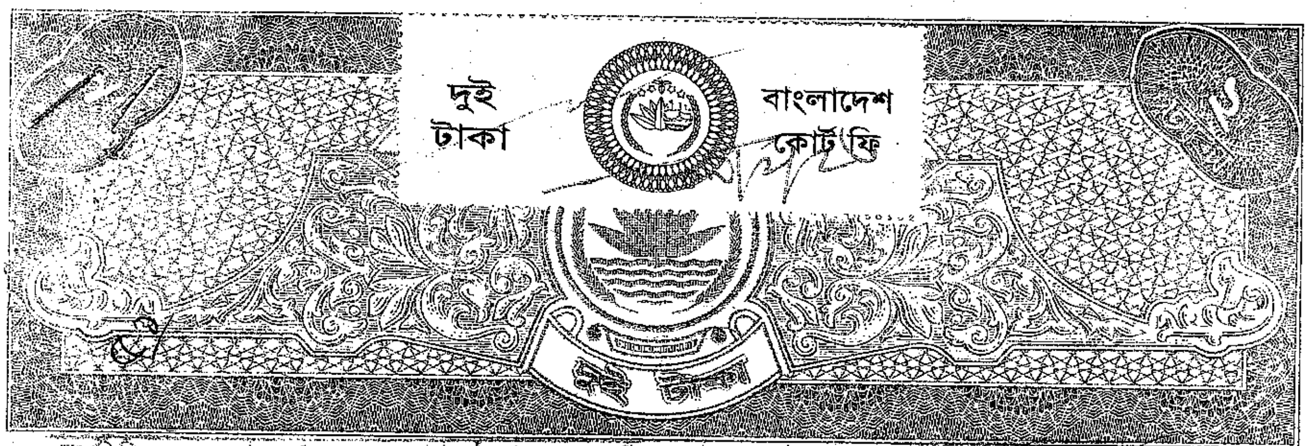

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কোর্ট ফি সঠিক আছে

DECREE FOR ARTHA RIN SUIT

In the court of Judge Artha Rin Adalat No-03, Dhaka

Palint Filed on 12/01/2017

Artha Rin Suit No. 33/2017

Dutch-Bangla Bank Limited,

having its Head Office at

Sena Kalyan Bhaban

(3rd, 4th & 10th Floors),

195, Motijheel Commercial Area,

Dhaka 1000, through Dutch-Bangla Bank

Limited, Bijoynagar Branch

having its address at

180-181 Shahid Sayed Nazrul Islam

Sharani (1st & 2nd Floor),

Bijoynagar: Dhaka

............PLAINTIFF.

-VERSUS-

1. The Manager

   Sonali Bank Limited

   Agargaon Branch,

   Agargaon, Dhaka-1216

2. Sonali Bank Limited

   Represented by its

   Managing Director

   Having its Head Office

   At 35-42, 44 Motijheel C/A

Dhaka-1000

3. Managing Director

Sonali Bank Limited

Having its Head Office

At 35-42, 44 Motijheel C/A

4. M/S. Madhabpur Textile Mills Through its

Proprietor Mr. Moshiur Rahman

150 Motijhee C/A Nahar Mansion (2^{nd} Floor)

Room No. C-2, Dhaka-1000

5. Md. Moslem Uddin,

Son of late Moinuddin Ahmed

Executive officer, ID No. 4197,

Principal Officer Sonali Bank Limited

Ramna, Dhaka.

And

272/Ka/1, West Agargaon, Dhaka

And

Vill-North Madrasha. P.o: Kashem Gor,

P.S: Charfashion, Dist-Bhola.

6. Md. Abul Kalam Matubber

Son of late Nur Mohammad Matubber

Executive officer, ID No.4742.

Principal Officer Sonali Bank Limited

Ramna, Dhaka.

And

House-4, Road-8, Janata House, Agargaon

And Vill-Khayer Danga,

P.O-Murshidabad, Dist-Madaripur.

THE CLAIM

SUIT FOR RECOVERY OF MONEY SUIT VALUED AT TK. 1,45,52,915.73 (TAKA ONE CRORE FORTY FIVE LACS FIFTY TWOTHOUSAND NINE HUNDRED FIFTEEN & PAISA SEVENTY THREE) ONLY AS ON 31/01/2017.

This suit coming this date 26/05/2022 for incoming Mehar Nigar Shuchona, Judge, Artha Rin Adalat No. 3, Dhaka.

In the presence of Mr. Nirupam Pandit Apu Advocate for the plaintiff & Mr. Shaikh Mohammad Zakir Hossain Advocate for the defendant No. 1-3. Mr. Md. Anwar Hossain Miah Advocate for defendant no. 4 for the defendant.

Ordered

That the suit be decreed on contest against the defendant No. 4 Mr. Moshiur Rahman, Proprietor of M/S Madhabpur Textile Mills an amount of Tk. 1,45,52,915.73 (Taka One Crore forty five Lac Fifty Two Thousand Nine Hundred Fifteen and Seventy Three Paisa) as on 31/01/2017. and dismissed against the defendant no. 1-3, 5, 6. The Plaintiff will be entitled to get interest as per section 50 (2) of the Artha Rin Adalat Ain, 2003 from the date of filing the suit till recovery of entire amount.

The defendant is directed to pay the decretal amount within 60 (sixty) days from date failing which the plaintiff may recover it by filing execution case. The Plaintiff will be entitled to get interest under Section 50(2) of the Ain. The plaintiff is also directed to deduct the payment (if there is any) made by the defendants during pendency of the suit (after 12/02/2017) before proceeding the execution case.

Given under my hand and seal of this court

This the

প্রার্থিত মতে আর্জিতে বর্ণিত।

বাদী বিবাদীর নাম ঠিকানা যথার্থ।

স্বা/-অস্পষ্ট
৩০/০৫/২২
সেরেস্তা সহকারী
অর্থঋণ আদালত নং-৩, ঢাকা।

স্বা/-মেহের নিগার সূচনা
জজ
অর্থঋন আদালত নং-৩,
ঢাকা।

SCHEDULE OF CLAIM

Particulars	Fig in Taka
Principal Bill Amount	63,89,600.00
Interest from date of acceptance to maturity date @ 15%	3,22,064.77
Overdue interest from maturity date to 31/01/2017 @15%	78,41,250.97
Penal Interest @ 2% from maturity date to 31/01/2017	6,52,059.30

বাংলাদেশ অনুলিপি স্ট্যাম্প

দুই টাকা

Total Amount	1,45,52,915.73
Payment by the Defendants	Nil
Total Claim amount as on 31/01/2017	1,45,52,915.73

Cost of the Suit.

Plaintiff		Tk.
1	Stamp for the Plaint	57,500/-
2	Stamp for the Power	30/-
3	Stamp for the plaint Petition & Affidavit.	20/-
4	Pleader's fee	3000/-
5	Process fee	10/-
6	Deame Paper	60/-
7	Total.	Taka=60,620/-

<u>Defendant(s)</u>		Tk.
1	Stamp for the Plaint	×
2	Stamp for the Power	30/-
3	Stamp for the plaint Petition & Affidavit.	20/-
4	Pleader's fee	3000/-
5	Process fee	×
6	Deame Paper	60/-
7	Total.	Taka=3,110/-

আমার নিজ হাতে কম্পোজকৃত ও সংশোধিতঃ

স্বা/-স্বাক্ষর
৩০/০৫/২২
সেরেস্তা সহকারী
অর্থঋন আদালত নং-৩, ঢাকা।

০৭/২/২৬
রাবি আক্তার
অনুলিপিকারক
অনুলিপি বিভাগ
জেলা ও দায়রা জজ আদালত, ঢাকা

দুই টাকা বাংলাদেশ কোর্ট ফি

দুই টাকা

অনুলিপির জন্য দরখাস্তের তারিখ	এষ্টিমেট দেওয়ার তারিখ	স্ট্যাম্প ফোলিও দাখিলের তারিখ	অনুলিপি প্রস্তুতের তারিখ	অনুলিপি প্রদানের তারিখ
৭/৬/২২	৪/২/২৩	৪/২/২৩	০৯/২/২৩	০৯/২/২৩

কোর্ট ফি ২/- সঠিক আছে।

(মুহাম্মদ হারুন সরদার
প্রধান তুলনাকারক
০৯/২/২৩

High Court Form No. 5(2)

Heading of judgment in Original Suit

District-Dhaka

In the court of Artha Rin Adalat No. 3, Dhaka.

Present-Mehar Nigar Suchona
Judge
Artha Rin Adalat No. 3, Dhaka.

Date: 26, May, 2022

Artha Rin Suit No. 33/2017

Dutch Bangla Bank Limited ....Plaintiff.

-Versus-

Sonali Bank Ltd. & others ....Defendant.

This Suit has come on for final hearing on 26/06/2019 in presence of

বাংলাদেশ অনুলিপি স্ট্যাম্প

দুই টাকা

1. Mr. Nirupam Pandit Apu

....................Advocate for Plaintiff.

2. Shaikh Mohammad Zakir Hossain

......Advocate for Defendant nos. 1-3

3. Md. Anwar Hossain Mia

..........Advocate for Defendant no.4

And having considering the evidence on record and argument the court delivered the following judgment:

This is a suit for recovery of outstanding amount under the Artha Rin Adalat Ain, 2003.

The plaintiff's case in brief is that, the plaintiff Dutch Bangla Bank Limited is a Banking Company duly incorporated under the Companies Act, 1994 and Governed by and in accordance with the Companies Act, 1991. The defendant no.1 is the Branch of the defendant no.2 represented by the defendant no.3. The defendant no.1 is the LCs issuing Bank with due authority of defendant no.2 represented by the defendant no.3. The defendant no.4 is a proprietorship concern which is the beneficiary of the Lcs is question. The defendant no. 4 has been maintaining a current account with the plaintiff bank being account no.191.110.3162. There are also loan accounts being nos. 191CL46122320502, 191CL46122320506, 191CL46122320509 outstanding due to nonpayment of export proceeds. The three numbers of Proforma Invoices being nos. MTM/32116/2012, MTM/Ex/111/2012 dated 04/04/2012, MTM/EXP/105/2012 27/02/2012 and 17/01/2012 respectively, were executed between one M/S. Green Printers (herein after called LC applicant/Buyer) and the defendant no.4 (Exporter). On 05/04/2012, 18/01/2012 and 27/02/2012 the defendant no.1 with due authority of the defendant no.2 represented by the defendant no.3, has issued the aforesaid Lcs nos. 444041299035 dated 05/04/2012 for Tk. 21,30,100.00, 444041299016 dated 18/01/2012 for Tk. 21,29,575.00, and 444041299029 dated 27/02/2012 for Tk. 21,29,925.00, on behalf of the said application in favour of the defendant no.4 through the plaintiff bank as advising bank. The defendant no.4 on 10/04/2012 against Lc No. 444041299035, on 24/01/2012 against the Lc No. 444041299016 and on 08/03/2012 against the LC No. 444041299029 submitted export documents as per terms and conditions of above Lcs to the plaintiff bank and the plaintiff bank forwarded the said presented documents to the defendant no.1 vide letters being nos. DBBL/191/LDC/2012/82 dated 24/01/2012, DBBL/191/LDC/2012/ 213 dated 05/03/2012, DBBL/191/LDC/ 2012/241 dated 09/04/2012 for acceptance of the bills with due date of payment. The defendant no.1 with due authority of the defendant no.2 represented by the defendant no.3 confirmed the acceptance to the plaintiff bank in favour of the defendant no.4 vide letter no. SBL/AGA/ILC/12/395 dated 10/04/2012 fixing the maturity date on 08/08/2012 for Tk. 21,30,100.00 against Lc no. 444041299035 with reference of the plaintiff bank being no. dated 09/04/2012 and vide letter no. DBBL/19112LDC049 SBL/AGA/ILC/12/85 dated 25/01/2012 fixing the maturity date on 24/05/2012 for Tk.21,29,575.00 against the 444041299016, with the reference of the plaintiff bank being no. DBBL/1911/2LDC014 dated 24/01/2012 and vide letter no. SBL/AGA/ILC/12/265 dated 07/03/2012 fixing the maturity date on 05/07/2012 for Tk.21,29,925.00 against the 444041299029, with the reference of the plaintiff bank being no. DBBL/19112LDC038 dated 05/03/2012. The defendant nos. 5 & 6 has signed the acceptance letter of above mentioned Lcs putting the dates of maturity to repay the overdue amount to the plaintiff bank as such the defendant nos. 5 & 6 are also liable jointly or severally to settle or repay the overdue amount to the plaintiff bank. The defendant no.4 executed letter of disbursement, letter of revival, letter of continuation, letter of hypothecation, bill of exchanges and indemnity against the aforesaid LAABS in committing to repay the liability to the plaintiff bank in case of default of the defendant no.1 represented by the defendant nos.2 & 3. The defendant no.1 has extremely been irregular in payment of the agreed liabilities. The plaintiff bank on several occasions verbally requested them to repay the agreed liability. The defendant nos. 1, 2 & 3 were always lack of concern to the frequent requests of the plaintiff bank. The plaintiff bank on various instances reminded them to take affirmative steps for adjustment of outstanding overdue of the facilities as per their commitment through mentioned letters. But, it is a matter of regret that the defendant nos. 1, 2 & 3 are yet to adjust the outstanding liabilities. Despite several reminders from the plaintiff-bank, the defendants have not adjusted the outstanding liability availed and used so far. Thereafter, finding no positive steps from the defendants the plaintiff-bank on 05/01/2017 sent legal notice to the defendants. But the defendants neither reply to the legal notice nor made any payment towards settlement of the liability. The present outstanding liabilities of the defendants stand at Tk.1,45,52,915.73 (Taka One crore forty five lac fifty two thousand nine hundred fifteen and seventy three paisa) as on 31/01/2017. Finally the plaintiff Bank has filed the present suit for recovery of Tk.1,45,52,915.73 (Taka One crore forty five lac fifty two thousand nine hundred fifteen and seventy three paisa) as on 31/01/2017 from the defendants.

The defendant No.1-3 has contested the suit by filing a written statement. Their case, in brief, is that the suit is not maintainable in present form and nature, that the suit is barred by limitation. The plaintiff did not make party the L/C applicant though they are the most necessary parties rather the defendant nos. 1-3 have been made parties in violation of the provision of section 6(5) of the Artha Rin Adalat, 2003 and as such the suit was defective for non-joinder of necessary parties and mis-joinder of improper parties and prayer of the plaintiff against the said defendants completely illegal which has no legal basis. Section 5(1) of the Artha Rin Adalat Ain, 2003 states that Ain should be used only by the financial institution to recover their loan, thereafter defendant bank being a financial institution they do not take loan rather provide loan and as such the plaintiff bank's claim against the defendant bank does not come within the purview of the said Ain and as such the suit is liable to be dismissed. The defendant bank has never opened any L/C, never confirmed the acceptance of any L/C bill in favour of neither the plaintiff bank nor defendant no.4. The plaintiff bank had never been to the defendant bank to verify the signature.

The proforma defendant no.4 filed a written statement and cross examined p.w.1. Her statement in brief is that the suit is not maintainable in present form and nature, that the suit is barred by limitation. It is clear from the averments of the plaint that the defendant nos. 1, 2 & 3 are the legally liable for payment of the bills in question for which they became guarantor on giving acceptance of the bills and confirming payment of maturity. The defendant nos. 1, 2 &3 are liable for payment of bills in question but not the defendant no.4. The defendant nos.1, 2 & 3 are liable as primary/principal guarantor. Basically the plaintiff bank purchased the bill on having assurance from the defendant nos.1, 2 &3. The plaintiff bank being confirmed the payment on maturity of the bill from the defendant nos. 1, 2 &3 purchased the same as it's business policy and to be gainer. The plaintiff also admitted the bills were purchased on the guarantee of the defendant nos. 1, 2 & 3 and as such the defendant nos. 1, 2 &3 are liable as primary/principal guarantor. In this context it is stated the plaintiff's payment is secured by the defendant nos. 1, 2 &3 as such the plaintiff can not file the suit against the defendant no.4. The plaintiff can not pray for decree against the defendant no.4 as the plaintiff admitted in the plaint that the principal defendants are legally liable to make payment against the advance given to the defendant no.4.

Issues

1. Whether the suit is maintainable in its present form?

2. Whether the defendant no.4 is bound to repay the loan towards the plaintiff bank?

3. Whether the LC papers were duly issued by the defendant bank?

4. Whether the plaintiff is entitled to get a decree as prayed for?

Discussions and Decision

In order to prove the plaintiff's case Mr. Md. Masudul Islam, Officer of the plaintiff Bank has deposed before the court as P.W.1 and has submitted the relevant documents which have been exhibited as exhibit no 1-10. On the other hand, the defendant no.1 Mr. Md. Masud Kalam deposed as

D.W.1, and has submitted the relevant document which have been exhibited as exhibit no. ka. I have perused the pleadings, evidence on record and have heard the argument of the learned lawyer appearing for the plaintiff.

On perusal of the evidence adduced by the plaintiff Bank and cross-examination of P.W.1, D.W.1 the issues are taken for discussion as follows:

Issue No. 1

The defendants in the written statements mentioned that the suit is not maintainable in its present form. But, they have not brought any reasonable ground for non maintainability of this suit.

The plaintiff is a bank and has filed the present suit for recovery of loan money in the proper court. This is why there is no bar to run the suit in the present form. Thus the issue has been decided in favor of the plaintiff.

<u>Issue No.2</u>

P.W.1 has deposed in support of the plaint and has submitted the letter of Authority, L/C documents, forwarding letter, Confirmation letter, Charge documents, Office notes, reminder letters, Legal notice, Bank statement. These documents have been exhibited (Ex: 1-9). On the other hand, the defendant no. 1-3 has submitted the authorization letter. P.W.1 has been cross examined by the lawyer of both the defendant no.1-3 and defendant no.4.

The plaintiff bank claims that the defendant no.4 has been maintaining a current account with the plaintiff bank being number 191.110.3162. There are also loan account being number 191CL46122320502, 191CL46122320506, 191CL461223205029. The three numbers of proforma invoices dated 04/04/2012, 27/02/2012 and 17/01/2012 were executed between one M/S Green Printers (L/C Applicant) and the defendant no.4 (Exporter). The defendant no.4 on 10/04/2012 against L/C no.444041299016 and on 08/03/2012 against the L/C no.444041299029 submitted export documents as per terms and conditions of above Lcs to the plaintiff bank and the plaintiff bank forwarded the said presented documents to the defendant no.1 vide letters dated 05/03/2012 and 09/04/2012 (Exhibit: 3 series) for acceptance of the bills with due date of payment. The plaintiff bank has submitted the L/C documents (Ex: 2 series), the defendant no.4 executed the letter of disbursement, letter of revival, letter of confirmation, letter of hypothecation, bill of exchange and indemnity against the aforesaid LAABS (Ex: 5 series). Upon perusal of the Exhibit: 2, 3, 4 series, the assertion of the plaintiff, deposition of P.W.1 the mentioned contention of sanctioning tk.21,29,575/-towards the defendant no.4 have been proved. According to the contents of Exhibit 2, 3,4 series. The facility was given in favour of the defendant no.4. Exhibit 5 series further reveal that the defendant no.4 availed the above facility in full and in acknowledgement of the said, as security, executed usual charge documents namely DP Note, letter of undertaking etc. Thus it becomes evident that the plaintiff has issued sanction of the loan facility on the basis of L/Cs and the defendant no.4 has availed the facility in full. As such the defendant no.4 is bound to repay the loan amount. So, issue no.2 is disposed of in favour of the plaintiff.

Issue : 3

The defendant no.1-3 claims that the defendant bank has never issued the L/Cs and has not given the confirmation neither to the plaintiff bank nor the defendant no.4. The L/C documents submitted by the plaintiff are false and fabricated. The signatures of the created acceptance letter are not given by any authorized officer. As per the contention of the written statement and the deposition of D.W.1, the authority of the bank has no knowledge about the said letter of credits and the record of such L/Cs are not available either in register or in computer system. On perusal of the 2 series, it appears that it contains all kinds of information relating to the matter of issuing L/C. At the top of L/C; the irrevocable documentary credit number is shown as 444041299014. This number reveals the code of AD or non AD branch, the type of L/C (Local or foreign); the year of issuing L/C and lastly the number of LC issued by them. It also contains every details required for issuing L/C. Here, Sonali Bank Agargaon Branch is the issuing bank. Dutch Bangla is the advising bank. Two questions are important here. Whether the plaintiff bank, as advising bank took proper care to verify the authenticity of the L/C s, the secondly, whether any fraud is committed before issuing the L/Cs by the defendant bank.

According to Article 7 of UCPDC the advising bank shall take reasonable care to check the apparent authenticity of the credit which it advises I/C s do not contain the required approval from either manager of the branch or the head office of the defendant bank. So, it seem to the Court the plaintiff bank did not take reasonable care to confirm the authenticity of the L/C s. P.W.1 in the cross admitted that in the forwarding letters of

Sonali Bank submitted by Plaintiff does not contain any memo number. He also admitted that there is no Despass or Receiving number (Ex: 2 series). Below the signatures of the office, there is no designation. So, it is clear that the plaintiff bank did not take reasonable care to confirm the authenticity of the L.Cs.

However, admittedly, Sonali Bank Agaragaon Branch is Non AD branch and in that case, it requires permission through SWIFT Code or in the appropriate case through mail from the Head office according to the section II 21 (f) Vol: 1(2009) Guidelines for Foreign Exchange Transaction

(Bangladesh Bank). This is the formality which have to be complied with by the branch office. The branch office of Sonali Bank has not complied with the formality of securing permission from the Head Office and therefore the SWIFT Code is not available in the L/Cs. As such it can be said that the L/Cs have not been duly issued complying all the formalities.

In view of the above mentioned facts and circumstance, it can be concluded that fraud and irregularities have been committed in connection with L/Cs and therefore the defendant no.1-3 are not responsible to the claiming bank to reimburse. In this way issue no3 is disposed of against the plaintiff.

Issue: 4

As issue n.1 and 2 has been disposed of in favour of the plaintiff and issue no.3 has been decided against the plaintiff the plaintiff is entitled to get relief from the defendant no.4 and not from the defendant no.1-3 nor from the defendant no.5, 6.

From the above discussions it appears that the plaintiff Bank has been able to prove that it is entitled to get back Tk. 1,45,52,915.73 (Taka One crore forty five lac fifty two thousand nine hundred fifteen and seventy three paisa) as on 31/01/2017 from the defendant. The statement of account is found to be correct.

The Court fee paid is correct.

Hence,

It is Ordered

That the suit be decreed on contest against the defendant no.4 Mr. Moshiur Rahman, Proprietor of M/s Madhabpur Textile Mills and an amount of Tk.1,45,52,915.73 (Taka One crore forty five lac fifty two thousand nine hundred fifteen and seventy three paisa) as on 31/01/2017. And dismissed against the defendant no.1-3, 5, 6. The plaintiff will be entitled to get interest as per Section 50(2) of the Artha Rin Adalat Ain, 2003 from the date of filing the suit till recovery of entire amount.

The defendant is directed to pay the decretal amount within 60 (sixty) days from date failing which the plaintiff may recover it by filing execution case. The Plaintiff will be entitled to get interest under Section 50(2) of the Ain. The plaintiff is also directed to deduct the payment (if there is any) made by the defendants during pendency of the suit (after 12/02/2017) before proceeding the execution case.

Dictated & Corrected by me.

Sd/-Mehar Nigar Suchona
26/5/22
Judge
Artha Rin Adalat No. 3,
Dhaka

Sd/-Mehar Nigar Suchona
26/5/22
Judge
Artha Rin Adalat No. 3,
Dhaka

দরখাস্তের তারিখ	তারিখ	দাখিলের তারিখ	তারিখ	তারিখ
৭/৬/২২	৩/২/২৩	৩/২/২৩	০৯/২/২৩	

০৯/২/২৩

কোর্ট ফি ২/- সঠিক আছে।
(মুহাম্মদ হারুন সরদার)
প্রধান তুলনাকারক
০৯/২/২৩

<u>আদেশনামা</u>

জেলা-ঢাকা।

মোকামঃ অর্থঋণ আদালত নং-৩, ঢাকা

উপস্থিতঃ মেহের নিগার সূচনা
জজ
অর্থঋণ আদালত নং-৩, ঢাকা।

<u>অর্থঋন মোঃ নং-৩৩/২০১৭</u>

ডার্চ বাংলা ব্যাংক লিঃ ....বাদী।

-বনাম-

সোনালী ব্যাংক লিঃ ....আসামী।

ক্রমিক নং- আদেশের তারিখ আদেশ স্বাক্ষর

৪৩----২৬/০৫/২২----অদ্য রায় প্রচারের জন্য দিন ধার্য্য আছে।

নথি পেশ করা হল।

দেখলাম। নথি রায় প্রচারের জন্য নেয়া হল। পৃথক ৪ ফর্দে

রায় প্রকাশ্য আদালতে তারিখ, স্বাক্ষর এবং সীলযুক্ত ক্রমে ঘোষণা

করা হলো, যা নথিতে সামিল আছে। রায়ের সারমর্ম নিম্নরুপঃ

Hence,

<u>It is Ordered</u>

That the suit be decreed on contest against the defendant no.4 Mr. Moshiur Rahman, Proprietor of M/s Madhabpur Textile Mills and an amount of Tk.1,45,52,915.73 (Taka One crore forty five lac fifty two thousand nine hundred fifteen and seventy three paisa) as on 31/01/2017. And dismissed against the defendant no.1-3, 5, 6. The plaintiff will be entitled to get interest as per Section 50(2) of the Artha Rin Adalat Ain, 2003 from the date of filing the suit till recovery of entire amount.

বাংলাদেশ অনুলিপি স্ট্যাম্প

দুই টাকা

The defendant is directed to pay the decretal amount within 60 (sixty) days from date failing which the plaintiff may recover it by filing execution case. The Plaintiff will be entitled to get interest under Section 50(2) of the Ain. The plaintiff is also directed to deduct the payment (if there is any) made by the defendants during pendency of the suit (after 12/02/2017) before proceeding the execution case.

Dictated & Corrected by me.

Sd/-Mehar Nigar Suchona
Judge
Artha Rin Adalat No. 3,
Dhaka

Sd/-Mehar Nigar Suchona
26/5/22
Judge
Artha Rin Adalat No. 3,
Dhaka

আক্তার
অনুলিপিকারক
অনুলিপি বিভাগ