

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Md. Ashfaqul Islam
Mr. Justice Zubayer Rahman Chowdhury
Mr. Justice Md. Rezaul Haque
Mr. Justice S.M. Emdadul Hoque
Mr. Justice A.K.M. Asaduzzaman
Mrs. Justice Farah Mahbub

CIVIL APPEAL NO.86 OF 2015.

(From the judgment and order dated 25.08.2010 passed by the High Court Division in Writ Petition No.7916 of 2008).

Prime Global Limited, represented by its Managing Director, Golden Plaza (Third floor) 58, Shahid Tajuddin Ahmed Sarani, Mohakhali, Commercial Area, Dhaka and others. : ...Appellants.

-Versus-

Sonali Bank Limited, BIDD Steel Plant Branch, Chittagong and others. :Respondents.

For the Appellants. : Mr. Mustafizur Rahman Khan, Senior Advocate with Mr. Md. Anisul Hassan, Advocate instructed by Mr. Md. Taufique Hossain, Advocate-on-Record.

For the Respondent No.1. : Mrs. Madhumalati Chowdhury Barua, Advocate-on-Record.

For the Respondent No.3. : Mr. ASM Abdur Razzak, Advocate instructed by Mr. Zainul Abedin, Advocate-on-Record.

For the Respondent No.2. : Not represented.

Date of Hearing. : 28.08.2025.

Date of Judgment. : 28.08.2025.

JUDGMENT

Farah Mahbub,J:

Instant Civil Appeal arises out of Civil Review Petition No.45 of 2011 corresponding to Civil Petition for Leave to Appeal No.2347 of 2010 disposing of the civil petition vide which the judgment and order dated 25.08.2010, passed by the High Court Division in Writ Petition No.7916 of 2008, was set aside without granting leave.

For realization of Tk. 17,88,34,045/- as the defaulted loan amount along with interest the respondent no.3, Uttara Bank Ltd, Gulsan branch, Dhaka as plaintiff instituted Artha Rin Suit No.293 of 2003 before the Artha Rin Adalat No.4, Dhaka impleading the petitioners-appellants, namely, Prime Global Limited and others (in short, PGL) and Sonali Bank, BIDD Street Plant Branch, Chittagong as defendants stating, *inter alia*, that PGL had earlier opened Current Account No.425 with Uttara Bank. However, through several requisitions between January and July 2002, it obtained IBP facilities totalling Tk.15,46,27,000/- (Taka fifteen crore forty-six lakh twenty-seven thousand) only against 57 post-dated cheques issued by Chittagong Tobacco Company Ltd. (in short, CTC). These cheques, drawn on CTC's Current Account No.907 with Sonali Bank, were each endorsed as "*Good for Payment*" and supported by written undertakings and reconfirmations issued by Sonali Bank on different dates in 2002-2003.

Relying on these assurances and confirmations, Uttara Bank extended IBP facilities to PGL. Although PGL fully availed the IBP facility, all 57 cheques were dishonoured upon presentation between

November 2002 and February 2003, despite Sonali Bank's earlier guarantees, thereby crystallising PGL's and Sonali Bank's alleged joint and several liabilities.

PGL and its directors contested the suit by filing written statements on the assertion that Uttara Bank had purchased a total of 223 cheques from them between May 2000 and July 2003, of which 166 were duly honoured, yielding Tk. 56.38/- crore. They contended that the remaining 57 dishonoured cheques amounting to Tk. 17.94/- crore were confirmed and reconfirmed exclusively by Sonali Bank, making Sonali Bank solely liable for payment. They further denied providing any personal guarantees or mortgaging property for the IBP facility, explaining that the only mortgage and guarantees they executed were related to a separate CC(Hypo)/L/C/LTR facility sanctioned in December 2000, which had since been fully adjusted.

On that basis, they sought exclusion of their names from the suit as being unnecessary and improperly joined parties; however, both their applications under Order I Rule 10 of the Code of Civil Procedure and Section 13 read with Section 57 of the Artha Rin Adalat Ain, 2003 (in short, Ain, 2003), were rejected by the Adalat concerned. Challenging the said order Writ Petition No.5510 of 2004 was filed before the High Court Division. The Rule Nisi so was issued therein, was ultimately discharged with a direction upon the Adalat to expedite disposal of the suit.

Upon resumption of the proceedings, the Artha Rin Suit was dismissed against PGL and its directors on contest on 07.08.2006, and

decreed *ex parte* against Sonali Bank, BIDC Steel Branch, Chittagong. Said decree was subsequently put to execution by filing Artha Execution Case No.65 of 2007 before the executing Adalat.

Sonali Bank challenged this *ex parte* judgment and decree in Writ Petition No.3434 of 2007, wherein the High Court Division issued a Rule Nisi and granted conditional stay vide order dated 07.05.2007 subject to deposit of Tk. 5,00,00,000/- (Taka five crore) within a prescribed period. When Sonali Bank sought relief before the Appellate Division by filing Civil Miscellaneous Petition for Leave to Appeal No.328 of 2007, the Court modified the condition vide order dated 15.05.2007 directing to deposit 10% of the decretal amount in order to maintain the interim order of stay of Artha Execution Case No.65 of 2007, passed by the High Court Division in Writ Petition No.3434 of 2007.

While the Rule in Writ Petition No.3434 of 2007 was pending, Sonali Bank filed Misc. Case No.390 of 2008 on 03.04.2008 before the Adalat concerned under Section 19(2) and 57 of the Ain, 2003 for setting aside the *ex parte* judgment and decree dated 07.08.2006.

In this regard, their categorical contention was that:

“যেহেতু দরখাস্তকারী সোনালী ব্যাংক, বিআইডিসি স্টীল প্ল্যান্ট শাখা, চট্টগ্রাম অর্থ মামলা নং-২৯৩/২০০৩ এর সমন আদালতের জারীকারকের মাধ্যমে বা ডাকযোগে বা পত্রিকার মাধ্যমে অবহিত না হওয়ার কারণে উক্ত মামলায় প্রতিদ্বন্দিতা করিতে পারেন নাই এবং রায়ের দীর্ঘদিন পর ১নং প্রতিপক্ষ বাদী উত্তরা ব্যাংক লিঃ এর আইনজীবীর নোটিশ প্রাপ্তির পক্ষে অবহিত হয় এবং উক্ত মামলায় আপীলের সময় না থাকার কারণে সোনালী ব্যাংকের একজন বিশেষ আইন উপদেষ্টার পরামর্শে রীট মামলা নং-৩৪৩৪/২০০৭ মহামান্য হাইকোর্টে দায়ের করায় অত্র মিছ মামলা দায়ের করিবার সিদ্ধান্ত গ্রহণ করিতে বিলম্ব হয়।”

Despite admitting in paragraph 6 of Writ Petition No.3434 of 2007 that it had full notice of the proceedings.

Said Miscellaneous Case was allowed *ex parte* on 17.04.2008 without service of notice upon PGL, resulting in the decree being set aside and the suit was restored to its original file and number.

Meanwhile, on the prayer of Sonali Bank, the *Rule Nisi* issued in Writ Petition No.3434 of 2007 was discharged by the High Court Division on 28.05.2008 for non-prosecution.

Being aggrieved thereby and dissatisfied with the order dated 17.04.2008 passed by the Adalat in Misc. Case No.390 of 2008 PGL filed Writ Petition No.7916 of 2008 before the High Court Division on the assertion that direction of the Appellate Division, given in Civil Miscellaneous Petition for Leave to Appeal No.328 of 2007 to deposit 10% of the decretal amount was not for setting aside the *ex parte* judgment and decree, but to retain the order of stay passed by the High Court Division in Writ Petition No.3434 of 2007; more so, indisputably said misc. case was filed far beyond the mandatory prescribed period of 30 (thirty) days as provided under Section 19(2) of the Ain, 2003, notwithstanding the applicant's unequivocal prior knowledge of the decree on several earlier dates including paragraph No.6 of Writ Petition No.3434 of 2007. Moreover, the Artha Rin Adalat acted *ultra vires* by entertaining the application on 03.04.2008 for restoration of the suit by purporting to cancel not an *ex parte* decree but a fully contested judgment and decree; thereby contravening Sections 19(2) and 57 of the Ain, 2003

as well as the elementary principles of natural justice, since no notice was served upon the petitioners. Consequently, their vested rights under the contested decree could not lawfully be reopened, particularly as Sonali Bank's earlier writ petition, which was filed challenging the same decree, was discharged for non-prosecution, giving rise to constructive *res judicata*. For all these reasons, the impugned order is liable to be declared unlawful and of no legal effect.

The High Court Division having found *prima facie* substance issued a Rule Nisi.

Sonali Bank-writ respondent no.2 contested the Rule by filing affidavit-in-opposition stating, *inter alia* that, since no summons of the suit was ever issued or served upon Sonali Bank, the circumstances amount to fraud. By reference to various orders of the Adalat it was stated that even the newspaper publication was defective, as the notices were published in two newspapers not directed by the trial court. Therefore, the limitation period should commence only from the date on which such fraud came to light, i.e. from 02.04.2008.

Upon hearing both the parties, the High Court Division vide judgment and order dated 25.08.2010, passed in Writ Petition No.7916 of 2008 made the Rule absolute declaring the order of restoration dated 17.04.2008 passed in Miscellaneous Case No.390 of 2008 to have been issued without lawful authority.

Subsequently, Sonali Bank filed Civil Petition for Leave to Appeal No.2347 of 2010 before this Division. On 22.02.2011, the Appellate Division set aside the High Court Division's judgment and directed the trial Court to dispose of the said Artha Rin Suit within 1(one) year.

In response thereof, PGL filed Civil Review Petition No.45 of 2011 challenging the aforesaid order whereupon leave was granted by this Division vide order dated 22.02.2015.

Hence, the instant Civil Appeal.

Mr. Mustafizur Rahman, the learned Senior Advocate with Mr. Md. Anisul Hasan, the learned Advocate on behalf of the appellants submits that, this Hon'ble Court erred on the face of record in treating the *ex parte* decree as a nullity on the ground of non-service of summons, without appreciating that Sonali Bank had explicit and constructive knowledge of the suit from 19.02.2005, as admitted in paragraph 6 of Writ Petition No.3434 of 2004. In this regard, he goes to argue that the entire purpose of summons is merely to notify a defendant of the pendency of proceedings. The record of the instance case unequivocally shows that Sonali Bank was duly aware of the suit upon receiving the *Rule Nisi* in Writ Petition No.5510 of 2004 and the legal notice issued by Uttara Bank on 13.12.2006 regarding the *ex parte* decree dated 07.08.2006. Notwithstanding such full and constructive knowledge, Sonali Bank failed to appear or to assert its defence within the statutory period of limitation, thereby waiving its rights by operation of the special law.

Taking us through the Civil Review Petition, he further submits that, there could be no question of the decree being a nullity when Sonali Bank itself invoked Section 19(2) of the Artha Rin Adalat Ain, 2003, and the Adalat proceeded to set aside the decree upon considering that application, which was indisputably filed only after the Bank came to know of the suit. The High Court Division was also right in holding that the *ex parte* judgment and decree dated 07.08.2006 was sought to be cancelled only on 03.04.2008 nearly two years later. Consequently, the Adalat could not exercise its jurisdiction under Section 19 unless both jurisdictional pre-conditions were satisfied: firstly, filing the application within 30 (thirty) days from the date of the *ex parte* decree or from the date of knowledge of the defendant and secondly, depositing 10% of the decretal amount within 15 (fifteen) days thereof. Since these mandatory conditions were not met, the grounds on which leave was granted are legally sound and warrant allowing the appeal.

Conversely, Mr. ASM Abdur Razzak, the learned Advocate for the respondents submits that, the High Court Division erred in holding that the petitioners had acquired a vested right under the decree, failing to appreciate that the suit was not filed by the writ petitioners themselves and, more critically, that no summons had been served, meaning the suit was never ready for hearing and the resulting decree was a nullity from the outset, incapable of creating any vested right for any party. He also submits that the Court further acted beyond its jurisdiction under Article 102 of the Constitution by entering into disputed questions of fact

specifically by declaring that Sonali Bank procured the impugned order through fraud; thus, involving an issue which cannot be determined without evidence. Moreover, the Court overlooked the admitted position that no attempt was made to serve summons either through process server or by post, a circumstance that itself raises a presumption of fraud and renders the decree fundamentally defective.

In the above backdrop, he submits that this appeal is liable to be dismissed.

The moot question in the case in hand is whether the declaration of the *ex parte* decree a nullity, is lawful on the face of Sonali Bank's admitted prior knowledge of the suit and its own invocation of Section 19(2) of the Artha Rin Adalat Ain, 2003 in order to set aside the said decree.

It is the settled principle of law that, *ignorantia legis neminem excusat* (ignorance of law excuses no one).

As per the statements on oath in paragraph-6 of Writ Petition No.3434 of 2007, filed by Sonali Bank, it is admitted that at least on 19.02.2005 Sonali Bank came to know about the pendency of Artha Rin Suit No.293 of 2003. Therefore, the very purpose of service of summons was met, as Sonali Bank had constructive knowledge of the suit. Furthermore, on 13.12.2006 through a legal notice issued by Uttara Bank it came to know about the *ex parte* decree dated 07.08.2006. Subsequently, said judgment and decree was challenged by Sonali Bank

by filing Writ Petition No.3434 of 2007. Nonetheless, Misc. Case No.390 of 2008 was filed under Section 19(1) of the Ain, 2003 during pendency of the Rule in connection with Writ Petition No.3434 of 2007, to set aside the *ex parte* decree long after 2 (two) years of passing the said decree.

Thus, it is apparent that the Adalat acted without compliance to the jurisdictional mandates of Section 19(2) of the Ain, 2003 that the application for restoration must be filed within 30 (thirty) days from the date of the *ex parte* decree or from the date of knowledge of the defendant and that 10% of the decretal amount is to be deposited within 15 (fifteen) days of filing thereof.

Considering the above, the High Court Division has rightly disposed of the Rule in connection with Writ Petition No.7916 of 2008 by setting aside the impugned order of restoration passed in Miscellaneous Case No.390 of 2008 arising out of Artha Rin Suit No.293 of 2003.

Accordingly, the appeal is allowed, but with no order as to costs.

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