Present:-
Mr. Justice Md. Riaz Uddin Khan
And
Ms. Justice Urmee Rahman

First Appeal No. 168 of 1997

Government of Bangladesh, represented by the District Controller of Food, on his behalf Officer in Charge, Saidpur Thana Food Department, District-Nilphamari
....**Plaintiff- Appellant**

-Versus-

Messers Madina Husking Mill, Saidpur, represented by Proprietor, Md. Ibrahim
.... **Defendant-Respondent**

Mr. Md. Zahirul Islam, D.A.G.
…. For the appellant
No one appeared
… For the respondent

Heard on 30.08.2026 and 03.09.2026

Judgment on 6th September, 2026

Urmee Rahman, J.

This First Appeal is directed against the judgment and decree dated 05.04.1995 (decree signed on 12.05.1995) passed by the learned Subordinate Judge, 2nd Court, Nilphamari in Money Suit No. 11 of 1994 (originally Money Suit No. 05 of 1989) decreeing the suit in part with a direction upon the defendant to make payment of the decretal amount in 12 (twelve) equal monthly installments.

Being aggrieved by the judgment and decree, the defendant-judgment debtor as appellant preferred First Appeal No. 259 of 1995 whereas the plaintiff as appellant preferred the instant First Appeal No. 168 of 1997.

It transpires from the record that the First Appeal No. 259 of 1995 was dismissed pursuant to the order dated 02.05.2006 by which 2(two) weeks time was allowed by this Division to file the appellant list, failing which the appeal would stand dismissed. Since the appellant list was not filed by the appellant despite repeated opportunities granted by this Court, the appeal was accordingly dismissed and it was recorded by the order dated 13.07.2006 as transpires from the order book of First Appeal No. 259 of 1995.

In the instant First Appeal No. 168 of 1997 notice was duly served upon the sole respondent but no one appeared till date in order to contest the Appeal. It appears from the order book that this First Appeal was made ready for hearing on 09.02.2005; however no step has been taken by the appellant until 17.08.2026, when the matter was fixed for hearing before this Bench. Since no one appeared on behalf of the respondent, this Appeal has been heard and the judgment is being pronounced *ex*

parte as per the provision of Order 41 Rule 17(2) of the Code of Civil Procedure.

The relevant facts of the case are that, the District Food Controller, on behalf of the Government, filed Money Suit No. 05 of 1989 in the Court of then Subordinate Judge, Nilphamari praying for a decree for an amount of Tk. 7,69,372.62/- against the sole defendant, namely, Messers Madina Husking Mill, Saidpur, represented by its Proprietor, Md. Ibrahim, of Upazilla-Saidpur, District-Nilphamari.

The plaintiff's case, in brief, is that, the Government, through the District Controller of Food, Rangpur, entered into a contract with the defendant on 29.08.1983 by which the defendant agreed to take delivery of paddy from the Government godown and after crushing the paddy would deliver the milled rice back to the Government as per the terms of the agreement. However, the defendant failed to deliver the total quantity of the milled rice within the stipulated time mentioned in the agreement. Clause 7 of the agreement stipulates that in case of default in delivering the rice, the Miller shall be liable to make payment double the market price of the rice. Hence, the suit.

The defendant No. 1 contested the suit by filing a written statement denying all the material allegations made in the plaint and alleging *inter alia* that, the contract on the basis of which the plaintiff has filed the instant suit has been made with some unfair and unlawful terms against the defendant and as such it is not binding upon him. Moreover, the paddy which has been supplied to the defendant was of substandard quality and most of the gunny bags, in which the paddy was supplied, were torn. The godown Officer inspected the defendant's Mill and refused to receive the rice on the ground that those were not up to the standard and directed the defendant to make delivery of the total quantity of rice within 5 (five) days. The defendant was able to crush only 7 tons of rice in the next 5 (five) days and went to deliver it to the plaintiff, who refused to receive the same stating that until the total quantity of rice is delivered, he will not receive the same. In the meantime, one criminal case was filed by the plaintiff against the defendant and he was taken to police custody. Later, when he was released from jail, the plaintiff offered him an opportunity by which he was asked to receive paddy directly from the plaintiff and crush them in his mill upon submitting a security bond to the Government for the total

amount and the crushing charge shall be adjusted with the payment which is due to the Government by the defendant. But recently the plaintiff stopped supplying the rice for which the defendant could not make full payment of the due amount. Had the Government continued to supply rice regularly, he would have been able to make payment of the due amount. In the plaint the plaintiff did not disclose the amount which the defendant already paid. Hence, the instant suit has been brought without any lawful basis and is liable to be dismissed.

During the course of the trial, the plaintiff examined only 1(one) witness, who is the Thana Food Inspector, Saidpur and produced documentary evidence marked as Exhibit-1, which is the original copy of the agreement dated 29.08.1983 between the plaintiff and the defendant and Exhibits-2 to 2(Gha), which are the receipts by which the defendant received the paddy from the plaintiff 's godown.

On the other hand, the defendant also examined 1(one) witness in support of his case, who is the Proprietor of the defendant-mill and produced documentary evidence marked as Exhibit-Ka, which is the memo dated 12.06.1990 and an application made by him before the

Secretary Ministry of Food was exhibited as Exhibit-Kha. Both the defendant's exhibits were produced with objection by the plaintiff.

This Money Suit No. 05 of 1989 was decreed *ex parte* on 15.05.1991 granting the full claim of the plaintiff against the defendant and the decree was signed on 21.05.1991. Thereafter, the defendant-judgment-debtor field Miscellaneous Case No. 43 of 1991 on 11.06.1991 under Order 9 Rule 13 of the Code of Civil Procedure praying for *setting aside* the *ex parte* Judgment and decree. The miscellaneous case was renumbered as 14 of 1994 and ultimately the Money Suit was restored and was renumbered as Money Suit No. 11 of 1994.

The learned Subordinate Judge framed as many as 5(five) issues in deciding the case, which are as follows:

1. Is there any cause of action to the suit?
2. Is the suit maintainable in its present form?
3. Is the suit barred by limitation?
4. Is the plaintiff entitled to the decree for the amount prayed for?
5. Is the plaintiff entitled to get any other remedy as per law and equity?

On consideration of the material evidence on record adduced by the respective parties, the learned Judge of the trial court was pleased to decree the suit in part on contest in the following manner:

1. The plaintiff claims to recover the double price of the rice as well as of the gunny bags but as per the terms of Clause 7 of the agreement plaintiff can claim double price of the rice only.
2. Since it appears from the document on the record that the defendant made effort in order to make payment of the due amount, he is exempted from making double price of the rice.
3. Admittedly, the defendant failed to deliver 50.189 metric ton milled rice and 1528 pieces of empty gunny bags to the plaintiff. The price per quintal of rice being 723 taka, total price for the rice would be Tk. 362866.47/- and per piece gunny bag being 14.28 taka, total price would be Tk. 21819.84/-. The plaintiff is therefore entitled to get an amount of Tk. 384686.31/- in total.

4. Since the defendant made payment of Tk. 27148.54/- for the crushing charge and paid a security amount of Tk.15000/- therefore, an amount of Tk. 42148.54/- shall be deducted from the total amount. Hence, the plaintiff would be entitled to get a decree for an amount of Tk. 342537.77/-.

5. Since the defendant prayed for installments in making payment of the amount, he is allowed to make the payment of the decretal amount in 12 (twelve) equal monthly installments.

Being aggrieved by the judgment the plaintiff has preferred the instant First Appeal.

Learned Deputy Attorney General Mr. Md. Zahirul Islam appeared on behalf of the Plaintiff-Appellant i.e. Government of Bangladesh, District Controller of Food, represented by Thana Food Officer, Saidpur, District-Nilphamari and submitted that, having regard to the fact that the plaintiff-appellant as per terms of the contract dated 29.08.1983 supplied 1,12000 Kg Irri paddy and 1805 pieces of bags to the defendant-respondent but in return he supplied only 20,754 Kg

husked paddy and 277 pieces of bags in violation of clause 7 of the agreement and as such the appellant is entitled to get back 50,189 Kg husked paddy along with 1528 pieces bags amounting to Tk. 769327.62/- but the learned court below without discussing the evidence decreed the suit in part for an amount of Tk. 342537.77/- which is liable to be *set aside.*

He next submitted that, clause 7 of the agreement (Exhibit-1) stipulated that in case of failure to deliver the husked paddy in time the respondent is bound to pay compensation two times of the market value but the learned court below misconstruing the Exhibit-1 and on mere surmises held that the defendant-respondent is entitled to get exemption from making payment of compensation. As such the impugned judgment is liable to be set aside.

He finally submitted that, the learned court below failed to apply judicial mind into the facts and circumstances of the case and partly decreed the suit on mere surmise and conjecture and not on the basis of the evidence on record. Hence the instant appeal is liable to be allowed setting aside the judgment and decree passed by the trial court.

We have heard the learned Deputy Attorney General for the appellant and gone through the memo of appeal and the grounds set forth therein, the judgment and decree appealed against as well as the Lower Court Records (L.C.R.).

None appeared for the Respondent.

On meticulous examination of Lower Court Records we find that, on 29.08.1983 an agreement was entered into between the Government of People's Republic of Bangladesh through the District Controller of Food, Rangpur and Messers Madina Husking Mill, represented by its Proprietor, Md. Ibrahim. It was stipulated in the agreement that on delivery of the paddy the Miller shall have to account for the paddy received and rice husked out of it in the 60:38 ratio for the Irri paddy (Exhibit-1) and from the Exhibits-2 to 2(Gha), it appears that a total amount of 1,12,000 Kilogram of Irri paddy was delivered to the Miller in 1805 gunny bags. The plaintiff claims that although as per the ratio mentioned in the agreement the Miller was supposed to deliver 70934 Kg of rice but he actually delivered only 20754 Kg. Therefore, there has been a deficit of 50189 Kg of rice. Upon deducting the amount of rice actually received by the plaintiff from the amount to be delivered by the

Miller we find that, the difference is 50180 Kg not 50189 Kg. There has been a clear miscalculation regarding the deficit amount of rice to be delivered by the defendant.

In order to prove the case, the plaintiff produced the original copy of the agreement and the receipts by which the paddy was delivered to the defendant but did not produce any document in order to substantiate their claim as to the amount of rice delivered back by the defendant to the Government. However, the defendant in his cross-examination as D.W.1 admitted the fact that he could deliver only 20754 Kg of rice to the plaintiff. The relevant part of the deposition of the D.W.1 is quoted below:

"আমি বাদিপক্ষের সহিত ফলিত চাউল প্রদানের জন্য একটি চুক্তি করি এবং ১৫,০০০/- টাকা সিকিউরটি জমা দেই। চুক্তিতে উল্লেখ থাকে যে চুক্তি সময়ের মধ্যে ফলিত চাউল দিতে না পারিলে দ্বিগুন হারে মূল্য পরিশোধে বাধ্য থাকিব। চুক্তি পত্রে আমি ৫ দফায় ১১২ মে: টন ধান গ্রহন করি। বস্তা ছিল ১৮০৫ টি। উক্ত ধান মূল্যমানে প্রতি কুইন্টাল চাউলের মূল্য ছিল ৭২৩.০০ টাকা। বস্তার দাম ছিল প্রতিটি ১৪.২৮ টাকা। আমি বাদিপক্ষের গোডাউনে ফলিত চাউল দিয়াছি ২০.৭৪৫ মে: টন, বস্তা ছিল ২৭৭ টি। বাদিপক্ষ আমার নিকট হইতে ৫০.১৮৯ মে: টন ফলিত চাউল পাইবে। খালি বস্তার পাওনা রহিয়াছে ১৫২৮ টি।"

It also appears from Exhibit-Kha produced by the defendant that an application was submitted by him before the Secretary of Ministry of Food in which he clearly admitted the plaintiff's claim regarding the deficit amount of rice to be delivered by him.

Hence, it is admitted by the defendant that he has failed to perform in accordance with the terms of the agreement.

Clause 7 of the agreement dated 29.08.1983 (Exhibit-1) provides as follows:

> *"7. That the value of any short delivery of rice beyond the permissible refraction allowance provided for in clause 6 shall be compensated by the Miller at double the market price of rice prevailing at the time during which the loss occurs or at double the ex-godown rate of the Government, whichever is higher, within 30 (thirty) days of detection of the shortage. If the Miller fails to compensate for the short delivery, the security deposit of the Miller shall be liable to forfeiture in part or in full and the Miller shall be liable to criminal prosecution on the charge of breach of trust."*

Considering the terms of the clause we find that, for failure of performance as per the stipulated terms of the contract the defendant is liable to make payment of the rice at double the market price as has been

rightly claimed by the plaintiff, but since there is no stipulation of making double payment for the gunny bags, the plaintiff is only entitled to get the single price for the 1805 gunny bags at the rate of 14.28 Taka per piece. The trial court rightly came to the finding in this regard.

However, from the judgment of the court below it appears that, the learned Subordinate Judge relied on the third case made out by the defendant and exempted him from making payment at the double rate of the market price for the rice considering that the defendant made effort in making payment of the due amount to the Government. While arriving at this finding the learned Judge relied on the application so made by the defendant before the Secretary of Ministry of Food (Exhibit-Kha) and a statement made by the P. W. 1 in his cross-examination. The learned Judge of the trial court held that the P.W. 1 admitted in his cross-examination regarding a further contract with the defendant by which he was allegedly given an opportunity to make payment of the due amount.

On perusal of the deposition we find that the P.W. 1 in the last line of his examination-in-chief stated that:

"..... সত্য নয় যে, বিবাদীর সহিত নগদ মূল্যে ধান সংগ্রহ ও বাদী পক্ষ হইতে ভাঙ্গানো বাবদ প্রাপ্য সমন্বয় হইবে মর্মে চুক্তি হয়।"

And in the first line of the cross-examination he stated that:

‘‘ বিবাদী সঞ্চয়পত্র জমা দিয়া সরকারী ধান ক্রয় করিয়া চাউল জমা দিবেন ও ক্রাশিং মূল্য বাদীর পাওনা হইতে সমন্বয় করা হইবে মর্মে ১টি চুক্তি হয়। উক্ত সঞ্চয়পত্রগুলি জেলা খাদ্য নিয়ন্ত্রকের নিকটে জমা আছে।.....’’

The trial court in his judgment held that:

> *‘‘.....বিবাদীর দাখিলকৃত একজিবিট-খ (আপত্তি) চিহ্নিত দরখাস্তটির বর্ননা হইতে দেখা যায় যে, তিনি মাননীয় সচিব খাদ্য মন্ত্রণালয় বরাবর আবেদন করিয়াছেন তাহাতে তিনি ২৭১৪৮/৫৪ টাকা ক্রাশিং চার্জ মাধ্যমে তাহার পাওনা হইতে সমন্বয় করিয়াছেন মর্মে ব্যক্ত করিয়াছেন। নথি দৃষ্টে প্রতীয়মান হয় যে, বিবাদীপক্ষ গত ১১.০২.৯৫ ইং তারিখে হলফনামাসহ বাদীপক্ষের নিকট হইতে চাউল জমা দিবার কাগজ পত্র সমূহ তলব করেন এবং আদালত বাদীপক্ষকে বিবাদীপক্ষের তলবকৃত কাগজ পত্র ২৫-০২-৯৫ ইং তারিখে দাখিল করিবার আদেশ দেয়। কিন্তু বাদীপক্ষ সে সমস্ত কোন তলবি কাগজ পত্র দাখিল করে নাই বা তলবী কাগজ সম্পর্কে কোন ব্যাখ্যা প্রদান করে নাই। সে কারনে বিবাদীপক্ষ পরবর্তীতে ধান গ্রহন করিয়া ক্রাশিং চার্জ বাবদে ২৭,১৪৮/৫৪ টাকা তাহার পাওনা হইতে সমন্বয় করিয়াছে মর্মে বিশ্বাসযোগ্য হইতেছে।’’*

On perusal of the corresponding application dated 11.05.1995 referred by the learned Judge of the trial court we find that, an application was made by the defendant on that date praying for production of certain document by the plaintiff on which he is relying to establish his case of entering into a further contract with the Government after getting out of the jail. In the schedule to that application it has been stated that:

''তলবীয় কাগজাদি (১) মোঃ ইব্রাহিম, প্রোপ্রাইটর মেসার্স মদিনা হাসকিং মিল, সৈয়দপুরের প্রদত্ত সঞ্চয়পত্র, চুক্তিনামা ও চাউল জমা দিবার কাগজাদি সমূহ।''

We find this application as unspecific and vague inasmuch as there is no description as to which security bond, agreement and receipts the defendant had mentioned. On the basis of such unspecific and vague application there was no scope for the plaintiff to produce any document before the court. Moreover, from the application made by the defendant before the Secretary of Ministry of Food, we find that there is no seal or signature showing that the application was actually received by the concerned office of the Secretary. There is no postal receipt showing that it was sent by post. The defendant could not produce a scrap of document in support of this claim.

It appears that the learned trial court has placed reliance solely on the statement made by the P.W. 1 in his cross examination and held that the alleged subsequent contract was proved. When the defendant failed to produce any evidence whatsoever in order to prove the alleged third case made out by him, such statement made by the P.W. 1 in cross examination could not, by itself, be treated as proof of the entire claim set up by the defendant, particularly as regards the terms of the alleged contract and the alleged deposit so made by him. We therefore, find that the learned judge of the trial court has misappreciated the evidence.

The learned judge of the trial court further deducted the amount of security deposit made by the defendant at the time of entering into the contract. However, we have already seen from Clause 7 that in case of default the security money shall be forfeited against the Miller. Therefore, there is no scope to deduct the amount.

Hence, we find that the plaintiff has been able to prove it's case so far as the price of the rice to be paid at a double rate of the market price by the defendant and for the due price of the gunny bags at a single rate.

Therefore, the decretal amount stands as follows:

> 50180 Kg or 501.89 quintal rice in total
>
> Price per quintal 723 taka, thus double price would be (723×2)=1446 taka per quintal.
>
> Hence, 501.89 X 1446 = 7,35,770.74 taka for rice; and
>
> 1528 bags X 14.28 taka per piece = 21819.84 taka, for gunny bags.

In total an amount of (7,35,770+21,819·84)=**7,57,589.84/- taka** with cost in favour of the plaintiff.

In view of the fact and circumstances and the discussion made hereinabove, we find merit in this appeal. Accordingly, the appeal is allowed. The impugned judgment and decree dated 05.04.1995 (decree signed on 12.05.1995) passed by the learned Subordinate Judge, Second Court, Nilphamari in Money Suit No. 11 of 1994 is hereby set aside.

Accordingly, the Money Suit No. 11 of 1994 be decreed in part against the defendant for an amount of **7,57,589.84/- taka** with cost in favour of the plaintiff .

The defendant-respondent is hereby directed to deposit the decretal amount before the concerned court within 90 (ninety) days from the date of receipt of a copy of this judgment by the trial court. In default of such payment within the stipulated period, the plaintiff shall be at liberty to realize the decretal amount in accordance with law through the process of execution.

Let the Lower Court Records (LCR) be sent down to the Court concerned forthwith along with a copy of this judgment and order.

Md. Riaz Uddin Khan, J.

I agree.

Helal/Abo