পাঁচ টাকা বাংলাদেশ কোর্ট ফি

01-07-26, 01-07-26

IN THE SUPREME COURT OF BANGLADESH

HIGH COURT DIVISION

(CIVIL APPELLATE JURISDICTION)

Dated: The 24th day of February, 2026

<u>Present:</u>

Mr. Justice Md. Iqbal Kabir

And

Mrs. Justice Jesmin Ara Begum

<u>FIRST APPEAL No. 123 of 2021:</u>

<u>(arising out of F.A.T. No. 214 of 2021:</u>

<u>In the matter of:</u>

Being aggrieved by and dissatisfied with the Judgment and Decree dated 17.02.2021 (Decree signed and drawn on 23.02.2021 passed by the Judge, Artha Rin Court No.2, Dhaka in Artha Rin Suit No.269 of 2014.

<u>And</u>

<u>In the matter of:</u>

Sonali Bank Limited, represented by its Manager Hotel Sheraton, Minto Road, Dhaka.

.... <u>Appellant</u>

-Versus-

Shahjalal Islami Bank Limited Dhaka Main Branch, Represented by its Manager and others

................<u>Respondents</u>

Present:
Mr. Justice Md. Iqbal Kabir
And
Mrs. Justice Jesmin Ara Begum

First Appeal No. 123 of 2021

Sonali Bank Limited
....Appellant

Versus

Shahjalal Islami Bank Limited and others
....Respondents

Mr. Shaikh Mohammad Zakir Hossain, Senior Advocate with
Ms. Raziah Sultana, Advocate,
Mr. Md. Anawarul Islam, Advocate,
Mr. Aminuzzaman Sohag, Advocate and
Mr. Md. Mahbubur Rahman, Advocate
....For the Appellant

Mr. Morshed Ahmed Khan, Advocate with
Mr. Khan Mohammad Shameem Aziz, Advocate
....For the Respondent No. 1

Heard on 16.11.2025, 24.11.2025, 01.12.2025 and Judgment on 24.02.2026.

Md. Iqbal Kabir, J:

At the instance of the appellant, this First Appeal is directed against the judgment and decree dated 17.02.2021 (decree signed and drawn on 23.02.2021) passed by the learned Judge, Artha Rin Adalat No. 2, Dhaka in Artha Rin Suit No. 269 of 2014 decreeing the suit on contest against the defendant No. 1 and ex parte against the defendant No. 2.

Facts in a nutshell for disposal of the First Appeal are that the respondent Shahjalal Islami Bank Limited, as plaintiff, instituted an Artha Rin Suit against Sonali Bank Limited and others for recovery of Tk. 1,03,80,749.83 as on 31.05.2014. The plaintiff in his plaint contended, inter-alia, that Dana Textile maintained a current account bearing No. 4001-11100014809 with Shahjalal Islami Bank since 09.10.2011. In the course of business, Sonali Bank, at the instance of its client T & Brothers Knit Composite Limited, opened a back-to-back Letter of Credit (L/C No. 037011042542 dated 02.10.2011) in favour of Dana Textile for import of 30s/1 Carded Yarn, amounting to US$ 1,35,800.00, equivalent to Tk. 1,03,07,220.00, subject to UCP-600.

It appears that Sonali Bank advised the amendment of the L/C to Dana Textile by letter dated 02.10.2011. Thereafter, Dana Textile submitted the L/C documents, including a bill of exchange dated 11.10.2011, to Shahjalal Islami Bank, which negotiated the documents and forwarded them to Sonali Bank for acceptance. Sonali Bank, being the issuing bank, unconditionally accepted the documents and confirmed payment of the bill amount, which was further verified by Shahjalal Islami Bank through correspondence and telephonic confirmation with authorized officials of Sonali Bank. Upon such unconditional acceptance, Shahjalal Islami Bank discounted the bill on maturity and extended credit facilities amounting to Tk. 71,00,354.60 to Dana Textile by crediting its current account, after obtaining the necessary charge documents. However, despite acceptance, Sonali Bank failed to make payment on the maturity date, i.e., 03.03.2012. Repeated demands and reminders through 47 letters and a legal notice dated 23.02.2014 yielded no result. According to established banking norms, UCP-600, and documentary credit practices, the issuing bank is legally bound to honor the L/C obligation in favour of the negotiating bank. As Sonali Bank failed to discharge its statutory and contractual obligation under the L/C, the plaintiff bank claimed Tk. 1,03,80,749.83 and prayed for a decree against defendant Nos. 1–2, jointly and/or severally, along with a personal decree against the concerned defendants for recovery of their lawful dues.

The respondent-defendant contested the suit by submitting a written statement denying the statements made in the plaint. According to him, the suit was not at all maintainable against the defendant No. 1 in the present form. The suit is false, frivolous, vexatious, manufactured, vague, misconceived, unspecified, baseless, concocted and meaningless and without jurisdiction which is not tenable in the eye of law, the plaint of the suit is barred by limitation as well as by principles of estoppels, waiver and acquisance, the plaintiff has no cause of action to file the instant suit and the suit does not disclose any cause of action, the suit has been filed with malafide intention and in the plaint the plaintiff did not make the L/C applicant parties though they were the most necessary parties rather the defendant No. I has been made party in violation of the provision of section 6 (5) of the Ain, 2003 and as such, the suit was defective for non-joinder of necessary parties and misjoinder of improper parties and prayer of the plaintiff against the said defendants completely illegal which has no legal basis, actually the disputed L/C never issued by the said defendant and there is no account opened for the beneficiary to the said defendant bank, the defendant No. 1 has no knowledge regarding this disputed matters and the said statements completely misrepresentations of facts, absolutely frivolous, vexations, misleading, motivated, manufactured and concocted, which are not tenable in the eye of law and the defendant categorically and emphatically denied and the plaintiff filed this suit for his illegal demand and purposes. The plaintiff filed this suit on the basis of a false and fabricated story, and a fraudulent practice has been committed by the plaintiff regarding these disputed matters. The plaintiff's claim by the plaintiff is false and fictitious, which should be dismissed.

After hearing of both the side upon considering the materials and evidence on record the learned Judge of the Artha Rin Adalat, Court No. 2, Dhaka decree the suit in favour of the plaintiff-respondent No.1 to the amount of TK 1,03,80,719.83 as on 31.05.2014 including interest and costs, on contest against defendant No. 1 and ex-parte against the remaining defendants in Artha Rin Suit No. 269 of 2014.

Being aggrieved by and highly dissatisfied with the impugned Judgment and Decree, the defendant No.2, as appellant, preferred the instant appeal before this Court.

Mr. Shaikh Mohammad Zakir Hossain, learned Senior Advocate for the appellant, submits that the Artha Rin Adalat wrongly included Sonali Bank Limited represented by the Manager, Sheraton Corporate Branch, Dhaka (defendant No.1) in the suit, although it was neither the principal debtor nor a guarantor or mortgagor under section 6(5) of the Artha Rin Adalat Ain, 2003. Therefore, the suit is defective due to mis-joinder and non-joinder of parties.

He submits that the judgment and decree dated 17.02.2021, passed by the learned Judge, Artha Rin Adalat No.2, Dhaka, directing to pay the decreetal money is not executable against the defendant No. 1 because he had no nexus with the charged documents executed by the borrower and its Bank, the plaintiff.

He submits that the plaintiff negotiating bank hopelessly failed to discharge their duties in allowing the alleged loan, while they found that T & Brothers Knit Composite Limited and Dana Textile Mills, in connivance with some officials, created fake, forged and fraudulent documents show as doubtful, but the learned Judge, without giving any findings, only based on UCPDC. 600 decreed the suit, ignoring the case of fraud, and as such, the judgment and decree are liable to be set aside.

He submits that the learned Judge failed to properly consider the decision in Zyta Government Ltd. vs. Union Bank (55 DLR (AD) 56). In that case, there was no allegation of fraud; the dispute concerned only the quantity and quality of fabrics. However, in the present case, the entire transaction, including documents and supply of goods, is alleged to be fake and fraudulent. He argues that, as held by the Apex Court, the only exception to the strict rule is where the bank has knowledge that the documents are forged or fraudulent, in which case the matter must be treated differently.

He also submits that, as per fundamental principles of LC, transaction fraud is an exception to the rule of UCPDC. 600, and the plaintiff adduced evidence of fraud that has been practiced by the parties of the so-called LCs, but the learned Court below failed to consider it in passing the impugned judgment and decree, which is liable to be set aside.

He further submits that the learned Judge committed a serious illegality in relying on the so-called "truck receipt" allegedly issued by Nayan Tara Transport Agency. The receipt merely states that the goods were received in good condition, but it does not disclose who received the goods, nor does it contain any signature or the registration number of the truck. These deficiencies clearly indicate fraudulent fabrication of documents, yet the learned court below failed to consider such material evidence while passing the impugned judgment and decree.

He also submits that the learned Judge misconstrued the central issue of the case. The Proforma Invoice was issued by Moinuddin Fabrics, and accordingly, the L/C was opened in its favour. However, without any amendment to the L/C, the bills were submitted by Dana Textile Mills as the beneficiary, which is wholly unauthorized and indicative of fraud. Furthermore, the investigation report dated 06.12.2012 reveals that Dana Textile Mills Ltd. is merely a paper entity with no real existence, and that Nayan Tara Transport Agency is also non-existent. These facts establish that the entire transaction was based on false and fabricated documents, but the learned Court below failed to properly appreciate these findings, rendering the impugned judgment and decree liable to be set aside.

He also contends that the beneficiary and documents were changed without proper amendment, and investigation reports showed that the entities involved were fictitious. Despite being informed about fraud and pending DUDAK cases, the trial court failed to consider these issues.

He submits that the impugned judgment is vitiated by gross illegality and misappreciation of evidence. Although the trial court referred to an undertaking dated 15.12.2011 by the supplier not to claim the bill amount, it failed to properly consider that the underlying documents were defective, incomplete, and apparently manipulated. The delivery chalan and truck receipts lacked essential particulars such as place, address, and proper identification, and mandatory documents like the BTMA certificate and GP-2 Mushak chalan were not produced. It is further alleged that the beneficiary's name in the L/C documents and the acceptance letter was altered by overwriting without proper authentication, in violation of Bangladesh Bank's BRPD Circular No. 13 dated 09.09.2012. The claim that 33.95 metric tons of yarn were transported in a single day by a single truck is also inherently improbable, indicating fabrication.

He further submits that the trial Court itself found irregularities and inconsistencies in the exhibits and even observed that the transaction appeared to be concocted, possibly involving all parties, including bank officials. Despite such findings, the court erroneously decreed the suit, which is contrary to the principles laid down in 55 DLR (AD) 56 and the fraud exception under UCPDC 600. Accordingly, the impugned judgment and decree are liable to be set aside.

He submits that the learned Judge failed to consider that the suit is barred by defect of the party since the L/Cs applicant, M/S. T & Brothers was not made a party in the suit, and the plaintiff intentionally did not make party T & Brothers to avoid showing the doubtful transaction between the parties. On the other hand, the defendant No. 1 is not connected with any loan or beneficiary of the alleged loan and did not apply for a loan to the plaintiff bank; consequently, the defendant No.1 was made a party in the suit, and the case is defective for mis-joinder and non-joinder of parties.

He submits that the learned Judge failed to consider that the whole deal and total gamut of situation has been created, in fact, consents and connivance with some officials of the defendant No. 1 and the same has been hedged at the behest of the plaintiff bank and the beneficiary i.e., the defendant No. 2, since letter alleged acceptance of bills as contained with alleged letters are all fake and some are not matters of office copies are available on record in the office of the concerned bank and as a consequence, those are product of fraud, fraudulent and fabricated documents/bills illegally and unlawfully created by the plaintiff bank, in collusion with the beneficiary and the corrupt dishonest officials of the defendant No. 1 bank who were connected with the malafide deal in their personal capacity and as such, the defendant No. 1 is not at all liable in this regard.

He submits that in the back-drop of the facts and circumstances and in all aspects the defendant No. 1 was impleaded as party in the suit is not warranted by the concerned provisions of law, consequently, the Artha Rin Adalat ought to have stricken off the name of the defendant No. 1 from the suit under order I rule 10(2) of the Code of Civil Procedure.

He submits that the plaintiff examined only one prosecution witness who failed to produce the case of the plaintiff, more so, the evidences of the said witness has not been corroborated by any other witness resulting of which the plaintiff case has not but the prosecution failed to find out otherwise from him in cross examination, so, the plaintiff case is fraud one and upon which the learned Judge illegally decreed the suit which is liable to be set aside.

He submits that the alleged L/Cs adopted the ICC Uniform Customs and Practice for Documentary Credits (commonly known as UCP 600) and as per the case brought forward by the plaintiff-respondent No. 1 bank that the present defendant-appellant had issued its confirmation regarding authenticity of such L/Cs whereas Article 34 of the UCP 600 clearly dictates that, "A bank assumes no liability or responsibility for the form, sufficiency, accuracy, genuineness, falsification or legal effect of any document, or for the general or particular conditions stipulated in a document or superimposed thereon....." and since the present defendant-appellant through-out the course of trial have maintained the position that it does not possess any record of such L/Cs ever being opened with it, let alone issuing confirmation in favour of the plaintiff-respondent No. 1 for purchasing the said L/Cs and ignoring such quintessential aspects, the trial Court below most illegally reached the conclusion of passing the herein-impugned judgment and decree, which is required to be set aside for the ends of justice.

He submits that under the UCP-600, banks are generally required to make payment strictly against conforming documents, a principle known as the "autonomy principle." However, over time, an exception to this principle-the "fraud exception"-has been recognized, allowing either the buyer to restrain the seller from drawing on the credit or to restrain the bank from making payment where clear or manifest fraud is involved. He further submits that where such outright fraud is committed by the seller, the buyer is entitled to notify the bank and prevent the seller from benefiting from the fraudulent transaction. In support of this contention, he relies on the decision passed in *Uttara Bank vs. Macneill and Kilburn Ltd. and others* reported in 33 DLR (AD) 298, where it was observed that payment under a letter of credit may be withheld if fraud is established and brought to the bank's notice. Accordingly, he argues that the present case is a fit one for stopping payment against fraudulent documents, and that the trial Court failed to properly apply its judicial mind in passing the impugned judgment and decree, which is therefore liable to be set aside.

He submits that the defendant No. 1 and the plaintiff bank are both renowned financial institutions in Bangladesh and the common people deposit their money in those banks. Both of these financial institutions have been using the deposited money to serve their clients' purposes, thereby extending their business and contributing to the economic growth of our country. The issuance of L/C, acceptance of L/C, and claim of the bills by the plaintiff bank are quite vague, baseless and forged. The plaintiff bank, with some dishonest officer mutually, had conspired and produced fake L/Cs and fake purchased bills, misappropriated the money of the innocent clients, and, with the ill motive to degrade the defendant No. 1's position in the banking sector, had inserted the defendant No. 1's name. The defendant No. 1 is in no way connected with the alleged offence, but the plaintiff bank and some of their dishonest officers, to avoid their liability and to misappropriate the money of the innocent clients, had initiated the said suit and obtained the herein-impugned judgment and decree and as such, the same is required to be set aside in the interest of justice.

He submits that even if the contention raised by the plaintiff-respondent No. 1 were held to be true, the benefit under the L/C was availed by the defendant No. 2 of the said suit and the present defendant only stood as a guarantor, so to speak, against the said credit/liability and since the present defendant-appellant is also a public banking company, the decreetal amount claimed by the plaintiff-respondent No. I may have to be paid by the present defendant-appellant in the long-run, which in turn might cause serious prejudice upon the present defendant-appellant as it does not possess any record of such L/Cs ever been opened at the instance of the said defendant No. 2 and thereby, the present defendant-appellant may be ousted from filing a suit for recovery of such amount in the future and as Section 6(5) of The Artha Rin Adalat Ain, 2003 in its proviso allows the decree to be transferred in favour of the third party mortgagor or guarantor, the said provision of law ought to have been considered by the trial Court below whilst pronouncing its verdict and as such,

the herein-impugned judgment and order is the outcome of non-application of judicial mind, causing serious loss and injury upon the present defendant-appellant and hence the same requires interference of this Court for the ends of justice.

He submits that the subject matter of the Artha Rin Suit, being the L/Cs in question, is a by-product of fraud and similar sets of circumstances. Sonali Bank Limited preferred Appeal, which was allowed and reported in 76 DLR 353, wherein it was held that:

> ".........Out of those different clauses, sub-clause (2) stipulates, amongst others, a letter of credit or other financial arrangement (ঋণপত্র বা অন্য কোন আর্থিক বন্দোবস্ত) be considered as a loan, if any financial institution provides or executes so in favour of any loan or the creditor takes the liability of such arrangement on behalf of its borrower. Admittedly, no such loan was created in favour of this defendant No. 2-appellant as per the said provision other than the defendant Nos. 3-8, rather, the plaintiff only took liability for the defendant Nos. 3-8 by purchasing the alleged bills upon creating an IBP loan against them, who, in their turn, issued a personal guarantee as security to repay the said loan. But nothing short of those arrangements has ever been done for the appellant. So, the purported acceptance of LC documents and confirmation to pay the bill on maturity, as has been asserted by the plaintiff invariably does not come within the ambit of "loan" as we found from the definition of loan and if it is so, then there is no earthly reason to maintain the suit against this appellant classifying it as any "borrower". Though the learned Judge disposed of the said issues in favour of the plaintiff but what she described and found is absolutely beyond the relevant provision of Artha Rin Adalat Ain, 2003 even such claim can never be sustained in view of the section 6(5) of the Artha Rin Adalat Ain, 2003 as well.. ."(paragraph-54) and as such the claim of the plaintiff bank, so far as it relates to the present appellant-defendant No.2, is liable to be dismissed and the impugned judgment and decree passed by the learned Artha Rin Adalat No. 2, Dhaka in Artha Rin Suit No. 269 of 2014 is liable to be set aside."

Mr. Morshed Ahmed Khan, learned Advocate for the respondent No. 1 submits that the Sonali Bank itself has admitted the fact of issuing the L/C (Exhibit- 5/15) and acceptance of the documents, which included setting a date for payment. Sonali Bank issued a letter dated 02.10.2011 in favour of Dana Textile advising the amendment of the L/C. In this context, legally, Sonali Bank cannot deny the existence of Dana Textile.

He brings notice to this Court that under the internationally accepted banking rules, particularly the Uniform Customs and Practice for Documentary Credits (UCP), banks deal strictly with documents and not with the actual goods, services, or performance underlying the transaction. Accordingly, when Shahjalal Bank forwarded the documents to Sonali Bank, the latter had the full opportunity to examine the documents for any discrepancies within the prescribed time. In the present case, Sonali Bank accepted the documents without raising any objection or pointing out any discrepancy and, on the contrary, advised and confirmed the maturity/payment date as 03.03.2012. Having accepted the documents, Sonali Bank became legally bound to honor the payment on the due date and is stopped from subsequently alleging defects or irregularities in the documents or the underlying transaction. In addition, the relevant Bangladesh Bank circulars and guidelines mandate that accepted export bills must be settled within the stipulated time, irrespective of disputes concerning the goods or the underlying commercial transaction. Consequently, Sonali Bank had no lawful justification to withhold or delay payment after having accepted the documents and fixed the maturity date.

He submits that Sonali Bank unequivocally accepted the bill for payment and advised the maturity date as 03.03.2012 vide its letter dated 03.11.2011, addressed to Shahjalal Bank. The bill itself clearly shows Dana Textile as the beneficiary. Once such acceptance is communicated, Sonali Bank becomes legally bound to honour the bill on maturity.

According to him, under settled banking law and practice, upon acceptance of a bill with an advised maturity date, the beneficiary's bank is legally entitled to purchase the bill before maturity by extending an IBP facility. The purchasing bank advances funds to the beneficiary at a discounted value, relying primarily on the accepting bank's undertaking to pay on the due date.

Mr. Morshed Ahmed Khan, by way of his submission, claims that Guideline for Foreign Exchange Transactions, Volume-1, 2009, Chapter 7, Section III, Para 38, dealing with payment settlement against back-to-back L/Cs, reads as under:

> "... ... ...Usance bills against back-to-back import LCs should be settled at maturity even where, for some reason export has not taken place, or where the export proceeds have not been realized, or where the realized export proceeds net of value addition requirement is not adequate to cover the back-to-back import payment ... ..."

According to him, pursuant to the above, Sonali Bank was under an obligation to make payment on the maturity date, i.e., on 03.03.2012.

He claims that BRPD Circular Nos. 10 dated 11.07.2012 and 13 dated 09.09.2012 deal with acceptance of Inland Bills, making the following provision:

> "এছাড়াও স্থানীয় কিংবা বৈদেশিক মুদ্রায় অভ্যন্তরীণ ঋণপত্রের বিপরীত স্বীকৃতি প্রদানের পূর্বে ক্রয়কৃত মালামালের প্রকৃত সরবরাহের সত্যতা সম্পর্কে নিশ্চিত হওয়া ব্যতিরেকে কোন স্বীকৃতি প্রদান কিংবা মূল্য পরিশোধ করা যাবে না।"

In the instant case, Sonali Bank accepted the bill on 03.11.2011 and advised a maturity date for payment on 03.03.2012. Therefore, the BRPD Circulars do not apply in the instant case.

On the point of vicarious liability, it was argued that vicarious liability is a legal principle in tort law that holds one person or entity legally responsible for the wrongful acts committed by another person, even though the person being held liable did not personally commit the wrongdoing or have any direct fault. It is most commonly used to make employers liable for the torts (civil wrongs) of their employees when those torts are committed in the course of employment. In the financial sector, a question generally arises whether a bank will always be liable or responsible for the acts committed by its employees. In this regard, a decision has been made in the case of the State Bank of India vs. Shyama Devi (AIR 1978 SC 1263), which established the principle of vicarious liability within the banking sector:

> "The Court in the judgment held that an employer, i.e., the bank, will be held responsible and liable for the acts done by their employees if the acts were done within the scope of their employment and which is an authorized act. Thus, the case establishes that if an employee of a bank acted beyond their authority, or outside the course of employment, then the Bank cannot be held responsible for such acts which are committed by their employees beyond their authority.
>
> The course of employment encompasses the principles and authorities under which an employee is required to act with the

> third party on behalf of, and for the benefit of the employer, i.e., the bank, thereby fostering the relationship between the bank and its clients.
>
> Therefore, if the employee performs and acts the duties and responsibilities entrusted upon him as per the terms of the course of employment, then it is said that he has done the acts within the scope of the authorized employment and manner, and beyond that scope will constitute an unauthorized act. The Doctrine of the frolic of his own theory illuminates the same lights on the aforesaid proposition. Thus, if an employer acts beyond his authority, in an unauthorized manner, beyond the scope of the employment and commits fraud for personal gain with the third-party causing loss and injury to that third party, then although he is doing the acts under the shed of the employer, but the employer cannot be held responsible for the acts for which he is not authorized for. But, if an authorized act is done in an unauthorized way or in a wrong manner, leading to a loss and injury to a third party will fasten the liability of such effects, and the third party can proceed against the employer.
>
> Thus, the vicarious liability creates doors for the person who endured loss by the acts of an employee committed under the purview of the authority of the course of employment given by the master/employer, then that person shall have the right to proceed against the employer to recover the losses caused by the employee. However, an unauthorized act committed by the employee using the position for personal gain will not come under the purview of the vicarious liability and the employer cannot be held liable for the unauthorized acts done by the employee."

In the instant case, D.W-1 stated very clearly in his cross-examination that the officers, upon whose signatures the L/C was opened and the officers who signed the acceptance of the bill, were the employees of Sonali Bank at the relevant time. Besides, Sonali Bank failed to prove by adducing credible evidence that the officers acted beyond their authorities. As such, Sonali Bank is liable for the activities of its officers.

We have considered the submissions so placed by the learned counsel for the appellant, perused the memorandum of appeal and the impugned judgment annexed herewith, and also perused the documents so exhibited.

On our scrutiny, it appears that Mr. Md. Kawsar Ahmed Mojumdar, Junior Assistant Vice President of Shahjalal Bank, deposed as P.W-1. Shahjalal Bank tried to prove its case by way of adducing credible evidence. It is at this juncture, it has brought notice to this court that Mr. Md. Abdus Salam, Senior

Principal Officer of Sonali Bank deposed as D.W-1, who in his examination-in-chief stated that ডানা টেক্সটাইল মিলস্ এর মালিক মোঃ ইকবাল হোসেন ১৫/১২/১১ইং তারিখের পত্রটি L/C applicant TM brothers Knit Composite Ltd. এর বরাবরে লেখা। উক্ত পত্রে ডানা টেক্সটাইল মিলস্ এর মালিক অঙ্গীকার করে বলেন যে, তিনি মালামাল সরবরাহ করে নাই এবং maturity date, due date ও L/C বাতিল করলে তাদের কোনো আপত্তি নাই। ১৫/১২/১১ইং তারিখের পত্রটি দাখিল করলাম। (প্রদঃ খ) In his cross examination, DW-1 stated that ১৫/১২/১১ইং তারিখের অঙ্গীকারনামা ২নং বিবাদী দিয়েছে L/C applicant T & Brothers বরাবর। ১৫/১২/১১ইং তারিখের পত্রের বক্তব্য আমরা স্বীকার করি। Further relates with signatures on the L/C, D.W-1 stated in his cross examination that এল/সি ওপেনার হিসাবে যে দুইজন অফিসার স্বাক্ষর করেছেন সেই দুইজন তখন সোনালী ব্যাংকে কর্মরত ছিলেন। পরে চাকুরীচ্যুত হয়েছেন। and relates with presentation of L/C documents, D.W-1 stated in his cross examination that ৩০-১০-১১ইং তারিখে এল/সি ডকুমেন্টসহ বাদী ব্যাংক সোনালী ব্যাংক বরাবর acceptance এর জন্য উপস্থাপন করে। He also brought notice that regarding signatures on the acceptance, D.W-1 states in his cross examination that Bill of Exchange এ যে তিনজন অফিসারের স্বাক্ষর আছে তারা তৎকালীন সময়ে সোনালী ব্যাংকে কর্মরত ছিল। At this juncture, it has claimed Sonali Bank totally failed to prove by adducing any evidence that their officers acted in excess of their authorities.

The documents shows that officials of Sonali Bank, Hotel Sheraton Branch, were involved in the relevant transactions and their authorized signatures appear on the documents. These include signatures of Saiful Hasan, Assistant General Manager, AKM Azizur Rahman, Deputy General Manager, and Mohammad Abdul Matin, Executive Officer. The records indicate that on 30.10. 2011, documents relating to a Bill of Exchange were presented for acceptance by Sonali Bank, and the acceptance was made with the participation of the concerned bank officials. Although the defendant claimed that no proper approval or acceptance was issued by Sonali Bank and denied its liability, the documentary evidence suggests otherwise. The Court observed that the acceptance of the Bill of Exchange was made by the bank officials and that their signatures were duly recorded, which supports the conclusion that Sonali Bank Hotel Sheraton Branch was indeed involved in the transaction.

Further, it is transpired that upon receipt of Sonali Bank's acceptance and assurance of payment vide letter dated 03.11.2011, Shahjalal Bank lawfully discounted the bill and extended an IBP facility to Dana Textile for an amount of Tk. 71,00,354.60 (Taka seventy-one lac three hundred fifty-four and paisa sixty only). Dana Textile was the borrower under the facility, and Shahjalal Bank obtained all requisite charge documents from it. Although Dana Textile was the primary borrower, it is standard banking practice in IBP transactions that the purchasing bank relies principally on the strength of the accepting bank's commitment. Accordingly, Shahjalal Bank relied on Sonali Bank's unequivocal guarantee contained in its letter dated 03.11.2011 as the primary source of repayment. Sonali Bank accepted the bill on 03.11.2011 and fixed the maturity date on 03.03.2012. Shahjalal Bank was legally entitled to purchase the accepted bill at any time within this period. The purchase of the bill on 20.11.2011 was therefore lawful, valid, and in strict conformity with established banking norms.

It is pertinent to note that the respondent/plaintiff Bank sanctioned an Inland Bill Purchase (IBP) facility in favour of the Defendant, Dana Textile Mills Ltd., on the strength of an unconditional acceptance of a bill by appellant/Sonali Bank vide its letter dated 03.11.2011, whereby Sonali Bank unequivocally undertook to honour and pay the bill amount upon its maturity. Such acceptance constitutes a direct, primary, and irrevocable obligation on the part of Sonali Bank, akin to a banker's acceptance, thereby, rendering it independently liable to discharge the liability arising out of the said bill. The aforesaid letter of acceptance, being the very basis and inducement for the grant of the facility, has been specifically pleaded in paragraph 7 of the plaint and duly incorporated in the schedule as part of the securities. Under section 8(2)(Kha) of the Artha Rin Ain, 2003, the said acceptance squarely falls within the ambit of "security," as it embodies an enforceable written undertaking guaranteeing repayment of the loan.

He claims that Sonali Bank is directly and integrally connected with the transaction in question, and its absence would impede the Court from effectively and completely adjudicating upon all the issues involved, thereby, creating a risk of multiplicity of proceedings and conflicting decisions. In light of the settled principles of law that party is necessary if no effective decree can be passed in its absence and proper if its presence is required for complete adjudication, Sonali Bank Limited clearly qualifies as both a necessary and proper party. Furthermore, within the scheme and spirit of the Artha Rin Ain, 2003, persons acting as guarantors or providers of security are amenable to the jurisdiction of the Artha Rin Adalat, and by virtue of its unequivocal acceptance and assurance of payment, Sonali Bank Limited has effectively assumed the role of a security provider in respect of the facility in question. In the premises, Sonali Bank Limited be impleaded as a party to the present suit in the interest of justice.

In the instant case, Sonali Bank has taken mutually destructive and self-contradictory pleas. It has been asserted that the very L/C, the unconditional acceptance of the L/C documents, and the advice of the maturity date for payment were fake and the result of forgery. At the same time, by admitting the claim that its own officers acted beyond their authority in relation to the said L/C. Such admission necessarily presupposes the existence of the L/C and the bank's involvement therein. Further, Sonali Bank alleged that the documents presented under the L/C, including the truck receipt issued by Noyontara Transport Agency, were forged and fabricated, and that Dana Textile is a non-existent entity. These pleas are inconsistent with its earlier contention that the L/C itself is non-genuine, as the question of scrutiny or rejection of documents under an L/C does not arise if the L/C itself never existed. Thus, Sonali Bank cannot be permitted to simultaneously contend that (i) the L/C itself is forged and void, and (ii) the documents presented under the L/C are forged and unacceptable. Such contradictory defences are legally untenable and amount to an admission that the L/C transaction was acted upon by Sonali Bank through its officers, albeit allegedly beyond their authority.

In the above situation, it has remained that the case reported in 76 DLR (2024) is different from the present case, and it is distinguishable. In the reported case, the L/C was opened by Sonali Bank Limited through a non-AD branch, which was not proper. But in this case, the L/C was opened by an authorized AD branch (Hotel Sheraton Corporate Branch), so it is valid. Secondly, in the reported case, Mercantile Bank Limited claimed it gave a loan to Sonali Bank. But in the present one, Shahjalal Islami Bank Limited gave the loan to Dana Textile based on Sonali Bank's guarantee, and lastly, Mercantile Bank could not prove the L/C and documents. But in this case, Shahjalal Islami Bank proved everything, and the case was decided in its favour. Therefore, the two cases are not the same, and the reported case does not apply in the present one.

Regard being had to the above discussion, we do not find any illegality in the impugned judgment and decree dated 17.02.2021 passed by the learned Judge of Artha Rin Adalat No. 2, Dhaka, in Artha Rin Suit No. 269 of 2014 decreeing the suit, which warrants no interference by this Court.

Resultantly, the Appeal is dismissed without any order as to cost.

The impugned judgment and decree dated 17.02.2021 (decree signed and drawn on 23.02.2021) passed by the learned Judge, Artha Rin Adalat No. 2, Dhaka in Artha Rin Suit No. 269 of 2014 decreeing the suit on contest against the defendant No. 1 and ex-parte against the defendant No. 2, is hereby affirmed.

Let a copy of this judgment, along with the lower Court records, be communicated to the Court concerned forthwith.

Md. Iqbal Kabir

Jesmin Ara Begum, J

I agree

Jesmin Ara Begum

প্রত্যায়িত অবিকল প্রতিলিপি

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17