

In the Supreme Court of Bangladesh  
High Court Division  
(Civil Appellate Jurisdiction)

**First Appeal No. 335 of 2011**  
**In the matter of:**

Hyperion Development Ltd.

..... Plaintiff-Appellant.

Vs.

Sheikh Atiar Rahman (Dipu) and  
another.

..... Respondents.

Mr. M.G. Mahmud Shaheen,  
Advocate

...For the Plaintiff-Appellant.

**Present:**

**Mr. Justice Sheikh Hassan Arif**  
**And**  
**Mr. Justice Biswajit Debnath**

**Heard and judgment on:**  
**30.07.2023.**

**SHEIKH HASSAN ARIF, J**

1. At the instance of the plaintiff in Title Suit No.359 of 2010, this appeal is directed against judgment and order dated 12.09.2021 (decree signed on 15.09.2011) passed by the Second Court of Joint District Judge, Dhaka in the said Suit, thereby, dismissing the suit filed by the plaintiff seeking specific performance of a contract.

2. **Background Facts:**

2.1 Facts, relevant for the disposal of the appeal, in short, are that the appellant, as plaintiff, filed the said Title

Suit No. 359 of 2010 before the Second Court of Joint District Judge, Dhaka against the respondent and another seeking specific performance of contract of a registered baina dated 04.06.2009 in respect of 14.60 Katha or 24.09 decimals land (2409 Azutangso).

2.2 The case of the plaintiff, in short, is that the suit property, as mentioned in the schedule to the plaint, belonged to defendant No.1. That the defendant No.1 executed a baina dated 06.04.2009 in respect of the said property agreeing to transfer the same in favour of the plaintiff for a consideration of Tk. 3,50,00,000/- and that, on the date of execution of the said baina, the plaintiff paid Tk. 2 crore as advance money. Thereby, the defendant No.1 agreed to execute the registered Kabala in favour of the plaintiff within one year upon receipt of the remaining amount of Tk.1,50,00,000/-. That the defendant, in the meantime, took Tk. 50,00,000/-, Tk. 50,00,000/- and Tk. 35,00,000/- vide three cheques dated 16.01.2010, 21.01.2010 and 27.01.2010 respectively. Accordingly, the defendant received, in total, Tk. 3,35,00,000/- from the plaintiff and the plaintiff was required to pay

only the remaining amount of Tk. 15,00,000/-. However, after expiry of one month time, when the plaintiff requested the defendant to execute registered kabala, the defendant started avoiding such execution by telling various conflicting stories. That, at one stage, the defendant claimed Tk.50 lakh more from the plaintiff on 03.04.2010 and, thereafter, the defendant refused to execute kabala unless the said Tk. 50 lakh was paid. The plaintiff then demanded registered kabala by issuing legal notice on 27.04.2010 followed by institution of the said suit, upon depositing Tk.40,250/- as Court fees, seeking a decree of specific performance of the said baina dated 06.04.2009.

2.3 The suit was not contested by the defendant, although summons thereof were duly served. The Court below then fixed the suit for exparte hearing, and upon recording the evidences of P.W.1 and admitting some papers filed by the plaintiff by way of firisty, dismissed the suit vide impugned order dated 12.09.2011 (decree signed on 15.09.2012) mainly on the ground that the baina was not registered and that

the plaintiff had filed the said suit without depositing the remaining amount of 1,50,00,000/- by way of chalan. Being aggrieved by such dismissal of the suit followed by decree, the plaintiff has preferred this appeal.

2.4 The appeal is not congested by the respondents, although the notices of the appeal have been served properly as per record.

3. **Submissions:**

3.1 Mr. M.G. Mahmud Shaheen, learned advocate appearing for the plaintiff-appellant, at the beginning, submits that the Court below has committed illegality in dismissing the suit without giving any opportunity to the plaintiff to deposit the remaining amount of baina on a subsequent date, particularly when the Court below has wrongly held that the baina was not registered one.

4. **Deliberations, Findings and Orders of the Court:**

4.1 It appears from the plaint that the plaintiff has specifically pleaded therein that the baina in question was registered one. According to the learned

advocate, the said registered baina was exhibited before the Court below, although we do not find any reflection thereof in the impugned order. However, it is apparent from record that the plaintiff has filed the said case seeking specific performance of contract in violation of Section 21A [Clause (b)] of the Specific Relief Act, 1877. It appears from Clause (b) of Section 21A of the Specific Relief Act that the provision to deposit the balance consideration money, as per the registered baina, at the time of filing of the suit is a mandatory provision, and no discretion has been given to the Court to extend time for depositing such amount.

4.2 Admittedly, the plaintiff has not deposited the remaining consideration amount at the time of filing of the said suit. Learned advocate appearing for the plaintiff-appellant also does not have any case on this point. This being so, we are of the view that the Court below has committed no illegality in dismissing the suit, although the Court below has not specifically

mentioned the provision of law referred to above. In view of above, we do not find any merit in the appeal and as such the same should be dismissed.

4.3 In the result, the appeal is dismissed.

Send down the lower Court records.

.....  
**(Sheikh Hassan Arif, J)**

I agree.

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**(Biswajit Debnath, J)**