

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Civil Appellate Jurisdiction)**

First Appeal No. 40 of 2011

In the matter of:

Trust Bank Limited

... Plaintiff-Appellant

-Versus-

Messrs Zardhi Steel and others

...Defendants-Respondents

Mr. Faysal Hasan Arif, Advocate

...For the appellant

Mr. Md. Yamin Newaz Khan, Advocate

...For the respondent no. 2.

**Heard on 14.12.2024, 28.12.2024, 05.12.2024
and Judgment on 08.12.2024**

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

Md. Bashir Ullah, J.

At the instance of the plaintiff in Artha Rin (Mortgage) Suit No. 11 of 2009, this appeal is directed against the judgment and decree dated 28.11.2010 passed by the learned Joint District Judge and Artha Rin Adalat, Chattogram decreeing the suit in part on contest against defendant nos. 2-4 and *ex parte* against defendant no. 1.

The short facts leading to preferring this appeal are:

The present appellant as plaintiff filed the aforesaid Artha Rin Suit seeking the following reliefs:

- a) a decree be passed against the defendants in preliminary form for payment of Taka 16,55,29,847.52 (Taka Sixteen Crore Fifty-Five lakh Twenty-Nine thousand Eight hundred Forty-Seven and Paisa Fifty Two only) to the plaintiff bank as per schedule of claim mentioned in schedule-1 with cost of the suit and *pendente lite* interest @12% per annum from the date of filing this suit till recovery.
- b. by the decree the defendants be ordered to pay the decretal amount within a period to be fixed by the Court.
- c. in case of default of payment as per direction of the Court a decree be passed for the sale of the mortgaged property described in the schedule for recovery of decretal dues with cost and interest.
- d. in case the sale proceeds of the mortgaged properties become insufficient to satisfy the decretal dues a decree be passed against the defendants for recovery of the balance dues by selling their other properties.

e. the plaintiff be allowed any other relief or relieves as may be found entitled according to law and equity.

The precise facts so described in the plaint are that, the plaintiff is a public limited banking company where defendant no. 1 is firm and defendant no. 2 is the proprietor of defendant no. 1. On the other hand, the defendant no. 3 is the mortgagor and guarantor and defendant no. 4 is the guarantor of defendant no. 1. The defendant no.1 opened current account no. 0012-0210003651 with the plaintiff-bank on 04.04.2006 and on the prayer of the defendant no. 2, the head office of the plaintiff-bank sanctioned credit facilities in the form of Letter of Credit (L/C), Trust Receipt (TR) and time loan facility for the defendant no. 1 as per terms and conditions so embodied in the sanction advice dated 09.05.2006. Then the defendant no. 2 established an L/C no. 235506010052 dated 09.05.2006 for US\$ 56,98,502.70 (US Dollar Fifty-Six lakh Ninety-Eight thousand Five hundred two and Paisa Seventy only) through the plaintiff bank favouring one, Messrs Yalumba Inc., Singapore to import Scrap Vessel named “MT ELPIS EX-AFRAGOLD, COLORADO, GLOBTIC LONDON” from Singapore in the name of defendant no. 1. As per terms and conditions of sanction advice defendant no. 2 was

supposed to deposit 60% (sixty percent) cash margin against the said L/C but ultimately the defendant no. 2 failed to comply so and finally deposited 38% margin. On receipt of the original shipping documents of above noted L/C, the plaintiff bank then drew bill upon defendant no. 1 with a request to release the L/C documents on payment. The defendant no. 2 collected the shipping documents from the plaintiff by availing TR facility as per the terms and conditions of sanction advice. The limit of the TR facility after collection of shipping documents of the above-noted L/C was Taka 15,50,00,000/- (Taka Fifteen Crore Fifty lakh only). But on the application of defendant no. 2, plaintiff bank was compelled to allow the excess limit to defendant no. 1 due to collection of said shipping documents. Defendant no. 2 undertook to repay the said excess limit along with the principal loan amount and interest payable thereon with all other charges within the stipulated period of sanction advice. The imported vessel arrived at the shipyard of defendant no. 1 located at Sitalpur, Sitakunda, Chattogram. Though the defendant no. 2 availed the Credit facility from the plaintiff bank as per terms and conditions of sanction advice issued by the plaintiff bank but failed to repay the liabilities with due interest within the stipulated period of sanction advice within 24.11.2006.

However, defendant no. 2 adjusted Taka 16,07,60,000/- (Taka Sixteen crore Seven lakh Sixty thousand only) in the said loan account on different dates. After partial repayment, the liabilities of defendant no. 1 with the plaintiff bank stood at Taka 16,55,29,847.52 only with interest till 31.12.2008. It has further been stated that the defendants are jointly and severally liable to pay the said amount to the plaintiff bank with up-to-date interest and other charges on demand.

As security to repay the bank dues with interest and all other charges, defendant no. 2 executed a DP Note and all other charge documents favouring the plaintiff bank. On the other hand, the defendant no. 3 mortgaged his landed properties as collateral security as described in schedule-III to the plaint in favour of the plaintiff bank by registered mortgage deed no. 1012, dated 27.03.2008. The defendant no. 3 executed irrevocable general power of attorney empowering the plaintiff bank to sell the scheduled mortgaged properties and the said power of attorney was registered bearing deed no. 1013, dated 27.03.2008. Defendant no. 2 pledged all furniture, fittings, metals, electrical equipment and scraps to be generated from the imported vessel to the plaintiff bank. The plaintiff bank delivered pledged goods to defendant no. 2 against the trust receipt for

quick disposal. Defendant no. 2 undertook to deposit the sale proceeds of all pledged goods of the said scrap vessel to the plaintiff, bank towards the adjustment of liabilities of defendant no. 1 against the said loan account. Defendant nos. 3 and 4 executed personal guarantees favouring the plaintiff bank securing the repayment of liabilities of defendant no. 1. At one stage, the defendants stopped repayment. Despite several requests and demands made by the plaintiff bank, the defendants failed to repay the bank dues within the stipulated period of sanction advice. In the said circumstances, the plaintiff bank took the initiative for disposal of the mortgaged properties and accordingly published auction notices in ‘The Daily Karnaphuli’, Chattogram on 17.06.2008 and ‘The Daily Jugantor’ on 25.09.2008 inviting quotations from the interested buyers to sell the mortgaged property. However, none came forward to purchase the mortgaged property and hence, the plaintiff was compelled to institute the above-mentioned suit praying a decree for Taka 16,55,29,847.52 only and other reliefs.

On the contrary, defendant nos. 2, 3 and 4 entered appearance and contested the suit by filing separate written statements where the defendant nos. 3 and 4 filed additional written statements denying all the material averments so made in

the plaintiff, contending *inter alia* that the suit is not maintainable, defendant no. 2 did not take loan from the plaintiff-bank, defendant no. 3 is not the mortgagor and guarantor against the credit facilities, defendant no. 4 is the guarantor for 40% of loan amount only and finally prayed for dismissing the suit.

In view of the pleadings, the learned Joint District Judge and Artha Rin Adalat, Chattogram framed as many as four different issues and three additional issues as well and in support of the case, the plaintiff examined one witness while the defendants examined three witnesses and produced some documentary evidence in support of their respective case.

Upon hearing the parties and taking into consideration of the evidence and materials on records, the learned Joint District Judge and Artha Rin Adalat, Chattogram decreed the suit in-part by impugned judgment and decree dated 28.11.2010.

Being aggrieved by and dissatisfied with the said judgment and decree dated 28.11.2010 passed by the learned Joint District Judge and Artha Rin Adalat, Chattogram, the plaintiff as appellant preferred the instant appeal.

Mr. Faysal Hasan Arif, learned Advocate appearing for the appellant upon taking us to the impugned judgment and decree, sanction letter, evidence on record at the very outset contends

that, the sanction/approval of loan explicitly provided for interest at the rate of 16% per annum and the respondents voluntarily agreed to the terms and conditions enshrined in the sanction letter but the trial Court erred in law by not considering the provisions of Artha Rin Adalat Ain and arrived at a wrong conclusion that the plaintiff-appellant is not entitled to the interests and hence, the suit was liable to be decreed instead of decreed in part.

He further submits that the trial Court erred in law by allowing the counterclaim filed by the defendants-respondents which is in direct violation of the provision of section 18(2) of Artha Rin Adalat Ain. With such submissions, the learned counsel finally prays for allowing the appeal.

Per contra, Mr. Md. Yamin Newaz Khan, the learned Advocate appearing for the defendant-respondent no. 2 opposes the contention so taken by the learned counsel for the appellant and contends that, the learned Joint District Judge has very perfectly passed the judgment and decree. He further contends that the plaintiff is not entitled to have interest as per section 47 of Artha Rin Adalat Ain, 2003 and hence, the trial Court exercised its discretion to deny interest in the interest of the justice of equity. Overall, the learned counsel finally prays for

dismissing the appeal on sustaining the impugned judgment and decree.

We have heard the learned Advocates for both sides and perused the memorandum of appeal, pleadings, evidence, impugned judgment and decree and materials on record.

The trial Court decreed the suit in-part by waiving the interest as claimed in the plaint. In this regard, we are of the view that the trial Court has failed to appreciate the provision of section 50 of the Artha Rin Adalat Act, 2003. In the said section, it has clearly been provided that no Court under this act shall be entitled to reduce, forgive or reject any interest lawfully fixed by any financial institution on any loan. The relevant portion of section 50 of the Artha Rin Adalat Ain, 2003 is reproduced below for convenience:

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

In this regard, we get support from the *ratio* settled in the case of ***Sonali Bank Vs. Md. Lutfor Rahman***, reported in 21 BLC 198, wherein this Court held:

“Imposition of interest cannot be reduced or waived by the Court of law in any manner. The Court is to accept the rate of interest and other issues fixed by the financial institution.”

Moreover, we have meticulously examined the evidence adduced by DW 1, 2 and 3 and written statements filed by the defendant nos. 2, 3 and 4. We find from the evidence that they have neither asserted nor prayed for waiver of interest imposed by the plaintiff-bank. Rather, PW1 in his examination-in-chief prayed for a decree of Taka 16,55,29,847.52 including interest. In support of his claim, he proved the statement of account marked as exhibit-12. In view of the above, it is proved that, the appellant-bank is entitled to recover interest as per the sanction letter/approval bearing no. TBL/HO/Credit/001816/06, dated 09.05.2006 and TBL/AGR/ADV/2006/2084, dated 29.05.2006 wherein the interest rate was fixed at 16% per annum which was duly agreed by the respondents and signed by respondent no. 2 vide exhibits-2 and 2(Ka). The defendant no. 2 submitted a Single Promissory Note, Letter of Continuity, Letter of

Disbursement, Trust Receipt for C.C. Pledge or LIM or other advances and Letter of Guarantee signed by him to the plaintiff-bank. In each document, especially in Promissory Note, defendant no. 2 promised to pay the plaintiff-bank's principal amount together with interest at the rate of 16% per annum or as may be revised from time to time which is evident from exhibit no. 5.

It appears from the plaint that total drawing (loan) amount is Taka 24,85,10,627.94, where the interest was charged up to 31.12.2008 at Taka 7,74,96,677.58 and other charges at Taka 2,82,542/-, the repayment made by the defendants was at Taka 16,07,60,000/-, where the plaintiff instituted the suit claiming for a decree of Taka 16,55,29,847.52, so it is clear that the entire claim so made by the plaintiff in the trial Court did not exceed 200% of the principal and hence, section 47 of the Artha Rin Adalat Ain, 2003 has no manner of application in the suit.

Given the fact that the appellant bank has not violated the provision of section 47 of the Ain. So, we are of the view that the trial Court cannot waive or reduce the interest of Taka 7,74,96,677.58 imposed on the defendants. So, the plaintiff-appellant is entitled to have a decree of Taka 16,55,29,847.52 till 31.12.2008 including interest.

On the other hand, the defendant no. 4 claimed in his written statement that the plaintiff Bank took mortgage of many properties and registered documents under pressure and sold out those properties at a very low price and thus caused damage to Taka 181,80,00,000/-, compelling the defendant to file Money Suit No. 22 of 2010 before the 3rd Joint District Judge, Chittagong which is pending. The learned Advocate for respondent no. 2 also claimed that the defendants faced serious loss in the business so they are entitled to have compensation and waiver of interest. However, section 18 (2) of the Artha Rin Adalat Ain, 2003 provides that no borrower is entitled to file any suit against any financial institution under the Ain, 2003 praying for any remedy on the concerned loan and the borrower while submitting a written statement in the suit filed by the plaintiff, financial institution, shall not include any set-off or counter-claim in such written statement. Section 18 of the Act, 2003 is thus given below:

“১৮। মামলা দায়ের ও শুনানী সম্পর্কিত বিশেষ বিধান।-(১)

কোন আর্থিক প্রতিষ্ঠানের কোন কর্মকর্তা বা কর্মচারী কর্তৃক

আত্মসাৎকৃত কোন অর্থ ঋণ গণ্যে এই আইনের অধীন আদালতের

মাধ্যমে আদায়যোগ্য হইবে না।

(২) কোন ঋণগ্রহীতা, কোন আর্থিক প্রতিষ্ঠানের বিরুদ্ধে, এই আইনের অধীন আদালতে, সংশ্লিষ্ট ঋণ হইতে উদ্ভূত কোন বিষয়ে, কোন প্রতিকার দাবী করিয়া মামলা দায়ের করিতে পারিবে না। এবং ঋণগ্রহীতা-বিবাদী, বাদী-আর্থিক প্রতিষ্ঠান কর্তৃক দায়েরকৃত মামলায় লিখিত জবাব দাখিল করিয়া, উক্ত লিখিত জবাবে প্রতিগণন (set-off) বা পাল্টাদাবী (Counter-claim) অন্তর্ভুক্ত করিতে পারিবে না।

(৩) ঋণগ্রহীতা-বিবাদী সংশ্লিষ্ট ঋণ হইতে উদ্ভূত বিষয়ে বাদী হইয়া কোন মামলা অন্য কোন আদালতে দায়ের করিয়া থাকিলে, উক্ত মামলা এই আইনের অধীনে প্রতিষ্ঠিত আদালতে দায়েরকৃত মামলার সহিত একত্রে শুনানীযোগ্য (Analogous hearing) হইবে না, অথবা এই আইনের অধীনে প্রতিষ্ঠিত আদালতে বিচারাধীন মামলাটি উপরি-উল্লিখিত অন্য আদালতে বিচারাধীন মামলার সহিত উক্ত অন্য আদালতেও একত্রে শুনানীযোগ্য হইবে না; এবং অনুরূপ কোন কারণে এই আইনের অধীন দায়েরকৃত মামলা স্থগিত করা যাইবে না।”

We find that the Artha Rin Adalat Ain, 2003 is a special statute which has been enacted only for recovery of the defaulted loan given by the financial institutions where it has got no power to adjudicate any other extraneous matters.

Given the above facts and circumstances, we are of the view that the defendants are liable to pay

Taka 16,55,29,847.52 and interest at the rate of 12% per annum from the date of filing the suit till its recovery.

Accordingly, the appeal is allowed however without any order as to costs. The suit is decreed and the defendants are liable to pay Taka 16,55,29,847.52 and interest at the rate of 12% per annum from the date of filing the suit till its recovery.

The impugned judgment and decree dated 28.11.2010 passed by the learned Joint District Judge and Artha Rin Adalat, Chattogram in Artha Rin (Mortgage) Suit No. 11 of 2009 is thus set aside.

However, the plaintiff bank will keep 48,67,200 shares of Al-Arafa Islami Bank belongs to defendant No. 4 under lien till disposal of decree execution case if plaintiff-appellant files so.

Let a copy of this judgment and decree along with the lower court records be communicated to the court concerned forthwith.

Md. Mozibur Rahman Miah, J.

I agree.