

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

Present

**Mr. Justice Md. Riaz Uddin Khan**

**And**

**Mr. Justice Raziuddin Ahmed**

**First Miscellaneous Appeal No. 262 of 2018**

**IN THE MATTER OF:**

Rasheq Rahman

... Plaintiff-Appellant

-Versus-

The Farmers Bank limited and others

... Defendant-Respondents

None

...For the parties

**Judgment on: 13.11.2025**

**Md. Riaz Uddin Khan, J:**

This matter was fixed at the instance of Mr. Tushar Knti Das, the learned advocate for the respondent No. 9. Thereafter, it was appearing on the list for several dates but neither party appeared. In such circumstances on 10.11.2025 we fixed the matter for delivery of judgment today.

This First Miscellaneous Appeal is directed against the Order No. 2 dated 22.05.2018 passed by the Joint District Judge, 1<sup>st</sup> Court, Dhaka in Title Suit No. 410 of 2018 rejecting an application for temporary injunction under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908.

The succinct facts for disposal of this First Miscellaneous Appeal is that the plaintiff filed Title Suit No. 410 of 2018 before the Joint District Judge, 1<sup>st</sup> Court, Dhaka contending *inter alia* that on 15.05.2016 he was sanctioned a Composite Credit Limit of Tk. 40,000,000 (Four Crore) only in his favour by the defendant no.1 bank. Under

the sanction letter bearing Reference No. FBL/GCB/CRD/2016/756, the plaintiff availed Term Loan for a period of 8 years from the date of disbursement with a limit of Taka 25,000,000/- (Two Crore Fifty Lac) only for the purpose of taking over the outstanding loan liability from the pro-forma defendant Nos. 8, 9 and 10 and also was sanctioned an overdraft loan amounting to Taka 15,000,000/- (One Crore Fifty Lac) in 1 (one) year revolving basis to meet the working capital requirement of the plaintiff. On February 2018, the defendant bank company without notifying the plaintiff started to charge interest at the rate of 16% and 17% per annum with respect to the overdraft facility and term loan facility. The plaintiff was astounded by such behavior of the defendants and on 29.03.2018, the plaintiff issued a letter to defendant No.2 notifying that he has paid interest amounting to Taka 7,975,445/- (Seventy Nine Lac Seventy Five Thousand Four Hundred and Forty Five) only till 29.03.2018 and requested that the interest rate of the loans be not increased over 13% as otherwise it would be difficult for the plaintiff to meet loan liabilities and maintain a clean CIB report. Despite such request the defendant No.5 on 02.04.2018 issued a letter bearing reference No. FBL/GCB/CRD/2018/281 with the subject "re-fixation of interest rate and Installment Size of your loan account" whereby the rate of interest was officially increased to 16% per annum for the Overdraft and 17% per annum with regards to the Term loan Facility. The defendant No.1 bank on several occasions without giving any proper reasons disallowed the plaintiff from withdrawing money from the loan accounts. Imposition of such high rate of interest for meeting its loan liabilities is exerting huge pressure on the plaintiff and his business is being

affected heavily and it has become extremely difficult for the plaintiff to repay other dues with the other bank companies, namely, the Premier Bank Limited and the City Bank Limited. The plaintiff's business is being hampered heavily as all of a sudden without any notification causing huge strain to pay its dues, forcefully putting him in a position that would lead him to be loan defaulter putting his business reputation at stake. Hence the plaintiff filed the suit for declaration that the said letter bearing reference No. FBL/GCB/CRD/2018/281 dated 02.04.2018 is arbitrary, irrational and not binding upon him. The plaintiff also prayed for permanent injunction upon the bank from enforcing the said letter with further prayer for injunction upon the Bangladesh Bank not to publish his name in the Credit Information Bureau (CIB) list as loan defaulter.

The plaintiff also filed an application for temporary injunction under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908 before the trial court. Upon hearing the plaintiff-petitioner the learned Judge was pleased to reject the application against which the plaintiff being the appellant filed this first miscellaneous appeal before this Court. At the time of admission of appeal the appellant obtained an order of interim injunction passed by this Court. However, on an application filed by Mr. A. Al Masud Begh, the learned advocate for the respondent No. 5 for vacating the interim order of injunction this Court by Order dated 14.07.2019 was pleased to vacate the interim order earlier passed by this Court. In such situation, we think, the parties have lost their interest to proceed with this First Miscellaneous Appeal for which the learned advocate for the appellant might not turn up for hearing

when the matter was taken up for hearing which was appearing in the list with names of the advocates for several dates. However, in such circumstances we have taken this matter for delivery of judgment today.

We have perused the plaint along with the application for injunction filed under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure and other relevant materials on record available before us. We have also perused the impugned order passed by the trial court.

It turns out from the record that the trial court rejected the application for temporary injunction on the ground that the list of defaulter is being published in the CIB report in accordance with section '5(Gha)' of Bank Companies Act and it is the duty of the Bangladesh Bank to publish those name in the Credit Information Bureau (CIB) report and as such there is no scope to grant any order of temporary injunction.

The main contention of the plaintiff-appellant is that the trial court erred in both law and facts in rejecting the application for temporary injunction as it failed to show any cogent reason and section 5(Gha) of the Bank Companies Act, 1991 does not speak about reporting of the loan defaulter in the CIB.

To appreciate the points raised by the appellant and the legal position, at this stage we may go through the relevant provisions of the Bank Companies Act, 1991. Section '5(GaGa)' defines the 'defaulter borrower' while section '27KaKa' of the Bank Companies Act, 1991, imposed some statutory duties upon the Banks, the financial institutions and the Central Bank, i.e the Bangladesh Bank. It would be profitable at this stage if we refer those two sections. Section '5(GaGa)' reads as under:-

GaGa) “defaulter borrower” means a borrowing individual or establishment or company granted advance, loan or any other credit facility in favour of him or it, or his or its interested establishment or any part thereof or interest accrued thereon or profit thereof which has become overdue as per definition notified by Bangladesh Bank and elapsed by 6 (six) months.”

Section ‘27KaKa’- “List of defaulter borrowers, etc- (1) every bank company or financial institution shall, in accordance with the provisions of article 43 and 44 of Bangladesh Bank Order, 1972 (P.O No. 127 of 1972), from time to time, send a list of its defaulter borrowers to the Bangladesh Bank.

(2) Bangladesh Bank shall, in accordance with the provision of article 45 of Bangladesh Bank Order, 1972 (P.O. No. 127 of 1972), send the list received under sub-section (1) to all bank companies and financial institutions of the country.

(3) No bank company or financial institution shall grant any kind of loan facility in favour of any defaulter borrowers;

Provided that notwithstanding anything contained in any other law for the time being in force, the loan granting bank company or financial institution, as the case may be, shall file a suit against the defaulter borrower in accordance with the prevailing laws”

It is well settled by a catena of decisions of our apex court that no injunction can be granted to restrain the defendants for performing their public/statutory duties. The court must not grant temporary injunction by invoking its inherent power unless compelling reasons demand that course. In the case of Bangladesh Shilpa Rin Sangstha (BSRS) Vs. Aziz Uddin Chowdhury, reported in 7BLT (AD) 81 it has been held that, “it is palpably clear that the learned trial judge as well as the learned judges of the High Court Division acted illegally and without jurisdiction in granting temporary injunction in a matter covered under Article 34 of BSRS Order, which is a special enactment and it will prevail over general law. The temporary injunction order in this case had been passed contrary to the scheme of the legislation and the purpose of the special law providing for speedy recovery of the dues of the Sangstha.” In this reported case, the loan-defaulter Aziz Uddin Chowdhury filed a Money Suit against Bangladesh Shilpa Rin Sangshta (BSRS), a development financial institution, and prayed for temporary injunction against the Notification dated 25.08.1995, issued under Article 34 of the BSRS Order, 1972, to auction sale the Mills of the plaintiff-borrower. The trial court granted temporary injunction, as prayed for. Being aggrieved the defendant-appellant (BSRS) preferred First Miscellaneous Appeal before the High Court Division. A Division Bench, upon hearing the matter, dismissed the appeal and upheld the order of injunction. Then BSRS preferred Civil Appeal before the Appellate Division with leave of the court. The Apex Court made the above observations. In the case of Hossain Ahmed Vs. H.D. Hossain and others reported in 32 DLR (AD) 223 our Appellate Division observed that section

56, clauses (d) and (f) of the Specific Relief Act, 1877 provide that no injunction can be granted to interfere with the public duties of any department of the government or for that matter to prevent the breach of a contract the performance of which would not be specifically enforced. It further observed that a declaratory suit being a suit under section 42 of the Specific Relief Act, 1877 the plaintiff is to satisfy the Court about entitlement of such declaration as section 42 speaks of person "entitled to any legal character or any legal right as to any property". In the case of Shahzada Muhd. Umar Beg Vs. Sultan Mahmood Khan and others reported in 22 DLR (SC) 41 the Pakistan Supreme Court observed that even if section 56 of Specific Relief Act does not limit the inherent power of a Court to grant temporary injunction, it cannot be said that in the exercise of those inherent powers it will not be a serious matter for the Court's consideration whether it would be right to issue an injunction to a public department which would obviously disturb its working and it would not do so unless compelling reasons demand that course. Regarding granting temporary injunction, in the case of S N Gupta & Co Vs. Sadananda Ghose & others reported in 11 DLR 470 this Court held: *"To summaries, in the case of temporary injunction, (a) an applicant must show a fair prima facie case in support of the right claimed; (b) an actual or threatened violation of that right; (c) productive of irreparable or at least serious damage; (d) his conduct must be such as not to disentitle him to assistance but it should be fair and honest and in particular there must be no acquiescence or delay; (e) there must be a greater convenience in granting than refusing the injunction; and (f) equally efficacious relief must not be obtainable by*

*any other usual mode or proceeding.”* In the case of Chowmuhani College and another Vs. Md. Ismail Hossain and others reported in 26 DLR 10 this Court went one step ahead and even rejected the plaint itself by invoking inherent jurisdiction of this court under section 150 read with 151 of the Code of Civil Procedure while dealing with a matter of temporary injunction and held that question of granting temporary injunction does not at all arise if the suit is not prima facie maintainable.

In a recent case of SolarEn Foundation and others Vs. Infrastructure Development Company Limited (IDCOL) and others reported in 77 DLR 327 a special bench comprising 3(three) learned Judges of this Court held that no injunction can be granted restraining the defendants from performing their statutory duties and further observed that *in a case where granting of an order of injunction is not permitted by law, i.e. where the plaintiff has no prima facie case, the issue of balance of convenience and inconvenience and the issue of irreparable loss become immaterial. Yet, in the case before us, and in similar other case, the balance of convenience and inconvenience lies in rejecting the prayer for injunction, least to save the national economy by saving the banking sector from being collapsed and closed to the great detriment of the depositors with whose fund the banks run their business, and to prevent liquidity crisis as well as short fall in the provisions. Besides, the banks, the depositors and the country's business economy will suffer irreparable loss, if injunction is granted in such case.* The Court finally discharged the Rule in relation to injunction from further continued publication, adverse inclusion and circulation of classification status of the plaintiff as loan defaulter in



the report of the Credit Information Bureau (CIB) of the Bangladesh Bank similar to the instant case.

As such, the law that no injunction can be granted to restrain the defendants from performing their statutory duties has been well settled by a catena of decisions reported in 22 DLR (SC) 41 (supra); 32 DLR (AD) 223 (supra); 7 BLT (AD) (1991) 81 (supra) and 77 DLR 327 (supra).

In the instant case the plaintiff appellant filed Title Suit No. 410 of 2018 against a private Bank along with the Bangladesh Bank for declaration that the letter bearing reference No.FBL/ GCB/ CRD/ 2018/ 281 dated 02.04.2018 has been issued by the defendant Nos. 1-5 raising the interest rate of payment of the term loan and overdraft from 13% per annum to 17% and 16% per annum respectively is arbitrary and irrational causing to be illegal and non-applicable on the plaintiff and as such not binding upon the plaintiff. The plaintiff also sought for an injunction restraining the respondent Nos. 1-7 from publishing his name in the Credit Information Bureau (CIB) report.

It has been noticed that this kind of suit is being filed over the years before different Courts of the country and in the meantime the issue has been settled in reported case of 77 DLR 327 (supra) by a Special Bench of this Court consisting 3(three) learned Judges of this Court relying upon long standing decisions of this sub-continent including our Apex Court that if the suit itself is not maintainable there cannot be any interlocutory relief. In the instant case the plaintiff-appellant has miserably failed to make out a prima facie case not to speak of a case of temporary injunction. In the impugned order the

trial court clearly mentioned a wrong section of law [Section 5 (Gha)] instead of correct section 5 (GaGa) of Bank companies Act, 1991. In the facts of the instant case in the light of the above decision (77 DLR 327) the instant plaintiff-appellant is a loan defaulter according to section 5 (GaGa) of the said Act and according to section 27KaKa of the Act it was the statutory duty of the defendant to send the name of the plaintiff to the Bangladesh Bank whose duty is to publish the name in the Credit Information Bureau (CIB) list. So, the wrong quotation of law by the trial court will not improve the case of the plaintiff-appellant in any way. When our courts are over burdened with millions of cases this type of luxury cases are consuming much of valuable public time and money. As the issue has been settled by the apex court we cannot in any way appreciate the filing of this type of cases. Since the issue has already been settled we do not find any reason to disagree with the decisions and revert back to settle the issue again. Hence the instant miscellaneous appeal is liable to be dismissed with cost as there is no merit.

In the result, the First Miscellaneous Appeal is **dismissed** with a cost of Taka 20,000/- to be paid by the plaintiff-appellant.

Send a copy of this judgment at once.

**Raziuddin Ahmed, J:**

I agree.