

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

**First Miscellaneous Appeal No. 37 of 2006
With
Civil Rule No. 70(FM) of 2006**

In the matter of:

Suriya Jesmin, w/o late Md. Moniruzzaman,
315 A Housing Estate, P/O Kushtia, Distirct-
Kushtia.

... Appellant

-Versus-

Bangladesh House Building Finance
Corporation, Zonal Office, 2, Sir Iqbal Road,
Khulna.

...Respondent.

Ms. Tania Amir, Senior Advocate with

Mr. Muhammad Safwan and

Mr. Md. Shiful Islam Sumon, Advocates

...For the appellant-petitioner

Mr. Sikder Mahmudur Razi with

Mr. Md. Zahirul Islam, Advocates

....For the respondent-opposite-party

**Heard on 14.01.2024 and 15.01.2024.
Judgment on 16.01.2024.**

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Mohi Uddin Shamim

Md. Mozibur Rahman Miah, J.

Since the facts and point of law involved in the appeal and that of the rule are intertwined, they have heard together and are being disposed of by this common judgment.

At the instance of the opposite-party no. 1 in Miscellaneous Case No. 36 of 1989 renumbered as Miscellaneous Case No. 160 of 1997, this appeal has been preferred against the judgment and order dated 15.11.2005 passed by the learned District Judge, Kushtia so filed under Article 27 of the House Building Finance Corporation Order, 1973 (PO No. 7 of 1973) stating *inter alia* that, the opposite-party in order to erect a building on the scheduled property that have been mortgaged with the bank took a loan facilities amounting to taka 8,89,000/- on 31.08.1978 with interest at the rate of 7.5% by executing a registered mortgage deed being no. 12254. It was stipulated in the said deed of mortgage that, the opposite-party will repay the said loan amount within a period of 25 years with a monthly installment at taka 4,910/49. But as the opposite-party failed to comply with the terms and conditions so laid out in the deed of mortgage, the outstanding dues against the opposite-party then stood at taka 14,56,436/35 as on 31.12.1988 and hence, the opposite-party no. 1 filed the Miscellaneous Case.

On the contrary, the opposite-party no. 1 herein the appellant in order to contest the said Miscellaneous Case filed a written objection denying all the material averments so made in the petition contending that, though she obtained a loan amounting to taka 8,89,000/- on 31.08.1978 but instead of imposing the simple interest, the opposite-party imposed a cumulative interest for which the amount claimed in the petition was enormous which is violative to the condition provided in the deed of mortgage and if the said interest rate to be calculated with original loan, the petitioner would have to be repaid in 67.5 installments but the

opposite-party went beyond the terms and conditions of the deed of mortgage and fixed 300 installments imposing taka 2,40,614/- as of additional amount and hence, the case is liable to be dismissed.

In order to dispose of the case, the learned District Judge framed as many as three different issues where the opposite-party produced the deed of mortgage as of exhibit-‘3’ and upon considering the materials on record, the learned Judge vide impugned judgment and order allowed the Miscellaneous Case for an amount of taka 14,56,436/35 directing the opposite-party to the case, herein the petitioner to pay the said amount within 60(sixty) days with interest till realization of the decretal dues.

It is at that stage, the opposite-party to the case as appellant preferred this appeal. After preferring the appeal, the appellant also filed an application for stay of the operation of the impugned judgment and order and this court vide order dated 24.01.2006 issued rule and stayed the operation of the impugned judgment and order dated 15.11.2005 on condition of making payment of taka 4,910/49 per month commencing from February, 2006 until making payment of the decretal amount at taka 14,56,436/35 and that very order then gave rise to above Civil Rule No. 70(FM) of 2006.

Ms. Tania Amir, the learned senior counsel appearing for the appellant-petitioner upon taking us to the impugned judgment and order and that of the order passed in the Civil Rule at the very outset submits that, there has been no scope to count any interest on the claimed amount made in the impugned judgment since the appellant-petitioner has already paid the said amount by 09.09.2019 and thus the appellant-petitioner is

exempted from making any interest on the claimed amount since there has no stipulation in the operative portion of the judgment on which amount the interest will have to be paid.

The learned senior counsel in her second leg of submission also contends that, since in the rule-issuing order, no time-frame has been made as to till which date the decretal amount has to be paid so if the installment set at taka 4,910/49 is to be paid, the petitioner would get time up to 2030 but since the claimed amount has paid much before so there has been no scope to calculate any interest upon the decretal amount and moment, the rule and interim order was passed, the interest supposed to be imposed has been stopped having no reason on the part of the appellant-petitioner to pay any amount on account of interest to the respondent and finally prays for allowing the appeal by setting aside the impugned judgment and order as well as making the rule absolute.

On the contrary, Mr. Sikder Mahmudur Razi, the learned counsel appearing for the respondent-opposite-party by filing a counter-affidavit very robustly opposes the contention so have been taken by the learned counsel for the appellant-petitioner and contends that, by virtue of the rule only the operation of the impugned judgment and order was stayed on condition of making payment of certain installment till realization of the claim amount so have been declared in the impugned judgment which does not *ipso facto* mean that the appellant-petitioner has been exonerated from making payment of interest as per the terms and conditions of the deed of mortgage as well as the plaint.

The learned counsel by taking us to the operative portion of the impugned judgment also contends that, in the very judgment, there has been two parts and in the first place, the decree was passed on the claim amount so have been calculated at the time of filing of the case and the second part of the judgment is in regard to give interest till realization of the said claim amount and since in the rule-issuing order, there has been no direction in regard to staying making payment of the interest so there has been no scope for the petitioner not to make payment of the interest in favour of the respondent.

To supplement the said submission, the learned counsel further contends that, naturally the operation of the impugned judgment and order is passed so that the petitioner as decree-holder cannot file any execution case to realize the said decretal amount and nothing else and since it is the admitted position that, as per direction of this Hon'ble court made in the Civil Rule, the defendant-appellant-petitioner deposited the claim amount and now the petitioner is obliged to make payment of the interest as per the direction made in the operative portion of the impugned judgment and in that sense, the appeal is liable to be disposed of directing the petitioner to pay the interest on the claim amount since the appellant-petitioner already paid the claim amount up to filing of the case and finally prays for disposing of the appeal.

We have considered the submission so advanced by the learned senior counsel for the appellant-petitioner and that of the respondent-opposite-party at length.

We have also very meticulously gone through the plaint as well as the deed of mortgage so supplied by the learned counsel for the respondent. The learned counsel has also referred a decision so passed by this court in First Miscellaneous Appeal No. 290 of 2014 dated 15.02.2023 where similar question of giving interest arose and this court also came to a finding that, in spite of paying off the decretal amount, the borrower/judgment-debtor will not be exonerated from making payment of the interest. However, on going through the operative portion of the impugned judgment, we find that, there have been two parts in the judgment. In the first part, the claim amount was decreed up to 31.12.1988 and in the second part, the opposite-party was given a direction to pay the interest as per the condition embodied in the deed of mortgage. Admittedly, the appellant-petitioner paid the claim amount but the interest which has been agreed in the deed of mortgage vis-à-vis asserted in the plaint has not been paid. Even though that very deed of mortgage was furnished by the defendant-appellant-petitioner, so there has been no scope on the part of the appellant to defy the said terms and conditions in regard to making payment of the interest in favour of the respondent.

It is the contention of the learned senior counsel for the appellant-petitioner that, the petitioner could have found time to pay the said amount up to 2030 so if the petitioner would continue to pay the said amount up to 2030 then the bank would have been prejudiced for which the interest should not be counted on the claim amount but we don't find any iota of substance in the said submission because if the claim amount

so mentioned in the rule-issuing order would keep on making payment till 2030 even then the appellant-petitioner could not be exonerated from making payment of the interest. Since it has clearly been directed in the operative portion of the judgment to pay the interest till realization of the amount (আদায়তক) so that very word “আদায়তক” clearly denotes that moment, the claim amount is realized, then up to that very date, interest will also have to be given. In the instant case, it is admitted position that, as per the rule-issuing order, the claimed amount of taka 14,56,436/35 has been paid back by the appellant-petitioner by 09.09.2019. So as per the judgment and order impugned in this appeal, the respondent is entitled to interest from 01.01.1989 till 09.09.2019 at the rate of 7.5% which remained unrealized from the appellant-petitioner and the appellant-petitioner is liable to make payment of the interest with that very period.

Against the above backdrop, we are of the view that, the respondent-opposite-party is entitled to the interest from the aforesaid period and the appellant-petitioner is hereby directed to make payment of the said interest of the aforesaid period within 6(six) months from date, in default, the respondent-opposite-party is at liberty to take appropriate step to realize the said amount from the appellant-petitioner.

With the above observation and direction, the appeal is thus disposed of.

Since the appeal is disposed of, the connected rule being Civil Rule No. 70(FM) of 2006 is hereby disposed of.

However, the order of stay granted at the time of issuance of the rule stands recalled and vacated.

Let a copy of this judgment be communicated to the learned District Judge, Kushtia forthwith.

Mohi Uddin Shamim, J.

I agree.