

**IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(Civil Appellate Jurisdiction)**

**First Miscellaneous Appeal No. 145 of 2010**

**In the matter of:**

Bangladesh House Building Finance  
Corporation

... Appellant

-Versus-

Tanjirul Islam being dead his heirs  
1(a) Md. Rustom Ali and others

... Respondents

Mr. Mohammad Saiful Islam, Advocate

... For the appellant

Mr. Sanowar Rahma, Advocate

.... For the respondent nos. 1(a) to 1(d)

**Heard and Judgment on 21.08.2024**

**Present:**

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

**Md. Mozibur Rahman Miah, J.**

At the instance of the petitioner in Miscellaneous Case No. 167 of 1997, this appeal is directed against the judgment and order dated 17.03.2002 passed by the learned District Judge, Kushtia in the said Miscellaneous case allowing the same awarding an amount to the tune of taka 9,15,882.02.

The short facts in preferring this appeal are:

The successor of the present petitioner, Tanjirul Islam took a loan amounting to taka 4,30,000/- in 3(three) different heads, that is taka 40,000/- as of principal loan taka 3,42,000/- as of multipurpose loan as well as taka 48,000/- as differential loan by furnishing three mortgage deeds dated 02.03.1978, 22.01.1979 and 31.08.1995 respectively fixing

interest 11%, 7½ , and 10½ respectively. But since the borrower herein the predecessor of the respondents failed to repay the said loan in time, the outstanding dues against the borrower stood at taka 9,15,87.02 as on 30.04.1994 and hence the said Miscellaneous case was filed under the provision of Article 27 of Bangladesh House Building Finance Corporation Order 1973 (President Order No. 7 of 1973). But since the opposite party to the case herein the predecessor of the respondent no. 1(a) to 1(d) did not come forward to contest the case the same was ultimately taken up for ex parte hearing and vide impugned judgment and order dated 17.03.2002 the said Miscellaneous case was also allowed for the claim amount of taka 9,15,882.02. But since no interest has been imposed on the claim amount as per the prayer so made in the Miscellaneous Case, the petitioner as appellant then preferred this appeal praying only for imposing the interest as agreed.

Mr. Mohammad Saiful Islam, the learned counsel appearing for the appellant in support of his submission take us through the petition of Miscellaneous case and submits that, in respect of three different sorts of loan three different kind of interest had been slapped which has clearly been mentioned in paragraph no. 2 to the petition of Miscellaneous Case.

The learned counsel then by referring to the deposition so made by the petitioner witness no. 1(PW 1) also submits that, the said interest rates had also been corroborated by the said witness having no scope not to impose interests as per the prayer so made in the Miscellaneous Case.

On the contrary, Mr. Sanowar Rahma, the learned counsel appearing for the respondent nos. 1(a) to 1(d) submits that, the appellant is

only entitled to get the amount up to the filing of the Miscellaneous case and the bank is not entitled to get any interest up to realization of the claim amount. But we don't find any substance to the said submission because Article 27 (7) (a) clearly denotes that, the claimant is entitled to get the amount due to the borrower with interest payable thereon. So as per that very provision there has been no scope to at one with that submission of the learned counsel for the respondents. Furthermore, since the Miscellaneous was filed under Article 27 of PO 7 of 1973 so there has been no scope to apply any provision of the Artha Rin Adalat Ain, 2003 as has also been canvassed by the learned counsel for the respondents as the appellant has not claimed any interest as per the provision of Artha Rin Adalat Ain.

Aside from that, we have also perused the memo of appeal including the impugned judgment and order and that of the petition of the Miscellaneous Case. On going through the petition we find that, in respect of three different sort of loans totaling taka 4,30,000/- three different set of interest has been there and from the prayer made in the Miscellaneous Case it has clearly been asserted that, the appellant is entitled to the claim amount with interest till realization of the said amount (দাবির অনুকূলে ও হিসাব মতে ভাবিকাল সুদ আদায়ত ). However, in the impugned judgment, though the learned District Judge allowed the Miscellaneous Case for an amount at taka 9,50,872.02 but that very claim was made up to 30.04.1994 so invariably the appellant is entitled to interest which has been mentioned in the prayer of the said case that is, from 1<sup>st</sup> of May, 1994 till realization of

the decretal amount. Be that as it may, we find substance to the submission so made by the learned counsel for the appellant.

Accordingly, the appeal is allowed however without any order as to costs.

It is ordered, appellant is entitled to interest at the rate of 11%, 7½% as well as 10½ % on the claim amount of taka 9,15,872.02 up to its realization.

Let a copy of this judgment and order along with the lower court records be communicated to the court concerned forthwith.

**Md. Bashir Ullah, J.**

I agree.