

# 2015

## Legal Update 2015

### **LEGAL UPDATE: SUMMARY OF CASES ON BANKING, CORPORATE, COMMERCIAL AND CONSTITUTIONAL ISSUES AS REPORTED UPTO FEBRUARY 2015**

#### **1. Constitution of the People Republic of Bangladesh 1972,**

**Article 102, Parties: M/S National Engineers Limited and others vs Jubak Housing and Real Estate Development Limited and others, Case Name: Civil Appeal No.135 of 2006, Name of the Court: Supreme Court of Bangladesh (Appellate Division), Judges: Md. Muzammel Hossain (CJ), Surendra Kumar Sinha (J), Md. Abdul Wahhab Miah (J) , A.H.M. Shamsuddin Chowdhury (J), ( Reported in 3 CLR AD).**

It was held that the learned Judges made the Rule Nisi absolute in a mechanical way just accepting the submission of the learned Advocate appearing for the Bank and thus they failed to exercise the jurisdiction vested in them. When the order dated 11.04.2004 passed by the Artha Rin Adalat was challenged before the High Court Division on the ground that the same was passed without lawful authority and was of no legal effect, it was held that it was the legal obligation of the learned judges to see its propriety and also the bonafide and rational of the submission of the learned Advocate appearing for the Bank as stated hereinbefore, but unfortunately, the learned Judges did not say anything as to how the order passed by the Artha Rin Adalat was without lawful authority to declare the same to have been passed so and was of no legal effect.

#### **2. Code of Civil Procedure (V of 1908)**

**Section 115, Parties: Nur Mohammad and others vs Mosammat Kamla Khatun and others, Case Name: Civil Petition for leave to Appeal No.2340 of 2009, Name of the Court : Supreme Court of Bangladesh (Appellate Division), Judges: Nazmun Ara Sultana (J), Syed Mahmud Hossain (J), ( Reported in 3 C.L.R. AD).**

The High Court Division held that the finding in respect of identity of the suit land was made without at all considering the title of the respective parties. It was held that when the trial Court by giving elaborate findings decided the question of title, the High Court Division should have reversed those finding while concurring with the judgment of the appellate Court.

#### **3. The Artha Rin Adalat Ain, 2000**

**Section 12(2), Parties: Mohammad Ali vs. Bangladesh Bank and Others, Case Name : Writ Petition No.9069 of 2008, Name of The Court: High Court Division, Judges: Ms.Nazmun Ara Sultana (J), Md.Ruhul Quddus ,(Reported in 3 C.L.R .HCD).**

It was not found in record that the bank made any attempt to sell the pledged goods, although it obtained permission from the executing Court. The court observed that the bank never approached in other Class Suit No. 81 of 2001 for any permission to sell the goods, though it was a legal obligation and responsibility on the part of the bank to sell the pledged goods and adjust the sale proceeds against the claim of the bank. This is the mandate of section 12(2) of the Ain. The bank could not have avoided its responsibility on the plea that a Suit was pending. The relevant facts regarding non-selling of the pledged goods were admitted and as such the submission of the learned Advocate for respondent –bank that the controversy cannot be determined in writ jurisdiction, is not tenable.

#### **4.The Constitution of Bangladesh 1972**

**Article 102, Parties: Arshad Hossain and another vs Bangladesh and others, Case Name: Writ Petition No. 162 of 2012, Name of the Court: High Court Division (Special Original Jurisdiction), Judges: Farah Mahbub (J), Kazi Md. Ejarul Haque Akondo (J), (Reported in 3 C.L.R .HCD).**

The Anti-Corruption Commission was directed not to cause impediment to go abroad, if needed, for the purpose of medical treatment of the petitioner's son. However, since several criminal cases were pending against them as such, the petitioners were also directed to notify the Anti Corruption Commission before travelling abroad in connection with those cases where investigations are still going on.

Where trial of the respective criminal cases has already begun after completion of investigation, in those cases the petitioners had been directed to notify the Adalat concerned before travelling abroad for necessary treatment of their son.

#### **5. Transfer of Property Act,1882**

**Section 60, Parties: Md. Afser Uddin vs Bangladesh and Others , Case Name: Writ Petition No.3785 of 2008, Name of the Court: The High Court Division ( Special Original Jurisdiction), Judges :Ms. Nazmun Ara Sultana( J), Md Ruhul Quddus (J), ( Reported in 3 C.L.R. HCD).**

The Court held that under section 60 of the Transfer of Property Act the respondent bank is legally bound to redeem the property mortgaged by the petitioner and return his title documents after the loan is paid off. The Court opined that the subsequent decree, however, would operate against the present writ petitioner as a judgment debtor in Mortgage Suit No. 33 of 2000 and if the decree can not be satisfied after selling of the property mortgages by the borrower-company, the respondent-bank can proceed to attach his (petitioner's) personal property, but in any view of the matter the respondent-bank can not retain his title documents, which were deposited to create mortgage to secure the loan that had already been paid off.

#### **6. Payment of Wedges Act, 1936**

**Section 26(1), Parties: The Deputy General Manager, BFIDC, Wood Preservation Unit, Kalurghat, Chittagong and another vs The Labour Appellate Tribunal, Dhaka and another, Case Name: Writ Petition Nos. 3648, 3649, 3650, 3652, 3653, 3654, 3655 and 3678 of 2000, Name of the Court: The High Court Division (Special Original Jurisdiction), Judges: Mohammad Bazlur Rahman (J), Sheikh Hassan Arif (J), (Reported in 3 C.L.R. HCD).**

The Labour Appellate Tribunal giving relief to the plaintiff-workers was passed in the year 2001. However, the authority did not refund the deducted wages to the concerned workers pursuant to the said judgment by taking recourse to the aforesaid Writ Petition, and, to the discontent of the Hon'ble Court, kept the said payment withheld for the last eleven years. It appeared from the administrative files of the Court that some workers have already either died or retired, and the Court did not know as to what happened to other workers. The Court held that this kind of misdemeanor and arbitrariness on the part of the petitioner-authority should not be taken lightly and such the Court felt inclined to hold that there should be an order for paying compensation to the plaintiff-workers from whom the said deductions were made and withheld. Accordingly, it directs the writ petitioner authority to pay Tk. 10,000.00 (Taka Ten Thousands) to each of the concerned workers or to his legal heirs if he is already dead, within three months from receipt of the copy of the judgment and order.

#### **7. National University Educational Institution's Governing Body Amendment Rules 1998, Delegated Law**

**Rule 6, Parties: Md. Asraful Alam vs Vice-Chancellor, National University, Gazipur and others, Case Name: Writ Petition No. 772 of 2010, Name of the Court: The High Court Division (Special Original Jurisdiction), Judges: A.H.M. Shamsuddin Choudhury (J), Md. Delwar Hossain (J), (Reported in 3 C.L.R. HCD)**

The court reasoned as to why rule 6 of the delegated legislation under consideration should be struck off, is that the delegate totally ignored a rather sacrosanct principle of our administrative law, which is the right to be heard "audi alteram partem", in legal jargon. It has been equated with the doctrine of "Due Process of Law" of the US constitution.

So far as Section 16 of the General Clauses Act is concerned, nobody had any doubt on the proposition that the hirer can also be the firer. But that the need to allow hearing before firing has not been torpedoed by Section 16 or remains beyond duality.

#### **8. Transfer of Property Act (IV of 1882) and Code of Civil Procedure (V of 1908)**

**Section 55(5)(d) and Order XXI, rule 1, Parties: Ahmed Ali (Md) alias Aatur Rahman and another vs Bangladesh of People Republic of the Bangladesh & others, Name of the Court: High Court Division (Special Original Jurisdiction), Judges: Syed Refaat Ahmed (J), Mahmudul Hoque (J), (Reported in 20 B.L.C).**

It was held that a buyer shall be bound to pay the money due on any encumbrances subject to which the property is sold and the interest there on afterwards accruing due.

Order XXI, rule 1 of the Code does not indeed preclude person(s) other than Judgment-Debtor (s) to pay the decretal amount in the name of the Judgment-Debtor (s) and seek a recording of such satisfaction of decree.

## **9. Companies Act (XVIII of 1994) and Bank Company Act (XIV of 1991)**

**Section 27 (a), Parties: Nuher Latif Khan and others vs Desh Energy Limited and Others, Name of the Court: High Court Division (Original Civil Jurisdiction), Judges: Md Rezaul Hasan (J),(Reported in 20 B.L.C).**

The Court held that the bar provided in section 27(a) of the Act is not applicable in the matter of transferring of the shares pursuant to court's order passed under section 233 of the Act or in the matter of a consequent resignation or vacation of office pursuant to order passed under section 233. Besides, Court found that since entire shares of the petitioners were transferred to the respondents then the petitioners had no stake in the company and there was no reason to saddle them with liability of the company in running and managing which they have no say, nor did they have any right to claim any interest in the profit. Accordingly, the Court decided that they will have no personal liability for the loan of a company after their relation with the company has been perpetually served. There is no reason to keep their personal guarantee alive in such circumstances. Hence, a direction upon the bank was made to relinquish the petitioners from their personal guarantees as well.

## **10. Natural Justice**

**Parties: Towhidur Rahman (Md) Mandol vs Principal, Rangpur Model College and others, Name of the Court: High Court Division( Civil Revisional Jurisdiction), Judges: Sharif Uddin Chaklader (J), AKM Shahidul Huq (J), (Reported in 20 B.L.C).**

The expression "natural justice" may not be capable of precise definition. But the basic and fundamental requirements of "natural justice" are well known and have been repeatedly affirmed by courts of highest authority. Particular forms of legal procedure may not be necessary, but it is of the very essence of an enquiry and a decision that the person enquiring must be one without bias and should render the decision in a judicial spirit and in accordance with the principles of substantial justice.

## **11. Evidence Act (1 of 1872)**

**Section 90, Parties: Nurul Hoq Bhuiyan vs Momtazul Islam and others, Name of the Court: Appellate Division (Civil), Judges: Nazmun Ara Sultana (J), Syed Mahmud Hossain (J), Md Imman Ali (J),(Reported in 67 D.L.R. AD).**

The Court Found that exhibit 'Kha' is an old registered deed of the year 1935 and, as such, was admissible in evidence without any formal proof. Since there were ample facts and circumstances before the court as pointed out in support of the genuineness of the partition deed and where that partition deed came before the court from the custody of the contesting defendants the heirs of one of the executants of this partition deed itself, it could not be said that

the partition deed did not come before the court from the proper custody and, as such, taking of this partition deed into evidence and making of the same as exhibit was found to have been illegal.

## **12. Evidence Act (I of 1872)**

**Section 106, Parties: Mahabur Sheikh alias Mahabur vs State, Name of the Court: Appellate Division (Criminal), Judges: Syed Mahmud Hossain (J), MdImman Ali (J), HasanFoez Siddique (J),(Reported in 67 D.L.R. AD).**

Burden of proving fact especially within knowledge- Under section 106 of the Act when any fact is especially within the knowledge of any person the burden of proving that fact is upon him. This principle has been applied in many cases where the wife has been found killed in the house of the husband where they reside together. In such circumstances, the husband will have to prove by positive evidence that he was absent from the house when his wife was killed or explain by evidence how she came to meet her death.

## **13. ArthaRinAdalatAin (VIII of 2003)**

**Section 12(6), 33(1) and 48, Parties: Proshanta Kumar Sarkar vs Managing Director, Agrani Bank Limited, Name of the Court: High Court Division (Special Original Jurisdiction), Judges: Syed Refaat Ahmedv (J), Mahmudul Hoque (J), (Reported in 67 D.L.R.).**

The Court found that the bank in selling the properties of the borrower placed to the bank as security against loan ought to have acted fairly and reasonably at least in determining the value of the property upon obtaining information from the local registration office as indicated in sub-section (6) of section 12 of the Ain, publishing notice in accordance with the provision contained in sections 33(1) and 48 of the Ain and ensured due participation of the bidders from the members of the public so as to allow the borrower to be duly kept abreast with transparent auction process and thereby should have taken necessary steps to protect their properties as necessary during such process.

## **14. Arbitration Act (I of 2001)**

**Section 7, Parties: Lita Sama Samad Chowdhury vs Md Hossain Bhuiyan , Name of the Court: High Court Division ( Civil Revisional Jurisdiction), Judges: Sharif Uddin Chaklader (J), ATM Saifur Rahman ( J),( Reported in 20 B.L.C. )**

According to Section 7 of the Act, the arbitration agreement may survive as a distinct agreement even if the contract in which it is contained is regarded as invalid, non-existent or ineffective, unless otherwise agreed by the parties .The validity of the matrix contract may therefore be determined by arbitration in accordance with the arbitration agreement, and the resulting award will be enforceable, even if the tribunal determines that the matrix contract is invalid.

## **15. Artha Rin Adalat Ain (VIII of 2003)**

**Sections 60 and 50(2), Parties: United Commercial Bank Limited vs Panam Banaspati Limited and others, Name of the Court: High Court Division (Civil Revisional Jurisdiction), Judges: arid Ahmed (J), Md Shawkat Hossain (J), (Reported in 20 B.L.C.).**

Under sections 50(2) and 60 the Appeal was filed by the plaintiff-Bank. There was no doubt that under provision of section 60 of the Artha Rin Adalat Ain 2003, it has its application to the appeals pending from the cases filed under the Ain, 1990. The Court found in pursuance provision of sub-section 2 of section 50 of the Ain, the plaintiff bank is entitled to penal interest.

#### **16. Code of Civil Procedure (V of 1908)**

**Order VI, rule 5, Parties: Jio Dev Bigrah vs Bennu Gopal Majumder and Others, Name of the Court: High Court Division (Civil Revisional Jurisdiction), Judges: Bhabani Prasad Singha (J), (Reported in 20 B.L.C.)**

The Court held that as the better statement was filed by the plaintiffs the nature character of the suit will not change. Better statement can be filed at any stage of a proceeding in as much as a plaintiff is not debarred from establishing his case and falsify the pleadings of the defendants as brought within the recital of the further and better statement.

#### **17. Code of Civil Procedure (V of 1908)**

**Order XLI, Rule 31, Order VIII, rules 1 and 5, Parties: Rajdani Unnayan Kartri pakhkha (RAJUK) and others vs Najir Ali and others, Name of the Court: High Court Division (Civil Revisional Jurisdiction), Judges: Sharif Uddin Chaklader (J), ATM Saifur Rahman (J), Reported in 20 B.L.C.).**

The lower appellate Court in a judgment of reversal should be more cautious and careful in its decision and discuss the evidence relied on by the trial Court which is not so required in a Judgment of affirmance where a general agreement with the reasoning of the trial Court is sufficient.

Unless there is denial of all the agreement made in the plaint in written statement specifically or by necessary implication the averments made in the plaint shall be taken to be admitted. It means, defendant at first made foundation of defense and after that evidence to be led. If in the written statement there is no foundation of defendant's case, defendants are not allowed to led evidence in the Court.

#### **18. Code of Civil Procedure (V of 1908)**

**Section 115(1), Parties: Dr Farzana Ahmed vs Roksana Ahmed and others, Name of the Court: High Court Division (Civil Revisional Jurisdiction), Judges: Sheikh Abdul Hussain (J), M Moazzam Hussain (J), (Reported in 20 B.L.C.)**

The Court is not allowed a remedy against the defendant or plaintiff either generally or otherwise which is inconsistent or contrary to its order. Passing order of such relief against the defendant to contest is violative of the principle of natural justice as well as against judicial norms.

### **19. Specific Relief Act (I of 1877)**

**Section 42, Parties: Sowkat Ali Molla and others vs Md Nurul Islam alias Sheikh Md.Nurul Islam and others, Name of the Court: High Court Division ( Civil Revisional Jurisdiction), Judges: Sharif Uddin Chaklader (J), ATM Saifur Rahman(J), (Reported in 20 B.L.C.)**

An order was passed by the Court as condition precedent that must be complied before stepping further. It is an admitted position that court's verdict was not complied with before filing of the suit as the suit was not maintainable.

### **20. Value added Tax Act (I of 1877)**

**Section 55, Parties: Akhter Furniture Ltd vs Commissioner, Customs, Excise and VAT and others, Name of the Court: High Court Division ( Special Jurisdiction), Judges: Md Ashfaul Islam (J), Md Ashraful Kamal (J), (Reported in 20 B.L.C.).**

As per court's direction in 29/007 that the notice which could not be issued subsequently cannot be re-issued on the ground of amended law.

### **21. Value Added Tax Act ( XXII of 1991),**

**Section 55(3) and 56, Section 43, Parties: Zakir Ahmed (Md) vs National Board of Revenue and others, Name of the Court: High Court Division ( Special Jurisdiction), Judges: Md Emdadul Huq (J) , Mahmudul Hoque (J), (Reported in 20 B.L.C.).**

The Court's finding was that before imposition of section 56 of the Act, no notice under section 55(1) of the Act was issued, no decision was given under section 55(3) of the Act and no notice as required under Rule 43 of the Rules was served upon the petitioner. By that reason it was found that locking of the BIN of the petitioner by the impugned memos were without legal sanction and was therefore absolutely unauthorized and uncalled for.

### **22. Artha Rin AdalatAin (VII of 2003)**

**Sections 10(1) and 19(2), Parties: ABSCO Limited vs Artha Rin Adalat No. 2, Dhaka &another, Name of the Court: High Court Division (Special Original Jurisdiction), Judges: Syed Refaat Ahmed (J), Mahmudul Haque (J), (Reported in 67 DLR).**

The Court held that there are no provisions in section 10 of the Ain for filing applications against the ex-parte judgments and decree of the Adalat similar to the provisions contained in section 19(2) of the Ain. It was open to the defendant to explore possible avenues of redress otherwise available under Ain. While the appeal provisions of section 41 was considered, in addition, Court

held that reading of section 26 of the Act serves to provide an indication of invoking relevant provisions of the Code.

### **23. Constitution of Bangladesh, 1972 ceremony**

**Article 102(2), Parties: Rezaul Kabir( Md) and anothers vs Bangladesh and Others, Name of the Court: High Court Division (Special Original Jurisdiction), Judges: Tariq ul Hakim (J), Md Monirul Islam Chowdhury (J), (Reported in 67 D.L.R).**

The Court adjudicate that prior show case notice must not be a simple paragraph or an idle ceremony but must effort the notice receiver adequate opportunity to explain his position and without such adequate opportunity it will be considered to be no notice at all.

### **24. Constitution of Bangladesh, 1972**

**Article 102 (2), Parties: Rahima Begum vs Government of Bangladesh Represented by the Secretary, Ministry of Local Government and others, Name of the Court: High Court Division (Special Original Jurisdiction), Judges: M.**

The Hon'ble Court adjudged that if the service rendered by the MLSS is otherwise satisfactory and not detrimental to the interest of the institution concerned mere defect/ flaw of his/ her academic records, not detected at the entry stage or soon thereafter, should not have been the ground for her removal.

### **25. Income Tax Ordinance (XXXVI of 1984)**

**Section 82BB (1) and 93, Parties: Payer Mohammed vs Deputy Commissioner of Taxes and others, Name of the Court: High Court Division (Special Original Jurisdiction), Judges: Zinat Ara (J), Md Habibul Gani (J), (Reported in 67 DLR).**

The Court held that the DCT has no authority to reopen the return of the assesses by issuing notice under section 93 while the assesses files return under section 82BB (1) without selection for audit by National Board of Revenue.