

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

First Appeal No. 19 of 2000

Government of Bangladesh, represented by the  
Secretary, Ministry of Food, Bangladesh Secretariat,  
Ramna, Dhaka

....Appellant

Versus

Md. Kamal Uddin being dead, his heirs and legal  
representatives are: Most. Hamida Khatun and  
others

....Respondents

Mrs. Nahid Hossain, D.A.G. with  
Mr. Sharif Uddin Ahmed, A.A.G,  
Mr. Mohammed Shaif Uddin (Ratan), A.A.G,  
Mr. Md. Towhidul Islam, A.A.G. and  
Mrs. Sharmin Hamid, A.A.G,

....For the Appellant

Mr. Chanchal Kumar Biswas, Advocate

....For the Respondent Nos. 1-4

Judgment on 18.08.2025.

Md. Iqbal Kabir, J:

This appeal is directed at the instance of the defendant appellant against the judgment and decree dated 10.08.1998 passed in the Title Suit No. 60 of 1991, thereby dismissing the suit by the learned Subordinate Judge, Second Court, Sylhet.

The precise facts leading to preferring this appeal are that on 11.05.1991, the predecessor of these respondents as plaintiffs filed Title Suit No. 60 of 1991 against the defendants for a declaration that the arbitration award dated 19.01.1991 given by defendant No. 1 is void.

The case of the plaintiff, in brief, is that the plaintiff was the proprietor of Kamal Rice Mills situated in Sadar, Sylhet. However, on 06.12.1975, the plaintiffs and defendants entered into an agreement by which it appears that the Government provided their collected paddy to the plaintiff Mill and under the agreement, the plaintiff will return those paddy to the government by converting the said paddy into rice. Under the agreement, the plaintiff mills produce 38.50 seer rice out of 60 seer paddy on consideration of Tk. 3/-. During that time, almost 2020 mound rice and 19680 mound paddy were stored in the plaintiff

mills compound. All of a sudden, on 01.07.1976, a massive flood hit the area and destroyed the rice and paddy stored in the plaintiff mills along with other mills. Thereafter vide Memo date 5.07.1976 the District Food Controller, Sylhet and other officials inspect the plaintiff's mills and found 5911 mound paddy have damaged out of 19680 mound and also found that, the staffs of the food department and mills were trying to dry up the damped/damaged paddy, in that respect the inspection authority forwarding report dated 10.07.1976 to the District Food Controller, Sylhet and Divisional Director, Dhaka informed that actual calculation will be done after dry up the damped paddy.

Thereafter, on 23.07.1976, the higher authority inspected and made a report which was sent to the authority. However, at one point in time, the plaintiff wrote a letter to the Authority, requesting to pay Tk. 16.768/-40 for processing the damped paddy. But the defendant, without taking any steps against such application, on 14.10.1977, by a notice to the plaintiff, claimed Tk. 67,105/50 as compensation for 996 mound paddy, against which the plaintiff filed an application to the defendant No. 1 and prayed for justice. After that, in an arbitration dated 15.08.1978, it was held that the plaintiff was not guilty. However, the authority tried to sell the damped paddy through auction, and one A. Rob purchased the remaining paddy, being the highest bidder @ of Tk. 28.80 for the 1<sup>st</sup> category and Tk. 23.80 for 2<sup>nd</sup> category. But subsequently, the auction purchaser did not deposit the auction money, and then the plaintiff offered to purchase the paddy for a rate of Tk. 30/- for the 1<sup>st</sup> category and Tk. 26/- for the 2<sup>nd</sup> category, which was more than the auction price. But the said offer was denied by the authority, as the plaintiff did not participate in the auction process. In spite of those facts, all of a sudden, the defendant authority vide memo dated 03.01.1980 claimed compensation of Tk. 2,96,512/26 for damaged, against which the plaintiff filed an application for seeking justice, and after hearing both parties, the defendant No. 1 on 28.08.1980 gave an award stating that the plaintiff did not get any relief. Against which the plaintiff applied to the Ministry of Food, and on 19.04.1982, the higher authority of the Ministry of Food informed that there was no scope to review. However, the Senior Secretary, Ministry of Food vide its memo dated 17.02.1989 informed the plaintiff that the earlier award given by the Deputy Secretary was cancelled due to some error, and the Secretary himself conducted the arbitration. Subsequently, the District Food Controller vide Memo dated 23.02.1999 informed the plaintiff that the defendant No. 1, by award dated 19.01.1999, directed the plaintiff to deposit Tk. 6,05,140/20. The official of the defendant did not take appropriate steps to sell the stocked paddy, and for their negligence, the stocked paddy was damaged, and under clause 15 of the contract, the

defendants were responsible for the damage. Therefore, 996 mound paddy was damaged due to devastating flood, and paddies marked as the 3<sup>rd</sup> and 4<sup>th</sup> category were auctioned as fodders. The defendant himself, as a party, was not competent to conduct the arbitration proceedings, and hence the plaintiff filed the instant suit.

On the contrary, defendant Nos. 4-5 contested the suit by filing a written statement that denied the entire material allegation so made in the plaint. According to them, due to the negligence of the plaintiff, the stocked paddy was damaged by the devastating flood on 1.07.1976. There was no official record of such a flood. However, an auction was held by the defendant authority on 02.08.1978, and one Md. A. Rob, as the highest bidder, purchased the stocked paddy. But he did not receive due to the reason that the paddy was mixed up with bran, which proved the negligence of the plaintiff. The plaintiff filed the instant suit to avoid their negligence, and prayed for dismissal of the suit.

In order to dispose of the suit, the learned trial Court framed as many as 5 (five) issues to decide the case. However, the court decided all the issues in favour of the plaintiff-respondent and against the defendants.

However, to prove their respective case, the plaintiff examined four witnesses and exhibited some documents, which were exhibited as exhibit Nos. 1-4 and X-Z, on the other hand, the defendant, to defend the case of the plaintiff, examined one witness and exhibited some documents, which were also exhibited as Exhibit No. Ka.

The trial Court, upon considering the materials and evidence on record, in conclusion of the trial, decreed the suit by the impugned judgment and decree dated 10.08.1989.

The defendant, as appellant, being aggrieved by and dissatisfied with the Judgment and decree dated 10.08.1998 passed by the learned Subordinate Judge, Second Court, Sylhet in Title Suit No. 60 of 1991, dismissing the award passed by the Secretary, Food Ministry of Sylhet on 19.01.1991, preferred this appeal.

Mrs. Nahid Hossain, the learned DAG for the appellant, upon placing the plaint along with other documents by way of her submission, brought to our notice that under the agreement, the plaintiff was liable for loss or damage of food grains as it was under his custody. It is claimed by the plaintiff that the paddy and rice were badly affected. Knowing this, an inquiry was made and a showcase notice was issued, against which no satisfactory reply was given to the appellant.

She submits that the alleged flood was false and created by the respondent in collusion with a local newspaper. However, the liability was fixed

after due inquiry. The court below did not appreciate that the alleged enquiry report was inadmissible in law, and it was a procured one, and without any lawful authority.

It has been claimed that the plaintiff respondent is liable for the entire loss, and the award could not be set aside in a suit. The Court below, in this particular case, acted without jurisdiction in setting aside the award.

She brought to our notice that under the agreement, the plaintiff/miller was bound to pay the damage, if any, to the appellant. The plaintiff can't get rid of the liability, as under clause 16 of the agreement, the plaintiff/miller was responsible for ensuring its safety, but due to the negligence of the miller, the damage was incurred. At this juncture, the plaintiff did not make any satisfactory explanation about the negligence, and as such, the impugned Judgment and decree are liable to be set aside.

She submits that the plaintiff/respondent was bound to keep all the paddy and rice in a safe place. The damaged paddy was dried and shifted to a safe place, which caused huge expenditure. But he did not submit any receipt or documentary evidence in respect of his expenditure, thus, the claim of the plaintiff is not true.

She claims that due to the negligence of the plaintiff, the paddy caused damage and consequently, the appellant lost a huge amount of taka 605140.20/, which is the public money, and as such, the appeal has to be allowed by setting aside the impugned Judgment and decree. Otherwise, the appellant/respondent would suffer irreparable loss and injury and would be highly prejudiced.

Mr. Chanchal Kumar Biswas, learned Advocate for the plaintiff/respondent No. 1-4, submits that after 3 years of the devastating flood, the Ministry of Food called an open auction to sell out stocked paddy at the rate of Tk. 28/80 per mound for the 1<sup>st</sup> category and Tk. 23/80 per mound for the 2<sup>nd</sup> category. He brought notice that one Abdur Rob, as the highest bidder, purchased the paddy, but he refused to receive the paddy. In such a situation, the plaintiff offered the defendant to purchase the said 1<sup>st</sup> category paddy at Tk. 30 per mound and 2<sup>nd</sup> category at Tk. 26 per mound, which is much more than the price fixed by the Ministry of Food. But the Ministry of Food did not agree to sell the stocked paddy to the plaintiff, which clearly proves that the Ministry of Food whimsically did not dispose of the stocked paddy. Consequently, the stocked paddy was damaged due to the whimsical decision of the then officials of the Ministry of Food. According to him, if there is any negligence to damage the stock paddy, which had been occurred at the instance of the government officials of the Ministry and accordingly as per condition No. 16, the plaintiff is

not at all responsible for damaging the stock paddy, rather the than official were responsible for the damaged caused and as such there is no reason to interfere with the impugned judgment and decree passed by the Trial Court below.

He submits that from the award it transpired that, “বাদীর মিলে রক্ষিত সরকারী ধান বন্যায় ক্ষতিগ্রস্ত হইলে বাদীর প্রার্থনানুসারে বিবাদীগণ একজন ম্যাজিস্ট্রেটকে সঙ্গে নিয়া বাদীর মিল পরিদর্শন করেন এবং ক্ষয়ক্ষতির পরিমাণ নিরূপণ করেন। বাদীর হেফাজতে রক্ষিত সরকারী সম্পত্তি যাহাতে অধিকতর বিনষ্ট না হয় তজ্জন্য বিবাদী পক্ষ ক্ষতিগ্রস্ত ধানের শ্রেণী বিন্যাসকরণ, শুকানো ইত্যাদি বিষয়ে বাদীকে পরামর্শ দেয়। বাদী উক্ত পরামর্শ মোতাবেক ধান শুকাইয়া মান অনুসারে শ্রেণী বিভাগ করেন এবং তাহার মিলের গুদামে উক্ত ক্ষতিগ্রস্ত ধান পুনরায় হেফাজত করেন।” It is at this juncture Mr. Chanchal argued that from the above findings of the arbitrator, it is crystal clear that there is no negligence on the part of the plaintiff to damage the paddy, and as such, as per condition no. 16 of the agreement, the plaintiff is not at all liable for the damage releats to the paddy.

He submits that written statements of the defendant's claims that the plaintiff misappropriated the stocked paddy, but the defendants did not produce any oral or documentary evidence to prove such allegation. He also submits that under the established principle of law, the specific case asserted in the pleadings should be proved by the party who asserted it. But defendants failed to discharge their onus, so the judgment and decree passed by the court below is tenable in the eye of law and thus the instant First Appeal may kindly be dismissed.

Under the circumstances as stated above, the appeal may be dismissed, and the judgment and decree of the Trial Court affirmed; otherwise, the plaintiff-respondents shall suffer irreparable loss and injury and will be highly prejudiced.

We have considered the submissions of the learned counsel for appellant and that of the respondents at length, perused the memorandum of appeal, including the impugned judgment and decree, and all other connected documents appended in the paper book.

On our scrutiny, it appears that the plaintiff claims there was a devastating flood on 01.07.1976, and due to such a massive flood, the adjoining area of the Surma River was affected, thereby destroying the reserved rice and paddy stored in the plaintiff mills along with other mills. In this case, four PWs were deposed, and in their statement, all of them claim there was a flood, and due to a huge amount of water in the area, including the plaintiffs' Rice Mill and Godwons are flooded, and such news, along with damage, has been covered by the weekly newspaper (Exhibit-4). Apart from that, the authority inquired into the matter, and the inquiry report (Exhibit-1) also admitted about such a flood. Furthermore, the written statement and the arbitration award clearly admit about such a flood. However, by such evidence, it appears that due to the flood, some

amount of Rice and paddy flashed out from the godown of the plaintiff, and some of those fell within the water, thus the damage occurred. However, the plaintiff will be responsible for the damage if there is any negligence.

In the context, this court examines clause 16 of the Agreement and other documents to determine whether there is any negligence on the part of the plaintiff. Clause 16 of the Agreement dated 06.12.1975 is reproduced below:

“That the Miller shall take all possible care to ensure the Safety of the Government. Property lying in his godown. If any Govt. stock is damaged due to the negligence of the Miller, the loss sustained by the Govt. on that account shall be recoverable from him as an arrear of revenue.”

From the deposition of pws, it appears পিডব্লিও-১, পিডব্লিও-২, পিডব্লিও-৩ এবং পিডব্লিও-৪ সকলেই উল্লেখ করিয়াছেন যে, বাদীর রাইছ মিলের আশেপাশে তাহাদের দোকান ঘর আছে এবং ১৯৭৬ ইয় সনের বর্নিত বন্যায় বাদীর রাইছ মিল সহ তাহাদের দোকানঘর বন্যায় প্লাবিত হইয়াছে, Exhibit-4 published a new report related to flood with a caption “সিলেট খাদ্য গুদাম জলমগ্ন.”

It is pertinent to note that apart from the above, the award of arbitration clearly observed that:

“... ”

5. Admittedly, a devastating and unprecedented flood accompanied with incessant heavy rainfall and rush of water suddenly inurdated both sides of the Surma River in Sylhet town and affected some bottom layers of foodgrains on Government account lying in the custody of the rice mills. Admittedly, the local food Department staff, as well as rice millers, tried their best to save the stock from the flood, but due to various difficulties, cent percent attempts were not successful as it was beyond human control.

...

6. Under his memo No. 3387 dated 8.7.76 D.C., Food had asked his staff to keep close supervision over the millers as regards salvaging, segregation, drying, and milling of the flood-affected paddy. S.C. Food, Sadar also issued similar instructions to his staff under his memo No. 3366(6) dated 8.7.76. It is thus presumed that such supervision precluded the possibility of pilferage or clandestine removal of stock from the place of storage. The respondent also does not claim either directly or by imputation any such clandestine removal stock.”

However, the remaining paddy and rice were taken care of by the plaintiff, but due to the late response and initiative on the part of the government official, the damage was taken place. Further, there is nothing in the record to show that the plaintiff had not taken such care of the remaining paddy and rice

and has negligence. From the above, it is clear that there was no willful negligence on the part of the plaintiff to protect the alleged paddy and rice.

Given the above facts and circumstances, the trial Court, on correct assessment of evidence, both oral and documentary, rightly dismissed the suit. This Court did not find anything to interfere with the aforesaid judgment passed by the Trial Court.

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

The judgment and decree dated 10.08.1998 passed by the learned Subordinate Judge, 2<sup>nd</sup> Court, Sylhet in Title Suit No. 60 of 1991 is hereby affirmed.

Communicate the judgment and send down the lower Court records.

Md. Riaz Uddin Khan, J:  
I agree.