

Present:

Mr. Justice Sheikh Abdul Awal
and

Mr. Justice Md. Rafizul Islam

In the Matter of:

First Appeal No. 369 of 2012

Manager, Sonali Bank Limited

.....Plaintiff -appellant.

-Versus-

Manager, Pubali Bank Limited and others.

.....Defendant-respondent.

Mr. Ali Haider Shoib, Advocate on behalf of

Mr. Monjur Elahi Porag, Advocate

..... For the appellant.

Ms. Sufia Ahmed, Advocate

..... For the Respondent No.1.

Heard on 13.05.2026 and Judgment on 18.05.2026.**Md. Rafizul Islam, J:**

This First Appeal is directed against the impugned judgment and decree dated 08.07.2012 (decree signed on 15.07.2012) passed by the learned Joint District Judge, Joint District Judge Court, Nilphamari in Money Suit No.03 of 2009.

Facts, relevant for disposal of this Appeal, in brief are that, the appellant Manager, Sonali Bank Limited as plaintiff instituted the money suit being Money Suit No.03 of 2009 in the Joint District Judge Court, Nilphamari against the defendants for recovery of money amounting to Tk. 7,40,000/- (seven lacs and forty thousand) from the defendants No.1-3. The Bangladesh Bank has no branches all over the country and for that reason Sonali Bank Limited performs the function of Bangladesh Bank and in this regard the activities as to accounts of other Banks are maintained by Sonali Bank Limited and that without getting license from Bangladesh Bank no organization of Bangladesh

can run monetary business in Bangladesh. The defendant No.1 having placed fake and forged demand draft in the name of their account holder A.K.M. Habibur Rahman, proprietor of M/S. H.R. Construction took away of Tk.7,40,000/- (seven lacs and forty thousand) from the plaintiff's Bank. The defendant No.1 Pubali Bank, Nilphamari Branch placed the exchange Bahrain demand draft No.1331313, dated 23.11.2006 of Tk. 5,00,000/- (five lacs) and draft No.1329619, dated 02.12.2006 of Tk. 2,40,000/- (two lacs and forty thousand) total Tk.7,40,000/- (seven lacs and forty thousand) submitted by the defendant No.2 in their account No.715 maintained in the plaintiff's Bank and took away the said Tk.7,40,000/-. The beneficiary of the said amount being defendant No.2 and the defendant No.3 who gave co-operation in opening the account of defendant No.2 and finally they collusively misappropriated Tk.7,40,000/- of the plaintiff's Bank. Thereafter, the plaintiff's Bank for collection of the said money sent the instruments to the Head Office and Wage Earners Corporate Branch, Sonali Bank Limited, 26, Dilkusha Commercial Area, Dhaka and the Head Office on 21.05.2008 informed the plaintiff that the said 2 (two) drafts were forged and thereafter, the plaintiff's Bank having asked the defendant No.1 to return the money as withdrawn earlier by him under the said forged and fake drafts. The defendant No.1 requested the plaintiff to realize the money from defendant No.2 and collaborator defendant No.3, but long days having passed after the said request the money was not returned and under this situation plaintiff's Bank on 17.11.2009 issued legal notice upon them and that the defendants having not paid back the money, the plaintiff immediately after receiving the letter from Head Office brought the instant suit praying for adjustment of the said money with the money kept in the account No.715 maintained in the plaintiff's bank by the defendant No.1.

The suit was tried by the learned Joint District Judge, Joint District Judge Court, Nilphamari. The plaintiff examined 1 witness and produced documents to prove his respective case. After conclusion of trial, the Trial Court on 08.07.2012 decreed the suit *exparte* against the defendant No.2.

Being aggrieved by and dissatisfied with the impugned judgment and decree dated 08.07.2012 passed by the learned Joint District Judge, Nilphamari, the plaintiff filed this First Appeal before this Court.

Mr. Ali Haider Shoib on behalf of Mr. Monjur Elahi Porag, the learned Advocate appearing for the appellant submits that the trial court committed error in decreeing the suit only against defendant No.2 by allowing defendants No. 1 and 3 going outside of the liability of misappropriating the claimed money amounting to Tk.7,40,000/- upon the finding that the plaintiff Bank should have examined and inquired as to the genuineness of the deposited 2 F. D. D before payment of the money and in this regard collusiveness between defendant No. 2 and defendant No. 1 and 3 had not been proved. He further submits that defendant No.1 had also responsibility to find out the genuineness of the impugned 2 F.D.D before depositing the same in their account maintained with plaintiff Bank and as such, the trial court committed miscarriage of justice for which the finding of innocence given in favour of defendant No. 1 is liable to be set aside and the impugned judgment is liable to be modified.

Ms. Sufia Ahmed, the learned Advocate appearing for the respondent No.1 submits that the defendant No.2 is liable for withdrawing Tk.7,40,000/- (seven lac and forty thousand) upon placing forged and fake F.D.D. and the defendant No.1 and 3 are not liable for the aforesaid transaction and for the negligence and co-operation of employee of the Sonali Bank Limited, Wage Earners

Corporate Branch. She again submits that the defendant No.1 and 3 have no lawful mechanism to examine the F.D.D to ascertain the F.D.D whether the same is fake or genuine and it was the legal duty of the plaintiff (the employee of Wage Earners Corporate Branch) to examine the F.D.D before the disbursement of the money but they failed to do the same. She further submits that the plaintiff failed to produce any oral and documentary evidence to prove their respective case so far relates to the defendant No.1 and 3. She next submits that the trial court appropriately and lawfully passed the impugned judgment and decree on 08.07.2012. She concludes that the appeal has no merit and the same is liable to be dismissed.

We have considered the submissions of the learned Advocates and perused the materials on record including the judgment and decree.

It appears from the record that the plaintiff instituted the suit claiming a sum of Tk.740,000/- alleging, inter alia, that defendant No.1, Pubali Bank Limited, sent two bank drafts to the plaintiff bank for verification of authenticity. On 04.12.006 and 22.12.2006, the plaintiff bank disbursed the disputed amount and the defendant No.1 disbursed the same to the defendant No.02 on the basis of the plaintiff bank's disbursement. But after two years, on 21.09.2008, the head office of the plaintiff bank informed the plaintiff bank that those 2 F.D.D were forged. So, it transpires that the very foundation of the plaintiff's claim rests upon the allegation that the two bank drafts were forged.

In the instant suit it transpires that defendant No.1 had no lawful mechanism to examine the F.D.D whether the same is fake or genuine and it was the legal duty of the plaintiff bank to examine the F.D.D before the disbursement of the amount. The plaintiff had scope to

examine the F.D.D with Exchange Bahrain before disbursement the amount but they failed to do the same.

On scrutiny of the record it is evinced that although the plaintiff alleged that the bank drafts were fake and forged, no documentary evidence whatsoever was, produced before the court below to prove such allegations. Neither the alleged original drafts nor any expert opinion, verification report, internal correspondence, audit report or other relevant banking documents were exhibited in support of the claim.

It is now well settled that mere assertion in the plaint cannot take the place of proof. The burden squarely lies upon the plaintiff to establish its claim by reliable and cogent evidence. In the instant case, except mere assertion, there is no legal evidence to show that the defendant No. 1 acted negligently or fraudulently in sending the drafts for verification.

The learned trial court upon assessment of the scanty evidence on record, decreed the suit *exparte* against the defendant No. 2. The plaintiff having failed to produce the primary documents relating to the alleged forged drafts cannot legitimately claim a decree against the defendants merely on the basis of allegation.

It is a settled principle of law that even in an *exparte* proceeding the plaintiff must prove its case independently by reliable evidence. *Exparte* decree cannot be passed merely because the defendant did not contest the suit.

In the instant case, the plaintiff utterly failed to discharge the burden of proof and the defendant No.1 had no fault in disbursing the disputed amount to the defendant No.2. Therefore, the impugned judgment cannot be sustained in law.

Moreover, the learned trial Court travelled beyond its jurisdiction in directing initiation of departmental proceeding and criminal case in absence of evidence and without any competent inquiry.

In view of foregoing discussion, we find reason to interfere with the impugned judgment and decree of the court below. Accordingly, the impugned judgment and decree are liable to be set aside. This appeal has no merit and the same should be dismissed.

In the result, the appeal is dismissed without any order as to costs. The impugned judgment and decree dated 08.07.2012 (decree signed on 15.07.2012) passed by the learned Joint District Judge, Nilphamari in Money Suit No.03 of 2009 is hereby set aside and that the suit is also dismissed without any order as to costs.

Since the appeal is dismissed, the connected Rule being Civil Rule No. 285 (F) of 2015 is also discharged. The order of stay granted earlier by this Court stands vacated.

Communicate this order at once.

Sheikh Abdul Awal, J:

I agree.