

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

First Miscellaneous Appeal No. 94 of 2000

In the matter of:

Mir Md. Solaiman being dead his legal heirs
1(ka) Mir Md. Harun-or-Rashid (Babu) and
others

... Appellants

-Versus-

Bangladesh House Building Finance
Corporation (established and run under
President's Order No. 07 of 1973), Zone-2,
represented by its Principal Officer (Law),
B.H.B.F.C. Buildings, 22, Purana Paltan,
Police Station-Motijheel, Dhaka and others

...Respondents.

Mr. Moinuddin with
Ms. Suriya Sharmi, Advocates

...For the appellants

Mr. Sikder Mahmudur Razi, Advocate

....For the respondent no. 1

Heard and Judgment on 20.03.2024.

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

Md. Mozibur Rahman Miah, J.

At the instance of the predecessor of the opposite-party no. 1 to
the Miscellaneous Case, Mir Md. Solaiman, this appeal is directed

against the judgment and order dated 14.10.1999 passed by the learned District Judge, Dhaka in Miscellaneous Case No. 546 of 1997 allowing the said case filed under Article 27(1) of the Bangladesh House Building Finance Corporation Order, 1973 (Presidential Order No. 07 of 1973).

The present respondent no. 1, Bangladesh House Building Finance Corporation filed the aforesaid Miscellaneous Case against the predecessor of the present appellants and five others for realization of taka 16,66,199/69 stating inter alia that, the opposite-party (herein corporation) sanctioned a loan under Loan Case No. D-625(Multi) amounting to taka 6,47,000/- with interest at the rate of 10.50% per annum. Subsequently, the opposite-parties to the case also availed another loan amounting of taka 1,07,000/- as of differential loan with interest at the rate of 10.50% per annum for the construction of a five-storey building on their land scheduled in the petition of Miscellaneous Case at Mouza Sarai Jafrabad under Police Station- Mohammadpur, Dhaka. In order to secure the repayment of the said loan, all the borrowers that is, the opposite-party nos. 1-6 to the case deposited their title deeds with the corporation and executed and registered deed of mortgage vide registered deed no. 14888 dated 11.08.1982 and another mortgage deed bearing no. 18475 dated 16.11.1983 in favour of the respondent-corporation. It has been stipulated therein the deed of mortgage that, the said loan has to be repaid in 14 installments and the per installment fixed at taka 8,990/84 payable in 30 years subject to charge of penal interest at the rate of 7% above bank rate. However, the borrowers opposite-parties to the case defaulted in making repayment of

the monthly installment and thus violated the terms and conditions of the loan agreement. Since the opposite-parties to the case did not come forward to repay the loan, the corporation then gave them chance to re-schedule the loan by remission of interest giving effective from 22.03.1992 but the opposite-parties could not avail the said opportunity. Finding no other alternative, the corporation then gave several reminders by way of issuing demand notice and then a final notice on 09.03.1997 demanding payment of the monthly installment with interest by recalling the entire loan including the defaulted sum. Though the opposite-parties promised to repay the said loan on various occasions but ultimately failed to pay back the defaulted sum with interest, Hence, the petitioner-respondent compelled to file the Miscellaneous Case.

On the contrary, out of the six opposite-parties in the Miscellaneous Case, the predecessor of the present appellant nos. 1(ka)-1(cha), Mir Md. Solaiman only contested the case by filing a written objection denying all the material averments so made in the petition. It has been stated that, he along with other borrowers, the opposite-party nos. 2-6 jointly took loan under Loan Case No. D-625(Multi) and started constructing a five-storey building over the scheduled property. It has been stated that, the opposite-party no. 1 himself repaid his portion of installment to the respondent-corporation but for non-cooperation of the other opposite-parties, the required installment could not be paid back to the corporation. However, claiming $\frac{1}{5}$ share of the mortgaged property, the opposite-party no. 1 subsequently filed a suit being Title Suit No.

166 of 1998 before the then Subordinate Judge, 2nd court, Dhaka and ultimately, the said suit was decreed on compromise on an application filed by the parties to the suit save for the defendant no. 10 that is, the corporation and it has been held that, the opposite-party no. 1 is entitled to only $\frac{1}{5}$ share of the said property mortgaged with the corporation and since the opposite-party no. 1 was ready to make payment of his proportionate share of loan to the corporation and during pendency of the suit made payment of taka 1,11,800/- and the corporation has readily received the said amount so the case should have been disposed of giving a direction to the opposite-party to pay his proportionate share of loan to the respondent-corporation and exonerate him from paying back the loan and finally prays for dismissing the Miscellaneous Case.

The learned District Judge took up the said Miscellaneous Case for hearing and upon considering the materials and evidence on record allowed the Miscellaneous Case by discarding the assertion so made by the opposite-party no. 1 holding that since the loan was availed and enjoyed by all the opposite-parties and the deed of mortgage was also executed and registered by all the opposite-parties so there has been no scope for any of the opposite-parties to pay the proportionate loan amount out of the total loan.

It is at that stage, the opposite-party no. 1 to the Miscellaneous Case as appellant came before this court and preferred this appeal.

Mr. Moinuddin, the learned counsel appearing for the appellants upon taking us to the impugned judgment and by supplying the copy of

the Miscellaneous Case and the written objection filed thereagainst and the application so filed before the corporation at the very outset submits that, this appellants are ready to pay the proportionate amount of loan obtained from the corporation as per the judgment and decree passed in the partition suit where it has been settled that the opposite-party no. 1 held $\frac{1}{5}$ share of the demised building for which the loan was obtained and therefore, he is liable to pay the proportionate amount of loan which came at taka 3,30,299/81 and since the appellants have already made a payment of taka 1,11,800/- so if the corporation is directed to allow the successor-in-interest of the deceased opposite-party no. 1 herein appellants to pay the balance amount, the appellants would get proper remedy from this Hon'ble court. On that sole submission, the learned counsel finally prays for allowing the appeal.

On the contrary, Mr. Sikder Mahmudur Razi, the learned counsel appearing for the respondent no. 1 simply supported the impugned judgment.

We have considered the submissions so advanced by the learned counsels for the appellants and that of the respondent no. 1 and perused the impugned judgment and other relevant document appended with the memorandum of appeal and the documents so have been supplied by the learned counsel for the appellants.

There has been no gainsaying the facts and also not denied by the learned counsel for the appellants that, the house building loan which was sanctioned in two different heads was availed by all the borrowers

who are related with each other and accordingly, they furnished all the charge documents by agreeing the terms and conditions so embodied in the sanction letter and therefore, as per those vital documents in particular, sanction letter and the deed of mortgage, the appellants vis-à-vis the opposite-party nos. 1-6 to the Miscellaneous Case are duty bound to pay the entire loan including the interest so have been stipulated in the mortgage deed as well as the sanction letter. Though the opposite-party no. 1 to the Miscellaneous Case (predecessor of the present appellants) contested the said Miscellaneous Case by filing written objection asserting that, he is ready to pay the proportionate amount of loan since during the pendency of the case, a partition suit was filed and it was decreed on compromise finding $\frac{1}{5}$ share in the scheduled land for the said opposite-party no. 1 so in view of the said compromise decree, the opposite-party no. 1 be allowed to pay the proportionate amount of the claim made in the Miscellaneous Case. But since there has been no stipulation either in the deed of mortgage or in the respective sanction letters allowing any of the borrowers to pay the loan by making any breakdown of the loan amount so the learned Judge of the trial court has very perfectly addressed that very issue and ultimately passed the impugned judgment asking all the borrowers to pay the claim made in the Miscellaneous Case. Invariably, we don't find any iota of illegality or impropriety in the impugned judgment and order however the learned Judge of the trial court in the body of judgment has very rightly observed that, if the opposite-parties, borrowers ever approach to the corporation

for availing such facilities then that endeavour of the appellants can be materialized at their mutual understanding but this court has got no authority to give any direction as prayed by the appellants.

Given the above discussion and observation, we don't find any illegality or impropriety in the impugned judgment and order.

Accordingly, the appeal is dismissed however without any order as to cost.

The impugned judgment and order is thus sustained.

Let a copy of this order be communicated to the court concerned forthwith.

Md. Bashir Ullah, J.

I agree.