

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

First Appeal No. 21 of 2025

Midland Co-operative Society Ltd., 11, Dilkusha
Commercial Area (Ground Floor), Dhaka-1000 and
another

.... Appellants

Versus

The City Bank Limited, Jibon Bima Tower, 10,
Dilkusha Commercial Area, Dhaka-1000

....For the Respondent

Mr. Md. Mostafa Kamal, Advocate

....For the Appellants

Mr. Tirtha Salil Pal, Advocate

...For the Respondent-Applicant

Present:

Mr. Justice Md. Iqbal Kabir

And

Mrs. Justice Jesmin Ara Begum

Judgment on 04.09.2025.

Md. Iqbal Kabir, J:

By filing this application, the respondent applicant prayed to dismiss the appeal as being not maintainable.

Mr. Tirtha Salil Pal, the learned Advocate for the respondent-applicant, in support of his prayer, brought some facts and made a submission which is described in paragraph Nos. 4 and 5 of the application. These are as follows:

“As per section 21(1)(a) of the Civil Courts Act, 1887, read with section 3 of the Civil Courts (Amendment) Act, 2021- "...an appeal from a decree or order of a Joint District Judge shall lie to the District Judge where the value of the original suit in which or in any proceeding arising out of which the decree or order was made did not exceed 5 (five) crore Taka...". In the instant suit since the suit value of the original suit is Tk. 86,91,200/- and the impugned judgment and decree was passed by the learned Joint District

Judge, 4th Court, Dhaka, the proper and lawful forum for preferring the instant appeal is before the court of learned District Judge, Dhaka. However, the appellant preferred the appeal before the Hon'ble High Court Division of the Supreme Court of Bangladesh which is completely a wrong forum and, therefore, the Hon'ble High Court Division is *coram non judice* for adjudicating the instant appeal resulting the appeal as not maintainable. Hence, the appeal is liable to be dismissed.

It is a well-settled principle of law that when a judicial proceeding is initiated before a forum which has no jurisdiction over the subject matter, such proceeding is void *ab initio* and falls within the mischief of the doctrine of *coram non judice*. Since, the Hon'ble High Court Division has no lawful jurisdiction to entertain or adjudicate the instant appeal, the same is not maintainable as a First Appeal before this Hon'ble Court. Hence, the appeal is liable to be dismissed for being not maintainable.”

He submits that under the law, this is not the proper jurisdiction, or the law does not confer such power to file an appeal before this Court. The instant appeal has been filed before a court without lawful jurisdiction, is inherently incompetent. According to him, continuation of the instant appeal would amount to an abuse of the process of the Court, as the proper forum prescribed under law has been bypassed by the appellant.

Mr. Md. Mostafa Kamal, the learned counsel for the appellants, admitted the alleged fact. According to him, due to wrong advice, the appeal has been filed before the Division Bench of this Court.

However, he submits that this matter may be sent back to the Court below for disposal. Respondent-applicant opposes such a prayer and claims there is no such scope to send it to the Court below. However, the appellant, in support of his submission, did not submit any authority.

Admittedly, this appeal has been filed in the wrong forum; the appeal is not maintainable because it was not preferred before appropriate Court. Thus, the application is allowed.

It is at this juncture, it is evident that the appellants wrongly filed this First Appeal before this Court. By this time, the statutory period to file an appeal has been expired.

However, considering his submission, we are of the view that the appellant may get an opportunity to file a fresh appeal before the Court below within 45 days from the date, if so advised.

In the context as stated above, the Court below is at liberty to consider and condone the period of delay in order to file the appeal.

Accordingly, the application is allowed.

However, consequently, with the above observation, the First Appeal is dismissed without t any order as to costs.

Communicate the judgment and order to the concerned Court below at once.

Jesmin Ara Begum, J:
I agree.