

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

Present:

Mr. Justice Md. Badruzzaman.

And

Mr. Justice Sashanka Shekhar Sarkar

First Appeal No. 284 of 2006

Janata Bank, Khulna Corporate Branch, Khulna.

....Plaintiffs-Appellants

-Versus-

Arab Bangladesh Bank Ltd. and another

.....Defendants-Respondents

Mr. Md. Khalilur Rahman Bhuiyan, Adv.

... For the Appellants

No one appears

... For the respondents

**Heard on: 06.03.2024, 07.03.2024, 09.05.2024 and
Judgment on: 13.05.2024.**

Sashanka Shekhar Sarkar, J:

This Appeal is directed against the judgment and decree 18.07.2006 (decree signed on 25.07.2006) passed by the learned Judge, Artho Rin Adalat, Khulna in Aurtho Rin Suit No. 25 of 2005 decreeing the suit.

The facts, relevant for disposal of this appeal, in brief, are that the appellants as plaintiffs filed Aurtho Rin Suit No. 25 of 2005 for the following reliefs;

- a) A decree for an amount of Tk. 87,00,830/= be passed.
- b) Pendentilite interest as per law till full and final realization of the decretal dues be passed.

The plaintiff filed money suit impleading the defendant No. 1 alleging that for the purpose of business transaction the defendant

No.1, opened an account on 01.04.2004. Defendant No. 2 is a subscriber of the plaintiff-bank and defendant No. 3 is the wife of defendant No. 2. The defendant No. 1 applied for loan to the plaintiff for his business purpose against the security of a FDR of Tk. 45,000,00/= (Forty Five lacs) issued by the defendant No. 5, Arab Bangladesh Bank, Dhanmondi Branch on 24.11.2004. Upon the said application, the defendant No. 5 made lien mark and informed the matter through a letter dated 10.05.2004 that the defendant No. 4 and 5 are bound to make the payment of the FDR amount to the plaintiff and accordingly the plaintiff-bank sanctioned loan of Tk. 81,00,000/= in favour of the defendant No. 1. The defendant No. 1 submitted all the necessary and relevant documents in regard to sanction of loan to the bank on 01.05.2004. The defendant No. 3 endorsed the loan as a guarantor and the same was submitted to the plaintiff-bank. The plaintiff sanctioned loan against FDR issued in favour of the defendant No. 2 having lien mark from the defendant No. 5 because, the plaintiff was so confirmed that if the defendant No. 5 does not make payment of the loan, the FDR submitted as security, will be encashed by virtue of the lien mark. The plaintiff on 01.08.2004 came to know from a report published in the daily news paper "Prothom Alo" that, no FDR as well as lien mark was issued in favour of the defendant No. 2. Accordingly the plaintiff lodged FIR with Khulna Police Station on 02.08.2004 implicating the defendant Nos. 1, 2, 3 and 5 to the effect that they in collusion with each other misappropriated Tk. 82,52, 488/= . Subsequently on inquiry about the said FDR came to know that the defendant No. 1 is a habitual perpetrator and used to take such loan using various names. The plaintiff bank sanctioned loan against the defendant No. 1 completing all officials formalities and the sanctioned loan has increased to Tk.

87,00830/= with interest which the plaintiff is entitled to realize but the defendants on 24.01.2005 refused the said claim and then the plaintiff instituted Artho Rin Suit for realization of the loan amount.

The defendant Nos. 4 and 5 entered appearance in the suit and contested by filing written statements denying all material averments of the plaint and contended that the defendant No. 4 and 5 are not at all liable to pay the loan sanctioned in favour of the defendant No. 1. The defendant No. 4 and 5 did not take any loan and even are not the guarantor of the same. The allegation of issuing FDR in favour of the defendant No. 2 by the defendant No. 5 is false. The defendant No. 1 -3 with the assistance of bank manager M. M. Ashirul Hoque created all those papers. The defendant Nos. 4 and 5 never submitted the said FDR before the plaintiff bank and the plaintiff did not follow the rules of disbursement of loan to the defendant No. 1. The papers and documents submitted in the name of F.D.R. alleged to have issued by the defendant Nos. 4 and 5 are forged, concocted and fabricated. The plaintiff in collusion with the defendant Nos. 1-3 has created the forged documents, for misappropriation of the loaned amount and as such the suit is liable to be dismissed.

Upon the pleadings of the parties, the trial court framed the following issues:

- 1). Whether the suit is maintainable in its present form?
- 2). Whether the suit is barred by limitation?
- 3). Whether the suit is properly valued and filed with proper court fees?
- 4). Whether the plaintiff bank has become recipient of Tk. 87,00, 830 /= from the defendants from the date of granting sanction to upto 09.01.2005?

5). Whether the FDR mentioned in paragraph 5 of the plaint is genuine and was issued by the defendant No. 5 and was lien marked properly by the defendant No. 5?

6). Whether the plaintiff is entitled to get decree as prayed for?

7) Whether the plaintiff bank is entitled to get any other reliefs?

At trial, the plaintiff examined one Subod Kumar Mondal an officer of the plaintiff bank and also submitted some documents marked as exhibits- 1-1(ka), 2-2(ka), 3-3(ka), 4-4(ka), 5-5(ka), 6-6(ka), 7-7(ka), 8-8(ka), 9-9(ka), 10, 11, 12, 13, 14-14(ka), 15, 16 and 17. On the other hand the defendant No. 4 and 5 examined one Md. Almgir Kabir, a Senior Officer of defendant No. 5, Arab Bangladesh Bank, Dhanmondi Branch, Dhaka and also produced some documentary evidences marked as exhibit-ka, kha and ga.

The learned Judge, Artho Rin Adalot, Khulna decreed the suit vide judgment and decree dated 18.07.2006 against the defendant Nos. 1-3 with a direction to pay the decretal amount within 45 days failing which the plaintiff will be at liberty to realize the same by attaching moveable and immovable properties of the defendant Nos. 1-3.

The plaintiff being aggrieved by and dissatisfied with the judgment and decree dated 18.07.2006 so far it relates to exonerating the defendant No. 4 and 5 from liabilities has preferred the instant appeal.

Mr. Md. Khalilur Rahman Bhuiyan, the learned Counsel appearing for the appellant submits that the trial court decreed the suit against the defendant Nos. 1-3 directing to make payment of the decretal amount within 45 days alternatively the plaintiff would be at liberty to realize the decretal amount by attaching of their movable and immovable properties through the process of court but committed

gross illegality in exonerating the defendant No. 4 and 5 from their liabilities. Mr. Khalilur Rahman submits that the plaintiff bank on completing of all legal and official formalities sanctioned loan to the defendant No. 1 against two FDR which were issued and lien marked by the defendant Nos. 4 and 5. The plaintiff since found proper documents of FDR with lien marks issued by the defendant Nos. 4 and 5, considering those are genuine documents of FDR, on a bona fide belief and trust, sanctioned loan to the defendant No. 1. Since the defendant Nos. 4 and 5 issued the FDR and as a security, the FDR was properly lien marked, considering as genuine documents granted loan. But since it appears on inquiry upon an allegation that the said FDR as well as lien mark was endorsed supporting the claim of the defendant Nos. 1-3 in collusion with the defendant Nos. 4 and 5, the defendant Nos. 4 and 5 are liable for the said loan and the decree should have been passed against them for realization of money misappropriated in the name of FDR. Mr. Khalilur Rahman lastly submits that the plaintiff bank sanctioned loan in favour of the defendant No. 1 as he was a regular subscriber and as after communicating and consulting the defendant Nos. 4 and 5 with regard to the genuineness of the FDR the loan was sanctioned, the liabilities of the defendant Nos. 4 and 5 cannot be ignored and as the trial court passed decree on the entire claimed amount directing to be paid by the defendant Nos. 1-3 exonerating the defendants No. 4 and 5 from their liabilities having same footings with the defendant Nos. 1-3 cannot be sustained as gross illegalities. As they endorse security the decree should have been passed against them to pay the decretal amount. But, since the trial court in passing decree totally failed to realise the legal and factual aspect and suffers from

gross legal infirmities is liable to be interfered and decree be passed against the defendant Nos. 4 and 5 for realization of loan.

No one appears to represent the respondents.

We have heard the learned Advocate for the appellant, perused the memorandum of appeal, the impugned judgment and decree and meticulously scrutinized oral and documentary evidences adduced and submitted by both the parties in trial.

It appears that the plaintiff bank filed the suit for realization of loan money alleging that the defendant No. 1 was sanctioned loan against two FDR issued by the defendant No. 4 and 5 in favour of defendant No. 2. When the defendant No. 1 refused to pay the loan money, the plaintiff Bank filed Artho Rin Suit for realization of the same impleading the defendant No. 1, to whom the loan was sanctioned, the defendant No. 2 to whom the FDR were issued, the defendant No. 3 who was the guarantor of the loan, the defendant No. 4 the regional office of the bank issued FDR and respondent No. 5 the head office of the defendant No. 4. The plaintiff asserted in the plaint that on completing of all legal and official formalities sanctioned loan against FDR issued by the defendant No. 5. The trial court did not consider that the disputed FDRs were created but not only by the defendant Nos. 1-3. The defendant No. 4 and 5 also in collusion with the defendant No. 1 to 3 created the same by dint of which managed to obtain the loan from the plaintiff bank. So the defendant Nos. 4 and 5 cannot be exonerated from the liabilities of payment of the loan.

It appears that the trial court found that the defendant Nos. 4 and 5 had no involvement in creating the alleged forged FDRs. The trial court found that as long as an FDR is lien marked, the same will not be considered as a genuine FDR. The trial court also observed that the

plaintiff bank before sanction of loan to the defendant No. 1 should have scrutinized and verified all the relevant papers and documents but that was not done by the plaintiff and for wrong of the plaintiff the defendant No. 4 and 5 are not liable.

We on careful perusal of the evidences and materials on records of this case find that the plaintiff sanctioned loan to defendant No. 1 on the security of FDR issued in favour of the defendant No. 2 but it has not been proved by evidence that the defendant Nos. 4 and 5 issued the FDR in favour of the defendant No. 1 rather, we find that the plaintiff bank sanctioned loan to the defendant No. 1 without properly scrutinizing and verifying the concern documents on which a loan could be sanctioned. By the activities of the plaintiff bank it reveals that in respect of granting loan of such a big amount, the plaintiff bank did not follow the rules. Rather it appears that the way of granting loan to the defendant No. 1 was a collusive misappropriation of government funds.

We have very meticulously perused all the documents produced by the plaintiffs, specially the FDRs Exhibit- 3-3 (ka) from which it appears that the said FDRs were not issued in a proper manner by proper authority and also we find that the said FDRs were not granted by its lien as was liable to be marked by the FDR issuing authority which is vital and important in encashing the FDR. Whenever FDR is required to be encashed, the lien mark of the issuing authority should be authenticated even if, the FDR is lost, then the lien mark will help to encash the FDR. As we find that the plaintiff bank being a commercial and financial institution did not maintain the official and legal formalities in granting loan against FDR and thereby committed offence and therefore liable for misappropriation of government fund. The allegation of creating forged documents in the name of FDR against the defendant No. 4 and 5 have not been proved by any oral and documentary evidence.

We on careful perusal of the impugned judgment and decree and all the material evidences find that the trial court on proper consideration of law

and facts has come to the correct and concrete decision in decreeing the suit against those who are liable for the illegal sanction of loan. So the plaintiff has already got relief and the task to do the needful in the decree has been indicated.

So on considering above all the facts and circumstances, we are of the view that the trial court decreed the suit against the proper liable persons and that should be upheld and maintained.

Accordingly we find no merit in the appeal.

In the result, the appeal is dismissed.

The judgment and decree dated 18.07.2006 (decree signed on 25.07.2006) passed by the Artho Rin Adalat, Khulna in Artho Rin Suit No. 25 of 2005 is maintained.

As we have observed that the plaintiff had not followed lawful official formalities in regard to granting loan, the Governor of Bangladesh Bank is directed to take appropriate action against the concerned officials of the plaintiff for misappropriation of government fund in the name of granting loans to the defendant No. 1.

Send down the Lower Courts Records along with a copy of this judgment at once to the court below and the Governor of Bangladesh Bank.

(Mr. Justice Sashanka Shekhar Sarkar)

I agree.

(Mr. Justice Md. Badruzzaman)