

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

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

In the matter of:

Sonali Bank Limited, Ramna
Corporate Branch.

.... Appellant.

Vs.

Md. Hassan Khaled and others.

..... Respondents.

Mr. M. Mohiuddin Yousuf,
Advocate.

...For the Appellant.

Heard and judgment on: 10.08.2023.

SHEIKH HASSAN ARIF, J

1. This appeal, at the instance of judgment-debtor 1- Sonali Bank in Title Suit No. 768 of 2011, is directed, against order dated 26.04.2018 passed by the First Court of Joint District Judge, Dhaka in Civil Miscellaneous Case No. 60 of 2013, thereby, dismissing the said case of the appellant (judgment-debtor) seeking to set aside the ex-parte judgment and decree passed in the said title suit against the appellant.

2. **Background Facts:**

- 2.1 Facts, relevant for the disposal of the appeal, in short, are that the respondent No. 1 filed said Title Suit No.

Present:

Mr. Justice Sheikh Hassan Arif

And

Mr. Justice Biswajit Debnath.

768 of 2011 before the First Court of Joint District Judge, Dhaka seeking a decree of compensation for an amount of Tk. 1,25,00,000/- against this appellant-Bank (defendant No.1) and others. The appellant (defendant No.1) having failed to appear in the said Suit, the same was decreed ex-parte vide judgment and decree dated 16.06.2013 (decree signed on 20.06.2013). The appellant (judgment-debtor No.1) then filed application on 29.09.2013 before the trial Court under Order 9, Rule 13 of the Code of Civil Procedure for setting aside the said ex-parte decree. Accordingly, the said application was registered as Civil Miscellaneous Case No. 60 of 2013. The Court then fixed 26.04.2018 as the date for hearing of the said case on which date the applicant (appellant) did not appear and/or did not file any application seeking adjournment. Thereupon, the Court below, vide impugned order dated 26.04.2018, rejected the said miscellaneous case. Being aggrieved by the said order, the applicant of the said misc case has preferred this appeal.

- 2.2 The appeal is not contested by any of the respondents, although the notices have been served duly.
3. At the time of hearing, learned advocate appearing for the appellant has filed a supplementary-affidavit annexing thereto various certified copies including a letter written by the learned advocate of the appellant in the Court below, as annexed to the said affidavit as Annexure-D2.
- 3.1 Drawing this Court's attention to the said letter of the said learned advocate of the appellant-bank, he submits that it is apparent from the said letter that the clerk of the said learned advocate in the Court below recorded the date of hearing of the said miscellaneous case wrongly. He further submits that it was a bona-fide mistake on the part of the appellant-bank to appear on the date fixed for hearing of the said miscellaneous case.
- 3.2 Upon consideration of the said letter issued by the learned advocate of the bank (Annexure D2), we find substance in such submissions. Accordingly, we are of the view that the said miscellaneous case should

be disposed of on merit giving a last chance to the applicant to proceed with the same without seeking any adjournment.

3.3 Accordingly, this appeal is allowed. The impugned order dated 26.04.2018 passed by the First Court of Joint District Judge, Dhaka is set aside. Thus, the Civil Miscellaneous Case No. 60 of 2013, as was pending before the First Court of Joint District Judge, Dhaka, is, hereby, restored to its original file and number. The Court below is directed to dispose of the same as expeditiously as possible.

Communicate this.

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(Sheikh Hassan Arif, J)

I agree.

.....
(Biswajit Debnath, J)