

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

**Present:**

Mr. Justice Kazi Md. Ejarul Haque Akondo

and

Mr. Justice Mohi Uddin Shamim

**First Appeal No. 116 of 2021**

In the matter of:

Jeans 2000 Limited and another

..... Plaintiffs-appellants

-Versus-

Scholastica Private Limited and others

..... Defendants-respondents

Mr. Tanjib Ul Alam, Senior, Advocate with

Mr. Kazi Ershadul Alam, Advocate with

Mr. Shafiqul Islam, Advocate

.... For the Plaintiffs-appellants

No one appears

..... For the Defendants-respondents

Heard on 29<sup>th</sup> May, 2<sup>nd</sup> & 4<sup>th</sup> June, 18<sup>th</sup>, 19<sup>th</sup> & 22<sup>nd</sup> August, 2024

Judgment on 4<sup>th</sup> September, 2024

Mohi Uddin Shamim, J.

This First Appeal has been preferred by the plaintiffs-appellants against the Judgment and Order dated 10.02.2021, decree signed on 16.02.2021, passed by the learned Joint District Judge, 3<sup>rd</sup> Court, Chattogram in Money Suit No.14 of 2015, by allowing the application filed by the

defendant no.1 under Order VII Rule 11(d) of the Code of Civil Procedure, 1908, whereby the plaint was rejected.

The facts necessary for disposal of this appeal, in short, are that the plaintiffs-appellants, Jeans 2000 Limited, entered into an oral agreement with the defendant-respondent, Scholastica Private Limited, on 05.11.2010 to purchase 6,00,000 ordinary shares of taka. 10 each, of the respondent no.1 company, with a premium of taka 70, and thereby would pay taka 80 for each share. The plaintiffs duly paid BDT 4.8 crore to the defendants as consideration for these shares. Despite multiple assurances by the respondents by various mediums/modes of communication, the shares were never allotted and actually transferred to the appellants, prompting them to issue a demand for the return of their money. When the respondents failed to comply, the appellants filed Money Suit No.14 of 2015 seeking recovery of the amount paid along with compensation for breach of contract.

The respondents filed an application under Order VII Rule 11(d) of the Code of Civil Procedure, 1908, for rejection of the plaint on the grounds that the suit was barred under Section 3 of the Companies Act, 1994. They contended that the issue concerned the transfer of shares and therefore fell exclusively under the jurisdiction of the High Court Division as company matter.

Mr. Tanjib Ul Alam, learned Senior Advocate along with, Mr. Kazi Ershadul Alam, learned Advocate appearing on behalf of the appellants, submitted that the learned Joint District Judge erred in rejecting the plaint by misapplying Section 3 of the Companies Act, 1994. He argued that the shares in question were never legally transferred to the appellants, as evidenced by the incomplete and unsigned Form 117s and the absence of necessary approvals from the Registrar of Joint Stock Companies (RJSC). Consequently, Jeans 2000 Limited was never made a shareholder of Scholastica Private Limited, and therefore, the dispute does not fall within the jurisdiction of the Companies Act.

The learned Advocate further submitted that the suit was for the recovery of money and compensation due to breach of contract, which are matters that are clearly within the jurisdiction of civil courts under Section 9 of the Code of Civil Procedure, 1908. He argued that the appellants are not seeking rectification of the share register or any relief that falls under the Companies Act, 1994, making the lower court's reliance on Section 3 of the Act misplaced.

No one appears to defend the impugned judgment, though the matter has been appearing in the daily cause list for hearing since 15.05.2024. But it appears from the written statements filed by the defendant no.1 before the

Trial Court and the application under Order VII Rule 11 of the Code of Civil Procedure, 1908 that the dispute involved the transfer of shares, which is a matter governed by the Companies Act, 1994, and thus falls under the exclusive jurisdiction of the High Court Division. It also appeared that since the suit related to shares and their transfer, the plaintiffs should have pursued remedies under the Companies Act, not through a money suit in a civil court.

It also appears that the plaintiffs' claim of not being shareholders was unfounded, as the entire transaction, including the payment and subsequent failure to transfer the shares, are intrinsically/inherently linked to company law, necessitating the application of the Companies Act, 1994.

The issues before this Court are:

1. From a plain reading of the plaint, whether the suit seeking recovery of money falls within the jurisdiction of the civil court.
2. Whether the learned court below correctly applied Section 3 of the Companies Act, 1994, in rejecting the plaint under Order 7 Rule 11(d) of the Code of Civil Procedure, 1908.

Upon hearing the submissions so advanced by the learned counsel for the appellant and perusing the records, this Court finds as follows:

**Non-Transfer of Shares:** It is evident from a plain reading of the plaint that the appellants have put forth a factual argument that the shares were never legally transferred to Jeans 2000 Limited, and the written statement of the defendants-respondents have admitted that the issuance of shares were not in fact, approved by Bangladesh Securities and Exchange Commission. In other words, the share transfer did not admittedly, take place. Without proper transfer, the appellants cannot be considered shareholders of Scholastica Private Limited. Therefore, the Companies Act, 1994, which governs the rights and obligations of shareholders, has no application to this dispute.

**Jurisdiction of the Civil Court:** The plaintiffs' claim is rooted in contract law, specifically the recovery of money and compensation for breach of contract. Such claims for recovery of money are within the jurisdiction of civil courts under Section 9 of the Code of Civil Procedure, 1908, which allows the adjudication of all civil disputes, unless barred by any other law. The learned court below erred in applying Section 3 of the Companies Act, 1994, as the appellants were never shareholders, and the dispute did not concern any matter exclusively governed by the Companies Act as the plaintiffs have not prayed for rectification of share register or any similar relief under company law.

**Misapplication of Section 3 of the Companies Act, 1994:** The lower court's reliance on Section 3 of the Companies Act, 1994, was based on the incorrect assumption that the appellants were shareholders seeking a remedy under company law. Since the shares were never transferred, the appellants' claim is a civil matter concerning recovery of money and compensation for breach of contract, which should be adjudicated by a competent civil court and not by the High Court Division under its company jurisdiction.

**Relevant case authorities:** Earlier decisions of the High Court Division reported in *20 DLR (SC) (1968), Page, 335* and *28 DLR (1976), Page 101* have been referred before us, where it is enunciated that Section 3 of the Companies Act only gives certain jurisdiction to the High Court Division for resolution of dispute arising under Companies Act; and in *19 BLC (2014), Page 18*, it has been reported that where the nature of dispute is civil in nature, and there is no provision in the Companies Act to claim the relief prayed for, then a competent civil court is the proper forum for adjudication of such dispute.

Apparently, as discussed above, no relief under company law has been prayed for by the instant plaintiff-appellants, and recovery of money for breach of contract cannot be adjudicated through the company jurisdiction

of the High Court Division. Hence, a competent civil court is the proper and only forum for adjudication of such dispute.

In light of the above discussion, this Court holds that the learned Joint District Judge, Third Court, Chattogram erred in rejecting the plaint on the ground of jurisdiction. The suit involves a civil dispute over the recovery of money and compensation for breach of contract, which is within the jurisdiction of the civil court under Section 9 of Code of Civil Procedure, 1908.

Accordingly, **the appeal is allowed** with no order as to costs. The Judgment and Order dated 10.02.2021, decree signed on 16.02.2021, passed by the learned Joint District Judge, Third Court, Chattogram, in Money Suit No. 14 of 2015, rejecting the plaint under Order VII Rule 11(d) of the Code of Civil Procedure, 1908 is hereby set aside.

Send a copy of this judgment along with the Lower Court Record (LCR) to the Court concerned at once.

**Kazi Md. Ejarul Haque Akonda, J**

I agree