

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

First Miscellaneous Appeal No. 139 of 2023

with

(Civil Rule No. 132 (FM) of 2017)

In the matter of:

Md. Nazmul Hossain and others

... Appellants-petitioners

-Versus-

Bangladesh House Building Finance
Corporation and another

... Respondents-opposite parties

Mr A. K. M Badrudduza, Senior Advocate

... For the appellants-petitioners

Mr. Muntasir Mahmud Rahman, Advocate

... For the respondent-opposite party no. 1

**Heard on 15.07.2024, 10.03.2025, 16.03.2025
and Judgment on 16.03.2025**

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

Md. Mozibur Rahman Miah, J.

Since the point of law and facts so figured in the appeal as well as rule are intertwined they have been heard together and are being disposed of with this common judgment.

At the instance of the opposite parties to the Miscellaneous Case No. 611 of 2013, this appeal is directed against the judgment and order dated 12.01.2017 passed by the learned District Judge, Dhaka in the said Miscellaneous Case allowing the Miscellaneous Case ex parte for an amount of taka 11,82,606.01.

The short facts leading to preferring this appeal are:

The present respondent no. 1, Bangladesh House Building Finance Corporation (hereinafter referred to as B H B F C) filed the above mentioned Miscellaneous Case under Article 27 of Presidential Order No. 7 of 1973 for realization of defaulted amount at taka 11,82,606.01 as on 30.06.2013 from the appellants stating, *inter alia*, that the predecessor of the appellants-petitioners availed house loan amounting to taka 12,00,000/- vide a sanction letter dated 14.12.1993 on the understanding that the said amount will be repaid in 18 years with monthly installment of taka 10,835.75. As the predecessor of the present appellants failed to repay the said loan as per the terms and conditions laid down in the sanction letter, B H B F C then issued a legal notice upon the loanee herein the appellants claiming an amount of taka 11,82,606.01 as on 30.06.2013 but as they did not come forward to repay the said outstanding dues compelling the present respondent to file the above Miscellaneous Case. During pendency of the said Miscellaneous Case, the present appellants-petitioners entered appearance and filed written objection denying all the material averment so made in the application though promised to pay back the dues and prayed for some time to that effect, and also prayed for redeem the property mortgaged with respondent given as a security to repay the loan. However, during pendency of the said Miscellaneous Case, the appellants-petitioners took several adjournment on the commitment that they would repay the outstanding dues. They also took steps to settle the dispute amicably with the respondent by filing a compromise petition and also undertook to repay $\frac{1}{3}$ rd of the outstanding

dues to the respondent. But as the appellants failed to keep all their promises, the learned judge of the trial court took up the Miscellaneous Case for hearing and on 12.01.2017 it was allowed ex parte directing the opposite parties to the Miscellaneous Case herein the appellants-petitioners, to pay the decretal amount within a period of 30 days with interest as per the terms and condition so have been set out in the sanction letter. It is at that stage, the petitioners of the Miscellaneous Case as appellants preferred this appeal.

After preferring this appeal, the appellants filed an application for stay of the operation of the impugned judgment and order passed ex parte and this court vide order dated 27.02.2017 issued rule and stayed the operation of the impugned judgment and order dated 12.01.2017 for a period of 06(six) months which was extended from time to time. However, the said application gave rise to Civil Rule No. 132 (FM) of 2017.

Mr. A.K.M Badrudduza, the learned senior counsel appearing for the appellants-petitioners upon taking us to the memorandum of appeal and that of the application for stay at the very outset submits that, though the appellants-petitioners are ready to repay the outstanding dues as per the impugned judgment and decree but the respondent did not come forward to receive the amount they wanted to pay and thus if this Hon'ble court directs the respondent to deduct the amount the appellants deposited during pendency of the Miscellaneous Case and that of after passing the impugned judgment, then none of the parties to the appeal would be prejudiced. However, the learned counsel for the appellants-petitioners did not dispute the validity of the impugned judgment and order only to

the exception that, the amount so have been deposited by the appellants-petitioners during the proceeding of the Miscellaneous Case be adjusted from the decretal amount though he finally prays for allowing the appeal and making the rule absolute.

On the contrary, Mr. Muntasir Mahmud Rahman, the learned counsel appearing for the respondent-opposite party no. 1 by filing a counter-affidavit opposes the contention taken by the learned counsel for the appellants-petitioners and by taking us to the documents so have been appended with the counter-affidavit at the very outset submits that, from the statements of account, it shows that from 31.07.2001 till 30.06.2024, the appellants-petitioners has deposited certain amounts from which it does not adjust the outstanding dues vis-à-vis the decretal amount passed by the impugned judgment and thus there has been no illegality in the impugned judgment and order which is liable to be sustained.

The learned counsel by taking us to the payment so made by the petitioners in different dates which has been described in annexure-‘H’ to the counter-affidavit also contends that whatever amount the appellants-petitioners have paid during pendency of the Miscellaneous Case and after passing the impugned judgment, the said amount will be deducted when the present respondent will file execution case. In that regard the learned counsel then referred us column no. 5 of the prescribed form of an execution case made under order 21 rule 11 of the Code of Civil Procedure in support of his such submission and finally prays for dismissing the appeal and discharging of the rule.

We have considered the submission so advanced by the learned senior counsel for the appellants-petitioners and that of the respondent-opposite party no. 1. We have also very meticulously gone through the documents so have been appended with the counter-affidavit. From those documents we find that, the appellants-petitioners were given ample opportunity to pay back the outstanding dues during pendency of the Miscellaneous Case and since the petitioners did not come forward to repay the amount and even failed to file compromise petition with the respondent, the learned District Judge thus before passing of the impugned order, rejected their application filed for adjusting the dues they promised earlier having no illegality in the impugned judgment.

Further, as the learned counsel for the respondent no. 1 contends that, it is ready to adjust the amount paid by the appellants-petitioners during pendency of the Miscellaneous Case as well as after passing of the impugned judgment and order so we find that the appellants have nothing to be prejudiced by the impugned judgment when we find no illegality in the impugned judgment and decree. As has been stated herein above, that in the impugned judgment and order the learned District Judge has directed the appellants- petitioners to repay the decretal amount within a period of 30(thirty) days, and admittedly within that very 30 days, no payment has been made by present appellants-petitioners yet if the appellants-petitioners have ever paid any amount after the said time frame, the respondent must adjust the said amount and then to file the execution case if it feels necessary because, if the appellants repays all the decretal

dues, before initiating an execution case there would have no necessary to initiate such case.

Having said that, we don't find any illegality or impropriety in the impugned judgment and order since it is admitted position that the appellants failed to repay loan as per agreed terms and condition laid down in the sanction letter.

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

However, the respondent no. 1 is directed to adjust the amount the appellants-petitioners paid during pendency of the Miscellaneous Case as well as after passing of the impugned order till date and then to realize the balance decretal dues from the appellants-petitioners.

Since the appeal is dismissed, certainly the connected rule being civil rule no. Civil Rule No. 132 (FM) of 2017 arising out an application for stay has lost its efficacy and thus it is discharged.

In any case, the order of stay granted at the time of issuance of the rule stands recalled and vacated.

Let a copy of this order be communicated to the respondent no. 1 to take note of the above observation and act in accordance with the same.

Md. Bashir Ullah, J.

I agree.