

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.37 OF 2022 WITH
CIVIL RULE NO.463(F) OF 2022**

Bank Asia Limited, Agrabad Brahch, Chattogram and
another

.... Appellants

-Versus-

Jamuna Bank Limited, Anderkilla Brahch, Chattogram

.... Respondent

Mr. Sk. Md. Morshed, Senior Advocate with

Mr. Md. Anisul Hassan, Advocate

Mr. Md. Zahirul Islam, Advocate

Mr. Mohammad Sayeed Arar, Advocate

Mr. Hossain Mohammad Shahidul, Advocate

Mr. Refat Bin Reza Rafi, Advocate

Mr. Md. Istiyaq Ahamed, Advocate

Ms. Rubiyet Mustarin Zoha, Advocate

.... For the appellants.

Mr. Munshi Moniruzzaman, Advocate with

Mr. Somarendra Nath Biswas, Advocate

Mr. Abdul Kuddus Miah, Advocate

.... For the respondent.

Heard on 16.08.2026 and 23.08.2026.

Judgment on 31.08.2026.

S M Kuddus Zaman, J:

This First Appeal is directed against the judgment and decree dated 31.10.2021 passed by the learned Judge, Artha Rin Adalat, Chattogram in Artha Rin Suit No.399 of 2014 decreeing the suit.

Civil Rule Nos.463(F) of 2022 having arising out of this First Appeal on an application for stay this First Appeal and Civil Rule are heard together and being disposed of by this single judgment.

Facts in short are that respondent No.1 as plaintiff instituted above Artha Rin Suit for recovery of Taka 13,62,39,388/- alleging that at the instance of Shah Amanat Iron Mart, the defendant, Bank Asia Limited, opened three Letters of Credit being Nos.208313990093, 208313990094 and 208313990095 on 13.10.2013 in favour of M/S. MAN Trading Corporation for supply of 3900 metric ton MS plates. M/S. MAN Trading Corporation the beneficiary of above Letters of Credit submitted all necessary documents and bills to to Jamuna Bank Limited, the plaintiff, for negotiation. The plaintiff submitted aforesaid bills to defendant No.1 for acceptance and confirmation of payment who assured payment on maturity. On above acceptance and confirmation the plaintiff made payment to M/S. MAN Trading Corporation. But defendant No.1 did not make payment of proceeds of above Letters of Credit to the plaintiff despite issuance of several notices.

Defendant No.1 contested above suit by filing a written statement alleging that the defendant did not obtain any loan from the plaintiff nor the defendant was a guarantor or jimmadar of any loan obtained from the plaintiff. The defendant issued domestic Letters of Credit at the instance of his client M/S. Shah Amanat Iron Mart in favour of M/S. MAN Trading Corporation but no goods was supplied under above Letters of Credit and the client of the defendant namely Mr. Gias Uddin

went on hiding. The plaintiff in collusion with M/S. Shah Amanat Mart has set up above false Letters of Credit to extract money and defendant is not bound to make payment under above fraudulent Letters of Credit.

At trial plaintiff and defendant examined one witness each. Documents of the plaintiff were marked as Exhibit Nos.1-13 and those of the defendant were marked as Exhibit Nos.“Ka” to “Gha”.

The learned Joint District Judge decreed above suit on contest against the defendant for Taka 13,62,39,386/- along with interest at the rate of 12% per annum.

Being aggrieved by and dissatisfied with above judgment and decree of the learned Judge of the Artha Rin Adalat defendant Nos.1 and 2 as appellants moved to this Court and preferred this First Appeal.

Mr. Sk. Md. Morshed, learned Senior Advocate for the appellants submits that the defendant did not obtain any loan from the plaintiff nor the defendant was a guarantor or mortgagor of any loan obtained by a third party from the plaintiff. The defendant issued three Letters of credit on 13.10.2013 on the request of its client M/S. Shah Amanot Iron Mart but the beneficiary of above Letters of Credit was M/S. MAN Trading Corporation did not supply any goods under above Letters of Credit. The defendant erroneously gave confirmation for payment on maturity. Since the defendant was not a debtor of the plaintiff filing of above suit in the Artha Rin Adalat was totally misconceived. The plaintiff could approach a competent Civil Court with a Money Suit for recovery of proceeds of above Letters of Credit. The learned Advocate

further submits that Section 2(18Gha) of the Artha Rin Adalat Ain, 2003 has defined debt and Sub-rule 2 includes Letter of Credit as a debt on the part of the issuing Bank for its client. But the plaintiff did not create any force loan against the defendant for the money he has paid under above Letters of Credit. As such the Artha Rin Adalat did not have any jurisdiction to entertain above suit against the defendant who is also a financial institution. In above suit the defendant submitted a petition under Order 7 Rule 11(d) of the Code of Civil Procedure, 1908 for rejection of plaint. Above petition was rejected by the trial Court and against above judgment and order the defendant preferred Writ Petition No.13912 of 2016 and the High Court Division while discharging above Rule held that the question of maintainability of above suit would be decided by the trial Court. The trial Court framed an issue as to maintainability of above suit but did not address above issue in the impugned judgment and decree dated 31.10.2021. The learned Advocate lastly submits that in the case of Manager, Sonali Bank Limited Vs. Mercantile Bank Limited and others reported in 76 DLR (2024) Page-353 the High Court Division held that the purported acceptance of letter of credit documents and confirmation of payment of the bill on maturity does not come within the ambit of loan as has been defined in Section 2(Ga)(2) of the Artha Rin Adalat Ain, 2003. The learned Joint District Judge totally failed to appreciate above facts and circumstance of case and evidence on record and most illegally decreed above suit which is not tenable in law.

On the other hand Mr. Munshi Moniruzzaman, learned Advocate for the respondent submits that the facts of this case are not disputed. It is admitted that defendant opened three Letters of Credit at the instance of his client M/S. Shah Amanat Iron Mart on 13.10.2013 and the beneficiary of above Letters of Credit M/S. MAN Trading corporation submitted all relevant documents to the plaintiff for negotiation who forwarded those documents to the defendant for confirmation of payment who confirmed payment on maturity and on above assurance plaintiff paid the proceeds of above Letters of Credit to M/S. MAN Trading Corporation. The defendant was bound under the above Letters of Credit to make payment to the plaintiff irrespective of any dispute arising out of the contract between above seller and purchaser.

Section 2(18) Clause Ga of the Artha Rina Adalat Ain, 2003 provides definition of debt which includes liability of a Bank under a letter of credit as debt. Above special law has been promulgated for recovery of loan by the financial institutions. No financial institution can file a suit in a Civil Court for recovery of its debt by passing above Ain. In the case of Sekander (Md) and another Vs. Janata Bank Limited and others reported in 22 BLC (AD) 2017 Page-53 the Appellate Division of the Supreme Court of Bangladesh held that a letter of credit is a debt and a financial institution must file every suit for recovery of debt in the Artha Rin Adalat who has exclusive jurisdiction in this regard and a letter of credit is an independent contract between two banks and the

issuing bank is bound to make payment to the negotiating bank unless there is elements of fraud in the relevant documents.

The defendant did not raise any allegation as to any error or fraud in above Letters of Credit or relevant documents which were submitted by the plaintiff to the defendant. Moreover, on receipt of above documents from the plaintiff the defendant accepted those as valid and assured payment on maturity. On consideration of above facts and circumstances of the case and materials on record the learned Joint District Judge rightly decreed above suit which calls for no interference.

We have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record including the impugned judgment and decree passed by the learned Judge of the Artha Rin Adalat.

It is admitted that the defendant issued three Letters of Credit being Nos.208313990093, 208313990094 and 208313990095 on 13.10.2013 at the instance of his client M/S. Shah Amanat Iron Mart for supply of 4500 metric ton MS plate and the plaintiff, as the negotiating bank, presented above Letters of Credit and all relevant documents to the defendant for acceptance and confirmation of payment and the defendant accepted above documents as valid and confirmed payment on maturity and the plaintiff on 24.10.2013 made payment under above Letters of Credit to its beneficiary M/S. MAN Trading Corporation on. It is also admitted that despite several requests and written notices the

defendant refrained from making payment to the plaintiff under above Letters of Credit.

Section 2(Ga) of the Artha Rin Adalat Ain, 2003 provides definition of “Debt” which is reproduced below:

“২(গ) “ঋণ” অর্থ-

(১) অগ্রিম, ধার, নগদ ঋণ, ওভার ড্রাফট, ব্যাংকিং ক্রেডিট, পাটাকৃত বা ক্রয়কৃত ষিল, ইসলামী শরীয়া মোতাবেক পরিচালিত আর্থিক প্রতিষ্ঠান কর্তৃক প্রিনিয়োগকৃত অর্থ বা অন্য যে কোন আর্থিক আনুকূল্য বা সুযোগ-সুবিধা, যে নামেই অভিহিত হউক না কেন;

(২) গ্যারান্টি, ইনডেমনিটি, ঋণপত্র বা অন্য কোন আর্থিক প্রদোশ্ত যাহা কোন আর্থিক প্রতিষ্ঠান ঋণ গ্রহীতার পক্ষে প্রদান বা জারী করে বা দায় হিসাবে গ্রহণ করে;

(৩) কোন আর্থিক প্রতিষ্ঠান কর্তৃক উহার কোন কর্মকর্তা বা কর্মচারীকে প্রদত্ত কোন ঋণ; এবং

(৪) পূর্ণাঙ্গী ক্রমিক (১) হইতে (৩) এ উল্লিখিত ঋণ, বা, ক্ষেত্রমত, ইসলামী শরীয়া অনুযায়ী পরিচালিত আর্থিক প্রতিষ্ঠান কর্তৃক প্রিনিয়োগকৃত অর্থ এর উপর ঐধভাবে আরোপিত সুদ, দণ্ড সুদ বা মুনাফা বা ভাড়া।” (underlined added.)

It turns out from Section 2(Ga) Sub-section (2) that letter of credit or any other financial arrangement which a financial institution issues for its client and thereby accepts his liability is a debt. The Artha Rin Adalat Ain, 2003 is a special law which prevails over any other law has in clear terms stated that by issuing letter of credit the bank undertakes the liability for payment for his client and above liability has been defined as debt. Above debt is created by operation of law immediately after issuance of the letter of credit on the shoulder of the issuing Bank. There is no necessity of creation of forced loan by the negotiating bank to

constitute “debt” since the liability of the issuing under letter of credit has been made “debt” by law. As such we are unable to find any substance in the submissions of the learned Advocate for the appellants that since the plaintiff did not create a forced loan against the defendant liability under the Letters of Credit did not constitute “debt”.

A letter of credit is a contract between the issuing Bank and negotiating bank and totally separate from the contract between the seller and purchaser which may be the basis of issuance of letter of credit. Consequently the undertaking of a Bank to honor or to fulfill any obligation under the letter of credit is not subject to claims or defenses by the applicant resulting from its relationship with the issuing Bank or the beneficiary of the letter of credit. The plaintiff as the negotiating Bank has honored the letter of credit issued by the defendant and on receipt of acceptance and assurance for payment from the defendant paid proceed of the Letters of Credit to the beneficiary, M/S. MAN Trading Corporation. There is no allegation that above letter of credit or any relevant document produced by the plaintiff was affected or tainted by fraud or any other legal deficiency.

The Appellate Division of Supreme Court of Bangladesh in the case of Sekander (Md) Vs. Janata Bank Limited reported in 22 BLC (AD) 2017 Page-53 held as follows:

“The preamble of the Ain indicates the object of promulgating it. It is for realization of ‘ঋণ’ (loan) by financial institutions by amending the prevailing laws which the legislature felt necessity to integrate

the law. The expression ‘আর্থিক প্রতিষ্ঠান’ has been defined in Section 2(Ka) that includes the Janata Bank, the respondent. The word ‘ঋণ’ means advance, loan, overdraft, banking credit, discounting bills, guarantee, indemnity, letter of credit etc. Section 3 says that the Ain shall prevail over Any other law which are inconsistent with the Ain. Section 5 empowers the exclusive jurisdiction of the Artha Rin Adalat to adjudicate upon disputes relating to realization of ‘ঋণ’ by a financial institution. It is said, notwithstanding anything contained in any other law, subject to the provisions of sbu-sections (5) and (6), all suits relating to realization of ‘ঋণ’ by a financial institution shall be instituted before the Arthat Rin Adalat established under Section 4 of the Ain and to be disposed of in the said Adalat.”

The Artha Rin Adalat Ain, 2003 was promulgated for the purpose of expeditious recovery of loan advanced by the financial institutions and the Artha Rin Adalat has been given exclusive jurisdiction to entertain such suits. A financial institution cannot file a suit in a civil court for recovery of loan advanced by it. The Appellate Division has reaffirmed that the definition of debt as has been provided in Section 2(Ga) Clause 2 of the Artha Rin Adalat Ain, 2003 includes liability of the bank created under a letter of credit.

On consideration of above facts and circumstances of the case and materials on record we hold that the defendant by issuance of above Letters of Credit and by subsequent acceptance of relevant documents as

valid and flawless and giving confirmation of payment under above Letters of Credit has created a debt has been defined under Section 2(Ga) Clause 2 of the Artha Rin Adalat Ain, 2003 and the creditor being a financial institution had no other forum but the Artha Rin Adalat to file a suit to realize above debt.

In above view of the facts and circumstances of the suit and materials on record we hold that the learned Joint District Judge rightly decreed above suit which calls for no interference and this First Appeal is devoid of any substance which is liable to be dismissed.

In the result, this First Appeal is dismissed. The connecting Civil Rule being No.463(F) of 2022 is hereby discharged.

The order of stay granted at the time of issuance of the Rule is hereby vacated.

However, there will be no order as to cost.

Send down the lower Court record immediately.

Tamanna Rahman Khalidi, J:

I agree.

MD. MASUDUR RAHMAN
BENCH OFFICER