

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

**First Appeal No. 41 of 2011**

**In the matter of:**

Trust Bank Limited

... Plaintiff-Appellant

-Versus-

Messrs Nabi Steel Industries and others

...Defendants-Respondents

Mr. Faysal Hasan Arif, Advocate

...For the appellant

Mr. Md. Yamin Newaz Khan, Advocate

...For the respondent no. 2.

**Heard on 05.12.2024**

**Judgment on 08.12.2024**

**Present:**

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

**Md. Bashir Ullah, J.**

At the instance of the plaintiff in Artha Rin (Mortgage) Suit No. 12 of 2009, this appeal is directed against the judgment and decree dated 29.11.2010 passed by the learned Joint District Judge and Artha Rin Adalat, Chattogram decreeing the suit in-part on contest against defendant nos. 2-8 and *ex parte* against defendant no. 1.

The short facts leading to preferring this appeal are:

The present appellant as plaintiff filed the aforesaid Artha Rin (Mortgage) Suit seeking the following reliefs:

- a) a decree be passed against the defendants in preliminary form for payment of Taka 18,70,60,609.32 (Taka Eighteen Crore seventy Lakh sixty thousand six hundred nine and paisa thirty two) only to the plaintiff bank as per schedule of claim mentioned in schedule-1 below with cost of the suit and *pendente lite* interest @12% per annum from the date of filing this suit till recovery.
- b. by the decree the defendants be ordered to pay the decretal amount within a period to be fixed by the Court.
- c. in case of default of payment as per direction of the Court a decree be passed for the sale of the mortgaged property described in the schedule-III below for recovery of decretal dues with cost and interest.
- d. in case the sale proceeds of the mortgaged properties become insufficient to satisfy the decretal dues a decree be passed against the defendants for recovery of the balance dues by selling their other properties.
- e. the plaintiff be allowed any other relief or relieves as may be found entitled according to law and equity.

The precise facts so described in the plaint are that, the plaintiff is a public limited banking company where defendant no. 1 is firm and defendant no. 2 is the proprietor of defendant no. 1. On the other hand, the defendant nos. 3 to 7 is the mortgagor and guarantor and defendant no. 8 is the guarantor of defendant no. 1. The defendant no. 1 opened current account no. 0012-0210003606 with the plaintiff-bank on 19.03.2006 and on the prayer of the defendant no. 2, the head office of the plaintiff-bank sanctioned credit facilities in the form of Letter of Credit (L/C), Trust Receipt (TR) and time loan facility for the defendant no. 1 as per terms and conditions so embodied in the sanction advice dated 06.04.2006. Then the defendant no. 2 established an L/C no. 235506010040 dated 05.04.2006 for US\$ 55,37,073/- through the plaintiff bank favouring one, Messrs Yalumba Inc., Singapore to import Scrap Vessel named “MT WESTMINSTER EX TEXACO WESTMINSTER” from Singapore in the name of defendant no. 1. As per terms and conditions of sanction advice defendant no. 2 was supposed to deposit 60% (sixty percent) cash margin against the said L/C but ultimately the defendant no. 2 failed to comply so and finally deposited 41.55% margin. On receipt of the original shipping documents of above noted L/C, the plaintiff bank then drew bill upon defendant no. 1 with a

request to release the L/C documents on payment. The defendant no. 2 collected the shipping documents from the plaintiff by availing TR facility as per the terms and conditions of sanction advice. The limit of the TR facility after collection of shipping documents of the above-noted L/C was Taka 15,50,00,000/- (Taka Fifteen Crore Fifty lakh only). But on the application of defendant no. 2, plaintiff bank was compelled to allow the excess limit to defendant no. 1 due to collection of said shipping documents. Defendant no. 2 undertook to repay the said excess limit along with the principal loan amount and interest payable thereon with all other charges within the stipulated period of sanction advice. The imported vessel arrived at the shipyard of defendant no. 1 located at Sitalpur, Sitakunda, Chattogram. Though the defendant no. 2 availed the Credit facility from the plaintiff bank as per terms and conditions of sanction advice issued by the plaintiff bank but failed to repay the liabilities with due interest within the stipulated period of sanction advice within 25.10.2006. However, defendant no. 2 adjusted Taka 11,85,35,000/- only in the said loan account on different dates. After partial repayment, the liabilities of defendant no. 1 with the plaintiff bank stood at Taka 18,70,60,609.40 only with interest till 31.12.2008. It has further been stated that the defendants are

jointly and severally liable to pay the said amount to the plaintiff bank with up-to-date interest and other charges on demand.

As security to repay the bank dues with interest and all other charges, defendant no. 2 executed a DP Note and all other charge documents favouring the plaintiff bank. On the other hand, the defendant nos. 3, 4, 5 and 6 mortgaged his landed properties as collateral security as described in schedule-III to the plaint in favour of the plaintiff bank by registered mortgage deed no. 1012, dated 27.03.2008. The defendant nos. 3 to 6 executed irrevocable general power of attorney empowering the plaintiff bank to sell the scheduled mortgaged properties and the said power of attorney was registered bearing deed no. 1011, dated 27.03.2008. Defendant no. 2 pledged all furniture, fittings, metals, electrical equipment and scraps to be generated from the imported vessel to the plaintiff bank. The plaintiff bank delivered pledged goods to defendant no. 2 against the trust receipt for quick disposal. Defendant no. 2 undertook to deposit the sale proceeds of all pledged goods of the said scrap vessel to the plaintiff bank towards the adjustment of liabilities of defendant no. 1 against the said loan account. Defendant no. 8 executed personal guarantees favouring the plaintiff bank securing the repayment of liabilities of defendant no. 1. At one stage, the

defendants stopped repayment. Despite several requests and demands made by the plaintiff bank, the defendants failed to repay the bank dues within the stipulated period of sanction advice. In the said circumstances, the plaintiff bank took the initiative for disposal of the mortgaged properties and accordingly published auction notices in 'The Daily Karnaphuli', Chattogram on 17.06.2008 and 'The Daily Jugantor' on 25.09.2008 inviting quotations from the interested buyers to sell the mortgaged property. However, none came forward to purchase the mortgaged property and hence, the plaintiff was compelled to institute the above-mentioned suit praying a decree for Taka 18,70,60,609.32 only and other reliefs.

On the contrary, defendant nos. 2 to 8 entered appearance and contested the suit by filing joint written statements where the defendant nos. 3 to 7 and 8 filed additional written statements denying all the material averments so made in the plaint, contending *inter alia* that the suit is not maintainable, the claimed amount is not correct, defendant nos. 3 to 7 are not involved with the credit facilities took by defendant nos. 1 and 2, defendant no. 8 is the guarantor for 40% of loan amount only and finally prayed for dismissing the suit.

In view of the pleadings, the learned Joint District Judge and Artha Rin Adalat, Chattogram framed as many as four different issues and three additional issues as well and in support of the case, the plaintiff examined one witness while the defendants examined one witness and produced some documentary evidence in support of their respective case.

Upon hearing the parties and taking into consideration of the evidence and materials on records, the learned Joint District Judge and Artha Rin Adalat, Chattogram decreed the suit in-part by impugned judgment and decree dated 29.11.2010.

Being aggrieved by and dissatisfied with the said judgment and decree dated 29.11.2010 passed by the learned Joint District Judge and Artha Rin Adalat, Chattogram, the plaintiff as appellant preferred the instant appeal.

Mr. Faysal Hasan Arif, learned Advocate appearing for the appellant upon taking us to the impugned judgment and decree, sanction letter, evidence on record at the very outset contends that, the sanction/approval of loan explicitly provided for interest at the rate of 15% per annum and the respondents voluntarily agreed to the terms and conditions enshrined in the sanction letter but the trial Court erred in law by not considering the provisions of Artha Rin Adalat Ain and arrived at a wrong conclusion that

the plaintiff-appellant is not entitled to the interests and hence, the suit is liable to be decreed instead of decreed in-part.

He further submits that the trial Court erred in law by allowing the counterclaim of the defendants-respondents which is in direct conflict with the provision of section 18(2) of Artha Rin Adalat Ain. With such submissions, the learned counsel finally prays for allowing the appeal.

*Per contra*, Mr. Md. Yamin Newaz Khan, the learned Advocate appearing for the defendant-respondent no. 2 opposes the contention so taken by the learned counsel for the appellant and contends that, the learned Joint District Judge has very perfectly passed the judgment and decree. He further contends that the plaintiff is not entitled to have interest as per section 47 of Artha Rin Adalat Ain, 2003 and hence, the trial Court has rightly exercised its discretion to deny interest. Finally, the learned counsel prays for dismissing the appeal on sustaining the impugned judgment and decree.

We have heard the learned Advocates for both sides and perused the memorandum of appeal, pleadings, evidence, impugned judgment and decree and materials on record.



The trial Court decreed the suit in-part by waiving the interest as claimed in the plaint. The trial Court observed that চনং বিবাদী কারাগারে আটক থাকায় দেশে ও বিশ্বব্যাপি বাণিজ্যিক মন্দায় ব্যবসা-বাণিজ্যে লোকসান হওয়ার বিষয়টি বাদী ব্যাংক অস্বীকার করতে পারে না। তদকারণে বাদী ব্যাংক বিবাদীপক্ষের নিকট হইতে অতিরিক্ত সুদ ও দণ্ড সুদ দাবী করিতে পারে না। Though the plaintiff bank did not impose additional interest and penal interest yet the views and observations are not correct. In this regard, we are of the view that the trial Court has failed to appreciate the provision of section 50 of the Artha Rin Adalat Act, 2003. In the said section, it has clearly been provided that no Court under this act shall be entitled to reduce, forgive or reject any interest lawfully fixed by any financial institution on any loan. The relevant portion of section 50 of the Artha Rin Adalat Ain, 2003 is reproduced below for convenience:

“৫০। সুদ, মুনাফা সম্পর্কিত বিধান।-(১) ধারা ৪৭ এর বিধান সাপেক্ষে, এই আইনের অধীন কোন আদালত, ঋণ প্রদানের দিবস হইতে মামলা দায়েরের দিবস পর্যন্ত সময়কালে কোন ঋণের উপর আর্থিক প্রতিষ্ঠান কর্তৃক আইনানুগভাবে ধার্যকৃত সুদ, বা, ক্ষেত্রমত, মুনাফা বা ভাড়া-হ্রাস, মাফ বা নামঞ্জুর করিতে পারিবে না।”

In this regard, we get support from the *ratio* settled in the case of ***Sonali Bank Vs. Md. Lutfor Rahman***, reported in 21 BLC 198, wherein this Court held:

“Imposition of interest cannot be reduced or waived by the Court of law in any manner. The Court is to accept the rate of interest and other issues fixed by the financial institution.”

Moreover, we have meticulously examined the evidence adduced by DW-1 and written statements filed by the defendant nos. 3 to 7 and 8. We find from the evidence that they have neither asserted nor prayed for waiver of interest imposed by the plaintiff-bank. Rather, PW-1 in his examination-in-chief prayed for a decree of Taka 18,70,60,609.32 including interest. In support of his claim, he proved the statement of account marked as exhibit-12. In view of the above, it is proved that, the appellant-bank is entitled to recover interest as per the sanction letter/approval bearing no. TBL/HO/Credit/001726/06, dated 06.04.2006 and TBL/AGR/ADV/2006/1718, dated 10.05.2006 wherein the interest rate was fixed at 15% per annum which was duly agreed by the respondents and signed by respondent no. 2 vide exhibits-2 and 2(Ka). The defendant no. 2 submitted a Single Promissory Note, Letter of Continuity, Letter of

Disbursement, Trust Receipt for C.C. Pledge or LIM or other advances and Letter of Guarantee signed by him to the plaintiff-bank before receiving the credit facilities. In each document, especially in Promissory Note, defendant no. 2 promised to pay the plaintiff-bank's principal amount together with interest at the rate of 15% per annum or as may be revised from time to time which is evident from exhibit no. 5.

It appears from the plaint that total drawing (loan) amount is Taka 23,27,65,449.75, where the interest was charged up to 31.12.2008 at Taka 7,23,82,677.65 and other charges at Taka 4,47,482/-, the repayment made by the defendants was at Taka 11,85,35,000/-, where the plaintiff instituted the suit claiming for a decree of Taka 18,70,60,609.40, so it is clear that the entire claim made by the plaintiff in the trial Court did not exceed 200% of the principal amount and hence, the suit was filed well within the pecuniary limit so provided in section 47 of the Artha Rin Adalat Ain, 2003.

However, under no circumstances can the trial Court waive or reduce the interest of Taka 7,23,82,677.65 imposed on the defendants. So, the plaintiff-appellant is entitled to have a decree of Taka 18,70,60,609.40 till 31.12.2008 including interest.

On the other hand, the defendant no. 8 claimed in his additional written statement that the plaintiff Bank took mortgage of many properties and got the documents registered under pressure and sold out those properties at a very low price that caused damage to Taka 181,80,00,000/-, compelling the defendant to file Money Suit No. 22 of 2010 against the Bank before the 3<sup>rd</sup> Joint District Judge, Chattogram which is pending. The learned Advocate for respondent no. 2 also claimed that the defendants faced serious loss in the business so they are entitled to have compensation and waiver of interest. However, section 18 (2) of the Artha Rin Adalat Ain, 2003 provides that no borrower is entitled to file any suit against any financial institution under the Ain, 2003 praying for any remedy on the concerned loan and the borrower while submitting a written statement in the suit filed by the bank or financial institution, shall not include any set-off or counterclaim against such written statement.

Artha Rin Adalat Ain, 2003 is a special statute which has been enacted only for recovery of the defaulted loan given by any financial institutions where it has got no power to adjudicate any other extraneous matters.

Given the above facts and circumstances, we are of the view that the defendants are liable to pay Taka 18,70,60,609.32 and interest at the rate of 12% per annum from the date of filing the suit till its recovery.

Accordingly, the appeal is allowed, however without any order as to costs and the suit is decreed and the defendants are liable to pay Taka 18,70,60,609.32 and interest at the rate of 12% per annum from the date of filing the suit till its recovery.

The impugned judgment and decree dated 29.11.2010 passed by the learned Joint District Judge and Artha Rin Adalat, Chattogram in Artha Rin (Mortgage) Suit No. 12 of 2009 is thus set aside.

However, the plaintiff bank will keep 48,67,200 shares of Al-Arafa Islami Bank belongs to defendant no. 4 under lien till disposal of decree execution case if plaintiff-appellant files so.

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

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

I agree.