

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. 416 of 2018

In the matter of:

Md. Nizam Uddin and another
... Defendants-appellants
- Versus -

Zannatul Ferdosi
... Plaintiff-respondent No.1
Uttara Bank Ltd., Bonorupa Branch, Kotowali,
Rangamati Parbotto Zilla, represented by its
Manager.

... Defendant-respondent No.2
Mr. Md. Mozibur Rahman, Adv. with
Mr. Md. Nazmul Islam, Advocate with
Mr. Md. Rafiqul Imam, Advocate
... For the defendants-appellants

No one appears
.... For the plaintiff-respondent No.1

Mr. Abdullah Al Mahmud, Advocate for
Mr. Syed Md. Tazrul Hossain, Advocate
.... For the defendant-respondent No.2

Heard on: 30.04.2024, 07.05.2024, 23.05.2024,
07.07.2024 and 31.07.2024
and

Judgment on 04th August, 2024

Mohi Uddin Shamim, J.

This appeal is directed against the judgment and decree dated
22.11.2017 (decree signed on 28.11.2017) passed by the learned Joint

District and Sessions Judge, Rangamati Parbotto Zilla in Money Suit No. 04 of 2016, decreeing the suit exparte.

At the time of hearing of the appeal, the learned Advocate for the appellant No.1 filed an application for a direction upon the trial Court i.e. the learned Joint District and Session Judge, Rangamati Parbotto Zila to disburse the remaining balance amount of tk.40,38,008.57/- (taka forty lac thirty-eight thousand and eight and fifty-seven paisa) from pay order No.9073383 dated 08.10.2017 to the appellant No.2 namely Md. Al-Mamun, which is deposited in the Court's name.

Facts necessary for disposal of the appeal in short are that, the respondent No.1 as plaintiff filed Money Suit No.4 of 2016 for recovery of money of Tk. 24,95,000/-. It is stated that the defendant appellant No.1 is a proprietor and a businessman of brick field. The plaintiff in need of bricks gave tk.24,95,000/- in cash to the defendant-appellant No.1 for supplying bricks to her. But the defendant failed to supply the bricks as per the said contract. As such, the plaintiff is entitled to get tk.24,95,000/- which was paid to the defendant. Since the defendant-appellant No.1 failed to supply bricks he issued four cheques lying with Uttara Bank Ltd. Rangamati Branch, being CA A/c No. 63000003132,

Cheque No. CAT/B No.7584246, dated 10.06.2015, amount of tk.8,00,000/-, Cheque No. CAT/B No.7584247, dated 20.06.2015 amounting to tk.7,90,000/-, Cheque No. CAT/B No.7584248, dated 30.06.2015 amounting to tk.4,05,000/- and Cheque No. CAT/B No.3744727, dated 30.08.2015 amounting to tk.5,00,000/-. It is also stated that, the plaintiff presented the cheques to the defendant-respondent No.2 - Bank for encashment. But the cheques were dishonored by the Bank due to insufficient of funds. Later on, when the plaintiff requested the defendant No.1 to pay the amount of tk. 24,95,000/- the defendant refused to pay the same on 01.01.2016. Hence the suit.

The plaintiff has produced the copy of dishonoured cheques and other materials on record to prove her case as P.W.1.

On the above pleadings of the parties, the learned Judge of the trial Court framed the following issues in the suit:-

- i. whether the plaintiff owes any money to the defendant
- ii. what is the latest amount owed by the plaintiff to the defendant?
- iii. whether the plaintiff can get a relief as prayed for

The learned Joint District and Sessions Judge, Rangamati Parbotto Zila after hearing the parties and on perusal of the documentary evidence decreed the suit *ex parte* against the defendant *vide* judgment and decree dated 22.11.2017.

Being aggrieved by and dissatisfied with the said judgment and decree dated 22.11.2017 the defendants as appellants preferred this appeal.

The appeal being ready it has been listed for hearing. When the appeal is taken up for hearing the learned Advocate for the appellant filed an application for direction upon the learned Judge of the trial Court to disburse remaining balance of Tk. 40,38,008.57 from pay order No. 9073383 dated 08.10.2017 to the appellant No. 2. Accordingly, the appeal along with the application is taken up together for disposal.

Mr. Md. Nazmul Islam, learned Advocate for Mr. Rafiqul Imam, learned Advocate on behalf of the defendant-appellants upon reading out the judgment passed by the trial Court at the very outset submits that, the trial Court without complying the mandatory provision of section 89A read with Order XIV, rules 1-3 of the Code of Civil Procedure passed the judgment and decree which is nullity and bad in law. He

further submits that, admittedly the plaintiff-respondent No. 1 filed the suit for recovery of money of Tk. 24,95,000/- and the learned Judge of the trial Court by the impugned judgment and decree directed the defendant-respondent No. 2-Bank to pay of Tk. 24,95,000/- to the plaintiff-respondent. Referring to the report on the auction sale of the suit property made by the defendant-respondent No.2-Bank, the learned Advocate submits that the total auction price of the suit property was Tk. 1,22,50,500/- and after deduction of the Bank dues the balance amount stood Tk. 65,33,008.57 which was deposited by pay order in the defendant Bank. Out of the balance amount of Tk. 65,33,008.57 if the decretal amount of the plaintiff respondent is deducted then the amount will stand at Tk. 40,38,008.57. The learned Advocate submits that since the plaintiffs are the owners of the suit property in equal share the appellant No. 2 is entitled to get Tk. 61,25,275.00 out of the auction price of Tk. 1,22,50,500/-. So in such circumstance since the plaintiff respondent have satisfied with their dues they will not have any objection against the remain amount of Tk. 40,38,008.57 and as such the trial Court may kindly be directed to pay the said amount of tk.40,38,008.57 to the defendant-appellant No. 2 namely Md. Al-Mamun

being the equal owner of the suit property. Accordingly, the defendant appellant No.1 filed the application for necessary order. He finally prays for allowing the application and allowing the appeal.

No one appears on behalf of the plaintiff-respondent No.1 to oppose the appeal or the application.

On the contrary, Mr. Abdullah Al Mahmud, learned Advocate appearing with Mr. Syed Md. Tazrul Hossain, learned Advocate on behalf of the respondent No.2 before the Court and submits that, the respondent No.2 the Bank has no further claim against the said amount of Tk.40,38,008.57 which has been kept with the respondent No.2, Bank.

We have considered the submissions so advanced by the learned Advocates for the appellants and that of the respondent No.2 at length. We have also gone through the impugned judgment and decree, the memo of appeal and all the documents so have been appended in part I and part II of the paper books.

Admittedly, the suit property which was mortgaged in the defendant Bank has been sold in auction at tk.1,22,50,500/-. It further appears that, the decretal amount of money of the plaintiff as well as dues of the defendant bank has been met up from the auction price of

the suit property with full and final satisfaction. Now the remaining amount is at tk.40,38,008.57 which is deposited in the Bank. The learned Advocate for the defendant-respondent No.2-Bank submits that he has no objection if a direction as prayed for by the appellant is given upon the trial Court to disburse the rest amount of Tk. 40,38,008.57 to the present defendant-appellant No.2 namely Md. Al Mamun.

Considering the submissions of both the parties, if direction as prayed for is given then justice will be met towards the parties. Accordingly, the trial Court is directed to disburse the amount of tk.40,38,008.57 (forty lac thirty eight thousand eight taka and fifty seven paisa) which was deposited in the Bank by pay order No.9073383 dated 08.10.2017 to the defendant-appellant No.2 namely Md. Al Mamun, son of Haji Momenullah Bhuiyan within a period of 02 (two) months from the date of receipt of the judgment and order of this Court without any fail.

With the above observations and direction, the appeal is **disposed of** without any order as to costs.

Let a copy of this judgment along with the lower court records (LCR) be communicated to the respondents as well as the court concerned forthwith.

Kazi Md. Ejarul Haque Akondo, J.

I agree.