

2016

LEGAL UPDATES ON BUSINESS RELATED LAWS

REPORTED CASES OF HON'BLE APPELLATE DIVISION AND HIGH COURT OF SUPREME COURT
OF BANGLADESH

FROM JANUARY TO FEBRUARY 2016

(COVERING MOST MAJOR LAW REPORTS)

1. Constitution of Republic of Bangladesh, 1972

Article 104, Parties: State v Dafader Marfoth Ali Shah and others, Name of the Court: Appellate Division (Criminal), Judges: Md Muzammel Hossain (J), Surendra Kumar Sinha (CJ), Md Abdul Wahhab Miah (J), Nazmun Ara Sultana (J), Syed Mahmud Hossain (J), Md Imman Ali (J), Reported in 68 DLR (AD) 13

The Court held that if a true copy of document is proved by the maker on oath giving explanation that the original is missing from the record, it satisfies the requirement of secondary evidence within the meaning of section 63 of the Evidence Act. Where secondary evidence of the contents of a document alleged to have been destroyed/untraceable is admitted by the court of first instance without objection, even without any foundation for the reception of secondary evidence having been laid down, the opponent is estopped from taking any objection to the admissibility of such documentary evidence in the appellate Court. Even oral evidence of the contents of the original document can be proved when the original is admitted to have been lost.

2. Constitution of Republic of Bangladesh, 1972

Article 102(2), Parties: Rokibul Islam (Lavlu) (Md) and others v Government of the People's Republic of Bangladesh and others, Name of the Court: Court Division (Special Original Jurisdiction), Judges: AHM Shamsuddin Chowdhury (J), Jahangir Hossain (J), Reported in 21 BLC 14.

The Court found that it appears from the documents the contract is a purely commercial contract and hence while the petitioners may have remedy for breach of contract in a civil court of competent jurisdiction, a writ petition is incompetent.

3. Constitution of Republic of Bangladesh, 1972

Article 102(2), Parties: Jamal uddin Sikder (MD) and others v Government of Bangladesh and others, Name of the Court: High Court division (Special Original Jurisdiction), Judge: Quazi Reza-ul-Hoque (J), Abu Taher (J), Md Saifur Rahman (J), Reported in 21 BLC 162.

The High Court division held that a public and/or constitutional authority must act reasonably as much required to do within the ambit of the law. The reasonableness, rationality and legitimate

expectation can be read together, wherein the executives-in-charge of placing the office order of the Prime Minister's Office before the Cabinet Division Meeting was not done reasonably while for the Freedom Fighters had/have legitimate expectation that the executives-in-charge put up the proposal fairly, diligently and reasonably. The executives-in-charge never had the authority to override the metes and bonds of law, which it did, legitimate expectation cannot be defeated by a public/constitutional body, which is set by law to be followed by a functionary.

4. *Arbitration Act, 2001*

Section: 42, 43 and 39, Parties: Nurul Absar (Md) v Golam Rabbani and other, Name of the Court: Supreme Court of Bangladesh, Appellate Division (Civil), Judge: Md Abdul Wahhab Miah (J), Md Imman Ali (J), AHM Shamsuddin Chowdhury (J), Reported in 68 DLR (AD) 4.

It was held that the only remedy open to a person who wants to set aside an arbitral award is to file an application under Section 42 of the Act, within sixty days from the date of receipt of the award and after the expiry of the period of sixty days as envisaged in the section, the award becomes enforceable within the meaning of Section 44 thereof and thus, jurisdiction of the civil Court has impliedly been barred if not expressly. Section 9 of the Code of Civil Procedure clearly provided that the Courts have jurisdiction to try all suits of civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

5. *Artha Rin Adalat Ain, 2003*

Section: 50(2), Parties: Rajib Traders v Artha Rin Adalat and others, Name of the Court: Supreme Court of Bangladesh, Appellate Division (Civil), Judge: Md Abdul Wahhab Miah (J), Md Imman Ali (J), AHM Shamsuddin Chowdhury (J), Reported in 68 DLR (AD) 10.

The Court's finding was that the rate of interest to be paid by the judgment debtor will have to be calculated according to the prevailing interest rate or rates, which may be different for different periods, from the time of filing of the suit till the payment of the decretal amount by the judgment debtor.

6. *Admiralty Court Act, 2000*

Section 4(3)(4), Parties: Praxis Energy Agents LLC v MV Yu Fu and others: Name of the Courts: High Court Division (Admiralty Jurisdiction), Judge: AKM Abdul Hakim (J), Reported in 21 BLC 46.

This Court noticed that the dispute as has been brought before this court has arisen from the supply of bunkers by the plaintiff to the defendant vessel and arising out of the contract and therefore squarely falls under clause (V) of subsection (2) of subsection (3) and has locus standi to invoke the jurisdiction under the provision of subsection (3) and (4) of section 4 the Admiralty Court Ain, 2000 and is clearly maintainable in this Admiralty Court.

7. *Code of Criminal Procedure Act, 1898*

Section 561A, Parties: Joynul Karim and others v State and another, Name of the Court: Appellate Division (Criminal), Judges: Md Fazlul Karim (J), Md Joynul Abedin (J), Shah Abu Nayeem Mominur Rahman (J), Reported in 21 BLC 1.

The Court observed that the grounds taken for quashment under section -561A of the Code of Criminal Procedure which cannot be considered as substantial ground for the purpose of interference under section 561A of the Code of Criminal Proceeding and that the alleged omission of pleading the Company in the proceeding is an irregularly and the same is not fatal and though the company is not made a party in the proceeding but the persons concerned representing the company, who are party in the issuance of the dishonored cheque in reference, having been made party in the proceeding cannot be said to be bad for defect of party inasmuch as the punishment if any on proof, is to be inflicted upon the natural persons involved in the offence committed.

8. Evidence Act, 1872

Section 73, Parties: Nurjahan Khatun v Momena Khatun and others, Name of the Court:High Court Division (Civil Revisional Jurisdiction), Judge: Md Rais Uddin (J),Reported in 21 BLC 19.

The opinion of an expert enables the court to come to a satisfactory conclusion. The court itself can compare any signature of LTI under section 73 of the Evidence Act and come to a decision but it is better to have an expert's opinion particularly in case of LTI. Mere comparison of admitted signature without expert's advice or microscope is dangerous.

9. Insurance Act, 1938

Section 47B, Parties: Standard Insurance Ltd v Maq Enterprise Ltd, name of the Court:High Court Division (Special Statutory Jurisdiction), Judge: Md Nuruzzaman (J), Farid Ahmed (J), Reported in 21 BLC 55.

The Court held that as the sub-section (2) of 47B provides the provisions of granting interest of claim amount, on perusal of the Act it divulged that the granting of interest is mandatory not discretionary of the court. Hence, the statutory interest under section 47B of the said Act, the Court has no discretion in this matter.

10. State Acquisition & Tenancy Act, 1951

Sections 143 and 147, Parties: Champa Dep v Secretary, Ministry of Land and others, Name of the Court:High Court Division (Special Original Jurisdiction), Judge: Md Habibul Gani (J), Md Akram Hossain Chowdhury (J), Reported in 21 BLC 88. It was held that from SA record and the BS record the property in question appears to have been recorded as a waste land. The title of the disputed land could not be decided in a summary proce The examination of title deeds for purposes of determinating title of holder of record of rights is not permitted under section 143. The disputed title cannot be decided in a summary proceedings

under section 143 and 147 of the Act or in a special jurisdiction other than by a competent Court of Civil jurisdiction by taking elaborate evidence.

11. State Acquisition & Tenancy Act, 1951

Section 145D (1)(c), Parties: Al-Mamun Mridha v Land Survey Tribunal , Dhaka Metropolitan Dhaka, Name of the Court: High Court Division (Special Original Jurisdiction), Judge: Md Habibul Gani (J), Md Akram Hossain Chowdhury (J), Reported in 21 BLC 158.

The Court found that the respondents in their application prayed for holding a local investigation by an Advocate Commissioner to investigate the possession of the property in question and also to investigate who are possessing thereon and further who are residing or enjoying the shops stands thereon and are getting rents from the shop keepers. Such prayer of the respondents are totally based on an application as generally filed in a civil suit for deciding the title and possession of the land in dispute but it does not attract the provisions of section 145D of the State Acquisition & Tenancy Act, 1950.

12. Code of Civil Procedure, 1908 (Order XXXVIII)

Rule 5, Parties: Mohammad Ali v Judge, Artha Rin Adalat & others, Name of the Court: High Court Division (Special Original Jurisdiction), Judge: Zubayer Rahman Chowdhury (J), Mahmudul Hoque (J), Reported in 21 BLC 1.

The Hon'ble Court adjudged that before issuing an Order of attachment before judgment the Court must be satisfied that the Defendant has been trying to frustrate effect of the decree that might be passed against him by disposing of the property or removing it from the jurisdiction of the Court. That is, the court must be satisfied not only to the effect that the defendant is trying to dispose of the property or remove the same from its jurisdiction but also this disposal or removal is with the object of observing or delaying the execution of the decree that may be passed in suit. This satisfaction is to be judicial satisfaction and it must be based on some visible materials which are to be found in the Affidavit filed by the party or otherwise.

13. Code of Civil Procedure, 1908, (Order XXVII)

Rule 9, Parties: M Mostafa Shahariar Bhuiyan v M Shahjahan Bhuiyan, Name of the Court: High Court Division (Civil Revisional Jurisdiction), Judge: Sheikh Abdul Awal (J), Reported in 21 BLC 11.

It was found that in a suit of this nature the Court is quit competent to direct for further local investigation for ascertaining the existence of path or road as well as the question structure standing thereon. Moreover, to ascertain the true position of the suit by way of further local investigation will no way cause prejudice to any of the parties.

14. Code of Civil Procedure, 1908, (Order: XXXVIII)

Rule: 5, Parties: Mahabub Alam (Md) v Liton Gosh and others, Name of the Court: High Court Division (Civil Revisional Jurisdiction), Judges: Sheikh Abdul Awal (J), Shahidul Karim (J), Reported in 68 DLR (AD) 26.

It was held that the power of attachment of property before judgment being an extraordinary power of interfering with a party's right to use and enjoy its own property before any decree is passed, the Court should be very circumspect in allowing such prayer and must decide the matter on the strength of the facts of each case. In this case, we have already indicated that the application under Order XXXVIII, rule 5 of the Code of Civil Procedure for attachment before judgment does not contain any concrete or specific allegation with specific materials to satisfy the Court that the defendant has been trying to transfer his property from the court's jurisdiction with intent to obstruct or defeat the prospective decree or to defraud the plaintiff and to frustrate the suit, no relief can be given on such vague and general allegation. Therefore, we find no substance in either of the contentions as raised by the learned Advocate for the petitioner.

15. Anti-Corruption Commission Act, 2004

Section 17(Ka), Parties: Yunus (md) v State and other Respondent, Name of the Court: Appellate Division (Criminal), Judge: Sundra Kumar Sinha (J), Nazmun Ara Sultana (J), Syed Mahmud Hossain (J), Hasan Foez Siddiquen (J), Reported in 68 DLR (AD) 109.

The Court observed that Schedule Offences – Offences punishable under section 420, 462A, 462B, 466, 467, 468, 469 and 471 of the Penal Code have been inserted in the schedule for the first time as offences triable by the Special Judge under the Durnity Daman Commission Ain without specifying as to whether those offences are connected with the offences mentioned under the Prevention of Corruption Act and offences punishable under sections 161, 162, 163, 164, 165, 166, 167, 168, 169, 217, 218, 409, and 477A of the Penal code have been arrayed as offences triable by the Special Judge. By reason of his insertion of those offences, the investigations and trials of the proceedings under the said offence have been postponed and thereby administration of criminal justice is being hampered.

16. Principle of Natural Justice

Parties: BRAC Bank Ltd. v Multimode Ltd, Name of the Court: High Court Division (Civil Appellate Jurisdiction), Judge: Sharif Uddin Chaklader (J), AKM Shahidul Huq (J), Reported in 68 DLR 48.

The Court held that Natural Justice has no definition. The principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial or quasi-judicial authority while making an order affecting those rights these rules are intended to prevent such authority from doing injustice.

17. Partition Act, 1893

Section 4, Parties: Hossain Shahid Chinu v Abdul Wahab and others, Name of the Court: Appellate Division (Civil), Judge: Md Muzammel Hossain (CJ), Sk Sinha (CJ), Md Abdul Wahab Miah (J), Hasan Foez Siddique, AHM Shamsuddin Chowdhury (J), Reported in 68 DLR (AD) 103.

The Court found that the suit land is not an undivided dwelling house rather it is admittedly a commercial place on which petitioners and other co-shares have been conducting their business treating the suit land as commercial premises. Since the suit land is not a undivided dwelling house but a commercial place n application under section 4 of the Partition Act cannot be invoked to buy out the share of a stranger purchaser in the suit land.

18. Customs Act, 1969

Sections 193 and 196, Parties: Mujahid Zamil (MD) and others v Commissioner of Customs and others, Name of the Court: High Court Division (Special Original Jurisdiction), Judge: Zinat Ara (J), JN Dep Choudhury (J), Reported in 21 BLC 142.

The High Court Division held that there is a difference between an order passed by a competent person/authority having legal jurisdiction to entertain and decide the matter but which suffers from irregularity error and an order passed by a person who has no competency or jurisdiction to entertain and decide the matter at all. Hence if an assessment order passed by a person having no legal competency/authority to make assessment, in such case ‘a person aggrieved’ may invoke writ jurisdiction. A person may also avail jurisdiction if on the face of assessment order, it is apparent that those are malafide or fraudulent. In other cases a person aggrieved by an assessment order has to file an appeal under section 193/196 of the Act with rule 13 of the Rules.

19. Limitation Act, 1908 and Arbitration Act, 2001

Section 5 of Limitation Act; Section 33 of Arbitration Act, Parties: Government of Bangladesh v Kothari Fermentation and Biochem Ltd, Name of the Court: Appellate Division (Civil), Judge: Md Muzammel Hossain (CJ), Surendra Kumar Sinha (J), Md Abdul Wahhab Miah (J), Hasan Foez Siddique (J), AHM Shamsuddin Choudhury (J), Reported in 21 BLC (AD) 20.

Section 5 of the Limitation Act is very much applicable for condonation of delay in filing an application for challenging any award in the trial Court under section 33 of the Act, 1940.

20. Bank Companies Act, 1991 and Contract Act, 1852

Section 27KaKa and 5GaGa of Bank Companies Act, Section 26 of Contract Act, Parties: Shamsul Alam (MD) v Bangladesh, represented by the Secretary Ministry of Law, Justice and Parliamentary Affairs and others, Reported in 21 BLC 130.

The Court held that the report has been initiated is very much within the provision of law and inclusion of the name of the petitioner in the CIB Report as per Bank Companies Act is also within the provision of law as it is a continuous process.

21. *Anti-Corruption Commission Act, 2004: (ACC Rules, 2007)*

Rule 16, Parties: Anti-Corruption Commission v Md. Reazul Kabir and another, Name of the Court: the Supreme Court of Bangladesh (Appellate Division), Judge: Surendra Kumar Sinha (CJ), Syed Mahmud Hossain (J), Hasan Foez Siddique (J), Reported in 4 CLR (AD) 61.

The was held that it is the functions of the Court to examine the reliability of evidence collected by way of trap after recording the evidence. Whether the trapping party had followed the relevant Rules at the time laying rap or not or in other words, pre arranged raid/trap carries any evidentiary value or not for non compliance of procedural formalities before laying traps should be considered by the Courts after decoy witness considering the facts, circumstances, the procedure to be followed for

laying traps and that the officials laying traps were designated or not. There may be other reliable evidence in the hand of prosecution of against the respondents to connect with the offence.

22. *Anti-Corruption Commission Act, 2004*

Section: 19, Parties: Chowdhury AtaurRahman Azad v Government of Bangladesh and others, Name of the Court:The Supreme Court of Bangladesh (High Court Division) (Special Original Jurisdiction), Judge: Md. Ruhul Quddus (J), Bhishmadev Chakraborty (J), Reported in 4 CLR (HCD) 22.

The Court held that under section 18 and 19 of the Ain, 2004 the Commission is empowered to compel the appearance of any person to give statement with regard to the allegation of corruption. The power of the Commission to issue notice for appearance covers both scheduled and non-schedule offence. The authority of the Commission to direct any person to appear before it to give statement in connection with ‘inquiry’ or ‘investigation’ has been embedded in the Ain, 2004.

23. *Negotiable Instrument Act, 1881*

Section: 148 and 40, Parties: Mohammad Eusof Babu and others Appellants (In the appeals) Mustaque Alam Chowdhury, Petitioner v The State and another, Name of the Court: The Supreme Court of Bangladesh (Appellate Division), Judge: Surendra Kumar Sinha (CJ), Md. Abdul Wahhab Miah (J), Syed Mahmud Hossain (J), A.H.M. Shamsuddin Choudhury (J), Reported in 4 CLR (AD) 70.

It was found that if for any reason the company is not prosecuted, the other person who are in charge of the affairs of the company or in the management of the company or have knowledge about the affairs of the company cannot escape from criminal liability if they are served with the notice. These persons need not have done any specific overt act or omitted to do anything to be fastened with liability. The very fact that the company has committed the offence is sufficient to make them liable. No company transacts business without the help of human agency. When the

Court presumes the existence of a fact, the burden of proving its non existence is on the party that asserts its non existence.