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IN THE SUPREME COURT OF BANGLADESH.
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)

Bench:
Mr. Justice Md. Ruhul Quddus
and
Mr. Justice S.M. Maniruzzaman

Writ Petition Number 7951 of 2015

Sonali Bank Limited represented by its
Managing Director and another
... Petitioners

-Versus-

Bangladesh represented by the
Secretary, Ministry of Finance and
others

... Respondents

Mr. Shaikh Mohammad Zakir Hossain,
Advocate

... for the petitioner

Mr. Md. Akhtaruzzaman with Mr.
Golam Ahmed, Advocates

... for respondent number 2

Judgment on 12.01.2023

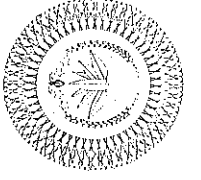
Md. Ruhul Quddus, J:

This rule was issued challenging Order Number 17 dated 20.05.2015 (Annexure-C to the Writ Petition) passed by the Artha Rin Adalat Number 2, Dhaka in Artha Rin Suit Number 216 of 2014 rejecting an application filed by the petitioners under Order 1, rule 10 of the Code of Civil procedure for striking out their names as defendants from the plaint.

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Respondent Number 2 (Shahjalal Islami Bank Limited, Panthapath Branch, Dhaka) instituted the suit for realization of loan allegedly paid against some letters of credit (LC) on confirmation given by the petitioner number 2 (Sonali Bank Limited, Agargaon Branch, Dhaka).

After expiry of the maturity dates, the negotiating bank made payment against the LCs in favour of its' beneficiary (respondent number 3 herein). As the LC issuing bank failed to repay of the money, respondent number 2 being plaintiff instituted the suit against respondent number 3 as well as against the petitioners.

The petitioners being defendants entered appearance and were contesting the suit by filing a joint written statement denying the material allegations of the plaint. Subsequently, the petitioners filed an application under Oder I, rule 10 of the Code of Civil Procedure for striking out their names from the plaint.

Learned Judge of the Artha Rin Adalat rejected the said application by order dated 20.05.2015, challenging which the petitioners approached this Division and obtained the present rule.

Ms. Hosneara Begum, learned advocate submits that the petitioners were neither borrowers, nor guarantors or mortgagers in any loan transaction with the plaintiff-bank and

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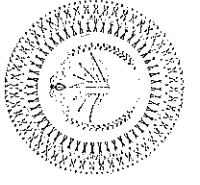
as such they were not required to be impleaded in an artha rin suit under the Artha Rin Adalt Ain.

Mr. Md. Akhtaruzzaman, learned Advocate for respondent number 2 on the other hand submits that without ascertaining the facts by conducting a full fledged trial, it cannot be said that the petitioners are not necessary parties in the suit. Mr. Akhtaruzzaman refers to the judgment and order dated 27.01.2015 passed in Writ Petition Number 5354 of 2014 (*Sonali Bank Limited and another vs Mercantile Bank Limited and others*) in support of his judgment submission.

We have considered the submissions of the learned advocates of both the sides, examined the record and gone through the judgment cited by the learned advocate for the respondent. In Writ Petition Number 5354 of 2014, similar issues in respect of similar loan transaction was raised before the High Court Division by the same bank. The High Court Division discharged the rule by judgment and order dated 27.01.2015 holding that the LC issuing bank was a necessary party. Sonali Bank moved in the Appellate Division with Leave Petition Number 661 of 2015 against the said judgment. The Appellate Division summarily dismissed the Leave Petition by its judgment and order dated 30.04.2015 upholding the decision of the High Court Division.



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We have also found an unreported decision of the High Court Division passed in a bunch of cases, namely, Writ Petition Number 4306 of 2015 (Sonali Bank Limited vs Bangladesh and others) and twelve other writ petitions of same nature, wherein under the same circumstances Sonali Bank Limited was made defendant in an artha rin suit and an application for striking out its name was rejected by the concerned artha rin adalat. The bank challenged the said order of rejection in writ jurisdiction. A Division Bench of the High Court Division presided over by Mirza Hussain Haider (as his lordship then was) discharged all the rules observing:

"...L/C is a document which the negotiating bank is to honor at the time of presenting it for making payment against the same as the same has been termed as loan in section 2(Ga) of the Ain as well as the same has been issued by a financial institution (Sonali Bank) in favour of a loanee (the beneficiary) or stands as a security as contemplated in section 2(Ga)(2) of the Ain. Non-payment of the same, thus, can be termed as non-payment of loan within the meaning of the aforesaid law. Under the banking law L/C is a document issued by a commercial bank and when such document is purchased by another financial institution as the negotiating bank it becomes an agreement between the issuer bank and the negotiating bank and under the said agreement the

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issuer bank is liable to pay the L/C money and the L/C issuing bank being the custodian of the said document is liable to pay the L/C amount to the presenter. So, from the above provisions of law as well as the principle followed in banking sector, it cannot be said that the L/C issued by Sonali Bank is not a debt (Rin) within the meaning of Section 2(Ga) (1) and (2) of the Ain, 2003. Thus when the L/C is loan under the Artha Rin Ain, 2003 the financial institution asking for recovery of any loan is legally entitled to implead such L/C opening bank a party in the suit under Section 6(5) of the Ain.

"The petitioner Sonali Bank has also taken a plea that it did not open the L/C as claimed by the plaintiff-respondent at least not in favour of the loanee of the plaintiff-bank. This is purely a question of fact which can very well be rather only can be determined by the trial Court by adducing evidence wherein there is sufficient scope to determine any question of fact as well as of law in respect of whether the L/C has been issued by the concerned bank or whether the concerned bank is a necessary party."

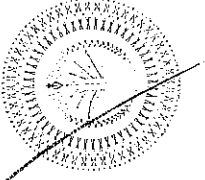
The case in hand is fully covered by the above cited decisions. So, we need not to discuss all the issues again wasting the valuable public time.

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In the result, the rule is discharged, however, without any order as to cost. The trial Court is directed to proceed with the suit expeditiously.

Md. Ruhul Quddus.

S.M.Maniruzzaman, J:

I agree.

S.M.Maniruzzaman.

Typed by: Rabul: 07.05.2024.

Read by: *[Signature]* 07.05.24

Exam.by: *[Signature]* 07.05.24

Readied by:

[Signature]

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07.05.24

স্বাক্ষরিত
এস.এম. মানিরুজামান
এস.এম. মানিরুজামান

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কাজী মফিজুল আলম
সিনিয়র অ্যাডভোকেট

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সহকারী রেজিস্ট্রার
বাংলাদেশ সুপ্রীম কোর্ট, হাইকোর্ট বিভাগ
(১৮-৭২ ইং সনের ১ম অফিসের
৩৬ পর্বাসিতে কর্মরত অফিস)