

Bench:
Mr. Justice Bhishmadev Chakraborty
And
Mr. Justice Murad-A-Mowla Sohel

First Appeal No.341 of 1996

In-charge, Jhalakathi Unit, Sadharan Bima Corporation and others

..... Appellants

-Versus-

Agrani Bank, Chowk Bazar Branch, Barishal and others

..... Respondents

with

Cross Objection No.07 of 1997

Agrani Bank PLC

..... Petitioner

-Versus-

Messrs Meghna Fishing and others

..... Opposite parties

Mr. Shafiqul Kabir Khan with

Mr. Rafi Ahmed and

Ms. Ilora Faruque, Advocates

..... For the appellants

Mr. Khalifa Shamsun Nahar

..... For respondent 1 in the appeal and petitioner of the cross objection

Judgment on 17.12.2025

Murad-A-Mowla Sohel, J:

Since the Cross-Objection has arisen out of the first appeal and the parties thereto are same, both have been heard together and disposed of by this judgment.

The appeal is directed against the judgment and decree dated 28.02.1996 passed by the Subordinate Judge and Artharin Adalat, Barishal in Title Suit No. 43 of 1993 decreeing the suit.

Defendant Sadharan Bima Corporation preferred this appeal and on the other hand plaintiff Agrani Bank filed the cross objection.

Plaintiff's case, in brief, is that the plaintiff Agrani Bank is a nationalized commercial bank. Its head office is located in Motijheel, Dhaka and the Agrani Bank Chawk Bazar Branch is located at Barishal Sadar Raod. Mohammad Hossen Mia, proprietor of M/S Meghna Fishing (defendant No. 1) opened current account No. 4032 with the plaintiff bank on 08.09.1887. He applied to the bank for a transportation loan for construction of a modern fishing boat to improve his fishing business. Plaintiff bank's head office on 03.12.1987 sanctioned a transportation loan of tk. 8,40,000/- in favour of defendant No. 1, through sanction advice dated 25.06.1988. Tender was invited for the construction of the proposed fishing boat and defendant No. 5 became the lowest bidder. Accordingly, when defendant No. 5 claimed defendant No. 1 money for construction of the boat on 19.07.1988, defendant No. 1 applied to the plaintiff bank to pay it to defendant No. 5. The plaintiff bank then allowed defendant No. 1 to withdraw tk. 5,50,000/- on 23.07.1988 and tk. 2,90,000/- on 10.08.1988 in total tk. 8,40,000/-, using pay slip, through defendant No. 5. Defendant No. 1 accepted the conditions of the plaintiff bank's sanction letter and receive the loan facility from the bank. Defendant No. 1 executed all charge documents providing security for repayment of the bank's loan, and defendant No. 1 mortgaged two different boats to the plaintiff bank and defendant Nos. 2-4, acting as mutual guarantors, mortgaged property listed in the schedule to the plaintiff and all the buildings thereon to the plaintiff bank. The time limit for the repayment of the loan taken by defendant No. 1 was until 31.12.1990 with monthly installment of tk. 43,700/-, and the method of the payment was

fixed as the first installment 3 months after the loan disbursement. However, despite enjoying the loan facility, the defendant failed to repay the plaintiff bank's dues as per the condition of sanction letter. As per the condition of sanction letter, the boat under construction, F. B. Meghna Fishing, registration No. F-3004, was insured for all risks with Sadharan Bima Corporation in the joint names of Bank and the debtor defendant No. 1. A tk.9,00,000/-(Taka nine lac) insurance policy for the said boat was opened through the office of the defendant No. 6 on 11.08.1988, and a premium of tk. 42,243.75 (Taka forty two thousand two hundred forty three and seventy five paisa) was deposited for 1988-1989 financial year. Similarly, a premium of tk. 42,243.75 (Taka forty two thousand two hundred forty three and seventy five paisa) was deposited for 1989-1990 financial year. In 1990-1991 financial year tk. 9,00,000/- (Taka nine lac) insurance policy was increased to Tk. 12,00,000/- (Taka twelve lac), and accordingly, a premium of tk. 56,325 (Taka fifty six thousand three hundred twenty five) was deposited for that year. Defendant No. 1 made conditional promises to repay the loan through various means and by executing an undertaking to the bank. The said boat F. B. Meghna Fishing, sang along with cargo in the Bay of Bengal near the Meghna river on 29.04.1991 due to the devastating storm. Regarding this, defendant No. 1 made a G D Entry at Doulatkhan police station and defendant No. 1 notified to defendant No. 6 about the accident on 11.05.1991 and claimed insurance amount on 10.06.1991. The plaintiff bank sent a letter to defendant No. 6 on 29.08.1991 for the insured money of tk. 12,00,000/-. Defendant No. 6 rejected the insurance claim through a

letter dated 27.05.1992. Nevertheless, when the plaintiff bank requested a reconsideration of insurance through letters dated 20.06.1992 and 26.08.1992, defendant No. 6 did not respond. Sadharan Bima Corporation illegally rejected the insurance claim outright. Plaintiff bank tried as much as possible to recover the insurance claim. However, Sadharan Bima Corporation rejected the insurance claim citing defects. Sadharan Bima Corporation physically inspected the boat at the time of insurance, and the insurance company is legally bound to pay the insurance claim because the boat sank in the storm. As on as of 10.09.1993 the amount due to the plaintiff bank from defendant No. 1, including interest, is tk. 19,37,001/-, which the defendants are jointly bound to repay. It appears that defendant No. 1 had absolutely no intension of repaying the plaintiff bank dues, the plaintiff filed the present suit to recover the loan amount.

Defendant No. 1 contested the suit through filling a written statement contending, *inter alia*, that the present case is not maintainable against defendant Nos. 1-5, they are not legally bound to repay the claimed amount, and that these defendants have been illegally categorized in this case. The plaintiff bank invited tender for construction of the F. B. Meghna Fishing boat and appointed defendant No. 5 as the builder, being satisfied with the construction cost, the plaintiff bank paid tk. 8,40,000/- to defendant No. 5 in two installments, besides that defendant No. 1 spent tk. 3,60,000/- from his own fund to make the boat fit for fishing. The defendant subsequently repaid tk.1,02,000/- to the plaintiff bank. As per the rules, the plaintiff bank took out an insurance policy of tk.9,00,000/- for the said boat with Sadharan Bima Corporation. Subsequently, when

the said boat was partially damaged in a moderate Boishakhi Storm, defendant No. 1 spent tk. 3,00,000/- from his own fund for repairing the boat and applied to the Sadharan Bima Corporation to pay tk. 3,00,000/-. Sadharan Bima Corporation informed the plaintiff bank that there is no provision for payment of repair cost for partial damage. Sadharan Bima Corporation then requested to increase the policy from tk. 9,00,000/- to tk. 12,00,000/- and the bank agreed. Accordingly, premium was paid. The said boat sank along with the driver, mechanic and 12 crews in the devastating cyclone on 29.4.1991. Defendant No. 1 informed the relevant authorities about it and found no trace of the said boat and 14 crews after searching. In response thereto, defendant No. 1 requested the plaintiff bank to take step to recover the insured amount of Tk. 12,00,000/- (Taka twelve lac) from Sadharan Bima Corporation, and the plaintiff bank requested the said Corporation to pay the insurance money. Despite being aware that the Meghna fishing boat, along with its crews, sank in the cyclone, the insurance corporation, with the malicious intention of causing unnecessary financial loss and harassment to the plaintiff bank and defendant No. 1, appointed Mongla Surveyors Limited to conduct a detail investigation and submits report on disappearance of Meghna fishing boat. The said Mongla Surveyors Limited, after a proper investigation, submitted a detail report to the insurance authority on 15.08.1991 stating that the fishing boat sank with all the crews in the storm of 29.04.1991, that no trace of it was found during search, and that the insured amount of tk. 12,00,000/- is legally due to the insured party. However, the insurance authority, having failed to get dishonest advantage from defendant No. 1

and the plaintiff bank, illegally rejected the neutral report of Mongla Surveyor Limited and refuse to pay the insured amount on various pretexts. Since the insurance corporation has not paid the insured money for a long time, the insurance corporation is legally bound to pay the plaintiff bank's claim with interest. As the boat, which was the sole means of livelihood for defendant No. 1, sank in the devastating storm, defendant No. 1 has lost all his capital and is living a sub-human life with his family. If the said boat had not been destroyed in the accident, defendant No. 1 would have already repaid the bank's dues with the boat's earnings. The statement of defendant No. 1 mentioned that the insurance corporation, is bound to pay the bank's claim. In the additional written statement defendant No. 1 mentioned that F. B. Meghna fishing boat was constructed in 1988 by Satish Chandra Mistry and was not constructed in 1982. The insurance policy for the boat was issued by Sadharan Bima Corporation after proper investigation. Defendant No. 1 can only sign his name in Bangali, and all the insurance procedures were completed in English by plaintiff bank and the insurance corporation.

Defendant Nos. 6-8 the official of Insurance Corporation contested the suit through filing separate written statement contending that the plaintiff's case is bad for defect of parties; that defendant Nos. 6-8 are not necessary parties to the suit and that the suit is not maintainable; that the information provided by the plaintiff and defendant No. 1 to the Sadharan Bima Corporation regarding the F. B. Meghna fishing mentioned in the plaint concerning in the insurance policy and the hull information provided does not match the length and other specification of the boat. As

the matter is not agreed upon, the insurance claim of plaintiff and defendant no.1 has not been sanctioned. The insurance authority, having honestly supplied the information about the factual situation by the plaintiff bank and defendant No. 1, rejected the insurance claim through a letter dated 27.05.1992. As the said boat was submerged out side the territory of Bangladesh, the Sadharan Bima Corporation is not bound to pay the insurance claim. Defendant No. 1 appointed his own engineer and send a legal notice dated 26.11.1992 and provided the relevant information to Sadharan Bima Corporation. The plaintiff and defendant No. 1 have fabricated information by providing the hull information of boat built in 1988 instead the boat built in 1982, due to which, there insurance claim is not worthy of consideration. The claim of the plaintiff bank is false, malicious and meant for harassment, it is prayed that the suit be dismissed with cost against defendant Nos. 6-8.

After considering the pleadings, the trial Court framed following issues:

- 1) Whether the claim of the plaintiff bank is correct and lawful and whether the suit is maintainable in its present form?
- 2) Whether the suit is bad for defect of parties?
- 3) Whether the insurance policy mentioned in the plaint is a valid insurance policy and the plaintiff bank and defendant No. 1 entitled to receive the insured amount from Sadharan Bima Corporation under its terms ?

- 4) Whether the amount of the plaintiff bank claimed loan dues is correct, who among the defendants is truly liable for repayment?
- 5) Whether the plaintiff bank is entitled to get a decree as prayed for or any other relief ?

During trial the plaintiff examined 1 witness and filed several documents which marked as exhibits 1-20. Defendant No. 1 and defendant Nos. 6-8 examine 1 witness each. The documents produced by defendant No. 1 are exhibits ক-ঘ and that of the defendant Nos. 6-8 are exhibits ঙ-জ.

After considering the entire evidence advanced by the parties, the trial Court decreed the suit against defendant Nos. 6-8. Being aggrieved by and dissatisfied with the judgment and decree of the trial Court defendant Nos. 6-8 as appellants preferred this appeal and at the same time plaintiff bank filed this cross objection.

Mr. Shafiqul Kabir Khan, learned Advocate appearing on behalf of the appellants, Sadharan Bima Corporation, submits that insurance is neither a guarantee nor a security; it merely provides coverage against risk. Risk coverage does not fall within the meaning of a “loan” under the Artha Rin Adalat Ain. The trial Court, *suo motu*, changed the nature of the suit and effectively created a third case, which is impermissible in law. The *sue motu* conversion of a title suit for recovery of money into an Artharin suit is illegal. In support of his submission, Mr. Khan relied upon the decision in the case of Agrani Bank Ltd. vs. AFM Enamul Huq, reported in 50 DLR (1998) 173. Furthermore, for claiming insurance

money, if any, defendant No. 1 is required to institute a separate suit against Shadharan Bima Corporation. Mr. Khan submits that boat sank while fishing outside the territorial waters of Bangladesh in violation of the terms of insurance policy, and that the length, breadth and description of the insured boat does not corresponds with the particulars mentioned in the insurance documents; therefore, payment of the insurance claim is not possible. However, the learned Trial Judge, having fallen into error of law and fact failed to consider the matters and passed a decree in the suit, which is liable to be set aside. Mr. Khan further submits that bank can recover the loan money through auction sell of the scheduled property, without selling the property to recover the loan amount, plaintiff bank illegally filed the present suit. The trial Court passed a decree as personal liability of the officers of the insurance corporation which is totally illegal and therefore, the decree of the learned trial Court is liable to be set aside.

Ms. Khalifa Shamsun Nahar, learned Advocate on behalf of plaintiff-respondent Agrani Bank in the cross objection submits that although learned trial Court rightly passed a decree against the insurance company for the insured amount but since banks claim exceeds the insurance amount and no decree was passed against the principal borrower-defendant No. 1 for the said amount, the bank as well as the general depositors will suffer loss. Therefore, she prays for interference with judgment and decree of the trial Court so as to pass an order directing recovery of the remaining amount against the principal borrower-defendant No. 1 as well.

Upon examination of the case record, it appears that before the trial Court on behalf plaintiff Agrani Bank officer Syed Zafor Ali as PW1 supported the case made in the plaint. The documents submitted on behalf of the plaintiff bank were marked as exhibits 1-20. Defendant No. 1 Mohammad Hossen Mia as DW1 supported the case made in his written statement. On behalf of defendant Nos. 6-8 Sadharan Bima Corporation, its officer Zulfikar Ali as DW2 supported the case made out in the written statement filed by them.

PW1 Syed Zafor Ali stated in his evidence, “১ নং বিবাদী তাহার মৎস ট্রলার বাবদ বাদী ব্যাংকের সহায়তায় ৬নং বিবাদী ইং ১১.০৮.১৯৮৮ তারিখে ৯,০০,০০০/- টাকার বীমা পলিসি ওপেন করেন। ঐ বীমার প্রিমিয়াম বাবদ ১৯৮৮-১৯৮৯ সালে বীমা কোম্পানীকে ৪২,২৪৩.৭৫ টাকা জমা দেওয়া হয়। একইভাবে ১৯৮৯-১৯৯০ সনের জন্য প্রিমিয়াম ৪২,২৪৩.৭৫ টাকা এবং ১৯৯০-১৯৯১ সালের জন্য প্রিমিয়াম জমা দেয়া হয় ৫৬,৩২৫.০০ টাকা।” DW2 Mr. Zulfikar Ali admitted this fact in cross-examination and stated, “মেঘনা ফিসিং এর নামে প্রথমত: ৯,০০,০০০/- টাকার বীমা পলিসি থাকে এবং পরে ঐ পলিসি ১২,০০,০০০/- টাকার বর্ধিত করা হয়। ৯,০০,০০০/- টাকার উপর ২ টি প্রিমিয়াম লই এবং ১২,০০,০০০/- টাকার উপর ১টি প্রিমিয়াম লইয়াছি।”

DW1 Mohammad Hosen Mia stated in examination-in-chief, ‘ট্রলার নিখোজ সম্পর্কে অবহিত হওয়া সত্ত্বেও ৬-৮ নং বিবাদী বিষয়টি সম্পূর্ণ তদন্তের জন্য মোংলা সার্ভেয়ার লিমিটেডকে নিযুক্ত করে। উক্ত সার্ভেয়ার কোম্পানী বিস্তারিত তদন্ত করিয়া ইং ২৫.০৮.১৯৯১ তারিখে নিরপেক্ষ এক প্রতিবেদন দেয়। উহার কপি আমি সার্ভেয়ার লিমিটেড এর নিকট হইতে সংগ্রহ করি। উহার ফটোকপি আমি দাখিল করিলাম।” DW2 Zulfikar Ali stated in cross- examinaitons, “বীমার দাবী তদন্তের জন্য মোংলা সার্ভেয়ার লিমিটেডকে ৬-৮ নং বিবাদী নিয়োগ দেয়া হয়। রেজি: কোম্পানী মোংলা সার্ভেয়ার লি: সার্ভে করিয়া প্রতিবেদন

দেন। মেঘনা ফিসিং ১৪ জন জেলে ও মাছসহ ঝড়ে ডুবিয়া যায় কিনা তাহা উক্ত সার্ভেয়ার কোম্পানীকে তদন্ত করিতে বলা হয়। ইং ১৫.০৮.১৯৯১ তারিখে ঐ সার্ভেয়ার লিমিটেড তদন্ত প্রতিবেদন দেয় কিনা জানিনা।”again DW1 Mohammad Hosen Mia stated in examination-in-chief, “এই ট্রলার ১৯৮৮ সালে নির্মান করা হয়। বীমা চুক্তি সম্পাদন করতে ৬ নং বিবাদী ব্যক্তিগতভাবে ট্রলার সরেজমিনে তদন্ত করেন এবং তিনি ব্যক্তিগত ভাবে ব্যাংকে হাজির হয়েছিলেন।” DW2 Zulfikar Ali stated in cross-examination, “এফ, বি মেঘনা ফিসিং এর দাবীর ভিত্তিতে আমরা নিযুক্ত সার্ভেয়ার দ্বারা তদন্ত করাই এবং সেই রিপোর্ট আমাদের নিকট আছে। এফ, বি মেঘনা ফিসিং একটি ট্রলারের নাম। উহার বাবদ আমরা বীমা করি এবং উহার রেজি: নং এফ-৩০০৪ হিসেবে পাই। বীমার প্রস্তাবপত্রের ১ নং কলাম আমি পূরণ করি।”

On perusal of the aforesaid oral evidence, it is admitted that defendant No. 1 obtained a loan of Tk. 8,40,000/- from the plaintiff Bank for construction of a fishing boat, and, in accordance with the terms of the loan, the said fishing boat was constructed through defendant No. 5, being the lowest bidder. The Bank paid the price of the boat directly to defendant No. 5. In accordance with the terms of the bank loan, the said fishing boat was insured with defendant Shadharan Bima Corporation for tk. 9,00,000/-, which was subsequently enhanced to tk. 12,00,000/-, the validity whereof was up to 08.08.1991. The said fishing boat obtained certificate of registration in the name of ‘F. B. Meghna Fishing’ on 08.08.1988 from the Head Office of the Mercantile Marine Department, Chattogram. Thereafter, on 24.04.1991, the Barishal Branch of the Mercantile Marine Department inspected the boat and granted permission to operate for fishing within the territorial waters of Bangladesh up to 24.04.1992. It is further admitted that on 25.04.1991, this said boat departed from Doulatkhan of Bhola District for the purpose of fishing,

and on 29.04.1991 it went missing with 14 crews. The said fishing boat went missing and sank while the insurance policy issued by Sadharan Bima Corporation was enforced and while the fitness certificate issued by mercantile marine department was valid. On the date of sinking, the said boat was seaworthy according to the certificate of mercantile marine department, and the insurance contract of Sadharan Bima Corporation covering the loss and damage with the boat was in force. The Sadharan Bima Corporation, after duly inspecting the boat, insured it by receiving two premiums for the insurance amount of tk. 9,00,000/- and one premium for insurance amount of tk. 12,00,000/-, and within the validity period of the said insurance, the boat sank. When a claim for tk. 12,00,000/- was submitted to the Sadharan Bima Corporation, for verification of genuineness of the claim, the Sadharan Bima Corporation appointed their enlisted Mongla Surveyor Limited. The said surveyor submitted a report in support of the insurance claim; nevertheless, Sadharan Bima Corporation refused to pay the insurance claim on the ground that the description of the boat did not match with the insurance documents and that the boat sank while fishing outside the territorial waters of Bangladesh. Upon perusal of the case records it appears that Sadharan Bima Corporation duly inspected the boat and accepted the premium Taka $(42,243.75+42,243.75+56,325=)$ 1,40,812.50 for insurance of Taka 12,00,000/-. Examination of registration certificate and the fitness certificate of the fishing boat shows that the boat was constructed for fishing in the Sea.

Fishing boats/trawlers of Bangladesh operate and fish within Bangladesh namely within the Exclusive Economy Zone (EEZ). According to Section 5 of The Territorial Waters and Maritime zones Act, 1974 (Act no. XXVI of 1974), the Exclusive Economy Zone (EEZ) of Bangladesh extends up to 200 nautical miles, that is 374 kilometers from the coastline (sea baseline). Therefore, the fishing area of the said boat was within the territory of Bangladesh and, consequently, within the coverage area of the insurance policy of Shadharan Bima Corporation. Hence, it cannot be said that the boat sank outside the territory of Bangladesh while fishing. On behalf of the Sadharan Bima Corporation defendant No. 6 inspected the boat and completed the insurance documentation. As all insurance documents of defendant No. 1 are mortgaged with Agrani bank in accordance with the terms of the loan, Agrani bank is entitled to receive tk. 12,00,000/- from the appellant-insurance company towards the insurance claim. On perusal of the case records it appears that admittedly the fishing boat F.B. Meghna was sank on 29.04.1991 and after that day all liabilities belonged to the Insurance Corporation upto the amount insured. On perusal of the loan statement tk. 13,39,314.74 was due on 27.06.1991 from defendant No. 1, Agrani bank as after receipt of insurance amount of tk. 12,00,000/- the rest tk. 1,39,314.74/- shall be recoverable from defendant No. 1. As Shadharan Bima Corporation and Agrani Bank are both government-owned nationalized organizations, the Bank shall not be entitled to claim any additional amount or interest after the said date from the borrower because the Bima Company did not pay the amount to the bank which they had to

pay in time. The trial Court directed recovery of the decretal amount personally from the officials of Shadharan Bima Corporation, which, in our view, was not proper. This is because the officials acted on behalf of the insurance company, and unless specific personal liability is proved, it is not appropriate to hold any official personally liable.

Learned Advocate for the appellant, Sadharan Bima Corporation, Mr. Khan in support of his submission, relied upon the decision in Agrani Bank Ltd. vs. AFM Enamul Huq, reported in 50 DLR (1998) 173. However, upon perusal of the ratio of the said case, it appears that the suit in question was an Artha Rin Adalat suit, whereas the present suit is title suit seeking decree to sell the mortgaged property and recovery of money. The Artharin Adalat has thus jurisdiction to dispose it. We find no necessity of filing any suit by the borrower against the Bima Company for recovery of insured money which can be resolved in this suit. Therefore, the ratio of the cited case has no relevancy with the facts and circumstances of the present case.

In the circumstances the appeal and the cross objection both are allowed in part. The suit be decreed against all defendants except defendant No. 5.

The judgment and decree passed by the trial Court is hereby upheld in modified form without any order as to costs. It is ordered and decreed that the appellant, Sadharan Bima Corporation, shall pay the insurance amount of Tk. 12,00,000/- (Taka twelve lakh) within six months to the plaintiff, Agrani Bank, the decree shall lie against Sadharan Bima Corporation and not against Defendant Nos. 6–8 in their personal capacity

and Defendant Nos. 1–4 shall jointly and severally pay the remaining amount of Tk. 1,39,314.74/- (Taka one lac thirty-nine thousand three hundred fourteen and seventy-four paisa) to the said bank within 6 (six) months from the date of receipt of this judgment failing which the bank will be entitled to recover the amount from defendant Nos. 1-4 in accordance with law. The plaintiff bank shall not be entitled to claim any interest or any other amount after 27.06.1991 from the borrower defendants.

Communicate this judgment and send down the lower Court records.

Bhishmadev Chakraborty, J.

I agree.

Hasan