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

Present:
Mr. Justice S M Kuddus Zaman
And
Ms. Justice Tamanna Rahman Khalidi

First Appeal No.331 of 2020

Rupali Bank Limited

...Appellant

-Versus-

Md. Foyjur Rahman being dead his heirs and successors- Md. Shoriful Islam and others

... Respondents

Mr. Md. Nazmul Haque, Advocate with
Mr. Zahidur Rahman, Advocate

... For the appellant.

Mr. Md. Sajjad Ali Chowdhury, Advocate with
Mr. Fazla Rabby, Advocate

… For the respondents.

Heard on 07.05.2026, 08.06.2026, 24.06.2026 and 08.07.2026.
Judgment on 16.07.2026.

S M Kuddus Zaman, J:

This First Appeal is directed against the impugned judgment and decree dated 20.10.2020 passed by the learned Joint District Judge, Nilphamari in Money suit No.8 of 2011 decreeing the suit.

Facts in short are that the respondent as plaintiff instituted above suit for Taka 4,41,30,559/- as compensation for causing damage of 828 mond tobacco leaf kept in the godown of the defendant pursuant to alleging that the plaintiff obtained pledge loan of Taka 4,00,000/- for purchase of 828 mond of tobacco leaf and kept above goods in the godown of the defendant. The plaintiff also obtained a C. C. hypo loan of Taka 60,000/-against above tobacco leaf on 21.09.1996.The plaintiff sent letters to the defendant on 29.08.1999, 26.09.1999 and 24.03.2002 requesting to sale out the pledged tobacco leaf and return the margin money of the plaintiff along with profit. But the defendant did not sale out above perishable goods and due to negligence and incompetence of the defendant 75% of above tobacco leaf was destroyed causing damage and loss to the plaintiff.

Defendant No.1 contested above suit alleging that the plaintiff obtained C. C. pledged loan of Taka 4,00,000/- for purchase of tobacco leaf and kept the same in the godown of the defendant. Pursuant to the terms of above loan sanction letter the plaintiff did not make monthly inspection of above goods nor they paid the loan and released and above goods Above loan became a bad loan and on the request of the plaintiff the defendant granted a fresh C. C. hypo loan of Taka 60,000/- to the plaintiff on 24.09.1996. The plaintiff could not pay above loan and the defendant filed Artha Rin Suit for recovery of above and on the order of the Artha Rin Adalat sold above pledged goods by open bidding and adjusted sale proceeds of Taka 40,400/- with above loan.

At trial plaintiff examined two witnesses and defendant examined one. Documents of the plaintiffs were marked as Exhibit Nos.1-5 and those of the defendant were marked as Exhibit Nos."Ka" and "Kha".

The learned Joint District Judge decreed above suit in part for Taka 8,19,000/-.

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

Mr. Md. Nazmul Haque, learned Advocate for the appellant submits that the plaintiff obtained pledge loan of Taka 4,00,000/-for purchase of tobacco leaf and he purchased 828 mond tobacco leaf with Taka 8,00,000/- and stored the same in the godown of the plaintiff under the control of the defendnat. The plaintiff did not pay off the loan and release above perishable goods from the godown. Nor the plaintiff made monthly inspections of the godown as was provided in the loan sanction letter. Above loan became a bad loan and due to fall of price of tobacco it was not to release and sale above goods. The defendant gave plaintiff a new loan of Taka 60,000/- to rescue business and repay above loan but the plaintiff failed to do so. The defendant filed a Artha Rin suit for recovery of above loan and obtained a decree for Taka 22,07,766/-on contest. The defendant raised the allegation of negligence and incompetence against the plaintiff but those remained not proved. The plaintiff gave a written undertaking to the Bank on 24.09.1996 absolving the defendant from any responsibility what so ever and pledged to repay above loan by 28.02.1997 but the plaintiff did not pay above loan. The learned Advocate lastly submits that if the impugned judgment and decree is set aside and the suit is remanded to the trial Court for retrial the defendant will produce above deed of undertaking which shall disprove all claims of the plaintiff. On the other hand Mr. Md. Sajjad Ali Chowdhury, learned Advocate for the respondents submits that the pledged goods were perishable in nature and the plaintiff requested the Manager of the defendant to sale out above goods and adjusts the sale proceeds with above loan. The defendant continuously kept above perishable goods in godown until the Artha Rin Adalat ordered for sale of above goods on 15.06.2004. Due to above delay substantial damage was caused and above goods was sold only for Taka 40,4000/-. The learned Advocate further submits that the defendant also sold out part of above tobacco leaf on other occasions but did not adjust the sale proceeds with above loan. The plaintiff did not provide detailed statement as to the quantity of above tobacco leaf and date of sale and the amount of sale proceeds in the plaint nor any document was produced. The plaintiff deposited Taka 1,30,000/- to the defendant to release a part of above tobacco leaf but the Manager of the defendant returned above money and did not release above goods. In support of above submissions the learned Advocate has produced a letter written to the Managing Director of the defendant. The learned

Advocate lastly submits that there are some deficiencies in the plaint and the plaintiff could not produce some relevant documents including above letter dated 31.03.2002 and the ends of justice will be met if the impugned judgment and decree is set aside and above suit is remanded to the trial court for retrial.

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

It is admitted that the plaintiff obtained pledge loan of Taka 4,00,000/- from the defendant on 10.04.1993 for purchase of tobacco leaf and he purchased 828 mond of tobacco leaf with Taka 8,00,000/- and above goods in the godown under the control of the defendant and the defendant sanctioned C. C. loan of Taka 60,000/- to the plaintiff on 24.09.1996. It is also admitted that above loans became defaulted loans and the defendant as plaintiff instituted Artha Rin Suit No.35 of 2003 and obtained judgment and decree on 15.01.2005 on contest. Plaintiff claims compensation from the defendant alleging that the defendant failed to sale out above perishable goods despite request of the plaintiff causing loss of Taka 4,41,30,559/- . The plaintiff obtained total loan of Taka 4,60,000/- from the defendant and the defendant obtained a decree from the Artha Rin Adalat for Taka 22,07,766/- for above loan along with interest. It is not understandable as to how the plaintiff could claim compensation of Taka 4,41,50,559/- for alleged damage caused to tobacco leaf of Taka 8,00,000/-.

In a suit for compensation the plaintiff is required to prove that the defendant had a legal or contractual duty towards the plaintiff which the defendants have failed to perform due to negligence or incompetence. The plaintiff is further required to provide and prove necessary facts which constitute the amount of compensation claimed by the plaintiff. A Manager of the Bank cannot release any mortgaged or pledged goods unless the loan is paid nor a Manager can sale a mortgaged or pledged goods unless the loan has been defaulted and the Bank initiates the recovery process.

The learned Advocate for the respondents brought to our notice a letter dated 31.03.2002 sent by the plaintiff to the Managing Director of the defendant alleging that he obtained advance money from the prospective buyer of above tobacco leaf and he deposited Taka 1,30,000/- but the Manager instead of releasing proportional pledged goods returned above money. Due to above non co-operation of the Manager the plaintiff the defendant could not sale the pledged goods and he has suffered huge loss. Above occurrence was not mentioned in the plaint nor above letter was produced at trial. The defendant did not have an opportunity to provide a reply to above allegation.

On the other hand the learned Advocate for the respondent has mentioned about a written undertaking executed by the plaintiff absolving the defendant from all responsibilities for damage or destruction of pledged goods and promised to sale out above goods by

28.02.1997 and satisfies above outstanding loan. The defendant wants to produce above document at trial and seeks retrial of the suit.

On consideration of above facts and circumstances of the case and submissions of the learned Advocates for the respective parties we hold that the ends of justice will be met if the impugned judgment and decree is set aside and above suit is remanded to the trial Court for retrial after giving both the parties an opportunity to amend their respective pleadings and adduce further evidence if any.

In the result, this First Appeal is allowed.

The impugned judgment and decree dated 20.10.2020 passed by the learned Joint District Judge, Nilphamari in Money Suit No.8 of 2011 is set aside and above suit is remanded to the trial Court for retrial after giving both parties an opportunity to amend their respective pleadings and adduce further evidence if any.

However, there will be no order as to cost.

Send down the lower Court's record immediately.

Tamanna Rahman Khalidi , J:

I agree.

MD. MASUDUR RAHMAN
BENCH OFFICER