the said names are received by the Bangladesh Bank, it is required to maintain such credit information through its Credit Information Bureau report in accordance with the provisions and obligations mentioned under Chapter IV (Articles 42 to 48) of the Bangladesh Bank Order, 1972. It appears from the provisions under Chapter-IV of the Bangladesh Bank Order, 1972 read with Section 27KaKa of the Bank Companies Act, 1991 that it is the obligation of the creditor-banks and/or financial institutions to send the names of the defaulter-borrowers, as defined by Section 5 (Ga Ga) of the Bank Companies Act, 1991, to the Bangladesh Bank and once such information is received by the Bangladesh Bank, it becomes its obligation to furnish such credit information to all banking companies and financial institutions so that such banking

companies or financial institutions may not get any opportunity to provide further credit facilities to any such defaulter-borrowers. Under Chapter-IV of the Bangladesh Bank Order, the Bangladesh Bank itself may also require any credit information (see Article 44) in such manner as it thinks fit from any banking company. The bank companies may also seek such credit information from Bangladesh Bank (see Article 45). However, such credit information are treated as confidential information (see Article 46). Therefore, it appears that sending the names of the defaulter borrowers to Bangladesh Bank by different creditor banks and financial institutions and/or publication of such credit information, in particular the names of the defaulter-borrowers, in the CIB report of Bangladesh Bank are statutory obligations of the creditor banks, financial institutions and Bangladesh Bank itself.

4.21. Now, it appears from Article 41 of the Bangladesh Bank Order, 1972 that such functions of Bangladesh Bank and its officials have been given a legal protection from any suits or legal proceedings. Sub-article (1) of Article 41 even starts with the provisions that ***"no suit or other legal proceedings shall lie against the bank*** [*meaning Bangladesh Bank, see Article 2(c)*] ***or any of its officers for anything"*** which is done in good faith or intended to be done in pursuance, amongst others, of the provisions of Chapter-IV of the Bangladesh Bank Order, 1972. For our ready reference,

Article 41 of the Bangladesh Bank Order, 1972 is reproduced below:

Bangladesh Bank Order, 1972

41. (1) No suit or other legal proceedings shall lie against the Bank or any of its officers for anything which is in good faith done or intended to be done in pursuance of Article 36 or Article 37 or Article 38 or Article 39 or Article 40 or in pursuance of the provisions of Chapter IV.
(2) No suit or other legal proceedings shall lie against the Bank or any of its officers for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of Article 36 or Article 37 or Article 38 or Article 39 or Article 40, or in pursuance of the provisions of Chapter IV.

(Underlines supplied)

4.22. Therefore, it appears from the very letters of the above provisions and the provisions under Chapter-IV of the Bangladesh Bank Order, 1972 that such act of publication, which has been done in good faith or intended to be done in pursuance of Chapter-IV, cannot be proceeded against by any suit or other legal proceedings. This means the provisions under Article 41 has even debarred the entertainment of any suit in respect of such publication by Bangladesh Bank in the CIB report. Therefore, when the provision of a statute is clear like day-light, it does not need any interpretation from the Court. Unless and until such provision is declared unconstitutional, it is the constitutional

obligation of all Courts including the Supreme Court of Bangladesh to apply such law and to act in accordance with such law.

4.23. A submission has been made from the appellants' side to the effect that the issue as to whether the Bangladesh Bank Officials or Bangladesh Bank itself has acted in good faith in publishing plaintiffs' names in the CIB report can be examined by the Civil Courts. This issue of mala-fide or good faith in a similar situation was considered by our Appellate Division in **Nur Mohammad vs. Mainuddin Ahmed, 39 DLR (AD)-1.** In this case, a suit was filed seeking a decree of title in respect of property, which was requisitioned under Section 3 of the Emergency Requisition of Property Act, 1948, and for setting-aside the order of requisition itself. It was alleged in the plaint therein that the said requisition was the result of mala-fide acts and the facts of such mala-fide were stated in detail under paragraph-5 of the plaint. However, majority view of our Appellate Division, which was authored by the then hon'ble Chief Justice Mr. Justice F.K.M.A. Munim, held that when the suit itself was barred by law, the same could not be held to be maintainable in order to try an issue of mala-fide alleged in the plaint. The relevant observation in that judgment, under paragraph-24 of the said reported case, is pertinent to be reproduced hereunder:

"24. This is a well –known proposition of law which this Court has yet no occasion to depart from or express any

disagreement with it. The point, however , is whether any bar of suit imposed by the legislature can be disregarded to make such suit which is so barred, maintainable in order to try an issue on mala fide alleged in the plaint. It may, at least in some cases, be seen that hardship, or even injustice , may result if , in spite of evident truth in the allegation of mala fide, the suit is held to be not maintainable because there is a bar against such suit in the statute concerned. But, seeker of justice in a court of law should become aware, if not already so, that justice is done according to law. A Judge may have sympathy for a litigant's suffering due to technicalities of law made by the legislature, still in view of the express legislative intention, he must follow the "hands-off doctrine". Otherwise chaos and anarchy would prevail leading to all sorts of complexities and confusion. Whatever the legislature says, unless it is contrary to the Constitution, its mandate, either express or implied, has been obeyed by Court".

(Underlines supplied)

4.24. Therefore, as per the above law declared by our Appellate Division, when a suit is barred, as in the present case under Article 41 of the Bangladesh Bank Order, 1972, such suit cannot be made entertainable just for examining the mala-fide alleged in the plaint. Further, the underlying principle declared in the said case is that if the judges are given liberty to examine such alleged mala-fide in a suit barred by the legislature, there will be chaos and anarchy leading to all sorts of complexities and confusions. Therefore, unless and until it is found by a competent Court that a provision enacted by Parliament is unconstitutional, each Court in Bangladesh is bound to act in accordance with that provision. In

spite of above decision of our Appellate Division, we have still examined the plaints concerned in the instant appeals to see whether any mala-fide, either of the creditor banks/financial institutions or of the Bangladesh Bank, has been pleaded specifically therein. However, we have not found any such statement in any of the plaints. Therefore, the submissions that even if a suit is barred by law, the same may be entertainable to examine the mala-fide pleaded in the plaints, has no substance and relevance in the present cases before us.

4.25. Now, as to the declaration sought by the plaintiffs that they are not defaulters. As stated above, admittedly, the relationship between the plaintiffs (or their stakeholder institutions) and the creditor banks (or financial institutions) is contractual relationship. It is also apparent from the plaints that whatever dispute they have stated as regards treating them as defaulters, the same arose from alleged breach of such contract by either of the parties. Therefore, the question of law is whether a declaration can be sought under Section 42 of the Specific Relief Act to the effect that a party to such contract is not a defaulter.

4.26. Suits seeking declaration in our country are mostly governed by the provisions under Chapter-VI of the Specific Relief Act, 1877, in particular Section 42 under the said Chapter. Therefore, Section 42 of the Specific Relief Act, 1877 is reproduced below:

Specific Relief Act, 1887

42. Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

***Explanation**- A trustee of property is a ‘’person interested to deny ‘’a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee.*

(Underlines supplied)

4.27. Thus, it appears from the above provisions that the very basic requirements for seeking such declaratory decree is to show that the person seeking such decree is entitled to any “legal character” or to any right as to any property and that the other person is denying such right to such “legal character” or interested to deny his such title to such character or right. To claim such legal character, the plaintiff will have to show that some attributes or characteristics are attached to him by law in his personal and individual capacity, namely marriage, divorce, adoption, legitimacy etc. In a reported case, it was held that where the dismissal order shows that the plaintiff was treated as a worker of defendants and was dismissed under the relevant provisions of the Labour Act, his only remedy lies in a grievance petition before

the Labour Court and he has no legal character to maintain a suit under Section 42 of the Specific Relief Act (see **Hazi Abdur Karim vs. Mst. Surraya Begum, AIR, 1945 LAH-266)**. This issue of legal character was also dealt with by the then High Court of East Pakistan, Dacca in **Burmah Eastern Ltd. vs. Burmah Eastern Employees Union and others, 18 DLR (1966) –709** ("Burmah Eastern Case") wherein the scope of rejection of plaint under Order VII rule 11 of the Code of Civil Procedure and maintainability of declaratory suits seeking a declaratory decree were considered. In that **Burma Eastern Case**, Burma Eastern Employees Union instituted the suit concerned seeking a declaration that some terms and conditions imposed on the service of the members of the union were illegal, invalid etc. In dealing whether the said employees Union can seek any such declaratory decree as regards their legal character, Chief Justice Murshed observed, in paragraph-20 of the said reported case, as follows:

> *"20. The term "legal character" is familiar to lawyers. It is, however, difficult to define precisely its connotation within a short compass. Attempts have, nonetheless, been made in this behalf, and I would suggest a workable definition in the following terms. <u>The expression "legal character" or "status" denotes a character or status conferred by law on an individual or a number of individuals viewed as a unit of society and not shared by the generality of the community but</u>*

> *only by individuals, placed in the same category of character. The character itself must be conferred by law on persons viewed from the standpoint of membership of the community. It is a "status" or "character" conferred by law. It is not a creature of contract but of law. Indeed, in most cases one cannot contract out of the "status" with which the law clothes one. For example, a minor cannot contract into majority nor can one, who has attained majority, under law, contract himself into minority."*

(Underlines supplied)

4.28. Thereafter, by examining various decisions of the superior Courts, the High Court in that case held that the plaintiffs did not have any entitlement to seek any declaration as to their legal character and, accordingly, the suit was prohibited under the law if not by the law. Accordingly, it was observed under paragraph: 27 of the said reported case that *"even if the case does not come, literally and strictly, within the letter of order 7, rule 11, of the Code of Civil Procedure, there cannot be any manner of doubt that the suit is prohibited under the law in the sense that it is barred under legal provisions. The Court below should, therefore, have rejected the plaint in limine because the suit itself is barred under our legal system. If Order 7, rule 11, of the Code of Civil Procedure cannot be prayed in aid, the inherent power of the Court should be invoked." (Underlines supplied)*. As regards

rejection of plaint in order to prevent continuation of fruitless litigation, his lordship Justice Murshed in the said case observed at paragraph:9 in the following terms:

> *"The principles involved are two-fold: In the first place, it contemplates that a still-born suit should be properly buried, at its inception, so that no further time is consumed on a fruitless litigation. Secondly, it gives plaintiff a chance to retrace his steps, at the earliest possible moment, so that, if permissible under law, he may found a properly constituted case."*

4.29. Therefore, in the above mentioned **Burmah Eastern** case, our superior Court has categorically discouraged the practice of allowing continuation of fruitless litigations. Rather, it has mandated that such litigation should be berried at its inception so that no further time is consumed.

4.30. Another case may be referred in this regard. The plaintiff in **Shafi A. Chowdhury vs. Pubali Bank,** 54 DLR (2002) 310 also sought a similar declaration that he was not a defaulter. However, a division bench of our High Court Division, after extensive examination of laws involving declaration of legal character, observed at para-36 as follows (per Mr. Justice ABM Khairul Haque, as his Lordship then was):

This kind of declaration involving pecuniary relationship of the concerned parties does not come within ambit of declaratory suit under section 42 of the Specific Relief Act. What the plaintiff is claiming is not a declaration of his legal character or as to his any right but the extent of his contractual obligations involving his financial liabilities. The above noted decisions would unmistakably show that a declaration with regard to the contractual or financial obligation involved or transacted between the parties cannot come within the ambit of section 42 of the Specific Relief Act. Besides, such a declaration may tend to oust the jurisdiction of the Artha Rin Adalat established under the Artha Rin Adalat Act, 1990 because if such a declaration is given that the plaintiff is not a defaulter or he is not a borrower or he is not a loanee the Pubali Bank Ltd, as a creditor, may be prejudiced in filing a suit against the plaintiff claiming repayment of loan before any court. As such, we would hold that this prayer on the basis of the averments made in the plaint that the plaintiff is not a borrwoer or a defaulter is not maintainable, simply because this pecuniary relationship or financial transaction between the two parties might be the subject matter of a properly framed suit either by the creditor or even by the debtor but declaration in respect of such claims cannot stand under section 42 of the Specific Relief Act. In view of above facts and circumstances, we would hold that this suit for declaration as mentioned in prayer 'a' and prayer 'e' in paragraph 50 of the

plaint is not maintainable under section 42 of the Specific Relief Act.

(Underlines supplied)

4.31. This being the legal position, it appears from the plaints concerned in the instant appeals that the plaintiffs in fact do not have any claim to any 'legal character' which have been denied or intended to be denied by the defendants. Rather, they have claimed some contractual rights and/or obligations and have alleged that such contractual obligations have been breached by the defendants. Therefore, they may at best file a suit in other nature if they are advised so, but not a suit seeking any declaration as they do not possess any 'legal character' or they do not have any claim to such 'legal character' as provided by Section 42 of the Specific Relief Act. This being so, the very averments of the said plaints in fact do not disclose any cause of action and as such the same are prohibited, if not clearly under Clause (a) of rule 11 of Order VII of the Code, they are prohibited under the law of the land, namely Section 42 of the Specific Relief Act, and as such the Courts, in exercise of their inherent power under Section 151 of the Code of Civil Procedure, should reject the said suits at their very inception. Not only that, if the Court of original jurisdiction does not reject such plaints or suits, or does reject such plaint or suit assigning wrong reason or by non-speaking order, Section 107 of the

Code amply empowers us as the appellate court to reject the same by assigning correct reasons or by a speaking order.

Murshed Khan's Case-72 DLR (2020)-744:

4.32. However, when we have taken the above view and have concluded that the plaints in question should be rejected in any way, we have stumbled on a decision of a division bench of the High Court Division comprising their Lordships Mr. Justice AKM Abdul Hakim and Madam Justice Fatema Najib in **Morshed Khan's case**, which appears to have given somehow contrary views on legal points addressed by us in almost similarly situated cases. In **Morshed Khan's case** as well, the plaintiffs sought similar declaration as regards publication of their names in CIB and also sought declaration to the effect that they were not defaulters and that their names were arbitrarily published in the CIB report of Bangladesh Bank. Therefore, in the instant appeals, we have two options: (1) to disagree with the decision of that bench on relevant points of law. Or (2) to ignore that decision on such points, in which case we will have to hold that the decision of that bench on those points is a decision per-incuriam.

4.33. It is long standing practice of our Courts not to declare a decision of a bench of concurrent jurisdiction per-incuriam, unless there is any compelling situation. The best practice is to disagree with that decision on relevant points and refer the matter to the Hon'ble

Chief Justice for constitution of a larger bench to settle those points. In order to decide as to which course we should take, we have carefully scrutinized the said decision of the said division bench in **Morshed Khan's Case**. It appears from such examination that the following issues were raised therein directly or indirectly:

(i) Whether a plaint can be rejected immediately after its registration/institution even before issuance of summons.

(ii) Whether a plaint can be rejected at the time of hearing of injunction application filed by the plaintiff even before filing of written statements by the defendants.

(iii) Whether the plaints concerned in the said appeals were liable to be rejected under Order VII rule 11 of the Code.

(iv) Whether the plaintiffs can seek a declaratory decree as to their legal character and as such whether the plaints therein have disclosed any cause of action; and

(v) Whether the plaint/suit was barred by Article 41 of the Bangladesh Bank Order, 1972.

4.34. However, it may be noted at the outset that although the above issues were raised and discussed, no definite declaration of law was given on all of them. To be more specific, no clear decision was given in the said decision by the said bench on the following issues:

(1) Whether a plaint can be rejected immediately after registration of the suit and before issuance of summons;

(2) Whether a plaint can be rejected at the time of hearing of temporary injunction application filed by the plaintiff after such registration of the suit;

(3) Whether a plaint can be rejected before filing of written statements by the defendants.

4.35. Therefore, on the above points of law, since we do not find any clear ratio in the said decision, we do not need to agree or disagree with that decision on those points. Our late lamented Mahmudul Islam in his book, '**Constitutional Law of Bangladesh'**, Third Edition (page-911), has quoted a very important paragraph from a decision of Indian Supreme Court [Krishna Kumar v. India, AIR 1990 SC 1782, 1793,], which is reproduced hereunder:

"The ratio decidendi is the underlying principle, namely, the general reasons or the general grounds upon which the decision is based on the test or abstract from the specific peculiarities of the particular case which gives rise to the decision. The ratio decidendi has to be ascertained by an analysis of the facts of the case and the process of the reasoning involving the major premise consisting of a pre-existing rule of law, either statutory or judge-made, and a

minor premise consisting of the material facts of the case under immediate consideration."

4.36. In the above reported decision of **Morshed Khan's case**, we have not found any such clear ratio on the point of rejection of plaint immediately after registration of the suit and before issuance of summons and/or rejection of plaint at the time of injunction hearing and/or before filing of written statement by the defendants. It was observed at paragraph-5 of the said reported case that the learned Joint District Judges concerned rejected the plaints in question under Order-VII, rule 11(d) of the Code on the ground of maintainability mainly relying upon three decisions reported in 18 DLR-709 (Burmah Eastern Case), 48 DLR (AD)-50 (W.B Industrial Case) and 51 DLR(AD)-221(BSRS Case). The said bench distinguished those three cases from the cases in hand in paragraphs-18 to 29 on the following features:

(1) In those cases, plaints were rejected upon an application under Order VII rule 11 of the Code filed by the defendants, but in the suits in question they were rejected suo-moto.

(2) In some of those cases, reliefs were barred under law, but in the cases in question the reliefs claimed by the plaintiffs were not barred under law.

(3) In those cases the plaints were rejected long after filing of the suit, service of summons, after appearance of the parties and contesting the same, but in the cases in hand it was rejected at the preliminary stage immediately after registration of the suit where no summons or notices were served.

(4) In Burmah Eastern case, the plaintiff did not have any legal character or status, but in the suits in question, the plaintiffs have legal character or status;

4.37. After finding above distinguishing features, the said bench then proceeded to justify as to how the plaints in question were not liable to be rejected on merit at that stage and as to why they were disclosing cause of action and that they were not barred by or under any law. In doing so, the said bench, however, did not express any specific view saying that a plaint cannot be rejected immediately after its registration and before issuance of summons and/or before filing of written statement. It also did not express any specific view to the effect that a plaint cannot be rejected without any application being filed by the defendants under Order-VII rule 11. However, the said bench has referred to various decisions and directly or indirectly relied on them, namely the decisions in **Ismat Zerin Case, 11 MLR (AD)-58; Nukul Chandra Cases, 4MLR (AD)-226; Fazlur Rahman Case 30DLR (SC)-30**; **Nur Mohammad's Case 39 DLR (AD)-1**; **Anath Bandhu Case,**

42 DLR(AD)-244; **Abdul Halim's Case, 49 DLR-564; Abdul Jalil's Case 49 DLR-531; Abul Khair Case, 53 DLR (AD)-62**; **Kazi Shahajan's Case, 54 DLR (AD)-125**; **Abdul Malek's Case, 57DLR (AD)-18** and **Akhter Begum's Case 58 DLR(AD)-219** and held that the above cases have laid down the following principles (see para 42):

> *"(i) The well settled principle of laws relating to Order VII, rule 11 are the plaint can be rejected only on reference to plaint itself as whether it is barred in any of the four clauses of Order VII, rule 11 of the Code of Civil Procedure.*
>
> *(ii) Plaint cannot be rejected on defense material as well as on mixed question of law and fact.*
>
> *(iii) Where evidence is required and where there is material, plaint cannot be rejected.*
>
> *(iv) Plaint can be rejected if it does not disclose a cause of action and barred by any law.*
>
> *(v) There is no hard and fast Rule when an application for rejection of plaint is to be filed but ends of justice demands that it must be filed at the earliest opportunity.*
>
> *(VI) Plaint cannot be rejected before filing of the written statement".*

4.38. We have also examined the above referred decisions carefully and we are in full agreement with the said bench in respect of

general principles as formulated by the said bench under paragraph-42 of the reported case except the general principle No. VI. We have repeatedly examined the said decisions to find any basis of the said general principle to the effect that a plaint cannot be rejected before filing of written statement. But have failed to find any such support except that in some cases when the plaint cannot be rejected on the very averments of the plaint, it has been held that the Court should not reject the plaint and should proceed for the next steps like issuance of summons, filing of written statements, framing of issues etc. Therefore, this principle No. (VI), as formulated by the said bench, cannot be regarded as a general principle of law. Rather, it may be a principle of law applicable to a particular plaint or suit depending on the averments made and relief sought in that plaint.

4.39. In this regard, we have particularly examined the decision of our Appellate Division in **Ismat Zerin Case, 11 MLR(AD)-58** wherein it appears that the 'head note' of the reported case does not reflect the real ratio decided therein. The head note of the said reported case has declared a general principle of law in the following terms:-*"Order 7 rule 11- Rejection of plaint on ground of maintainability of the Suit is not permissible before filing of written statement". However,* a three judge bench of the Appellate Division in the said decision concluded in the body of the judgment that on the facts of the said case the plaint should

not have been rejected before filing of the written statement. It did not hold any view that as a general principle of law, plaints cannot be rejected before filing of written statement. It rather appears that in the said decision, an earlier decision of a larger bench (five judges) of the Appellate Division in **Rupali Bank's case-7MLR(AD)-4** was referred to by the learned advocate for the World Bank wherein a similar situation arose as regards filing of a case by the employee of a bank seeking declaration that his dismissal was illegal. The said larger bench of the Appellate Division therein held as follows:

> *"10. In view of the legal position as discussed above we need not decide the issue as to whether the dismissal from service in question was illegal, but we must hold that the suit is not maintainable on the ground that a declaratory decree will not be enough and that a decree for mandatory injunction necessary as a consequential relief is barred under the law. We, therefore, find that neither the trial court nor the appellate court nor the High Court Division considered this vital issue which cuts at the root resulting the suit not maintainable as framed. The suit ought to have been dismissed on this issue."*
>
> *(Underlines supplied)*

4.40. Therefore, the basic principle as declared in Burmah Eastern Case and supported by other cases is that a still born suit should be properly buried at its inception so that no further time is consumed on a fruitless trial and such burial also gives benefit to the plaintiff who then can have a chance to replace his steps

at the earliest possible moment so that, if permissible under the law, he may found a properly constituted case. Therefore, we have no option but to humbly hold that the decision in Morshed Khan's case to the extent that the plaintiffs in the suits concerned have legal character (see paragraph 27 of the reported case) is a decision per-incuriam. Thus, we should ignore the same.

4.41. It further appears from the said decision in **Morshed Khan's** case that the said bench has given huge emphasis on Order XIV rule 2 of the Code of Civil Procedure in order for settling the preliminary issue of maintainability after framing of issues. We fully agreed with such view of the said bench in that in a case where summons and written statements are required to be issued and submitted as because the plaint cannot be rejected on the very averments of the same under Order VII rule 11 of the Code and/or Section 151 of the Code, and in such cases when issues are framed after filing of written statements, the suit should be disposed of by resolving the issue of maintainability, or issue of law only, first if such step resolves the entire suit or part of it. This position was affirmed by our Supreme Court in the above referred **Fazlur Rahman's** case 30 DLR (SC)-30. We have already discussed this case at length in our earlier paragraph Nos. 4.12 to 4.16. This case rather supports our view

that a suit should be buried at its inception if it is found on the very averments of the plaint that the same is barred by law.

4.42. In view of above, we have no hesitation to hold that in a proper case the plaint can be rejected immediately after its registration and even before issuance of summons because of the fact that the very word 'shall' in the provisions under Order-VII rule 11 of the Code makes it obligatory for the Court to reject a plaint if such plaint does not disclose any cause of action or if the suit is barred by law.

4.43. Now, the substantive issues. It appears that the said division bench in **Morshed Khan's case,** under paragraphs 33 to 37, deliberated on the application of Article 41(1) of Bangladesh Bank Order, 1972 to the plaints concerned therein. The entire deliberation is quoted below:

> *"33.In the impugned judgments the learned Joint District Judge found that the suit is explicitly barred by Article 41(1) of the Bangladesh Bank Order, 1972. To appreciate this findings, it will be profitable to quote the Artile 41(1) of the Bangladesh Bank Order, 1972. To appreciate this findings, it will be profitable to quote the Article 41(1) of the Bangladesh Bank Order 1972 which provides that-*
>
> > *"41.– (1) No suit or other legal proceedings shall lie against the Bank or any of its officers for anything which is in good faith done or intended to be done in*

pursuance of Article 36 or Article 37 or Article 38 or Article 39 or Article 40 or in pursuance of the provisions of Chapter IV.

(2) No suit or other legal proceedings shall lie against the Bank or any of its officers for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of Article 36 or Article 37 or Article 38 or Article 39 or Article 40, or in pursuance of the provisions of Chapter IV.

34. The very words 'good faith' are the riders of Article 41 which are ultimately providing some sort of indemnity or liberty or exemption to the bank or its officers from any suit or legal proceeding for any kind of work or performance in pursuance of some provisions of law thereof done/carried out in course of duty. In no way, it restricts/prohibits/precludes/bars upon filing any suit or other legal proceedings in case of 'dispute' arising between the borrower and the creditor bank. Article 41 does not create any express or implied bar upon any relief or contents of a pleading. Thus, reliefs prayed in the present suit are in no way barred under Article 41.

35. Definition of good faith is not given in the Bangladesh bank order. "Good Faith" as defined in section

3(20) of the General Clauses act, 1897. "Section 3(20) Speaks: a thing shall be deemed to be done in "good faith" where it is in fact done honesty, whether it is done negligently or not." But it transpires that dispute in the suit does not come within the definition of good faith. It is a 'dispute' of civil nature which is to be adjudicated by adducing proper evidence and witnesses before the Court of law. But the learned trial Court failed to appreciate this difference, and erroneously rejected the plaint on misconception of law by referring Article 41 of the Bangladesh Bank Order, 1972.

36. In this connection, we have carefully examined the decision reported in 17 BLC 653 as cited by the learned Advocate Mr. Elen Emon Shah but the facts and circumstances of the above decision and instant case are completely distinguishable and, as such, this decision has no manner of application in the present case. Therefore, decision does not have any nexus because of the fact that same was passed in writ petition not in a civil suit. Moreover, this decision does not create any bar upon fling a civil suit by any person whose name is published in the CIB report.

37. At this juncture, it can be said that Article 41 does not create any bar upon any relief, and it has no application under Order Vii, rule 11(d). The learned courts below totally failed to appreciate such important aspect of the case".

(Underlines supplied)

4.44. Thus, in view of our deliberations in the above paragraph Nos. 4.1 to 4.42, we have no option but to humbly hold that some of the above views taken/expressed by the said bench on the maintainability of suits and rejection of plaints concerned are decisions per-incuriam and as such we do not need to agree or disagree with the same. We can simply ignore the said views. Our late lamented Mahmuddul Islam, by referring to various decisions of the Superior Courts, has observed at paragraph 5.214 of his book 'Constitutional Law of Bangladesh', Third Edition-page 912 that *"A decision which is per incuriam, that is, a decision given in ignorance of the terms of the Constitution or of a law or of a rule having the force of law, does not constitute a binding precedent."* [**(see Sufia Khatun vs Mahbuba Rahman (2010) BLD (AD)-41** and some other decisions mentioned in the said book on the said point.]

4.45. As stated above, because of the contractual relationship between the plaintiffs (or their stake holder institutions) and the creditor banks (or financial institutions), the plaintiffs became defaulters as per the terms of the said contracts and, accordingly, their names were sent to the Bangladesh Bank as defaulter-borrowers in performance of statutory obligations under Section 27 KaKa of the Bank Companies Act, 1991 followed by publication of their names in the CIB report of Bangladesh Bank as per the provisions under Chapter-IV of the

Bangladesh Bank Order, 1972. For such statutory functions, the creditor banks (or financial institutions) and the Bangladesh Bank did not even need to issue any notice on the plaintiff. This position has been confirmed by our Appellate Division in **M/S Ripon Traders vs. Bangladesh Bank, VII ADC (2010)-152** and the High Court Division in **Al-Amin Bread vs. Bangladesh Bank, 17 BLC (2012)-653.** Since such publication by Bangladesh Bank is immune from any legal challenge through any suit or proceedings under Article 41 of Bangladesh Bank Order, 1972, the said bench of the High Court Division in **Morshed Khan's case** has clearly ignored the law of the land and as such the said decision, to the extent it held that the suits concerned were maintainable, is a decision per-incuriam.

4.46. It further appears from paragraph-36 of the said decision that **Al-Amin Bread case** was specifically cited before the said bench by the learned advocate Mr. Elen Emon Shah. But the said bench held that the said decision in **Al-Amin Bread case** did not have any nexus because of the fact that the same was decided in writ petition and not in a civil suit. According to Article 111 of the Constitution of our country, the law declared by the Appellate Division is binding on the High Court Division and the law declared by either division of the Supreme Court shall be binding on all subordinate Courts. This Article 111 of the Constitution does not speak of law declared in civil suit, criminal

case and/or writ petition etc. Therefore, it cannot be said that a law declared in a writ petition does not apply in a civil suit, particularly when the law is relating to the publication of the names of the defaulter-borrowers in the CIB of Bangladesh Bank and the suits in question are also in respect of the said publication. Therefore, we are undone but to hold humbly again that this view, as expressed by the said bench about applicability of law declared in writ petition, is also a decision per- incuriam and as such we can ignore the same. At the same time, the view expressed by the said bench under paragraph-51 of the reported case to the effect that the civil Court has wide jurisdiction to examine whether the Bangladesh Bank rightly declared the appellants as loan defaulters and published their names in the CIB report and that the said matter should be decided by the trial Court after framing issues, is also not the correct view of law, particularly when Article-41 of Bangladesh Bank Oder, 1972 has debarred such suits and that Bangladesh Bank in fact does not declare anyone defaulter, rather a borrower is treated as defaulter-borrower by the creditor banks (or financial institutions) and said creditor banks (or financial institutions) merely send the names of such defaulters-borrowers to the Bangladesh Bank under statutory obligation and the Bangladesh Bank publishes the same in the CIB report, also under statutory obligation. Besides, when the very suit is not maintainable, courts cannot entertain such suits to examine

the issue of bonafide pleaded in the plaint (see above paragraphs 4.23 & 4.24).

4.47. There is another aspect in these cases. Parliament has enacted Artha Rin Adalat Ain, 2003 (Act No. 8 of 2003) enabling exclusively the banks and/or financial institutions to file suits before the Artha Rin Adalats for realisation of loans from defaulter-borrowers. Sections 3 and 26 of the said Ain have given overriding effect of the provisions of the Ain in case of inconsistency with any other law or provisions of the Code. Section 20 of the said Ain has made any claims unentertainable by any court, which has been lodged ignoring provisions of the said Ain which, under Section 5, has given exclusive jurisdiction to the Artha Rin Adalat to entertain all suits regarding realisation of loans. Therefore, if the plaintiffs in the instant appeals, or the appeals in Morshed Khan's case, are allowed to preemptively maintain a suit seeking declaration that they are not defaulters, that will indirectly oust the jurisdiction of the Artha Rin Adalat in advance. Therefore, such a cunning device to preemptively oust such exclusive jurisdiction of the Artha Rin Adalat cannot be allowed by this Court.

Orders of the Court:

4.48. In view of above facts, circumstances and laws applicable thereto, we are of the view that the plaints in question in the instant appeals

should be rejected on the very averments of the plaints, as the same do not disclose any cause of action and the reliefs prayed therein are barred by and under law. Thus, we hold as follows:

(a) That the civil Court has obligation, at the very beginning, to examine the plaint to check if it is conforming to the legal requirements. If formal defects in the plaint are found, Court should give reasonable opportunity to the plaintiff to cure such defects. But if the defect goes to the very root of the suit, the plaint should be rejected on the very averments of the plaint either for non-disclosure of cause of action or on the ground that the suit is barred by or under law. In such case, it is the obligation of the Court to reject the plaint even before issuance of summons.

(b) However, if it is found on the very averments of the plaint that the Court needs to go beyond the plaint for reaching a decision to reject the same, it then should go for the next steps of issuance of summons and appearance of defendants, written statements, framing of issues etc.

(c) The plaints in the instant appeals having not disclosed any cause of action, and since the reliefs prayed-for therein are barred by and/or under law, they are liable to be rejected at the very inception of the suit.

(d) Though the Courts below have not rejected the said plaints assigning proper reasons, we are of the view that, as the Appellate Court, we should reject the same as because we have found that the said plaints are liable to be rejected at the very inception of the suit.

(e) For the reasons stated above, the appeals are dismissed. The plaints in question are rejected. Thus, the impugned orders rejecting the plaints in question are affirmed. Accordingly, connected civil Rules are disposed of. The ad-interim orders, if any, thus stand recalled and vacated.

Communicate this.

……………………….
(Sheikh Hassan Arif,J)

I agree.

…………………….
(Ahmed Sohel, J)