

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

Present

Mr. Justice Md. Iqbal Kabir

And

Mrs. Justice Jesmin Ara Begum

First Appeal No. 159 of 2000

IN THE MATTER OF:

Manager, Janata Bank, Ramkrishnopur
Branch, Cumilla

... Plaintiff-Appellant

Versus

M/S Liyakat Ali and another

... Defendant-Respondents

Mr. A.B.M. Bayezid, Advocate

... For the Plaintiff-Appellant

No one appears

... For the Defendant-Respondents

Judgment on: 03.11.2025

Jesmin Ara Begum, J:

At the instance of the plaintiff-appellant, this appeal is directed against the ex parte judgment and decree dated 17.01.2000 (decree signed on 20.01.2000) passed by the learned Judge of the Artha Rin Adalat, Cumilla, in Title Suit No.83 of 1994, not decreeing the suit for the full claimed interest.

Facts in a nutshell, for disposal of this appeal are that the Manager, Janata Bank, Ramkrishnopur Branch, Cumilla, as plaintiff, filed the suit before the learned Sub-ordinate Judge and Artha Rin Adalat, Cumilla, against the defendant-respondents for the realization of the outstanding loan amount of Tk. 2,38,973.13/- and also for interest pendente lite and till realization of the dues.

It is pertinent to note that the summons was duly served upon the defendants as the suit was properly filed in the Court below. The defendants did not turn to appear before the Court, therefore, the learned Court fixed the suit for ex-parte hearing and upon examining the plaintiff (P.W.1) along with all exhibits, the trial Court being found the suit as proved decreed the suit ex-parte for the outstanding loan amount by its impugned judgment and decree and also

directed the defendant Nos.1 and 2 to pay the decreetal amount to the plaintiff-bank within 60 days from the date of judgment; failing which the plaintiff will be entitled to realize the money by selling the suit schedule land with a simple interest at 7% over the decreetal outstanding loan amount from the date of filing of the suit till realization of the dues.

Being aggrieved by and dissatisfied with the rate of interest as is directed by the impugned ex parte judgment, the plaintiff-appellant filed this First Appeal.

Mr. A.B.M. Bayezid, the learned advocate appearing on behalf of the plaintiff-appellant submits that the appellant-bank is entitled to get a decree for the principal loan amount along with the interest to be accrued at 16% as per the terms and conditions of the agreement executed in between parties and the learned trial Court though directed the defendants by the impugned ex-parte judgment to pay the loan amount with interest but the learned Court below being failed to realize the terms and conditions basing on which loan was sanctioned to the defendants, directed the defendants to pay 7% interest instead of 16% interest. The learned Counsel also submits that the plaintiff-appellant-bank filed the suit not only for the realization of the outstanding loan amount but also for interest pendente lite and till realization of dues at the rate of 16% over the decreetal loan amount. In support of his submission, reliance was made on the exhibits, especially exhibit-2 series, the loan sanction letters, and deed of mortgage exhibit-4, which was executed by the defendant No.2.

On the other hand, no one appeared on behalf of the defendant-respondents to oppose the submission of the learned Advocate for the appellant.

We have heard the submissions advanced by the learned Advocate for the plaintiff-appellant-bank, gone through the impugned ex parte judgment and decree, vis-à-vis perused the documents exhibited and appeared in the paper book and compared those kept with the lower Court's records available before us.

It is pertinent to note that the appellant-bank filed this appeal only against the rate of interest as is pronounced in the impugned judgment which was delivered ex-parte in the Artha Rin Suit filed by the plaintiff for recovery of certain amount of money claiming it to be defaulted loan repayable by the defendant Nos.1 and 2, so we would examine as to whether the plaintiff has been able to prove its case especially the claimed rate of interest through

evidences adduced and produced by it. As it is the settled principle of law held by our Appellate Division especially in the case reported in 9 BLT (AD) 66 and also in 6BLC(AD)41, where it has been propounded that “there may be thousands of defects in the documents of the defence as well as in their case but that does not entitle the plaintiff to get a decree. The plaintiff is to prove his own case irrespective of the defence version of the case.” The said ratio has also been established in the decisions reported in 10 BLC (AD) 58, and 39 DLR (AD) 237.

Further, in view of the above, it is necessary to examine how far the plaintiff has been able to prove its claim by adducing evidence. We have gone through the plaint and find that the plaintiff Bank is claiming that the defendant Nos. 1 and 2 took a loan of Tk. 30,000/- from the bank, firstly on 19.08.1981. Thereafter, based on the prayers of the defendants plaintiff Bank extended their loan amount on various dates, and lastly, by the sanction letter dated 06.04.1985, their loan amount was re-fixed, amounting to Tk. 90,000/-, though there was a condition that the defendants would refund the loan amount with 16% interest within 31.10.1985. Accepting the terms and conditions of the sanction letters, the defendants executed and registered a mortgage deed in favour of the plaintiff bank for 45 decimals of land and withdrew the loan amount by the CC account No.17, but the defendants ultimately failed to make repayment of the loan amount despite repeated reminders. Lastly, on 01.04.1993 plaintiff bank sent a legal notice to the defendants demanding the outstanding loan amount, to which the defendants did not respond, and hence the Bank filed the suit.

It is pertinent to note that in support of the alleged assertion, P.W.1 came up and exhibited application for loan and petition for renewal, i.e., exhibit No.1 series, sanction letters and charge documents as of exhibit 2 and 3 series respectively. Apart from this, P.W.1 also produced a deed of mortgage and statement of accounts, which were also marked as exhibits 4 and 7.

On perusal of the exhibited documents and the unrebutted testimony of P.W.1, it appears that P.W.1 deposed in support of the plaintiff's case, and his exhibited documentary evidence corroborated his positive assertion. So the learned trial Court below rightly found that the plaintiff bank has become successful in proving its case.

Mr. A.B.M. Bayezid, the learned counsel appearing for the appellant bank, taking us to the impugned ex parte judgment and all the exhibited

documents, contends that the learned Judge of the trial Court has failed to realize the rate of interest on which the loan was sanctioned. He further submits that the learned trial Judge ought to consider the terms and conditions of the sanction letters relating to the rate of interest.

In this respect, on perusal of the sanction letters exhibit-2 series, it appears that the loan in question was sanctioned to the defendants at the rate of 16% interest. It is also evident from the mortgage deed, Exhibit 2 document, that by accepting the 16% rate of interest, the defendants took a loan from the bank and mortgaged their 45 decimals of land as security.

It appears from the record that the summons was duly served upon the defendants, but they did not appear before the Court and did not oppose the claim of the plaintiff. It has already been discussed that the learned trial Court rightly decreed the suit ex parte on being found it as been proved. It is also proved by the sanction letters exhibit-2 series and mortgage deed, exhibit-4, that the defendants took a loan and executed and registered a mortgage deed by accepting the terms and conditions of interest at 16%. But without considering the agreed rate of interest, the learned trial Court directed the defendants to pay the outstanding loan money along with the interest at 7% instead of 16%. The learned Court below did not show any reason as to why 7% interest is directed to be paid by the defendants. Where the rate of interest is clearly written in the sanction letters and also in the mortgage deed as 16% then it is not justified to decide the interest to be paid should be at 7%.

Therefore, the learned Court below erred in law and also in fact in directing the defendants to pay interest pendente lite at 7% over the directed loan amount instead of 16% interest. Thus, the rate of interest as is directed to be paid by the defendants is not tenable in law.

It is important to note here that this First Appeal was filed on 23.03.2000 and it became ready for hearing on 24.10.2004, but surprisingly plaintiff-appellant did not take any initiative for its disposal. It is at this juncture, it will be harsh if we allow the defendant-respondent to pay the interest for the period of time that was extended only by the negligent conduct of the plaintiff-appellant. In this respect, we are of the view that the defendant-respondent Nos. 1 and 2 can be made liable to pay 16% interest over the decretal amount up to the date of filing of this First Appeal.

In a result, the appeal is **allowed**, however, without any order as to cost.

The very part of the impugned judgment and decree dated 17.01.2000 (decree signed on 20.01.2000) passed by the learned Sub-ordinate Judge and Artho Rin Adalat, Cumilla, in Title Suit No.83 of 1994, relating to the rate of interest, is hereby set aside.

The defendant-respondents are hereby directed to pay the outstanding decreetal loan amount with 16% interest to the plaintiff-appellant until the filing of the First Appeal, failing which the plaintiff-appellant will take necessary steps for the realization of the outstanding decreetal loan amount with interest.

Communicate the judgment and order at once.

Md. Iqbal Kabir, J:

I agree.

Md. Anamul Hoque Parvej
Bench Officer