

**IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(Civil Appellate Jurisdiction)**

**First Miscellaneous Appeal No. 27 of 2021**

**with**

**(Civil Rule No. 108 (FM) of 2020)**

**In the matter of:**

Bangladesh House Building Finance  
Corporation, Regional Office, Kushtia  
... Appellant-petitioner

-Versus-

Kazi Mamun-ur-Rahman, son of Kazi Shamsul  
Alam being dead his legal heirs  
(1) Kazi Mahfuzur Rahman and others  
... Respondents-opposite parties  
Mr. Md. Zahirul Islam, Advocate  
... For the appellant-petitioner  
None represented  
... For the respondents-opposite parties

**Heard and Judgment on 12.08.2024**

**Present:**

Mr. Justice Md. Mozibur Rahman Miah  
And  
Mr. Justice Md. Bashir Ullah

**Md. Mozibur Rahman Miah, J.**

Since the point of law and facts so figured in the appeal as well as rule are intertwined they have heard together and are being disposed of with this single judgment.

At the instance of the petitioner in Miscellaneous Case No. 38 of 2006, herein the appellant, this appeal is directed against the judgment and order dated 14.11.2019 passed by the learned District Judge, Kushtia in the said Miscellaneous case filed under Article 27 of President Order (PO) No. 7 of 1973 allowing the same in-part.

The short facts leading to preferring this appeal are:

The appellant as petitioner filed the aforesaid Miscellaneous Case stating *inter alia* that, the predecessor of the present respondents, Kazi Mamunur Rahman took a loan amounting to taka 5,75,000/- with interest at the rate of 10.5% per annum by registering a deed of mortgage dated 08.12.1986 and disbursement of the said amount was accordingly made on 02.11.1987. It has been agreed by the said borrower-respondents-opposite parties that, he will repay taka 4,177.34 as monthly installment. Subsequently, the loan amount was rescheduled with 10% interest per annum and the monthly installment then enhanced to taka 7,4634.27. However, the predecessor of the respondents, Kazi Mamunur Rahman as failed to repay the loan amount in spite of issuing legal notice dated 07.12.2003, the appellant then compelled to file the Miscellaneous case claiming an amount of taka 16,37,679.28 as on 30.06. 2006.

On the contrary, the predecessor of the present respondents, Kazi Mamun-ur-Rahman contested the said Miscellaneous case by filing a written objection denying all the material averment so made in the petition of Miscellaneous case stating *inter alia* that, on 14.09.1986 a loan amounting of taka 5,75,000/- was sanctioned by issuing a sanction letter in his favour but in the sanction lette, certain impractical conditions have been inserted which he could not understand at the time of taking disbursement of the loan amount. Though it was promised by the petitioner-appellant that simpl interest will be imposed on the loan disbursed but ultimately compound interest has been slapped upon the loan amount and for that reason, the opposite-party-respondents became

defaulting borrower having no fault of them and finally prayed for dismissing the case.

The learned District Judge in order to dispose of the case, framed a single issue and in support of the case, both the petitioner and the opposite party adduced single witness when the appellant produced several document which were marked an exhibit 1-8 series. However, the learned District Judge after taking into consideration of the material and evidence on record by the impugned judgment and order allowed the case in-part awarding an amount of taka 49,100/- instead of the claim amount of the appellant at taka 16,75,900/- holding that, the claim so made in the case goes beyond the provision of section 47 of the Artha Rin Adalat Ain, 2003.

It is at that stage, the petitioner of the Miscellaneous Case as appellant preferred this appeal. After preferring the appeal, the appellant also filed an application for stay of the operation of the impugned judgment and order on which rule was issued being Civil Rule No. 108(FM) of 2020 and the operation of the impugned judgment was stayed initially for a period of 06(six) months but record shows that, no extension was taken by the appellant-petitioner thereafter.

Mr. Md. Zahirul Islam, the learned counsel appearing for the appellant-petitioner upon taking us to the memorandum of appeal and the application for stay vis-a-vis the documents appended with the application at the very outset submits that, the learned District Judge, Kushtia erred in law in applying section 47 of the Artha Rin Adalat Ain

while disposing of a Miscellaneous Case though filed under Article 27 of PO 7 of 1973.

The learned counsel further contends that, though the appellant claimed an amount of taka 16,37,679.28 but from the statements of account which had been exhibited at the instance of the appellant before the trial court as of annexure 'D' series where it has been proved that, the respondents-opposite parties adjusted an amount of taka 16,75,900/- resulting in, the claim of the appellant stood at taka 6,88,666.49 taka as on 30.09.2019 against the respondents-opposite parties yet the learned District Judge passed the impugned judgment awarding taka 49,100/- by multiplying the principal amount of taka 5,75,000/- basing on the provision of section 47 of the Ain which cannot be sustained under the provision of Article 27 of PO 07 of 1973. On those two scores, the learned counsel finally prays for allowing the appeal.

Record shows, respondents did not appear in the appeal or in the rule to contest the same.

We have considered the submission so placed by the learned counsel for the appellant-petitioner and perused the memo of appeal including the impugned judgment and order.

Together, we have also perused the application filed for stay of the operation of the impugned judgment and the documents appended therewith. The only legal point as canvassed by the learned counsel for the appellant, is that, there has been no scope to apply section 47 of the Artha Rin Adalat Ain, 2003 when admittedly the appellant filed the Miscellaneous case under Article 27 of PO 7 of 1973 in spite of the fact

that, in the schedule of the Artha Rin Adalat Ain, Bangladesh House Building Finance Corporation has been inserted which does not *ipsofacto* authorize the learned District Judge to apply the provision of section 47 of the Artha Rin Adalat Ain, 2003. Because, had any suit filed under Artha Rin Adalat Ain, 2003 only the provision of section 47 would have applied as section 47 of the Ain clearly speaks, no bank or financial institution can file an Artha Rin suit claiming 200% above the principal amount. But in the instant case since the Miscellaneous case has been filed under the provision of Article 27 of PO 7 of 1973 so there has been no scope to make section 47 of the Ain applicable in adjudicating the case. Overall, we find ample substance to the submission of the learned counsel for the appellant-petitioner and are inclined to allow the appeal.

Accordingly, the appeal is allowed however without any order as to cost.

The impugned judgment and order dated 14.11.2019 passed by the learned District Judge, Kushtia, in Miscellaneous Case No. 38 of 2006 is thus set aside.

Since the appeal is allowed, the connected rule being Civil Rule No. 108(FM) of 2020 is hereby made absolute.

However, as we allow the appeal, so to enable the appellant to realize the claim of taka 6,88,666.49 there is no reason to sustain the order of stay any further granted at the time of issuance of the rule. Hence the order of stay stands recalled and vacated.

Let a copy of this judgment and order along with the lower court records be transmitted to the court concerned forthwith.

**Md. Bashir Ullah, J.**

I agree.