Bench:
Mr. Justice Bhishmadev Chakrabortty
And
Mr. Justice Md. Akhtaruzzaman

First Appeal No.02 of 2014
with
Civil Rule No.187(F) of 2014

The ICB Islami Bank Limited and another
.....appellants
-Versus-
Md. Motazzarul Islam (Mithu) and another
..... respondents
And
First Appeal No.15 of 2014

Md. Motazzarul Islam (Mithu)
..... appellant
-Versus-
The ICB Islami Bank Limited and another
..... respondents

Ms. Shahanara Bhuiyan with Mr. Mizan-Ur-Rashid, Advocates ..... for the appellants

[In FA No.02 of 2014, respondents 1 and 2 in FA No.15 of 2014 and petitioners in the Civil Rule]

Mr. Md. Zahurul Islam Mukul with Mr. Harun-or-Rashid, Advocates ..... for respondent 1

[In FA No.02 of 2014, appellant in FA No.15 of 2014 and Opposite party in the Civil Rule].

Judgment on 07.03.2024.

Bhishmadev Chakrabortty, J.

Since both the appeals and the Rule have arisen out of the selfsame judgment and decree and the parties thereto are same, these have been heard together and are being disposed of by this judgment.

First Appeal No.02 of 2014 preferred by the defendant bank is directed against the judgment and decree dated 03.10.2013 passed by the Joint District Judge, Court No.1, Dhaka in Money Suit No.71 of

2009 decreeing the suit in part. The borrower plaintiff has preferred First Appeal No.15 of 2014 against the selfsame judgment and decree being displeased with the inadequate decree.

The plaint case, in brief, is that the plaintiff is a reputed businessman, a famous entrepreneur, a renowned contractor, a big manufacturer, a tobacco seller and suppliers. Defendant 1 is the Bangladesh Bank who has supervisory control all over the Banks and financial institutions of this Country. Defendant 2 is the ICB Islamic Bank Ltd., Head Office, Dhaka formerly known as Oriental Bank Ltd. who has provided loan facilities to the plaintiff's firm through its VIP Road Branch, defendant 3. The plaintiff had maintained accounts and enjoyed loan facilities with Arab Bangladesh Bank Ltd. for business transaction. During his business with the aforesaid Bank. a good relationship of the then Managing Director Kayes Sami and other higher officials of the Bank was developed with him. The above named officials subsequently joined in the then Oriental Bank Ltd. and requested him to open an account with their Bank. In their request he opened an account therein and had been continuing business transparently with the Government and others financial institutions. He became the highest taxpayer of the Country and got award for it. He opened an account with the bank of defendant 3 bearing AC No. 006-133-000-34-301 (in brief 301) for his business purpose. He used to take Bai-Muajjal loan (BM) from the bank against his work order and for that purpose he had to submit the cheques issued against the

work order. On his prayer for enjoying BM facility the bank sanctioned Taka 60.00 lac to him. Subsequently on his prayer the facility was enhanced to Taka 1.20 crore on 15.05.2003 in the name of his firm M/S Motazzarul Islam (Mithu) through sanction advice. He was provided the loan with the sureties by signing in the necessary charged documents. Defendant 2 opened three loan accounts for the aforesaid loan of Taka 1.20 crore bearing No.0006-425-00057184 (in brief BM 776/03), 0006-42500056944 (in brief BM 752/03) and 000 642 500057210 (in brief BM 777/03) without plaintiff's knowledge with *malafide* intent. At the time of taking loan defendant bank took several blank cheques with plaintiff's signatures. After completion of the supply work, the plaintiff obtained the bills and those were credited into his account of Lexicon Merchandise bearing CD Account No.301. The Bangladesh Bank issued 3(three) cheques amounting to Taka 30,41,061.00, 3,45,52,316.00 and 3,64,927.00 all dated 30.06.2004 of total Taka 3,79,58,845.00 against his work order. Defendants 2 and 3 transferred Taka 16,72,928.53, Taka 39,57,026.11, Taka 2,96,45,582.46 and Taka 5,38,093.02 *i.e.*, total Taka 3,58,13,630.12 from the plaintiff's account against the sanctioned loan of Taka 1.20 crore. According to the sanctioned letter 14% interest on the loan amount stood at Taka 18,20,000.00 on 30.06.2004. The principal amount and the interest payable to the defendant bank thus stood at Taka 1,38,20,000.00. But the defendant in the meantime debited Taka 3,58,13,630.12 from the plaintiff's

account and as such withdrew Taka 2,19,93,630.12 in excess than it was entitled to. But the defendant bank illegally claimed Taka 6,74,62,000.00 in the plaintiff's loan account as classified account holder. The bank authority misappropriated huge amount of other clients for which the Chairman of the bank was tried on the charge of corruption and sentenced to imprisonment. Consequently the Bangladesh Bank took over the management and control of the bank. During the regime of caretaker government in 2007 defendant bank compelled the plaintiff to deposit Taka 50.00 lac on 13.03.2007 as down payment of the illegal claimed amount to classify the so-called defaulted amount. Defendant bank by its office memo dated 09.04.2007 arbitrarily and illegally treated the plaintiff as defaulter for the sanctioned loan amount and fixed up liability of Taka 6,22,10,749.47 after deducting the amount of Taka 50.00 lac. It had taken away the entire loan amount with interest including excess amount of Taka 2,19,93,630.12 from the plaintiff's account on 13.06.2004 and, thereafter, by setting up an illegal claim fixed liability and compelled him to pay the aforesaid amount showing him as classified borrower. The defendant bank encashed MTDR amounting to Taka 45.00 lac without plaintiff's knowledge. He deposited in his account Taka 3,45,52,316.00 and Taka 3,64,927.00 on 30.06.2004 and Taka 95,45,700.00, Taka 2,30,26300.00 on 28.03.2005 through cheques which he received against work order. So the plaintiff should have Taka 5,73,87,719.00 with 14% interest on

28.03.2005. The defendant bank illegally withdrew taka from the plaintiff's account and transferred it in the three accounts created by it. The amounts were withdrawn after 30.06.2004. The plaintiff had no loan liability but the bank debited Taka 60.00 lac, Taka 80.00 lac and Taka 70.00 lac on 29.03.2005 and Taka 50.72 lac and Taka 65.00 lac on 30.03.2005 in cash and the liability of the plaintiff as shown on 29.03.2005 in AC Nos. 1005/04,777/03 and 776/03, therefore, is of no legal basis. The plaintiff claimed that he came to learn in the first week of June 2006 about the bad condition of the bank. He met with the higher authority and sat in a meeting while the officials of the bank assured him that they would adjust the amount to his account which they have withdrawn. He also came to learn that the bank would be winding up and its control and management would be taken over by the Bangladesh Bank. He wrote a letter to defendant bank on 11.07.2006 making some queries about his account and requested them to provide statement of his account but the bank did not make any response. He again wrote a letter to the bank about unusual transfer in his account by the bank authority and requested them to conduct an inquiry but all his steps went in vain. The bank is still creating pressure upon him to adjust the full amount. The plaintiff wrote a letter to the bank on 04.05.2008 requesting to inspect the account by special team but all ended in vain. The plaintiff did not draw any amount from his account after 28.03.2005 and his outstanding balance on that day stood at Taka 5,73,87,719.00 which

was enhanced to Taka 10,73,24,735.00 with 14% interest per year up to 28.09.2009 and as such he is entitled to get decree of Taka 11,44,72,536.00 against the bank. Hence the suit for recovery of the aforesaid amount with 14% interest till its realization showing cause of action on 11.11.2009, *i.e.,* the day defendant bank finally refused to adjust the plaintiff's deposited amount.

Defendants 2 and 3, the bank contested the suit by filing a set of written statement denying the statements made in the plaint. They contended that the suit is barred by limitation. Apart from CD Account No.301 the plaintiff opened another account in the name of Lexicon Merchandise bearing CD Account No.0006.136.0002159 (in brief AC No.159) with the same branch. At the plaintiff's request the defendant sanctioned a loan of Taka 60.00 lac which was subsequently enhanced to Taka 1.20 crore with some conditions. In Islamic banking business a separate account is to be opened for any BM facilities because such system is revolving in nature and has a tenure of one year. After approval of the loan on 13.07.2003, three accounts were opened in the plaintiff's name and cheque books were issued for the CD account which should be in his safe custody. The plaintiff did not provide any documents to the bank but by putting his signatures issued some blank cheques. The plaintiff subsequently withdrew money from the account of Lexicon Merchandise by issuing cheques. It is the mere practice of the bank that CD account will be debited through vouchers and issued cheques. The bank was not able

to perform the transaction because the plaintiff withdrew fund from the CD account. There is no indication that the bank officials withdrew any amount illegally from the plaintiff's account. The plaintiff deposited Taka 50.00 lac in 2007 for reschedulement of his account and thus admitted the loan liability of the bank. The claim of the plaintiff is baseless, without any documents and as such the suit would be dismissed.

The Joint District Judge on pleadings framed the following issues to adjudicate the matter in dispute:

I. Whether the suit is maintainable in its present form?

II. Whether the suit is barred by limitation?

III. Whether the plaintiff is entitled to get prayed amount of money?

In the trial, the plaintiff examined one witness PW1 Md. Abdul Quddus and produced his documents exhibits-1-9 while the defendant bank examined a witness DW1 Md. Mojibur Rahman and produced documents exhibits-Ka-Cha series. However, the Joint District Judge decreed the suit in part holding that the plaintiff shall get an amount of Taka 4,55,56,6394.00 with 14% interest till realization from defendants 1 and 2 and directed them to pay it.

Against the aforesaid judgment and decree the defendant bank preferred First Appeal No.02 of 2014 while the plaintiff preferred First Appeal No. 15 of 2014 raising grievance of inadequate decree.

The defendant bank also filed an application for staying the operation of the impugned judgment and decree passed by the trial Court upon which the aforesaid Rule was issued and operation of judgment and decree has been stayed.

Ms. Shahanara Bhuiyan, learned Advocate for the appellant in First Appeal No. 02 of 2014 taking us through the materials on record submits that the plaintiff instituted the suit claiming Taka 11,44,72,536.00/- with 14% profit till its realization. The suit for recovery of money is hopelessly barred by limitation under Article 60 of the Limitation Act, 1908. Under the aforesaid provision of law the period of limitation of filing a suit is three years from when the demand was lastly made. Even the statements made in the plaint are considered to be true, it is found that in the month of June 2006 he came to learn about the overall condition of the bank and met with its higher authority. He requested them to adjust his account but the authority expressed their inability showing cause that the Bangladesh Bank would acquire the bank. The plaintiff demanded money to the bank in the month of June 2006 and was refused then and there. The suit for recovery of money would have been instituted within 3(three) years *i.e.,* by May/June 2009 but it was filed on 26.11.2009. Although, the trial Court framed an issue on limitation but did not pass any decision on it. The plaintiff opened CD Account No.848 on 02.04.2003 for his proprietorship firm M/S Md. Motazzarul Islam. He opened another account in the name of his other sole proprietorship

M/S Lexicon Merchandise on 22.07.2003 for business purpose and its account number was CD 301. The loan was sanctioned initially on 12.05.2003 for Taka 60.00 lac in the account of M/S Motazzarul Islam (Mithu) through sanction advice which was increased to Taka 1.20 crore and was followed by several 'Restructuring with Enhancement' and renewals more than the amount stated in the plaint. The first disbursement of the loan was transferred from BM Hypo AC No.752/04 to the current account of the borrower bearing CD No.848 of M/S Motazzarul Islam amounting to Taka 5.00 lac. The plaintiff did not mention the loan facilities he availed in the name of M/S Lexicon Merchandise. The borrower sent a request for approval of BM facility for Taka 1(one) crore and issuance of pay order of Taka 41.00 lac against work orders. On the same day he made a proposal for approval of BM facility and it accorded post-facto approval on 14.01.2004. The first disbursement was made on 10.01.2004 to the plaintiffs CD Account No. 301 of Lexicon Merchandise by transfer of Taka 40,09,961.00 from BM Hypo account No.820/04. The plaintiff as proprietor of M/S Motazzarul Islam and M/S Lexicon Merchandise has filed the suit and claimed money from both the accounts. He sought relief claiming that he has no loan liability in his BM Hypo Account Nos.777/03, 776/03 and 752/03 in the name of M/S Md. Motazzarul Islam (Mithu) and also BM Hypo account Nos. 820/04 and 1005/04 in the name of M/S Lexicon Merchandise. The plaintiff has distorted the truth as the enhanced facility of Taka 1.20 crore had

ended on 31.05.2004 and he availed more credit facility afterwards. Ms. Bhuiyan further submits that the plaintiff entered into an agreement with the defendant bank to classify his account and the total liability was fixed at Taka 6,74,62,000.00. He deposited Taka 50.00 lac for reschedulement. Since he deposited money and made prayer for reschedulement he is admittedly a defaulter and cannot get any decree in the suit. His liabilities were consolidated into a single account following his letter dated 19.03.2007 exhibit-Ga. The plaintiff requested the bank to reconsider his case and issue a new sanction advice as per clause 13 of the repayment schedule for clearing dues of his three other allied concerns which was allowed and thus he accepted all the transactions with the bank. She adds that there is nothing in the record to show that the bank officials withdrew money illegally from his account. It is the common banking practice to use balance in a client's CD account to settle any outstanding liability in loan accounts. The bank could not recover the due because the plaintiff had already withdrawn his fund from his CD account using his own signed cheques. The plaintiff put his signatures in all the cheques on the front and in a few cases someone else on the reverse side. If cheques are payable to cash or bearer any person carrying those could encash after fulfilling the formalities unlike crossed cheques. The bank can adjust the loan by transferring from CD Account through credit and debit vouchers. Generally, when a loan account is debited, a loan is created and when the loan is adjusted the

account is credited. Money was debited from the CD account of M/S Lexicon Merchandise Account No.301 on 30.06.2004 and it was utilized to adjust the loan account and none of the bank officials had withdrawn the fund. She further submits that as per normal course of Islamic Banking for BM facility approved a separate account will be opened and it is revolving in nature and has tenure of one year. A revolving account is a type of credit that gives the borrower more flexibility as money can be borrowed repeatedly up to a predetermined limit set forth in the sanction advice.

In the midst of hearing of the appeals the bank has filed an application under Order 41 Rule 27 of the Code of Civil Procedure (the Code) for accepting additional evidence. The plaintiff resisted the application by filing counter affidavit. We kept the application in the record to be disposed of with the appeals. Ms. Bhuiyan refers to the statements of the application and the photostat copies of the annexures appended thereto and submits that some necessary facts were not properly stated in the memorandum of appeal due to inadvertence which are required to be accepted and considered as evidence otherwise the appellant would suffer irreparably. However, Ms. Bhuiyan finally submits that the plaintiff failed to prove in any part of his claim by adducing oral and documentary evidence and as such he is not entitled to get any decree. The Joint District Judge misdirected and misconstrued in the approach of the matter and decreed the suit in part which is required to be interfered with by this Court in appeal.

Since the plaintiff failed to prove his case in any manner, therefore, the impugned judgment and decree would be set aside. The First Appeal No. 2 of 2014 therefore, would be allowed and First Appeal No. 15 of 2014 preferred by the plaintiff be dismissed.

Mr. Md. Zahurul Islam Mukul, learned Advocate for respondent 1 in First Appeal No.02 of 2014 and appellant in First Appeal No.15 of 2014 taking us through the judgment and decree passed by the Court below and other materials on record submits that the trial Court without considering the documents exhibit 'Kha' series, *i.e.,* the the plaintiff's cheques encashed by the defendant bank decreed the suit in part. The Court ought to have considered that the money was withdrawn by the bank through five different cheques amounting to Taka 3,58,13,549.00 on 29.06.2004 and 30.06.2004 respectively. Had the aforesaid facts and evidence been considered by the trial Court, the suit would have been decreed in full as prayed by the plaintiff. The plaintiff all along denied other accounts in his name except two bearing CD Account Nos.848 and 301. In his evidence PW1 denied the claim of the defendant and the plaintiff put a specific suggestion to DW1 to that effect which he denied. He further submits that it is admitted position of fact that Taka 1.20 crore was sanctioned to the plaintiff against the work order. The plaintiff after completion of the work received the total amount of Taka 3.79 crore against the said work order through cheques and those were duly deposited in his account. But the defendant bank withdrew the total amount by money

receipts as it appears from the statement of the bank. He refers to exhibits-Kha (62) - Kha (64), Kha 66 and Kha 67 dated 29.03.2005 and 30.03.2005 respectively and submits that the bank officials withdrew Taka 80.00 lac, Taka 70.00 lac, Taka 60.00, Taka 65.00 lac and Taka 50.72 lac totally Taka 3.2572 crore through the aforesaid 5(five) cheques. Although the above cheques bear the signatures of the plaintiff in overleafs but the signatures put in the backleafs are found to be of different persons. All the signatures in backleaf are dissimilar and no name of payee or borrower in the overleafs were mentioned. At the time of taking loan, the plaintiff deposited some blank cheques putting his signatures as wanted by the bank. DW 1 in his evidence admitted the said fact. The bank withdrew the aforesaid amount through those cheques by inserting amount therein.

In the midst of hearing of the appeals, Mr. Mukul has filed an application under section 57 of the Evidence Act annexing certified copy of the judgment and order passed in Writ Petition No.5188 of 2009 which we kept with the record to be considered at the time of disposal of the appeals, if required. Mr. Islam relied on the judgment and order passed in the aforesaid writ petition and submits that the plaintiff in the aforesaid writ petition challenged the inclusion of his name published in the CIB report of Bangladesh Bank. The rule issued in the aforesaid writ petition was made absolute and inclusion of plaintiff's name in the CIB report was declared to have been made without lawful authority. The defendant bank neither disown the

judgment passed in the writ petition nor challenged the same in the Appellate Division. Therefore, the case of defendant bank that by depositing Taka 50.00 lac to the bank and praying reschedulement the plaintiff admitted him as defaulter do not stand. On point of limitation, Mr. Mukul submits that the question of limitation as raised by Ms. Bhuiyan is a mixed question of fact and law. The plaintiff submitted application to the bank in the year 2007 and he took steps in 2009 challenging the inclusion of his name in CIB list is writ petition which is the continuation of the cause of action and as such the suit is not barred by limitation. The Joint District Judge on misconception of fact and exhibited documents erred in law in decreeing the suit in part. Had the learned Judge applied his judicial mind on the materials on record, the suit would have been decreed in full. Therefore, the judgment and decree passed by the trial Court would be modified and the suit be decreed in full as claimed by the plaintiff. Therefore, First appeal No.02 of 2014 filed by the bank should be dismissed and First Appeal No.15 of 2014 preferred by the plaintiff be allowed.

We have considered the submissions of both the sides, gone through the materials on record, the application under Order 41 Rule 27 of the Code for accepting additional evidence and application under section 57 of the Evidence Act for taking the judgment passed in the writ petition into judicial notice and provisions of law as referred to.

Ms. Bhuiyan argued that the suit is barred under Article 60 of the Limitation Act. She refers to the statement made in the plaint as well as exhibited documents and submits that the plaintiff made representation about his claim and disagreement with the bank's claim and filed applications to the higher authority. But the authority replied in negative showing cause that the Bangladesh Bank would acquire the bank on that very day which ended in the first part of 2006. But the plaintiff instituted the suit on 26.11.2009, *i.e.,* after expiry of three years of the cause of action. It is the well settled principle that limitation is a mixed question of fact and law which is to be decided in trial considering the evidence and other material on record. We find that although the dispute arose in 2006 but the plaintiff made representation to the bank on 19.03.2007 and 12.04.2007 exhibits 'Ga and Gha.' Furthermore, the plaintiff's name was published in the CIB report of Bangladesh Bank in 2007 showing him as defaulter. The plaintiff then invoked writ jurisdiction of this Court and rule issued in Writ Petition No.5188 of 2009 was made absolute declaring inclusion of his name in the CIB report without lawful authority. The judgment of the writ petition has been filed by the plaintiff with an application under section 57 of the Evidence Act for taking it judicial notice of this Court. Since the judgment has been passed by the High Court Division and the defendant bank contested the rule and that DW 1 in cross-examination admitted that the plaintiff filed a writ petition before the High Court Division challenging the CIB report, therefore,

the judgment and order passed in the writ petition is taken into the judicial notice for consideration. It is found that the plaintiff made representation to the concerned authority on 11.07.2006, 23.07.2006 to settle the dispute and lastly to the Bangladesh Bank on 19.07.2009 (wrongly typed in the paper book as 19.07.2004) exhibit-8 for deleting his name from the list of CIB report. The above exhibits-Ga, Gha, 8 and Annexure-x, *i.e.*, the judgment and order passed by the High Court Division in the writ petition prove that the cause of action continued from 2006 upto the middle part of 2009. The above fact may safely be considered as continuation of the cause of action. The instant suit was filed on 26.11.2009 which is within the period of limitation prescribed under Article 60 of the Limitation Act. Therefore, the suit is not barred by limitation. Although the trial Court did not discuss and dispose of the issue of limitation separately assigning reason but actually it decided the issue in favour of the plaintiff. The submission of Ms. Bhuiyan on point of limitation, therefore, bears no substance.

It is admitted position of fact that the plaintiff as borrower initially took loan of Taka 60.00 lac from the defendant bank. The sanction advice dated 10.06.2003 exhibit-4 proves the facts of taking the loan. The loan was subsequently enhanced to Tk. 1.20 crore which is also admitted. It is further admitted that the plaintiff took the loan against work order dated 13.01.2004. The photocopy of cheque No.697381 exhibit-6 proves that on 27.06.2004 the plaintiff deposited

a cheque of Taka 3,45,52,316.00 against the said work order. The statement of account exhibit-7 furnished by the bank further proves that the said amount was deposited in plaintiff's CD Account No.301 in the name of M/S. Lexicon Merchandise. The plaintiff alleges that the total amount deposited in his account against work order was withdrawn by the bank. The plaintiff up to 28.03.2005 deposited Taka 7.2 crore totally in his CD Account No.301 by several cheques he obtained against the work orders. The loan amount of Taka 1.2 crore became 1.38 crore at the time of its tenure with interest. But he had Taka 3,79,58,305.00 in the account, so after adjusting the loan with interest he should have balance amount of Taka 2,41,58,305.00 at the expiry period of the loan. He deposited Taka 95,45,700.00 and Taka 2,30,263,00.00 on 28.03.2005, i.e., totally Taka 3,25,72,000.00. So after deducting payable amount of the bank the amount stood Taka 5,73,87,719.00. The defendant illegally transferred some amount from his current account to BM account without assigning any reason. On perusal of the statement of account supplied by the bank exhibit-7 and the vouchers exhibit-'Cha' series it is found that defendant bank withdrew an amount of Taka 4,55,56,694.00 from the plaintiff's CD Account No.301 excess to their claim. There is nothing in the record to show that the plaintiff took loan more than Taka 1.20 crore or he enjoyed any other loan facility from the bank or took away any amount from his other account. The defendant bank did not make out such case by producing documents or oral evidence. Because exhibit

‘Kha’ series the cheques and exhibit ‘Cha’ series the vouchers related to plaintiff CD Account No.301 only.

By way of filing an application under Order 41 Rule 27 of the Code, the bank prayed for accepting additional evidence of the documents appended thereto. In the application for additional evidence photostat copies of series of documents have been annexed as Annexure-X to X 23 and Y-Y 1 but nothing has been mentioned therein what prevented the defendant bank to produce those at the time of trial of the suit. In the application the bank simply stated that it came to the notice of the learned Advocate that some necessary facts were not properly stated in the memorandum of appeal due to inadvertence and as such those shall be included in the paper book otherwise the appellant bank would suffer irreparable loss and injury and that the papers are required to resolve the conflict between the parties. In the application, the bank did not state the reason that prevented it to bring those documents to the record during trial. Rule 27 of Order 41 of the Code permits a party to produce additional evidence, if the Court from whose decree the appeal is preferred has refused to admit those in evidence which ought to have been admitted or the appellate Court requires any documents to be produced or any witness to be examined to enable it to pronounce judgment or to any other substantial cause. In the statements made in the application, we find that the defendant appellant has failed to make out any case for which the documents can be accepted by us as evidence. On perusal

of the documents annexed, we find that those are irrelevant, beyond the pleadings and are not required to pronounce judgment of these appeals. Therefore, the application for acceptance of additional evidence is rejected.

In First Appeal No. 15 of 2014 the plaintiff challenged the part decree passed by the trial Court and prayed for passing a decree in full as per his claim. His case is that at the time of taking loan against the work order the bank took his signatures on some blank cheques against the loan amount. The plaintiff claimed that the corrupt bank officials enchased those cheques and misappropriated huge amount. We have gone through exhibit-'Kha' series, the cheques of plaintiff's Account No.301 particularly exhibits-Kha 62, 63, 64, 66 and 67. The bank produced those honoured cheques which were duly exhibited. It is found that three cheques all dated 29.03.2005 of the CD Account No. 301 bears serial Nos.119, 120 and 121 (exhibits-Kha 64. 63 and 62 respectively) of Taka 60.00 lac, Taka 70.00 lac and Taka 80.00 lac and other two cheques both dated 30.03.2005 bearing Nos.122 and 123 of the same account of Taka 50.72 lac and Taka 65.00 lac (exhibits-Kha 66 and 67) respectively. There could be no reason on the part of the plaintiff of issuing three cheques exhibits-Kha 62-64 on the same day of chronological serial numbers for withdrawal of money by three different persons. In respect the cheques issued on 30.03.2005 exhibits-Kha 66 and 67 we express the similar view. On careful examining of those cheques, we find that on the overleaf of

some cheques ‘self’ and in the others ‘cash’ have been written which were to be encashed by the plaintiff himself or his men. On the backleaf of the cheques it is found that the amounts were withdrawn by five different men. The signatures put on the backleaf of the cheques appear to be not similar. There could be no reason of sending 3 different persons to the bank to withdraw money on the same day and 2 others person on the following day for 2 cheques for the same purpose. The case made out by the plaintiff is that the bank authority withdrew the amount and misappropriated appears well founded. DW 1 in evidence admitted that they kept blank signed cheques of the plaintiff at the time of disbursing the loan. The above fact also supports the terms of the sanction advice exhibit-4. The facts stated in the plaint that some of the high officials of the bank were convicted for corruption was not also challenged sharply by the defendant bank. Therefore, it can be safely concluded that the bank authority misappropriated the total amount of the aforesaid five cheques of Taka 3,25,72,000.00 through exhibits- Kha 62, 63, 64, 66 and 67 which the plaintiff is entitled to recover from the defendant bank. The trial Court did not take into account the above fact and thereby erred in law in not decreeing the plaintiff’s suit for that amount.

In view of the discussion made hereinabove, we find that the trial Court ought to have decreed the suit in full as claimed by the plaintiff and by not doing so erred in law causing miscarriage of justice. The plaintiff is entitled to get a decree in the suit in full.

Therefore, we find no merit in First Appeal No. 02 of 2014 but merit in First Appeal No.15 of 2014.

Accordingly, First Appeal No.02 of 2014 is dismissed and First Appeal No.15 of 2014 is allowed. However, there will be no order as to costs. The judgment and decree passed by the trial Court is hereby upheld in the modified form. Money Suit No.71 of 2009 is decreed in full for Taka 11,44,72,536.00 with 14% interest till its realization according to the claim of the plaintiff. Consequently, Civil Rule No.187(F) of 2014 is disposed of.

The order of stay stands vacated.

Communicate the judgment and send down the lower Court's record.

Md. Akhtaruzzaman, J.

I agree.

Asaduzzaman (Sumon)-B.O.