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

Present

Mr. Justice Md. Iqbal Kabir
And
Mr. Justice Md. Riaz Uddin Khan

First Miscellaneous Appeal No. 188 of 2025
With
Civil Rule No. 148 (FM) of 2025

IN THE MATTER OF:

City Seed Crushing Industries Limited and others
... Plaintiff-Appellants

Versus

Provita Feed Limited and another
... Defendant-Respondents

Mr. Mohammad Abdul Hannan, Advocate
... For the Plaintiff-Appellants

Mr. M.A. Azim Khair, with
Mr. Najmul Karim, Advocates
... For the Defendant-Respondent Nos.1 and 2

Judgment on: 02.06.2025

Md. Riaz Uddin Khan, J:

Since the facts and law involved in this First Miscellaneous Appeal as well as in this Rule are intertwined they are being heard together and are disposed of by this judgment.

This miscellaneous appeal is directed against the order No. 23 dated 18.02.2025 passed by the District Judge, Dhaka in Summary Suit No. 11 of 2023 rejecting the application filed by the plaintiff-appellants under Order XL Rule 1 of the Code of Civil Procedure for appointment of a receiver.

Facts in a nutshell, for disposal of this appeal and rule are that the appellants being plaintiffs filed Summary Suit No.11 of 2023 on 31.10.2023 implicating the respondents as defendants under Order XXXVII Rule 2 of the Code of Civil Procedure before the Court of District Judge, Dhaka for realization of due money against 153 cheques issued by the defendants praying for, *inter alia*, a money decree of Taka 347,71,62,028.00 (Taka three forty seven crore seventy one lac sixty two thousand twenty eight) only with interest @ 9% per annum during pendency of the suit alleging *inter alia* that the defendant No.1 in order to make payment against the supplied goods, issued A/C Payee Cheques on different dates of different amounts all are signed by Defendant No. 2 being the sole signatory of defendant No.1 company against its Bank accounts held in Pubali Bank Limited and Mercantile Bank Limited, in favour of the plaintiffs. The respective Plaintiffs have deposited all of the cheques for encashment before the respective banks on due date within the validity period of six months and the same having been en-cashed except 153 cheques in total as stated in the schedule which were dishonoured on the ground of insufficient fund. In this way, the Defendants have caused to be dishonoured 153 (124+17+12-153) cheques on account of Plaintiffs of their face values totally amounting of Tk. 468,87,30,000.00 which are still lying unpaid. As the defendants failed to repay the respective cheque amounts of 153 cheques in time the plaintiffs have every right to claim interest at the rate of 9% as the plaintiffs have already paid to their creditor banks to the calculated on and from the respective due date of the particular cheques which now accrued as on 30.09.2023 in respect of plaintiff No.1 against value of 124 cheques at Tk.58,50,59,629.00, in respect of plaintiff No.2 against value of 17 cheques at Tk.8,47,56,282.00 and in respect of plaintiff No.3 against value of 12 cheques at Tk.14,24,54,857.00. Details of aforesaid 153 cheques that had been dishonoured by the defendants' bank in respect of plaintiff No.1, 2 and 3 along with cheque number, date, cheque value, dishonor dates, interest calculation at the rate of 9% from due date and other details are given in Schedule-A of the plaint. But from the Statement of Claim as contained in Schedule B of the Plaint after deducting the payment made in the meantime after dishonouring the said cheques, the claim of the suit is of Tk. 347,71,62,028.00 with interest at the rate of 9% till the date of institution of the suit.

The suit was admitted for hearing on 08.01.2024 and the next date was fixed on

24.04.2024 for S.R and A.D by the learned District Judge, Dhaka. Defendant-Respondents after receiving summons entered appearance to defend the summary suit and on 04.02.2025 filed a Written Statement denying the material allegation brought against them.

Thereafter, on 29.10.2024, the plaintiff-appellants filed an application under Order XL Rule 1 of the Code of Civil Procedure, 1908 (hereinafter refer to as the CPC) for appointment of a Receiver at their cost for collecting/recovering claim/sum at the rate 20% from each and every sale proceeds of the defendant-respondents during pendency of the suit to pay of the plaintiffs. The defendant-respondents on 18.02.2025 filed a written objection against the application for appointment of Receiver and also filed an application for framing issues.

After hearing both the parties, the learned District Judge, Dhaka vide impugned Order No.23 dated 18.02.2025 rejected the application for appoint of a Receiver filed by the plaintiffs and allowed the application for framing issues filed by the defendants.

The plaintiffs earlier filed an application under Order XXXIX Rule 1 and 2 of the CPC praying for temporary injunction restraining the defendant-respondents from transferring the land owned by defendants as mentioned in the Schedule "B" and "C" till disposal of the suit. The defendants filed a written objection against the application for temporary injunction and upon hearing both the parties, the learned District Judge was pleased to fix the next date on 03.06.2024 for hearing of application for temporary injunction and passed an order of status-quo in the meantime for preserving the subject-matter of the injunction application vide order No.11 dated 06.05.2024 against which the defendants being appellant preferred F.M.A.T. No. 194 of 2024, which was subsequently renumbered as F.M.A. No.174 of 2024, before the High Court Division along with an application for stay and upon hearing the said application, the High Court Division on 21.05.2024 was pleased to issue Rule and further pleased to pass an interim order staying the operation of Order No.11 dated 06.05.2024. Against the aforesaid order of the High Court Division the plaintiffs preferred Civil Petition for Leave to Appeal No.1928 of 2024 and on 04.07.2024, the Appellate Division disposed of the said Civil Petition by upholding the Order of Status-quo passed by the District Judge and asked the High Court Division to dispose of the Rule. Accordingly, the High Court Division on 28.08.2024 upon hearing both the parties was pleased to dispose of the F.M.A

No.174 of 2024 and Civil Rule No.199 (FM) of 2024 directing the District Judge to dispose of the application for temporary injunction dated 24.04.2024 positively by 22.09.2024 relying on the undertaking given by the Senior Counsel of the instant respondents that in the meantime the Schedule B and C property shall not be transferred. Upon receipt of the aforesaid Judgment and order, the District Judge having heard both the parties on 22.09.2024 was pleased to allow the application for temporary injunction and thereby directed the defendants not to transfer or dispose of the Schedule B and C properties as stated in the said application till disposal of the suit.

Against the aforesaid order dated 22.09.2024 passed by the District Judge the instant defendants preferred First Miscellaneous Appeal Tender (F.M.A.T) No.539 of 2024 along with an application for stay before the High Court Division and the High Court Division was pleased to issue Rule and further pleased to pass an interim order of stay operation of the order of the District Judge. Against the aforesaid interim order of stay, the plaintiffs preferred Civil Petition for Leave to Appeal No.103 of 2025 and the Judge-in-Chamber of the Appellate Division by his order dated 16.01.2025 was pleased to pass an order of status-quo.

Stating the above background facts of the case the plaintiff-appellants claimed that on 14th August, 2022, the Defendant No. 2 gave an undertaking categorically acknowledging that there was an amount of Tk. 282,00,00,000.00 (Taka Two Hundred Eighty Two Core) lying unpaid to City Group and the defendant No. 2 undertook and promised to repay the said Tk. 282 Crore in following manner, which he failed to honour in paying:

a) to repay Tk. 37.50 crore by 30.08.2022 (Tuesday)'

b) to repay Tk. 15.00 Core in each month (30 days) additionally along with regular payment of price of goods delivered and received,

c) to repay entire outstanding within 6 (six) months by selling 168 Bighas of land owned by him at the bank of river Meghna.

The appellants further claimed that the defendant No.2 furnished another undertaking on 29.05.2023 acknowledging Tk.268.00 Crore and undertook to repay but failed to repay hence the said amount along with interest is still lying unpaid which is recoverable.

The defendant-respondent Nos. 1 and 2 entered appearance by filing counter-affidavit stating *inter alia* that the appellant-applicants and the respondent-opposite parties have been maintaining a business transaction since long from 05.09.2019, which involved monetary transaction of thousands Crores among the parties. That due to mutual trust and sincerity, most of these business activities have been done verbally rather than in writing. The Opposite Parties used to purchase soya seed, soybeans, soya meal, high and low-protein, rapeseed, soybean oil, soybean hulls, sugar and corn from the appellants for their feed production. Either the appellants sometimes imported low-quality expired soya seed or the imported soya seed sometimes got damaged and which caused production of soya meal of inferior quality. Whatever, on several occasions, after taking delivery of raw material, particularly soya meal (high protein and low protein) under various Purchase Order it has been discovered that a huge quantity of the soya meal did not meet the specified standard. The Opposite Parties time and again reported verbally to the Applicants to take back the substandard soya meals, but in all occasions, they asked to store those soya meal in the Opposite Parties' godown as the Applicants' godown was out of space and also requested the Opposite Parties to use as much of it as was suitable for the Opposite Parties' production, and they will return the rest of the goods (substandard soya meals). Since a substantial portion of soya meal could not be used in feed production in any way, the Opposite Parties needed to use their own godown and the Applicants did not take back the substandard and unusable soya meal was gradually damaged and/or destroyed as per the rules of the poultry industry under the verbal instructions of the Applicants.

It is further stated by the respondents that when the disputes arose between the parties regarding the quantity of sub-standard raw materials so supplied by the Applicants, return of sub-standard raw materials by the Applicants and calculation of outstanding balance after deduction of the Opposite Parties' payment, after much deliberation, negations & discussions from the part of the Opposite Parties producing cogent evidences, those disputes could not be settled due to non-cooperation of the Applicants and lastly the Applicants most arbitrarily filed the instant Summary Suit No.11 of 2023. In the given situation, the outstanding claim of Tk.347,71,62,028.00 and repayment amount from the due date of the Cheques as shown by the Applicants in Schedule-B of the plaint of the Summary Suit is not duly calculated instead patently inaccurate, inordinate and inappropriate, which is a glaring instance of high handedness and is *malafide*. The Opposite Parties deny the outstanding as well as repayment amount as claimed/alleged by the Applicants with all vehemence. The disputed 153 Cheques are dated from 02.01.2021 to 28.08.2022, for a total amount of Tk.468,87,30,000.00 against which as appears from Schedule-B of the plaint, the Applicants claimed receipt of total Tk.202,38,38,740.00 whereas the Opposite Parties paid in total Tk. 489,48,16,108.00 within the period from 16.09.2021 to 31.10.2023 [upto the date of filing the instant Suit) through fund transfer, RTGS, Cash Deposit etc., which is much higher than that of the disputed Cheques' amount, the details of which are given in paragraph 22(i) of the Written Statement. Further the instant Summary Suit has been filed on 31.10.2023 and the Opposite Parties paid off total Tk.3,44,86,240.00 from 01.11.2023 to 23.01.2024 to the Applicants, the details of which are provided in paragraph 22(j) of the written Statement. Thus, in any count, the outstanding claim of the Applicants against the Opposite Parties requires a through enquiry so as to fix the actual dues and/or liability to refund the excess amount, which requires full length enquiry, inspection, discovery and trial. That the alleged 153 Cheques were furnished as security, not for presentation for encashment since the Opposite Parties were used to pay off the Applicants in cash through different banking channels and mode. The Applicants never ever communicated presentation of 153 cheques for encashment with the Opposite Parties, neither the Applicants intimated the dishonour of those cheques to the Opposite Parties. At the same time since there remains a recurring dispute regarding the outstanding receivables of the Applicants from the Opposite Parties and since the Opposite Parties have been paying off the Applicants regularly, no question at all arose to present those security cheques beyond the back of the Opposite Parties.

It has been further stated that the Opposite Party No.2 did not execute the alleged Undertakings dated 14.08.2022 and 29.05.2023 acknowledging and payment of outstanding, instead those are forged and fabricated. At one stage of the disputes regarding the exact outstanding amount, the Applicants stopped delivery of any raw materials to the Opposite Parties and thus, with a view to resolve the issue, the Opposite Party No.2 when visited at the Head Office of the Applicants, the Officials of the Applicants required signatures on some blank stamp papers from the Opposite Party No.2. Since at that stage the business of the Opposite Parties was at a standstill due to want of raw material, the Opposite Party No. 2 put signatures on some blank stamp papers under financial distress, economic duress and coercion so as to resume the supply of raw materials to the Opposite Parties. It is for the first time from the instant Summary Suit, the Opposite Parties came to know as to those Undertakings containing unfounded, irrelevant, absurd and baseless issues as well as unverified and unacknowledged outstanding dues and understood that the Applicants most surreptitiously converted the signed blank stamp papers into the said Undertakings and thereby perpetrated a gigantic fraud upon the Opposite Parties. Fraud would also appear in the context that in both the Undertakings, substantial portions have been kept blank and both were witnessed by the Officials of the Applicants only. If those Undertakings were executed on mutual understanding between the two parties, then the Applicants would have definitely paid Tk. 75 crore of soy cake/full fat soybeans as per the terms of the Undertaking dated 29.05.2023, issued a pay order of Tk. 35 crore for the mortgaged land owed to BRAC Bank and obtained a Deed of Redemption of the mortgaged land. Since the Applicants themselves created such fictitious, bizarre, unrealistic, false, absurd Undertakings, they did not fulfill their own obligation. Resultantly, the Undertakings are unenforceable and the Applicants are not entitled to rely and enforce those against the Opposite Parties.

Mr. Mohammad Abdul Hannan, the learned advocate for the plaintiff-appellants submits that the plaintiffs have strong prima facie arguable case on merit as present suit having been instituted for a decree of Tk.347,71,62,028.00 being the value of 153 cheques and interest thereon under Order XXXVII of the Code of Civil Procedure inasmuch as the said 153 cheques are Bill of Exchanges as per definition of cheque as defined in section 6 of the Negotiable Instruments Act, 1881 which also include in the definition of Bill of Exchange as contained in section 5 of the said Act and therefore Rule 2 of Order XXXVII specifically mentioned Bill of Exchange and therefore the present suit is maintainable. The Plaintiffs have strong prima facie arguable case on merit as evident from the averment made in the written statement as well as written objection filed by the defendants against the application for appointing Receiver to the effect that there being no denial on issuance of the said 153 cheques from the bank account maintained by the defendants and further there being no denial as to non-payment of the value of the said 153 cheques in favour of the plaintiffs by the defendants and therefore the same being admission on the part of the defendants they failed to honour the said cheques and therefore the present suit claiming face value of the said 153 cheques with interest is very much maintainable on such admitted facts.

He then submits that the present application for appointment of Receiver under Rule 1 of Order XL is maintainable as it qualifies all the conditions for passing an order to that effect by appointing a Receiver of any property which "includes property of every description movable or immovable, corporeal or incorporeal, and commercial and industrial undertakings, and any right or interest in any such property or undertaking" as contained in Article 152 of the Constitution of People's Republic of Bangladesh and in the present suit the value of the cheques being value of raw material purchased from the plaintiffs and admittedly not paid being the subject-matter of the present suit which now being a substantial part of the running capital of the defendants having exclusive control of the defendants, but actually the money of the plaintiffs which is essentially "the property" be categorized as movable/commercial and right and interest accrued therefrom shall need to be preserved for the plaintiffs in the custody of the Receiver and therefore the said property being the running capital/sale proceeds/gross receipts whatsoever now need to put in the hand of a Receiver to be appointed for prevention of manifest wrong and injury causing and to be caused by the defendants by removing, to be wasted, to be damaged, to be alienated or to be wrongfully sold and to preserve the same from further deterioration or losing the value in the hand of the defendants.

The learned advocate next submits that the defendants are bank defaulter which they cannot deny as evident from newspaper publication that they defaulted about Tk-300 crores to different banks and financial institutions among which BRAC Bank PLC has published auction notice for selling of mortgage property for recovery of Tk 105.74 Crore and the present transaction with the plaintiffs is also of similar nature grabbing the money of the plaintiffs by not honouring the cheques in particular the said 153 cheques as admittedly issued by the defendant No.2 being the purchase price of the raw materials and in doing so the defendants use the said cheques as a device for grabbing the money of the said purchase materials which the defendants used in its factory and admittedly manufactured the poultry feed and being benefitted by the sale proceeds of the said feeds and now enjoying the said sale proceeds by doing business and therefore it is necessary to appoint a Receiver essentially to preserve the property of the plaintiffs being an extra ordinary measure so that the value of the said 153 cheques shall not be deteriorated or wasted or damaged or alienated at a lesser amount and therefore the balance of convenience and inconvenience is in favour of the plaintiffs.

He further submits that it is now just and convenient for the security of claim being the value of the said 153 cheques and the interest accrued thereon to appoint a Receiver for the purpose of removing the defendants from the possession and custody of the property to the extent of Tk.347,71,62,028.00 by transferring the same to the possession, custody and management of such Receiver to be appointed by conferring all such power for realization, management, protection, preservation and improvement of such property, collection of profits, application and disposal of such profit to the extent of such amount at the rate of 20% from each and every sale proceeds of the defendants' business.

He then submits that while rejecting the plaintiffs' application, the trial Court failed to consider that there is inevitably higher chance for the plaintiffs to obtain decree in the suit, particularly in view of the undertaking of defendant No.2 dated 14.08.2022 acknowledging and conceding to pay off the amounts to the plaintiffs, and in such view of the matter, the appointment of receiver is imperative in the present facts and circumstances, or else, the plaintiff-appellants may have to suffer irreparable loss and injury.

He next submits that while describing the plaintiffs' claim of Taka 347,71,62,028/ on account of the defendants' dishonoured cheques as disputed requiring further examination on the amounts paid by the defendants, the trial Court also miserably failed to take into account that owing to the said amount of money, the plaintiffs are indebted to their own banking companies and are also subjected to an entailed predicament of calculating interest thereon, while, on the other hand, the defendants, being safely in operation of their worldwide business of manufacturing fish feed and poultry feed to the tune of 48,000 MT per year, are mischievously mismanaging the funds of the business, which was created, even partially, through the supply made by the plaintiffs to the defendants, and hence if a receiver is not appointed in respect of management of assets and accounts of defendant No.1 Company, there is every likelihood that the purpose of the suit shall be frustrated, and such loss and injury shall be irreparable in absence of any security or surety except these 153 dishonoured cheques.

The learned advocate strenuously submits that while rejecting the plaintiffs' application for appointment of receiver, the trial Court has most hopelessly been focused and in the same order framed the issues as suggested by the defendants even without framing any issues on plaint of the plaintiffs though about five months back on 03.11.2024 the suit was fixed for examination of witnesses and more so the protection as justly and fairly be necessary for the plaintiff-appellants' interest which is imminently at stake for the capricious and reckless management of funds by the defendants, and in such view of the matter, if this Court is not kind and judicious enough to pass an order, till disposal of the suit, appointing a receiver in the suit before the Court below, the plaintiff-appellants may have to suffer dire and irreparable loss and injury.

The learned advocate lastly submits that the impugned order is based on conjecture and surmises and non-application of judicial mind as the learned District Judge has miserably failed to construe ill-intention and fraudulent conduct of the Defendants as evident from the averments made in the written statement and the written objection regarding admission of issuance of 153 cheques, purchase of raw materials from the Plaintiffs during a long period of time, making the transaction vellum at a higher site purposefully to grab a bigger amount which is the value of these 153 cheques and such sum is still lying unpaid as not honoured by the banks concern and even admitting the receipt of the payments as stated by the defendants, stopping the payment of Taka five lakh per day as evidently and continuously paying till service of the notices of the suit showing serious disrespect to the court and therefore the money of the said 153 cheques still lying with the Defendants has to be put in custody of the receiver to be appointed for ends of justice.

Per-contra Mr. M.A. Azim Khair with Mr. Nazmul Karim, the learned advocate for the defendant-respondents submits that under Order XXXVII Rule 2(1) of the Code of Civil Procedure, a summary suit is maintainable if it is filed on only bills of exchange, hundis and promissory notes', none else. Another Negotiable Instrument namely 'Cheque' is expressly and consciously kept outside the scope and ambit of that provision. By dint of such provision, therefore, this Summary Suit based on Cheques is totally impermissible. Consequently, prima-facie the instant Summary Suit entirely based on Cheques is barred by law and not maintainable in the present form of Summary Suit before the District Judge, Dhaka. Therefore, where the Summary Suit itself is ex-facie not maintainable, there cannot be any question of appointment of Receiver as prayed for and instant Application is liable to be rejected in *limine*. Since the Appellants filed the instant Suit in the form of money Suit having highly disputed claim and counter claim between the contending parties, it was required to file it in ordinary Civil Court having jurisdiction, not before the District Judge, Dhaka under summary proceedings. In any event, certainly there is a need to adjudicate upon the disputes between the parties upon appraisal of the evidence adduced by both the Parties. In the instant Summary proceeding of highly disputed claim and counter claim between the contending parties, the appointment of Receiver is totally unwarranted.

He then submits that under Order XL Rule 1 of CPC, a Receiver can be appointed only regarding the property forming the subject-matter of the Suit, and in the present case, the sale proceeds of the respondents is in no way the subject-matter of the Suit. Thus, there remains no justification for appointment of Receiver as prayed for.

He further submits that the respondents have substantial legal defence, which is likely to succeed and hence there remains no question of appointment of Receiver for realization of disputed amount. The Appellants miserably failed to distinctively specify any extraordinary circumstances so as to appoint the Receiver. At the same time, mere apprehension, allegation and asking of the Appellants are not sufficient grounds for appointment of Receiver. More so, in all strict sense appointment of Receiver would not be just and convenient, instead such appointment shall cause mischief, great hardship, grave prejudice and inconvenience on the part of the Opposite Parties in doing business smoothly.

He next submits that the relief for appointment of Receiver for collection and deduction of sale proceeds could not be granted as the matters raised, concerned the internal management of the company and no Court should interfere with such internal affairs of a company.

The learned advocate vehemently submits that the plaintiff-appellants from the very beginning of instant Suit come up with a strategy to file one after another interlocutory application praying for one after another harsh remedy against the defendant-respondents and thereby are using that strategy as a weapon of coercion and are in fact trying to extort miscalculated Tk.347,71,62,028.00 with interest @ 9% from the respondents, which is not at all the actual dues. This Court should take cognizance of the Appellants' such attempts and should apply its discretion and judicial mind in the disposal of the instant appeal along with the rule.

The learned advocate for the respondents finally submits that under the facts, circumstances and laws stated above, this Court should be pleased to reject the Application for appointment of Receiver in *limine* for ends of justice. Because if the Receiver is appointed, not only the respondents shall be prevented from doing business smoothly and shall suffer monetary loss but also such appointment shall certainly damage their goodwill and tarnish the image resulting in causing loss of confidence amongst their Customers/Clients.

We have considered the submissions advanced at the bar. We have also gone through the memorandum of appeal including the impugned order and the application of appointment of receiver along with all the documents annexed therein.

The learned advocate for the respondents raised the question of maintainability of the suit itself. According to him if the suit is not maintainable granting of any interim relief is not permissible at all. So, we have to deal with the primary question of maintainability. Admittedly the instant suit is a summary suit filed under Order XXXVII of the CPC which deals with the summary procedure on negotiable instruments. Rule-2(1) of Order XXXVII provides: *All suits upon bills of exchange, hundies or* *promissory notes may, in case the plaintiff desires to proceed hereunder, be instituted by presenting a plaint in the form prescribed.* Admittedly the instant suit is filed for realization of cheques' money. Now, the question is whether the cheque comes under any category of negotiable instruments of either bills of exchange or hundies or promissory notes. Negotiable Instruments Act, 1881 defined the cheque in section 6 which reads as under: *A "cheque" is a bill of exchange drawn on a specific banker and not expressed to be payable otherwise than on demand*. So, a cheque is under the law a negotiable instrument, a bill of exchange. Section 118 of the Negotiable Instruments Act, 1881 deals with the presumptions of consideration which provides: *Until the contrary is proved, the following presumptions shall made:*

(a) that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

(b) …

(c) ….

(d) …

(e) ….

(f) …

(g) that the holder of a negotiable instrument is a holder in due course: provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.

While Section 120 of the above Act deals with the principle of estoppel against denying original validity of the instrument which runs as follows: *No maker of a promissory note, and no drawer of a bill of exchange or cheque, and no acceptor of a bill of exchange for the honour of the drawer, shall, in a suit thereon by a holder in due course, be permitted to deny the validity of the instrument as originally made or drawn.*

From plain reading of the above sections of the Negotiable Instruments Act it is clear that the cheque is a bill of exchange, a negotiable instrument and the drawer of the same is not permitted to deny its validity as originally drawn except on the allegation of obtaining the same by means of an offence or fraud. And in such case burden lies upon him to prove such allegation of offence or fraud, who raised the allegation. In such view of the position of law the point of maintainability of the summary suit raised by the advocate for the respondents has no substance.

The next point raised by the respondents is that the instant application for appointment of receiver under Order XL Rule 1 of the CPC is not maintainable. Because receiver can only be appointed on the subject-matter and in no way the sale proceeds of the respondents is the subject-matter of the instant suit. Order XL Rule 1(1) reads as under:

> Rule-1(1) Where it appears to the Court to be just and convenient, the Court may by order-
>
> (a) appoint a receiver of any property, whether before or after decree;
>
> (b) remove any person from the possession or custody of the property;
>
> (c) commit the same to the possession, custody or management of the receiver; and
>
> (d) confer upon the receiver all such powers, as to bringing and defending suits and for the realization, management, protection, preservation

> and improvement of the property, the collection of the tents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Court thinks fit.

The learned advocate for the appellants submits that the present application for appointment of Receiver under Rule 1 of Order XL is maintainable as it qualifies all the conditions for passing an order to that effect by appointing a Receiver of any property which "includes property of every description movable or immovable, corporeal or incorporeal, and commercial and industrial undertakings, and any right or interest in any such property or undertaking" as contained in Article 152 of the Constitution of People's Republic of Bangladesh and in the present suit the value of the cheques being value of raw material purchased from the plaintiffs and admittedly not paid being the subject-matter of the present suit which now being a substantial part of the running capital of the defendants having exclusive control of the defendants.

There is no definition of 'property' in the code of Civil Procedure. However, article 152 of our constitution defines "property" which *includes property of every description movable or immovable, corporeal or incorporeal, and commercial and industrial undertakings, and any right or interest in any such property or undertaking*. So, it can safely be said that the money of alleged 153 cheques, the subject-matter of the instant suit is “property” in accordance with law. In that view of the matter the present application for appointment of receiver under Rule 1 of Order XL is maintainable. But the question is whether in the given facts and circumstances of the case the appellants have able to make out a case for appointment of receiver.

This Rule-1 of Order XL confers wide jurisdiction of the Court and appointment of receiver cannot be claimed as a matter of course. The discretion of the Court is not absolute, arbitrary or unregulated and it must be exercised on sound judicial principles after taking all the circumstances of the case for the purpose of serving the ends of justice and protecting the rights of all the parties interested in the controversy. Such discretion must be exercised very sparingly as it takes away certain property out of possession of parties litigating against each other. A receiver should not be appointed unless the circumstances are of such an exceptional character that refusal might entail a risk of clear abuse of the process of the Court or some gross injustice. Appointment of receiver must not be a mere weapon of coercion and the Court should not exercise the discretionary power in the absence of a strong case.

The object and purpose of appointment of receiver, in general, to preserving the subject-matter of the suit pending judicial determination of the rights of the parties. The dominant object is to prevent the ends of justice from being defeated. In that view in taking any action under the instant Rule, the Court is to look into that the rights of the parties are not jeopardized and the ends of justice not defeated. Generally under this Rule, receiver can be appointed for the proper management of any property which is subject-matter of the suit. The provision of appointing receiver is to be considered as one of the harshest remedies for the enforcement of rights to property and should be exercised in extreme cases where there is not merely apprehension of possible danger, but the peril or danger to the property in question appears to be great and imminent. Mere apprehension that the property in question will be transferred by the defendants, offer no justification for appointment of receiver. This view has been expressed by the Appellate Division in the case of Faiz Ahmed Vs. Bakhtear Ahmed reported in 36

DLR (AD) 97. A receiver is not to be appointed unless there is some substantial background for such an interference, such as, a well-founded apprehension that the suit property will be dissipated or other irreparable injury may be done, unless the Court appoints a receiver. If there is no fear that the property in question is going to be destroyed or dissipated, the Court should be reluctant to extend the relief of appointment of receiver. However, in a very rare and exceptional circumstance, a receiver can be appointed even of properties which are not the subject-matter of the suit in which the appointment is made.

These are the principles governing appointment of receiver decided by the superior Courts of this sub-continent including Bangladesh. In this regard in the case of Krishnaswami Vs. Thangavelu reported in AIR 1955 Mad 430 following principles have been laid down:

(a) The appointment of receiver is discretionary with the court.

(b) It is a protective relief. The object is preservation of the property in dispute pending judicial determination of the rights of the parties to it.

(c) A receiver should not be appointed unless the plaintiff prima facie proves that he has very excellent chance of succeeding in the suit.

(d) It is one of the harshest remedies which the law provides for the enforcement of the rights, and therefore, should not be lightly resorted to. Since it deprives the opposite party of possession of the property before a final judgment is pronounced, it should only be granted for the prevention of manifest wrong or injury. A court will never appoint a receiver merely on the ground that it will do no harm.

(e) Generally, an order appointing a receiver will not be made where it has the effect of depriving the defendant of a de facto possession, since that might cause irreparable loss to him. But if the property shown to be in medio, that is to say, in enjoyment of no one, it will be the common interest of all the parties to the suit to appoint a receiver.

(f) The court should look at the conduct of the party who makes an application for appointment of a receiver. He must come with clean hands and should not have disentitled himself to this equitable relief by laches, delay or acquiescence.

Now, in the light of the catena of decisions of the superior Courts of this sub-continent cited above let us consider the instant case how far the plaintiff-appellants made out their case for appointment of receiver.

We have already noticed that the plaintiff-appellant instituted this summary suit before the court of District Judge, Dhaka for realization of due money against 153 cheques amounting to Tk- 347,71,62,028.00 along with interest @ 9% per annum and the defendant-respondents have already appeared and contesting the same by filing written statement denying the material allegations of the plaint.

It is admitted position that the plaintiffs earlier filed an application under Order XXXIX Rule 1 and 2 of the CPC praying for temporary injunction restraining the defendant-respondents from transferring the land owned by defendants as mentioned in the Schedule "B" and "C" till disposal of the suit. On contest the learned District Judge was pleased to pass an order of status-quo for preserving the subject-matter of the injunction application. On appeal the High Court Division was pleased to stay the operation of the said order of status-quo. On filing Civil Petition the Appellate Division disposed of the said Civil Petition by upholding the Order of Status-Quo passed by the District Judge and asked the High Court Division to dispose of the Rule. Accordingly, the High Court Division disposed of the FMA and Rule further directing the District Judge to dispose of the application for temporary injunction positively by 22.09.2024 relying on the undertaking given by the Senior Counsel of the instant respondents that in the meantime the Schedule B and C property shall not be transferred. Then the District Judge having heard both the parties allowed the application for temporary injunction and thereby directed the defendants not to transfer or dispose of the Schedule B and C properties as stated in the said application till disposal of the suit. Against the aforesaid order of the District Judge on appeal the High Court Division issued Rule and stayed operation of the order of the District Judge. On filing of Civil Petition the Judge-in-Chamber of the Appellate Division by his order dated 16.01.2025 was pleased to pass an order of status-quo.

The above facts suggest that the defendant-respondents are barred from transferring huge quantity of land. This is a summary suit filed under Order XXXVII Rule 2 of the CPC and the object of this Order to dispose of the suit by following summary procedure. The suit has been filed in the year 2023 but the case is still in the stage of framing of issues. The parties are coming before the superior Court with one after another interlocutory order. In the course of hearing of the instant Miscellaneous Appeal along with the Rule, the learned advocates for both the parties agreed that the suit should be disposed of expeditiously as early as possible since it is a summary suit.

The learned advocate for the plaintiff-appellants in one hand submits that the defendants are bank defaulter which they cannot deny as evident from newspaper publication that they defaulted about Tk-300 crores to different banks and financial institutions among which BRAC Bank PLC has published auction notice for selling of mortgage property for recovery of Tk 105.74 Crore and the present transaction with the plaintiffs is also of similar nature grabbing the money of the plaintiffs by not honouring the cheques in particular the said 153 cheques as admittedly issued by the defendant No.2 being the purchase price of the raw materials and in doing so the defendants use the said cheques as a device for grabbing the money of the said purchase materials which the defendants used in its factory and admittedly manufactured the poultry feed and being benefitted by the sale proceeds of the said feeds and now enjoying the said sale proceeds by doing business and therefore it is necessary to appoint a Receiver essentially to preserve the property of the plaintiffs being an extra ordinary measure so that the value of the said 153 cheques shall not be deteriorated or wasted or damaged or alienated at a lesser amount and therefore the balance of convenience and inconvenience is in favour of the plaintiffs. On the other hand submits that the defendants, being safely in operation of their worldwide business of manufacturing fish feed and poultry feed to the tune of 48,000 MT per year, are mischievously mismanaging the funds of the business, which was created, even partially, through the supply made by the plaintiffs to the defendants, and hence if a receiver is not appointed in respect of management of assets and accounts of defendant No.1 Company, there is every likelihood that the purpose of the suit shall be frustrated, and such loss and injury shall be irreparable in absence of any security or surety except these 153 dishonoured cheques. By these submissions the appellants admitted that the defendants have worldwide business of manufacturing fish feed and poultry feed to the tune of 48,000 Metric Tons per year at present. Which means the apprehension of the plaintiffs of immediate removing, wasting, damaging or alienating of the property has no substance. The learned advocate for the plaintiff-appellants though forcefully argued that it is just and convenient for the security of claim being the value of the 153 cheques and the interest accrued thereon to appoint a Receiver for the purpose of removing the defendants from the possession and custody of the property to the extent of Tk.347,71,62,028.00 by transferring the same to the possession, custody and management of such Receiver to be appointed by conferring all such power for realization, management, protection, preservation and improvement of such property, collection of profits, application and disposal of such profit to the extent of such amount at the rate of 20% from each and every sale proceeds of the defendants' business but failed to substantiate that the peril or danger to the property in question appears to be great and imminent. Because, the provision of appointing receiver is to be considered as one of the harshest remedies for the enforcement of rights to property and should be exercised in extreme cases where there is not merely apprehension of possible danger, but the peril or danger to the property in question appears to be great and imminent. Mere apprehension that the property in question will be transferred by the defendants, offer no justification for appointment of receiver. Moreover, in the instant case some properties of the defendant-respondents are secured by the order of the Appellate Division. In such view of the matter, we are not inclined to appoint a receiver as prayed for by the plaintiff-appellants.

It appears form the impugned order that while rejecting the application for appointing the receiver, the learned District Judge, Dhaka framed issues for determination of the suit on the basis of the application of the defendants only though the application for framing of issues filed by the plaintiff-appellants was still pending which is not tenable under law. The issues are to be framed considering the controversy as stated in the pleadings i,e both plaint and written statements on issues of law and facts on which the right decision of the case appears to depend. As such we are constrained to interfere with the impugned order.

In the result the appeal is **allowed-in-part**.

The impugned order no.23 dated 18.02.2025 passed by the District Judge, Dhaka in Summary Suit No. 11 of 2023 is hereby set aside so far it relates to framing of issues. The trial court is directed to frame issues on both laws and facts considering the pleadings and after hearing both the parties in this regard.

The trial court is further directed to conclude the suit within 4(four) months from receipt of this judgment and order without fail and not to allow any adjournment by any parties except in a very exceptional circumstances keeping in mind that the suit must be concluded within 4(four) months.

Since the appeal is disposed of by this judgment the connected rule being Civil Rule No. 148(FM) of 2025 is discharged in the light of the above observations of the instant judgment.

Communicate this judgment and order at once.

Md. Iqbal Kabir, J:

I agree.

Mahfuza Nasrin
Assistant Bench Officer