IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL APPELLATE JURISDICTION)

Present:

Mr. Justice Md. Badruzzaman.

And

Ms. Justice Aynun Nahar Siddiqua

First Appeal No. 113 of 2007.

Md. Shajahan Ali Khan

...Appellant.

-Versus-

Rupali Bank and others

....Respondents.

Mr. Md. Yousuf Ali with
Mr. Gabinda Biswas, Advocates
… For the appellant

Ms. Khalifa Shamsunnahar, Advocate
… For respondent No. 1.

Mr. Mosarof Hossain, Advocate
...For respondent No. 5

Heard on: 23.02.2026, 26.02.2026, 02.03.2026, 19.04.2026.
Judgment on: 13.05.2026.

Md. Badruzzaman, J:

This appeal is directed against the Judgment and Decree dated 01.03.2007 (the decree having been signed on 08.03.2007) passed by the learned Joint District Judge, 5th Court, Dhaka, in Money Suit No. 52 of 1999, whereby the suit was dismissed.

The facts, relevant for the purpose of disposal of this appeal, are that the appellant, as plaintiff, instituted Money Suit No. 52 of 1999 before the learned Joint District Judge, 5th Court, Dhaka, praying for a decree for money amounting to BDT 87,72,085.50 together with

interest at the rate of 20% per annum from 17.11.1996 until realization.

The plaintiff's case, in brief, is that he is a Stock Broker and a member of the Dhaka Stock Exchange (DSE). On 08.06.1994, he opened Current Deposit Account No. CD-1544 with defendant No. 2, a branch of defendant No. 1, Rubali Bank Limited. The account was authorized to be operated either jointly by the plaintiff and his employee, A.F.M. Rafiquzzaman (defendant No. 5), or severally by either of them. In the course of his business, the plaintiff pledged 4,447 shares of various companies and obtained loans from the defendant bank on different occasions for carrying on his share trading business. Subsequently, the plaintiff opened another Current Deposit Account being No. CD-2014 with the same bank, which was operated exclusively by him. On 22.05.1996, the plaintiff submitted an application to defendant No. 2 requesting transfer of all pledged share certificates from Account No. CD-1544 to Account No. CD-2014. One Mr. Mainul Faruq, an employee of the bank, duly endorsed the said application and acknowledged the transfer of the entire share portfolio from Account No. CD-1544 to Account No. CD-2014. At the relevant time, there remained certain outstanding loan liabilities under Account No. CD-1544, which were subsequently adjusted and fully liquidated on 01.10.1996 and the account was formally closed on 01.10.1996 but the defendant bank did not return the pledged share certificates to the plaintiff. The plaintiff then requested defendant No. 2, by letter dated 14.10.1996, to return all his share certificates. Receiving no response, he submitted a further application dated 16.11.1996 seeking return of the said share certificates, but to no avail. Thereafter, on 02.03.1997, the plaintiff submitted a complaint to the General Manager of the then Complaint

Cell of Bangladesh Bank requesting immediate intervention for recovery of his 4,447 share certificates. In response thereto, the Deputy Director of Bangladesh Bank, by letter dated 05.03.1997, informed the plaintiff that necessary steps had been taken in the matter. Subsequently, by communication dated 18.01.1998, Bangladesh Bank informed the plaintiff that an inquiry had been conducted and appropriate directions had been issued to the authorities of Rubali Bank Limited. In the aforesaid backdrop, and having failed to ascertain the whereabouts of the share certificates, the plaintiff submitted an application dated 19.03.1998 to the Managing Director of defendant No. 1 claiming compensation amounting to BDT 87,72,085.50, representing the highest market value of the 4,447 shares as traded on the Dhaka Stock Exchange during the period from 30 October 1996 to 25 November 1996. After a considerable lapse of time, defendant No. 2, by letter dated 02.04.1998, informed the plaintiff of an alleged arbitration proceeding between the plaintiff and his employee, A.F.M. Rafiquzzaman (defendant No. 5), and asserted that the dispute had already been resolved through such arbitration. Upon receipt of the aforesaid reply, the plaintiff reasonably believed that the defendant bank had wrongfully dealt with and/or misappropriated his share certificates. Consequently, through his learned Advocate, the plaintiff served a legal notice dated 08.02.1999 upon the defendants demanding payment of BDT 87,72,085.50 together with interest at the rate of 20% within fifteen days from the date of receipt of the notice. As the defendants failed to comply with the said demand, the plaintiff was constrained to institute the instant suit.

Defendant Nos. 1–3 contested the suit by filing a joint written statement denying the material averments made in the plaint. Their case, in substance, is that on 22.05.1996 the plaintiff and his employee, A.F.M. Rafiquzzaman, jointly submitted an application in the prescribed form requesting return of the share certificates from Account No. CD-1544. The plaintiff also submitted another application seeking transfer of the said share certificates to Account No. CD-2014. Acting in good faith, Mr. Mainul Faruq endorsed the proposed transfer. Subsequently, however, Mr. Mainul Faruq discovered that an outstanding loan liability amounting to BDT 27,97,752.65 remained due under Account No. CD-1544. Accordingly, he immediately informed the plaintiff and defendant No. 5 that the transfer could not be effected. Thereafter, at their request, the plaintiff and defendant No. 5 jointly submitted another application seeking retention and return of the share certificates to Account No. CD-1544. Consequently, the share certificates remained attached to Account No. CD-1544. The defendants further contended that Account No. CD-1544 was closed on 01.10.1996 after adjustment of all outstanding liabilities. Upon receiving the plaintiff's subsequent applications dated 14.10.1996 and 16.11.1996, the defendants conducted an inquiry and discovered that the share certificates had never been transferred to Account No. CD-2014 because the transfer application had been submitted while substantial loan liabilities remained outstanding under Account No. CD-1544. According to the defendants, any confusion that arose was attributable to the negligence of the concerned bank official, against whom departmental proceedings were initiated. The defendants further stated that, upon receipt of the plaintiff's complaint dated 19.03.1998, they came to learn from A.F.M. Rafiquzzaman (proforma

defendant No. 5) that the dispute concerning the share certificates had arisen out of an internal dispute between the plaintiff and proforma defendant No.5. The said dispute was allegedly resolved through arbitration in the presence of respected members of the Dhaka Stock Exchange, pursuant to which A.F.M. Rafiquzzaman received share certificates upon payment of BDT 26,00,000/- to the plaintiff through Mr. Shah Md. Sagir. The defendants asserted that the plaintiff instituted the suit suppressing material facts and relying upon false, frivolous, and fabricated allegations, and therefore the suit was liable to be dismissed.

At the trial, both the plaintiff and the contesting defendants adduced oral and documentary evidence in support of their respective cases. The plaintiff examined himself as P.W.1 and produced documentary evidence, which were marked as Exhibits 1–3, 3(Ka) to 3(Chha)-1, and Exhibit 4. On the other hand, Mr. Chandan Kumar Ghosh, an employee of the defendant bank, deposed as D.W.1 on behalf of defendant Nos. 1–3 and produced documentary evidence, which were marked as Exhibits Ka–Na. Upon consideration of the pleadings, evidence, and materials on record, the trial Court, by Judgment and Decree dated 01.03.2007, dismissed the suit. Being aggrieved thereby, the plaintiff has preferred the instant appeal.

Mr. Yousuf Ali, the learned Advocate appearing with Mr. Gobinda Biswas, the learned Advocate for the plaintiff-appellant, mainly submitted that:

(i) The plaintiff's application dated 22.05.1996 (Exhibit-2) seeking transfer of the share certificates in question from

Account No. CD-1544 to Account No. CD-2014 was duly endorsed by the concerned officer of defendant No. 2 with the endorsement, "চ. ১৫৪৪ হিসাব হইতে শেয়ারগুলি স্থানান্তর করা হইল" and by virtue of such endorsement the plaintiff was under the bona fide impression that the share certificates had been duly transferred to his personal Account No. CD-2014.

(ii) After full adjustment and settlement of all outstanding loan liabilities on 01.10.1996 (Exhibit-1), the plaintiff submitted applications dated 14.10.1996 (Exhibit-3) and 16.11.1996 (Exhibit-3Ka), respectively, requesting the defendants to return the share certificates. However, the defendants neither returned the said share certificates nor furnished any reply to the aforesaid applications. In the circumstances, it is reasonably inferable that the share certificates were wrongfully retained and/or misappropriated by the defendant bank.

(iii) The plaintiff had deposited 4,447 share certificates with the defendant bank by way of pledge as security against various loan facilities availed by him. Accordingly, under the provisions of section 172 of the Contract Act, 1872, the legal relationship between the plaintiff and the defendant bank was that of pawnor and pawnee. Upon full adjustment of the loan liabilities on 01.10.1996 and subsequent closure of Account No. CD-1544 on 01.10.1996, the defendant bank ceased to have any lien over the pledged securities and became liable as a bailee in respect of the said share certificates. Therefore, in

terms of section 161 of the Contract Act, 1872, the defendant bank became responsible for the safe custody and return of the share certificates and is legally liable to compensate the plaintiff for its failure to redeliver the same.

(iv) Despite receipt of the plaintiff's applications dated 14.10.1996 and 16.11.1996 (Exhibits-3 and 3Ka), the defendant bank failed to return the share certificates. Consequently, the plaintiff submitted an application dated 19.03.1998 (Exhibit-3Uma) claiming compensation amounting to BDT 87,72,085.50, representing the market value of the 4,447 shares calculated on the basis of the highest prices at which the shares were traded on the Dhaka Stock Exchange during the period from 30 October 1996 to 25 November 1996. Such claim, according to the learned Advocate, is fully supported by the provisions of section 161 of the Contract Act, 1872.

(v) Although the defendant bank alleged that an arbitration proceeding had taken place between the plaintiff and his employee, Mr. A.F.M. Rafiquzzaman (defendant No. 5), before an Arbitration Tribunal and that, pursuant to the decision of the arbitrators, defendant No. 5 received the share certificates upon payment of Tk. 26,00,000 to the plaintiff, the defendants utterly failed to substantiate such plea. Neither any member of the alleged Arbitration Board was examined as a witness nor was any authentic arbitration award produced before the Court. Nevertheless, the trial Court erroneously relied upon the

alleged outcome of the purported arbitration and, on that basis, dismissed the suit. As such, the impugned judgment and decree are liable to be set aside and the suit should be decreed in favour of the plaintiff.

(vi) The trial Court failed to appreciate that the burden of proving the existence and validity of the alleged arbitration squarely rested upon the defendants. However, the defendants miserably failed to discharge such burden either through cogent documentary evidence or reliable oral testimony.

(vii) The letter dated 29.12.1996 produced by the defendants and marked as Exhibit-Na is merely a private document and carries no evidentiary value. According to him, the presiding officer of an Arbitration Board or Tribunal can communicate an arbitral award only to the parties to the arbitration proceeding. In the instant case, however, the author of the alleged communication directly addressed the defendant bank, which was neither a party to nor privy to the purported arbitration proceeding. Furthermore, the defendants failed to produce any arbitral award addressed to the parties concerned. In such circumstances, it may safely be concluded that neither any arbitration proceeding was ever held nor concluded as alleged by the defendants or the share certificates were returned to the plaintiff or to any duly authorized representative on his behalf and as such, the defendant bank is legally bound to compensate the plaintiff in the manner and to the extent claimed in the plaint.

On the other hand, Ms. Khalifa Shamsun Nahar, the learned Advocate appearing on behalf of the defendant-respondent bank, mainly submitted that:

(i) A dispute had arisen between the plaintiff and defendant No. 5 concerning their business affairs and interests, which was subsequently resolved through arbitration. Pursuant to the arbitral settlement, the plaintiff received a sum of Tk. 26,00,000 from defendant No. 5. In view of the said settlement and in compliance with the decision of the Arbitration Board, the defendant bank lawfully delivered the share certificates to defendant No. 5. Therefore, the bank had no further obligation or legal responsibility to return the share certificates to the plaintiff.

(ii) The defendants, by adducing both oral and documentary evidence, successfully established that the share certificates in question were returned to defendant No. 5 pursuant to the decision of an Arbitration Board constituted for resolution of the dispute between the plaintiff and defendant No. 5.

(iii) The trial Court, upon proper appreciation and evaluation of the oral and documentary evidence adduced by the respective parties, rightly dismissed the suit. As such, the impugned judgment and decree call for no interference by this Court in the exercise of its appellate jurisdiction.

Respondent No. 5 was impleaded in the suit as proforma defendant No. 5 and he did not contest the suit by filing any written statement. However, during the hearing of this appeal, respondent No.

5 filed an application seeking leave to adduce additional evidence by producing some documents relating to the alleged arbitration proceeding and other judicial proceedings. In the said application, respondent No. 5 asserted that an arbitration had in fact taken place between himself and the plaintiff for resolution of their disputes and that, pursuant to the arbitral award, the plaintiff received Tk. 26,00,000 from him. It was further asserted that, in accordance with the decision of the Arbitral Tribunal, respondent No. 5 received the share certificates from the defendant bank. Respondent No. 5 also disputed the plaintiff's assertion that he had been an employee of the plaintiff and claimed that no such employer-employee relationship existed between them.

In support of the aforesaid contentions, Mr. Mosharof Hossain, the learned Advocate appearing on behalf of respondent No. 5, submitted that the documents sought to be produced by way of additional evidence are material for the just adjudication of the controversy involved in the appeal and, therefore, ought to be taken into consideration by this Court at the time of pronouncement of judgment.

We have heard the learned Advocates for the respective parties, perused the pleadings, the oral and documentary evidence adduced by the parties, the documents produced by respondent No. 5 by way of additional evidence, the impugned judgment and decree, and the other materials available on record.

Admittedly, the plaintiff was the holder of Current Deposit Account No. CD-1544, which, at his request, was authorized to be

operated either jointly or severally by the plaintiff and proforma defendant No. 5. It is also undisputed that the plaintiff subsequently opened another Current Deposit Account being No. CD-2014 with the same bank. It is further admitted that, upon depositing 4,447 share certificates of different companies as security, the plaintiff availed various loan facilities through Account No. CD-1544 for the purpose of conducting his share trading business. It is likewise admitted that the share certificates in question were never returned directly to the plaintiff. The plaintiff's case is that, after full adjustment of the outstanding loan liabilities, the defendant bank failed to return the share certificates despite repeated demands. The case of the defendant bank, on the other hand, is that the share certificates were delivered to defendant No. 5 pursuant to an arbitral award rendered in a dispute between the plaintiff and defendant No. 5, and, therefore, the plaintiff is not entitled to any compensation for the alleged loss of the share certificates.

Accordingly, the principal issue requiring determination in the instant appeal is whether the defendant bank successfully discharged its contractual and legal obligations as bailee by returning the pledged share certificates to the plaintiff or to a person duly authorized by him.

Since the alleged return of the share certificates is a disputed question of fact, the burden lies upon the defendants to establish, by reliable evidence, when, how, and under what authority the share certificates were allegedly delivered to the plaintiff or to his authorized representative. Among the documents relied upon by the defendants, namely the letters dated 29.12.1996 (Exhibit-Ña), 24.06.1997 (Exhibit-Ta), 20.11.1996 (Exhibit-Tha), and 23.10.1996 (Exhibit-Da), only Exhibit-

Da appears to have some relevance insofar as it contains an alleged admission by respondent No. 5 regarding withdrawal of the share certificates prior to 15.09.1996. It is pertinent to note that the plaintiff's loan liabilities were admittedly adjusted on 01.10.1996. It further appears from the evidence on record that on 22.05.1996 the defendant bank declined to release the share certificates on the ground that substantial loan liabilities remained outstanding under Account No. CD-1544. In such circumstances, the alleged delivery of the share certificates before 15.09.1996 appears inconsistent with the defendants' own case and therefore warrants close judicial scrutiny.

Since the alleged arbitration and settlement of disputes between the plaintiff and proforma defendant No. 5 were specifically pleaded by the defendants in their written statement, the burden of proving such facts squarely rested upon the defendants in view of the provisions of section 103 of the Evidence Act, 1872. In order to establish the existence of a valid arbitration proceeding, it is incumbent upon the party asserting such fact to prove the existence of a valid arbitration agreement between the disputing parties or some other legally binding framework authorizing recourse to arbitration.

In *Corona Fashion Limited vs. Milestone Clothing Resources LLC and others*, reported in 71 DLR 106, it was held that "*the latest position of the law relating to arbitration throughout the world, which has now become an inviolable principle, is that there cannot be any arbitration without an arbitration agreement".*

The alleged arbitration is stated to have taken place in 1996, when the Arbitration Act, 1940 was in force. Under the scheme of the

Arbitration Act, 1940, as under the Arbitration Act, 2001, the existence of a valid arbitration agreement is the *sine qua non* for commencement of any arbitration proceeding. It is a settled principle of law that no arbitration can lawfully be initiated, conducted, or enforced in the absence of a valid and binding arbitration agreement between the parties.

Admittedly, the defendants failed to produce before the trial Court either any arbitration agreement or any arbitral award. Instead, they sought to establish the alleged arbitration merely through certain letters and correspondences exchanged between different persons. Such documents, by themselves, cannot substitute for proof of a valid arbitration agreement or a legally enforceable arbitral award. In view of the aforesaid settled proposition of law, the defendants' failure to produce any arbitration agreement between the plaintiff and defendant No. 5 is fatal to their plea of arbitration.

During the hearing of this appeal, the learned Advocate for the plaintiff-appellant produced the Bye-laws of the Dhaka Stock Exchange (DSE). The learned Advocates for the respondents did not dispute either the authenticity or applicability of the said Bye-laws. Accordingly, the same may properly be taken into consideration in adjudicating the issues involved in this appeal. The relevant arbitration provision is contained in Article 17 of the Dhaka Stock Exchange Bye-laws which is reproduced below:

> “17. Arbitration between Members:
>
> (a) All disputes, complaints, and claims arising between members relating to any stock exchange transaction shall, in the first

instance, be decided by arbitration through the Complaint Sub-Committee in accordance with the provisions of these Rules.

(b) Whenever a dispute arises between members of the Stock Exchange, any member who is a party to such dispute may apply to the Secretary of the Stock Exchange, accompanied by a fee of Tk. 5/- ...”

It appears therefrom that, under the said Bye-laws, an arbitration proceeding may be commenced only upon submission of a written application in the prescribed form set out in Appendix-D and only in respect of disputes arising between members of the Dhaka Stock Exchange. Upon perusal of the documents produced by the defendants, it appears that no complaint was ever lodged before the Complaint Sub-Committee of the Dhaka Stock Exchange as contemplated by Article 17 of the Bye-laws. The defendants have contended that, on the basis of a complaint, certain members of the Dhaka Stock Exchange intervened and resolved the dispute between the plaintiff and respondent No. 5 through arbitration, claiming that respondent No. 5 was also a member of the Dhaka Stock Exchange at the relevant time. However, the defendants failed to adduce any documentary evidence either before the trial Court or before this Court to establish that respondent No. 5 was, in fact, a member of the Dhaka Stock Exchange at the material time. In the absence of any such evidence, and having regard to the mandatory requirements of the relevant Bye-laws, this Court is constrained to hold that the alleged arbitration was not conducted in accordance with the arbitration mechanism prescribed by the Dhaka Stock Exchange. Consequently, the plea of arbitration cannot be accepted as having been established in accordance with law.

Even assuming, for the sake of argument, that the plaintiff and respondent No. 5 had resorted to a private arbitration arrangement outside the framework of the Dhaka Stock Exchange, the defendants failed to produce any arbitration agreement evidencing a consensual undertaking by the parties to refer their disputes to arbitration. In the absence of such an agreement, the very foundation of the alleged arbitration remains unproved. Accordingly, the story of arbitration put forward by the defendants cannot be relied upon as credible evidence in support of their claim. Moreover, the materials on record indicate that proforma defendant No. 5 was merely an authorized representative or assistant of the plaintiff. This fact is borne out by Exhibit-Na, namely the letter dated 29.12.1996, wherein the authority of the Dhaka Stock Exchange categorically stated that Mr. A.F.M. Rafiquzzaman was an authorized representative of Mr. Shajahan Ali Khan, the plaintiff. The defendants failed to produce any evidence demonstrating that respondent No. 5 was either a member of the Dhaka Stock Exchange or a partner of the plaintiff at the relevant time.

In view of the foregoing discussions and the settled principles of law governing arbitration, it may safely be concluded that, in the absence of any agreement between the parties providing for reference of their present or future disputes to arbitration, no valid arbitration could have taken place between a member of the Dhaka Stock Exchange and his authorized assistant, who was admittedly not a member of the Exchange.

Although respondent No. 5 produced certain letters and documents at the hearing of this appeal, including correspondence allegedly exchanged between the plaintiff and the Dhaka Stock

Exchange in 1996, none of those documents constitute an arbitration agreement, a request for arbitration, or an arbitral award. Mere production of miscellaneous correspondence is insufficient to discharge the burden resting upon the defendants to prove the existence of a valid arbitration proceeding and the alleged settlement of disputes between the plaintiff and respondent No. 5.

Upon consideration of the evidence on record, this Court finds that the defendant bank has failed to establish that the pledged share certificates were ever returned to the plaintiff or to any person lawfully authorized to receive the same on his behalf. In such circumstances, the inevitable inference is that the defendant bank either lost the share certificates or wrongfully dealt with and misappropriated them.

In this regard, section 161 of the Contract Act, 1872 is directly relevant, which provides that if, by the default of the bailee, the goods are not returned, delivered or tendered at the proper time, he is responsible to the bailor for any loss, destruction or deterioration of the goods from that time.

In the instant case, it is an admitted position that the share certificates were not returned to the plaintiff after full adjustment of the loan liabilities. Consequently, the defendant bank became liable to compensate the plaintiff for the loss occasioned by its failure to redeliver the pledged securities. Upon adjustment of the loan liabilities on 01.10.1996, the rights of the defendant bank as pawnee stood extinguished, and the relationship between the parties thereafter assumed the character of a bailment. From that date, the defendant bank was under a legal obligation to return the share certificates to the

plaintiff, the bailor. The learned Advocate for the plaintiff-appellant has rightly contended that the defendant bank could have discharged its obligation either by transferring the entire share portfolio to the plaintiff's sole Account No. CD-2014 or by physically delivering the share certificates to him immediately upon adjustment of the loan liabilities. Having failed to do so, the defendant bank became liable as bailee for the consequences of such default.

Considering the facts and circumstances of the case, our conclusion is that the defendant bank, being the bailee and custodian of the share certificates, failed to disclose in its written statement either the date or the manner in which the share certificates were allegedly returned to the plaintiff or to any duly authorized representative on his behalf after adjustment of the loan liabilities. The defendants' assertion that the share certificates had been delivered to defendant No. 5, as reflected in their letter dated 23.10.1996 (Exhibit-Da), is wholly inconsistent with the admitted facts of the case. The alleged delivery is stated to have taken place prior to 15.09.1996, at a time when substantial loan liabilities were still outstanding under Account No. CD-1544. Therefore, the said plea appears to be nothing more than an afterthought and a concocted story devised with a mala fide intention to conceal and justify the defendants' unlawful conduct in dealing with and misappropriating the share certificates. Consequently, the defendant bank is legally bound to compensate the plaintiff as a bailee under section 161 of the Contract Act, 1872.

How should compensation be assessed?

While Section 161 of the Contract Act, 1872 creates liability for the failure to return goods at the proper time, the quantum of compensation is to be determined in accordance with the general principles governing the assessment of damages. In this connection, Section 73 of the Contract Act, 1872 is relevant which provides as follows:

> **"73. Compensation for loss or damage caused by breach of contract.**—When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.
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> Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.
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> *Compensation for failure to discharge obligation resembling those created by contract*—When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.
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> *Explanation*—In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account."

A combined reading of Sections 161 and 73 of the Contract Act, 1872 makes it evident that while Section 161 creates liability upon a bailee for failure to return the goods at the proper time, the

assessment of compensation for such default is governed by the general principles of damages contained in Section 73 of the Act. Under Section 73, compensation is confined to such loss or damage as naturally arises in the usual course of things from the breach, or such as may reasonably be supposed to have been within the contemplation of the parties at the time the contract was made. The provision expressly excludes compensation for remote, indirect, or speculative losses and embodies the well-established principle that the injured party must take reasonable steps to mitigate the loss suffered.

The object of an award of damages is compensatory rather than punitive, namely, to place the injured party, so far as money can do so, in the position he would have occupied had the contract or obligation been duly performed. Accordingly, where a bailee wrongfully fails to return goods, compensation must be assessed with reference to the actual loss suffered at the time of the breach and not on the basis of speculative or subsequent gains.

As a matter of settled legal principle, where goods are lost, destroyed, or wrongfully withheld, the ordinary measure of damages is the market value of the goods at the time and place at which they ought to have been returned, together with any consequential loss that is legally recoverable and proved. Where the goods have deteriorated, damages are generally measured by the difference between the value the goods would have had if returned on time and their value in the deteriorated condition. The court may also award reasonable interest from the date on which the cause of action arose.

Applying these principles to shares or other marketable securities, compensation should ordinarily be assessed on the basis of the market value of the shares on the date when the defendant's obligation to return them became absolute, or, if no trading occurred on that date, on the nearest trading date. The claimant is entitled to be restored to the position he would have occupied had the shares been returned when due, but is not entitled to recover damages based on the highest market value attained after the breach. Subsequent fluctuations in market price are ordinarily irrelevant, as damages are assessed as of the date on which the cause of action crystallized.

Therefore, under Sections 161 and 73 of the Contract Act, compensation for the wrongful retention or non-return of goods or share certificates should be determined by reference to their value on the due-return date, together with lawful interest, rather than by reference to any subsequent increase in market value. If no trading took place on that date, the assessment shall be based on the average market value on the nearest trading date thereto. To hold otherwise would expose the defaulting bailee to liability arising from market fluctuations wholly unconnected with the breach itself.

The plaintiff claimed a total sum of Tk. 87,72,085.50 as compensation, calculated on the basis of the highest market value of the shares traded on various dates between 30.10.1996 and 25.11.1996 on the Dhaka Stock Exchange. However, we are not persuaded to accept the assessment made by the plaintiff-appellant. Since the plaintiff became entitled to the return of the share certificates from the defendant Bank on 01.10.1996, and the Bank failed to return them on that date, we are of the view that the

compensation should be assessed on the basis of the average market value of the shares traded on the Dhaka Stock Exchange on 01.10.1996, being the date on which the loan liabilities were fully adjusted and the defendant Bank's obligation to return the share certificates became absolute. If no trading took place on that date, the assessment shall be based on the average market value on the nearest trading date thereto. The plaintiff shall also be entitled to reasonable interest thereon in accordance with law.

During the hearing of this appeal, the plaintiff-appellant produced, by way of additional evidence, the trading values of the pledged shares as supplied by the Dhaka Stock Exchange for the period from 01.10.1996 to 30.11.1996. These documents were annexed as Annexure-B to the application for taking additional evidence, affirmed on 11.03.2026. The learned Advocates for the respondents did not dispute either the authenticity or the correctness of the information furnished by the Dhaka Stock Exchange regarding the trading prices of the shares during the relevant period in 1996. Accordingly, Annexure-B is hereby admitted and taken on record as additional evidence. According to Annexure-B, the average market value of the pledged shares as traded on 01.10.1996 and on 9.10.1996 (the nearest traded date) was as follows:

SL	**Name of the company**	**Number of Shares**	**Aererage Trade Value**	**Total Taka**
1	Bengal Carbide (Olympic Industries Ltd.), Traded on 1.10.1996	66	1526.43	1,00744.38
2	Orion Infusion Ltd. Traded on 1.10.1996	2000	336.61	6,73,220.00
3	Chittagong Cement Ltd	300	3749.77	11,24,931.00

	Traded on 1.10.1996.			
4	National Tea Company Ltd. Traded on 9.10.96	25	400.00	10,000.00
5	Dynamic Textile Industries Ltd. Traded on 1.10.1996	600	70.00	42,000.00
6	Beximco Knitting Ltd. Traded on 1.10.1996	180	184.00	33,120.00
7	National Polymer Industries Ltd. Traded on 1.10.1996	200	1630.13	3,26,026.00
8	Beximco Textiles Ltd. Traded on 1.10.1996	1076	134.19	1,44,388.44
	Total	4447		2454429.82

The above calculation demonstrates that the aggregate market value of 4,447 shares of the aforesaid eight companies stood at Tk. 24,54,429.82 traded on 01.10.1996 and 9.10.1996 (the nearest traded date). We, therefore, hold that the plaintiff is entitled to recover the said amount as compensation with simple interest @ 5% per annum for the loss of the share certificates occasioned by the failure of the defendant bank to return the same.

Upon a careful examination of the impugned judgment and decree, it appears that the learned Judge of the trial Court dismissed the suit without due consideration of the oral and documentary evidence adduced by the parties, as well as on a misconception of the applicable law. Accordingly, the findings and conclusions recorded by the trial Court are liable to be set aside, being unsustainable both in law and on the facts.

The plaintiff is entitled to a money decree for the amount as is assessed by this Court.

In view of the discussions made hereinbefore, we find considerable merit in this appeal.

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

The impugned Judgment and Decree dated 01.03.2007 (decree signed on 08.03.2007) passed by the learned Joint District Judge, 5th Court, Dhaka, in Money Suit No. 52 of 1999 are hereby set aside.

Accordingly, the suit be decreed in-part for a sum of Tk. 24,54,429.82 (Taka twenty-four lakh fifty-four thousand four hundred twenty-nine and paisa eighty-two only), together with simple interest thereon at the rate of 5% (five per cent) per annum from 01.10.1996 until full realization of the decretal amount.

Defendant-respondent Nos. 1–3 are hereby directed, jointly and severally, to pay the decretal amount of Tk. 24,54,429.82 (Taka twenty-four lakh fifty-four thousand four hundred twenty-nine and paisa eighty-two only) together with simple interest thereon at the rate of 5% per annum with effect from 01.10.1996 until realization, within 60 (sixty) days from the date of receipt of a copy of this judgment by the trial Court. In default of such payment within the stipulated period, the plaintiff shall be at liberty to realize the decretal amount in accordance with law through the process of execution.

Let the Lower Court Records (L.C.R.) be sent down to the Court concerned forthwith along with a copy of this judgment and order.

(Justice Md. Badruzzaman)

I agree.

(Justice Aynun Nahar Siddiqua)