

Bench:

Mr. Justice Bhishmadev Chakrabortty

And

Mr. Justice Md. Akhtaruzzaman

First Appeal No.38 of 1997

Rupali Bank Limited appellant

-Versus-

Mostafa Sarwar Jahan (Babul) and others

.....respondents

Mr. Md. Imam Hasan with

Mr. Md. Shahinul Islam, Advocates

.....for the appellant

No one appears for the respondents

Judgment on 06.11.2023

Bhishmadev Chakrabortty, J.

This appeal, at the instance of plaintiff Rupali Bank Limited (the bank), is directed against the judgment and decree dated 11.09.1996 passed by the Subordinate Judge and Artha Rin Adalat, Jamalpur (the Adalat) in Money Suit No.52 of 1993 decreeing the suit in part.

Facts relevant for disposal of the appeal, in brief, are that the predecessor of respondents 1(a)-1(c) Mostafa Sarwar Jahan (the borrower) maintained an account with the aforesaid bank. He applied for a loan to the bank on 07.03.1983. The loan was sanctioned for Taka 20,000/- on 28.03.1983. The borrower signed in the necessary documents. In addition to that he signed in the charge form and deposited the relevant documents in respect of .07 acres of land as detailed to the schedule of the plaint as collateral security. The land

originally belonged to defendants 2 and 3. In the agreement interest was imposed at 16% per annum. It was stipulated in the contract that the borrower would repay the loan with interest within 28.09.1983. But he did not repay the amount. The bank then issued notices upon him for payment. Lastly on 19.04.1993 the bank sent a legal notice to him which he received but he did not pay the amount due. The bank calculated the amount due to the borrower at Taka 1,38,160/- up to 22.06.1993 and then instituted Money Suit No.52 of 1993 in the Adalat for a decree of the aforesaid amount with 20% interest till its realization.

The defendants did not appear in the suit to contest it, although, the heirs of defendant 1 were substituted and made parties to the suit.

In course of trial the bank examined 01(one) witness PW1 and exhibited the necessary documents exhibits 1-8 in support of the claim. The learned Judge of the Adalat considering the evidence and other materials on record decreed the suit *ex parte* on 11.09.1996 for Taka 30,960/- with 6% interest till its realization.

Being aggrieved by the bank approached this Court with the present appeal.

Mr. Md. Imam Hasan, learned Advocate for the appellant taking us through the materials on record submits that the principal amount and interest as calculated by the learned Judge of the Adalat

do not support exhibit-8, the bank statement and as such the impugned judgment and decree cannot be sustained in law and the suit be decreed in full as claimed by the appellant bank. He then submits that in the sanction letter interest was imposed at 16%. The sanction letter is a contract between the bank and borrower and the Adalat cannot go beyond it. He refers to the provisions of section 30 of the Bank Company Act, 1991 and submits that the Adalat has no power to waive interest of the borrower. In the aforesaid premises, the appeal should be allowed and the suit be decreed in full in terms as claimed by the bank.

No one appears on behalf of the respondents.

We have considered the submissions of the learned Advocate for the appellant, gone through the materials on record and the relevant law as referred to. It is admitted position of fact that the borrower applied to the bank for loan on 07.03.1983 and the bank sanctioned Taka 20,000/- on 28.03.1983. As per the contract, the borrower was to repay the loan amount to the bank with interest within 28.08.1983 but he did not do it. The bank instituted the suit on 16.08.1993 which it could have filed on 29.09.1983 while the fixed time for repayment just expired. We do not find from the documents submitted and exhibited by the bank that subsequently the loan amount was increased or any supplementary contract was signed between the parties but the statement submitted by the bank exhibit-8

shows that the borrower took Taka 34,650/- in total. We do not find any basis of such claim. The learned Advocate for the appellant referring to the provisions of section 30 of the Bank Company Act, 1991 submits that the Adalat has no authority to waive the interest. But in fact the Adalat did not waive interest, it has calculated the interest upon the borrowed amount exercising its power. It is found that Taka 20,000/- was taken as loan by the borrower and he deposited Taka 9,328/-. The suit was filed under the provisions of Artha Rin Adalat, 1990 where no provision for calculating interest has been provided for. As per the Ain, 1990 in the absence of any specific provisions laid therein the provisions of the Code of Civil Procedure (the Code) shall come into play. Here, the Adalat exercised its jurisdiction under section 34 of the Code. Under section 34 of the Code the learned Judge has the authority to fix interest considering the facts and circumstances of every case. In the case of M/S MM Ispahani Vs. Sonali Bank and others, 37 DLR (AD) 1, it has been held-

“S.34

Payment of interest from the date of the suit to the date of decree and then till realization is in the discussion with the Court-Appellate Division in the present case disallowed all interests not only from the date of the suit till realization but of the period prior to that.”

From the impugned judgment, we also find that the learned Judge of the Adalat applied the provisions of Usurious Loans Act, 1918. Sub-section 3 and 3(a) of section 2 of the aforesaid Act, 1918 reads as follows-

“2(3) "Suit to which this Act applies" means any suit- that

(a) For the recovery of a loan made after the commencement of this Act;”

So the learned Judge of the Adalat may apply the provisions of this Act in cases of usurious loans. It is a fact that the borrower had taken loan of Taka 20,000/- and paid Taka 9,328/- but the bank after waiting years together calculated interest upon the aforesaid amount and claimed Taka 1,38,160/- with interest which is very unusual and not legal. The learned Judge of the Adalat correctly calculated the principle amount and interest imposed upon it and held that the plaintiff is entitled to Taka 30,960/- with 6% interest from the date of failing of the suit till its realization.

In view of the aforesaid discussion, we find no merit in this appeal. Accordingly, the appeal is dismissed. The judgment and decree passed by the Adalat is hereby affirmed. It is to be noted here that the bank presented this appeal in the year 1997 but did not take any step for its early disposal. In view of the aforesaid facts, if any execution case is filed in future for realization of the decretal

amount, the bank will not get interest from 1997-2023 while appeal was pending before this Court.

Under the facts and circumstances, the judgment and decree passed by the Adalat is affirmed with the observation made hereinabove.

Communicate the judgment and sent down the lower Court records.

Md. Akhtaruzzaman, J.

I agree.