

Artha Rin Adalat Ain - 2003

(With Latest Amendment)

&

The Limitation Act - 1908

Background: After introduction of Loan Classification and Provisioning vide BCD Circular No.34/1989 and subsequent BCD circular No.20/1994, BRPD Circular No.16/1998, master Circular No. BRPD-05/2006, BRPD Circular No.07 dated June 14,2012 and Master Circular No.14 dated 23/11/2012 the increased NPL became growing concern for the industry and considered major challenge to the bank- based economy.

There had been no separate law for loan recovery other than “The Civil Procedure Code-1908” as Money Suits and Public Demand Recovery Act-1908. It took huge time for settlement of loan recovery suits as the civil courts were overburdened with other business suits.

Considering the defaulted loan situation in banking sector, Govt. introduced “**The Commercial Court Act**” in 1984.

Contd...2)

Introduction: Govt. enacted a special piece of legislation under the Title” **Artha Rin Adalat Ain-1990**” which contains 9 sections only. To make it more effective for loan recovery it required more amendments.

Meantime Govt. introduced “**The Bankruptcy Act-1997**” which came into force on 3rd Dec. 1997 for recovery of defaulted loan. This law also not effective to recover the huge defaulted loan.

Based on the under performance of the aforesaid laws for recovery of defaulted loans Govt. introduced “**Artha Rin Adalat Ain-2003**” by addressing the shortcomings of “Artha Rin Adalat Ain-1990” and the said law came in force on May 01 2003. [The section 46 & 47 came in to operation from May 01, 2004.](#)

Till date the following amendments made to the law:

- (a)Artha Rin Adalat (Amendment) Ain -2004.
- (b) Artha Rin Adalat (Amendment) Ordinance –2007 (Repealed)
- (C) Artha Rin Adalat (Amendment) Ain -2010.
- **Basic changes of ARAA-2003 over ARAA-1990**
- The Money Loan Court Act-2003, addressed quite effectively some of the problems of the old Act, namely MLC Act-1990 by incorporating a lot of new provisions to speed up the judicial process.
- The new Act has concentrated on the following areas:
- Further codification of the Civil Procedure-1908 i.e. simplification of the procedure for filing of suit and awarding judgment within a minimum stipulated time schedule.

- Emphasis on documentary evidence and less importance on verbal argument before the court.
- Alternative Dispute Resolution through settlement conference or mediation between the lenders and borrowers. Changes in the Limitation Act-1908.
- Changes in the doctrines of finality.

Main Features of Artha Rin Adalat Ain – 2003

Artha Rin Adalat Ain – 2003 contains 8 chapters and 60 sections. Main features of Artha Rin Adalat Ain – 2003 are stated below:

Section 3: Act to override

The provision of this Act shall have effected notwithstanding anything inconsistent in any law for the time being in force.

Section 5: Sole jurisdiction of the Court

All the suits those are relating to recovery of loan of the financial institutions shall be filed in the Artha Rin Adalat.

Section 6(2): Trial Procedure

- (a) A Plaint and an affidavit in favour of the plaintiff must be submitted.
- (b) Documentary evidence need to be attached. (c) Ad Valorem Court fee must be deposited.

6(5): During filing the suit against the Principal Debtor, the Bank/FI's shall include third party mortgagor and the third party guarantor simultaneously.

Section 7: Provisions relating to service of Summon.

Section 8: Plaint

8(1): A financial institution shall file a suit through plaintiff submission; amongst other matters the following matters shall be included in that plaintiff they are furnished below:

- (a) The plaintiff's name, address, working place etc.;

- (b) Defendant's name, address, working place, residence etc.;
- (c) All the events related to the claim;
- (d) Incident from which the cause of action of the suit arises, including the place and date thereof;
- (e) Valuation of the suit for the serving purpose of making deposit of the court fee; contd...3)

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8(2): The plaintiff shall also include in the plaint in addition to the matter that is mentioned in the aforesaid sub-section:-

(a) A schedule, where it shall be set-

- I. Original lending sanction to the defendant or, as the case may be, the amount of money invested;
- II. Amount of taka imposed as normal interest or in the case of demands necessary, profit or rent;
- III. Amount of taka imposed as penal interest;
- IV. Amount of taka imposed upon defendant due to other matters;
- V. Amount of taka deposited to the plaintiff/financial institution as payment of lending or due as per last account drawn before filing the suit;
- VI. Description of comparative of total amount given and fixed by the plaintiff and total amount that paid by the defendant;

(b) A schedule of the immovable and movable property shall be given against of which lending has been received by the defendant, through mortgage or security and detail identification, description of the related mortgaged or security instrument and financial evaluation if done, shall be showed.

8(3): If the plaintiff mentions any document in support of him that is in his possession, he shall submit that document or its attested copy or photocopy incorporating a list with the plaint.

8(4): If the plaintiff depends on a document that is not in his possession, in this respect he shall submit a list of document mentioning the possession of that document.

8(5): As an exception to the provisions under sub-section (2) & (3), if the plaintiff submits any documents afterwards, without having reasonable

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excuse and payment of expenses the Court shall not accept it; and the due expenses shall be deposited to the proper head of account as government revenue.

8(6): The plaintiff shall mention in a clause of the plaint who will conduct the suit of his behalf.

8(7): In failing to submit the schedule of the property of the defendant, the plaintiff pray for this to the Court, the Court on receiving prayer of the plaintiff shall direct the defendant to submit his account of movable and immovable properties along with his affidavit and receiving such direction, the defendant shall submit a list of the immovable and movable properties, if any, having written document to the Court.

8(8): A financial institution shall submit so many copies of plaints and along with relevant papers, which are relevant to the total number of defendants.

Section 10 (1): Appearing before the court, the defendant shall submit a written statement. Otherwise, the court shall dispose the matter ex-parte.

Section 10(2): The court may extend the time for 20 days on payment of Tk.2000-5000 as compensation/expense.

Section 11: The Plaintiff Bank/FI may furnish an additional statement against the written statement.

Section 12: Right to sell certain securities by the Bank/FI

12 (1&3): Bank shall not file a suit in the Artha Rin Adalat without selling out the property of the defendant which is kept under its control for lien, pledge, hypothecation or mortgage and without adjustment of the sale process on account of repayment of lending.

12 (4): At the time of selling such property, Bank shall the procedure stated in section 33(1), (2) & (3).

Section 13: Court shall fix up a certain date and frame the points/issues of the case on hearing the parties. If Court finds no issue to be framed, Court shall immediately pronounce the judgement. (Contd...5)

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If one or both parties remain absent on fixed date, Court shall frame the points/issues of the case considering the plaint & written statement and shall immediately pronounce the judgement.

Section 14 (1): Court shall not adjourn the hearing of the suit more than once on prayer of any of the party.

Section 14 (2): But Court may allow the adjournment for more than once on payment of expense tk 1000-3000, without making breach of the time limit fixed by this Act.

Section 15: It is not mandatory for the court to hear oral argument before delivering the judgement. But on application of the parties, Court may allow to submit written argument within 5 days.

Section 16: Provision relating to Delivery of Judgement

16 (1): Court shall deliver the judgement within 10 days of recording of evidence.

16 (2): But where any party has submitted written argument or court hears oral argument, 10 days time will be counted from that date.

Section 17 (1): Provision relating to Time Limit for Disposal of the Suit.

17 (1): If the defendant does not appear before the court after serving summon, Court shall dispose of judgement within 30 days.

17 (2): If the defendant submits written statement, Court shall dispose of judgement within 90 days.

Section 18: Special provision for filing of suits and hearing

- (a) Bank cannot file any suit under this law for recovery of money which is appropriated by its officer or employee.**
- (b) A debtor cannot file any suit under this law against any Bank/FI for seeking any relief which is arising out of any matter relating to lending operation.**
- (c) Court shall not arrange analogous hearing with any other suit filed by the debtor in different courts. (Contd...6)**

Section 19: Ex-parte Decree

Court shall dispose the case ex-parte if the defendant remains absent on date of hearing. But within 30 days of receiving the information of exparte decree, defendant may apply to the court for re-hearing by depositing 10% of decreetal amount.

Section 22: Arbitration

Subject to provision of section 24 withholding further proceeding, after of submission of written statement, Court may send the suit for arbitration. But if the parties on mutual consent apply to the court for arbitration process, it shall be mandatory.

Such arbitration council shall be presided over by a neutral lawyer, retired judge, retired banker or any other person on mutual understanding of the parties. Conditions of settlement should be written down in the shape of agreement and the Court shall pass necessary order as per Order 23 of CPC 1908 within 60 days but it may be extended up to 90 days. No party is allowed to the right of appeal or revision in Higher Court against the order of such conference.

But if the attempt for settlement of the dispute through arbitration fails, the Court shall start the legal proceeding again.

Section 25: If the suit value exceeds more than 5.00 crore, the court shall inform the Chief Executive of the Bank/FI in writing about the settlement conference or arbitration.

Section 27: Court of Execution

Any order of decree proclaimed by the Artha Rin Adalat shall be executed by the court itself or by another court where it is sent for the purpose of execution.

(For example: If the property situated in Chittagong is mortgaged to the bank situated in Dhaka, Artha suit shall be filed in Dhaka Court but for the purpose of execution, the court may transfer the execution suit to Chittagong by itself or on application of the Plaintiff Bank.)

(Contd...7)

Section 28: Time Limit to File Suit for Execution.

The decree holder shall file the execution suit within maximum one year of the date of decree.

But if the Court fixes any time limit for payment under section 29, the time will be counted from the expiring date.

If the court fixes some instalment for payment under section 29, the time will be counted as soon as the judgement-debtor fails to comply with the order.

Execution suits filed after one year shall be barred by limitation and Court shall directly reject the application/ execution suit.

Section 28(4): Where any new suit for execution is submitted after 6 years of expiry of first execution suit, the same shall be barred by limitation and the court shall directly dismiss the suit directly.

(Bank can file as many execution suits as it requires for recovery of the loan. But no execution suit can be filed after six year of filing the 1st execution suit. For example: If 1st execution suit is filed on 01.01.2011, the 2nd or 3rd or 4th execution suit cannot be filed after 31.12.2016)

Section 31: Stay of Execution Process

Where any suit (arising out of Artha Rin Suit) is under trial in Higher Court, the proceeding of Artha Rin Suit will not be automatically stayed. If the Higher Court directly gives a direction of stay order, the proceeding of Artha Rin Suit will be stayed.

Section 32: Objection against Execution

Any party aggrieved by any order and decree of Artha Rin execution suit may file an application/misc. case by depositing 10% of the decreetal amount.

Section 33: Auction Sale Procedure (By Court).

33(1): The Court shall invite sealed tender through a national bangla daily. Court may publish auction notice in a local daily also.

(Contd...8)

33(2): The bidder/tenderer shall deposit a pay order of specific value according to this section. The highest bidder (if bid is accepted by the court) will deposit the rest amount of money within 90 days. But Court can extend this time for more 60 days.

But if the decree-holder considers the value very low, irregular, insufficient or inadequate shall apply to the Court for rejecting the auction price and the Court may discharge the offered value. (But Court is not bound to discharge)

33(3): If the highest bidder fails to deposit the rest amount under section 33(2), his initial deposit will be forfeited and Court will give this opportunity to 2nd highest bidder and so on.

33(4): 2nd Auction Sale. If the property could not be sold under section 33(1), (2) & (3), Court shall arrange 2nd auction following the same process.

33(5): If auction sale is not possible under section 33 (1), (2), (3) and (4), court shall vest the possession of the property to the decree-holder and issue a certificate for the same purpose which has the following effects:

- (a) The decree-holder shall be entitled to the possession and enjoyment of the property until the realization of full dues.**
- (b) The decree-holder shall be entitled to sell the property through auction and realize the dues.**
- (c) If the sale proceed is insufficient to adjust the dues, the decree holder shall be entitled to file another execution suit to realize the rest amount.**
- (d) If the sale-proceed is excess comparing to dues, the decree holder must return to the Judgement-debtor.**

- (e) The decree-holder can acquire the possession of the property with the help of the executing Court.

(Contd...9)

33(6): The ownership of the property will be automatically vested on the decree-holder after expiry of 6 years of obtaining certificate under section 33(5). However, if decree-holder desires to obtain the ownership before 6 year, he needs to apply in written before the Court.

33(7): Despite the provision of section 33(4) & (5), Decree-holder Bank can apply to the Court for the certificate under section 33(7). But without complying the provisions of 33 (1), (2) & (3), Decree-holder is not entitled to get the certificate under section 33(7).

The certificate issued by the Court under section 33(7) has the following effects:

- (a) Such Certificate shall be treated as the 'Documents of Title'.
- (b) The Court shall send a copy of such certificate to the local Sub Registrar office.
- (c) The decree-holder can acquire the possession of the property with the help of the executing Court under section 33(7A).
- (d) The decree-holder becomes the owner, both in legal and practical meaning; of the property i.e. he can sell, transfer, enjoy the outcome of the property and keep it subject to the provision of section 10 of the Banking Company Act- 1991.
- (e) In respect of sale, if the sale-proceed is insufficient, he cannot claim the rest amount to the judgement-debtor.
- (f) If the sale-proceed is excess, decree-holder can enjoy it with full right.

(g) As per rule of the Apex court (Appellate Division) of the country, certificate issued under section 33(7) cannot be cancelled by executing Court of High Court Division.

33(7 KA): Delivery of Possession

When the Court has issued the certificate under section 33(5) & (7), Decree holder Bank can file an application for delivery of possession. The Court will take necessary steps for delivery of possession.

(Contd...10)

Section 34: Civil Jail

34(1): On application of the decree-holder, the court can send the judgement-debtor to civil jail for a period of 6 months.

34(2): The provision of Civil Jail shall not be applicable to the heirs of the Judgement-debtor in case of his death.

34(9): The Court shall not send the judgement-debtor to civil jail until at least one auction sale is held.

34(12): Where a judgement-debtor has been detained for a full term (6 months), he cannot be detained again.

Section 37: Limitation of time for disposal of execution proceedings

Section 38: Settlement during execution amicably

Section 41: Appeal

If the decreetal amount is up to 50.00 lac, an appeal may be preferred to District Judge Court within 30 days of the decree but if the amount exceeds 50.00 lac, an appeal may be preferred to Honourable High Court Division of the Supreme Court within 60 days of the decree.

If the lonee/mortgagor/guarantor is the appellant, he needs to deposit 50% of the decreetal amount to the court as security. But if

the Bank is appellant, according to section 41(4), no security is required.

Section 42: Revision

If the loanee/mortgagor/guarantor files the Revision (For the purpose of Artha Rin Adalat Ain, Revision means 2nd appeal and it must be filed before the Honourable High Court Division of the Supreme Court) suit, he needs to deposit 75% of the decretal amount to the court as security. But if the Bank files the Revision, no security is required as well as Appeal.

(Contd...11)

Section 44:Ad-interim Order

No ad-interim order arising out of Artha Rin Adalat Ain shall be called in question in any higher court in the form of Appeal or Revision. (It is to be noted that Artha Rin Adalat Ain does not contain any provision for Appeal or Revision against any order of the Artha Rin Suit or Execution Suit. **So, Filing Writ Petition may be the only relief**)

Section 45: Amicable Settlement of Suit

At any stage of suit, the parties can settle the dispute amicably

Section 46: Special Procedural and Time Limit about Filing of Case

Notwithstanding anything contained in the Limitation Act – 1908, Bank shall file a suit if it is unable to realize as per repayment schedule

- (a) Minimum 10% of the recoverable amount in the first year.**
- (b) Minimum 15% of the recoverable amount in the first two years.**
- (c) Minimum 25% of the recoverable amount in the first three years.**

46(3): If the repayment schedule is less than three years and recoverable amount is less than 20%, Bank shall file the suit within the next one year.

If loan is re-scheduled, the time limit will be ascertained on the basis of new repayment schedule.

46(5): If suit is not filed following the provision of this Act, the Court shall inform the Chief Executive Officer in writing and the appropriate authority shall take disciplinary action.

Section 47: Limitation on imposing claim

Bank cannot claim more than 200% interest of the principal amount while filing the Artha Rin Suit i.e. (principal 100 tk + interest 200 tk) = 300 tk.

(Contd...12)

Section 48: Counting Days

Only the working days of the Judge shall be counted in respect of counting days.

Section 57: The inherent power of the Court

For the purpose of the ends of the justice and checking misuse of the proceedings, Court can pass necessary complimentary order using its inherent power.

Section 59: In respect of contradiction, this Act (in Bangla) shall prevail.

Some important amendments made in 2010

In 2007, the last 'Care Taker Government' made some important amendments and promulgated an ordinance namely 'Artha Rin Adalat (Amendment) ordinance – 2007'. But it was automatically repealed in 2008, as the newly formed government did not approve it in the parliament within 30 days. Later

on, in the light of that repealed ordinance, some important amendments were made in 2010. Some major amendments are discussed in the following briefly:-

- (a) Banks/FI's can sell the mortgage property under section 12(3), though the Power of Attorney has not been offered.
- (b) The suit can be amicably settled through arbitration, under section 22, at any stage of the suit. It can be settled even in execution or appeal stage.
- (c) Execution suit must be filed within one year (Instead of 180 days) of the decree under section 28(1).
- (d) The court shall publish the notice aforesaid in such a newspaper which is directed by the decree-holder lodging a written petition before the court. (Section 30).

(Contd...13)

- (e) The amount to be deposited in case of objection in execution suit has been made 10% (Instead of 25%) in section 32.
- (f) In case of auction sale under section 33, every bidder shall deposit 20% of the quoted value, if it is maximum 10.00 lac.
15% of the quoted value, if it is between 10.00 lac to 50.00 lac.
10% of the quoted value, if it is more than 50.00 lac.
But it was 25% in all slabs. The time limit for payment of the rest amount has been fixed for 30 days, 60 days and 90 days. Even the time may be extended to more 60 days on application of the bidder.
- (g) The time for filing appeal in the High Court Division has been extended to 60 days. (Section 41)
- (h) The interest on the decretal amount has been increased from 8% to 12%. In case of appeal/revision, it will be 16% and in case of appeal/revision against the order of Higher Court, it will be 18%.

Where any writ petition has been filed challenging any order or decree and is discharged, interest will be charged at the rate of 25%.

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The Limitation Act - 1908

Introduction: The law of Limitation was first introduced in the Subcontinent in 1793 in partially. Then, in 1859, the Law of Limitation was passed and later on it was amended in 1877. Finally, the Limitation Act - 1908 was promulgated which includes the law relating to limitation for Suits, Appeals and Applications etc. It has come into force on January 01, 1909.

Object of this law: Law is the back-bone for the standing of peaceful and live society. It changes with the change in the society. Mortality is the fate of every life. So, would be the fate with the litigations because there is no good to the society in keeping them to be live for sine-die-period.

The main object of the Law of Limitation is to prevent disturbance or deprivation may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or lacks. It provides the time period in which case can be brought in the court of law. Negligence in institution of suit with period prescribed causes the suit time barred, thus not maintainable in the court of law. Violation of one's right gives rises to cause of

action. One should not sleep over his night. No negligence on accrual of right or interest is permitted. Law aids the vigilant and not the indolent. Vigilance grants the relief. Enforcement of rights upon its infringement is got made through court. Right is extinguished when it is not litigated within the time prescribed for it.

The object of this Act is not to create or define cause of action but simply to prescribe the period which the existing rights can be enforced in court of law. The principle of this Act is not to enable suits to be brought within certain period but to forbid them being brought after certain period.

The Limitation Act – 1908 contains 29 Sections. The main sections of this Act are given below:

Section 3: Dismissal of Suits after period of Limitation.

Section 4: When the court is closed, when period expires. (When the court is closed, the Suits/appeals/applications may be instituted on the day the court re-opens).

Section 5: Extension of period in certain cases: - Any appeal or application of revision or a review of judgement or for leave to appeal or any other application to which the section made applicable by or under any enactment for the time being in force may be admitted after the period of limitation prescribed thereof, when the appellant or applicant satisfies the court that he has sufficient cause for not preferring the appeal or making the application within such period.

Section 9: Continuous running- Where once time has begun to run, no subsequent disability or inability to sue stops it.

Section 12: Exclusions of time in legal proceedings. The time requisite for obtain a copy of judgment/ decree shall be excluded.

Section 14: Exclusion of time of proceeding bona fide in court without jurisdiction.

Section 15: Exclusion of time during which proceedings are suspended.

Section 19: Written acknowledgement of liability: - before the expiration of the period prescribed for the suit or application in respect of any property or right, an acknowledgement of liability in respect of such property or right

has been made in writing signed by the party, such period of limitation shall be computed from the time when the acknowledgement was signed.

Section 20: Effect of payment on account of debt or of interest on

legacy: - before the expiration of the prescribed periods, due to payment a fresh period of limitation shall be counted from the period of payment made.

Section 28: Extinguishment of right to property after 12 years.

Section 29: Nothing in this Act shall affect section 25 of the Contract Act – 1872.

At present, Bank/Financial Institutions file suits under the Artha Rin Adalat Ain–2003 and latest amendment in 2010. This law has been promulgated only for the Bank/Financial Institutions for recover their defaulted money. Since Artha Rin Adalat Ain -2003 is a special/ overriding law, the provision of Limitation Act – 1908 is not generally applicable.

In the Artha Rin Adalat Ain – 2003, section 28 and 41 provides the grounds of limitation. Section 28 of this Ain provides for the time limit to file suit for execution and section 41 provides for special provision in respect of filing Appeals.

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As per section 28, The decree holder shall file the execution suit within maximum one year of gaining decree. Execution suits filed after one year shall be barred by limitation and Court shall directly reject the application/ execution suit.

Where any new suit for execution is submitted after 6 years of expiry of first execution suit, the same shall be barred by limitation and the court shall directly dismiss the suit directly.

For Example: Bank can file as many execution suits as it requires for recovery of the loan. But no execution suit can be filed after six year of filing the 1st execution suit. For example: If 1st execution suit is filed on 01.01.2011, the 2nd or 3rd or 4th execution suit cannot be filed after 31.12.2016.

As per section 41, If the decretal amount is up to 50.00 lac, an appeal may be preferred to District Judge Court within 30 days of the decree but if the amount exceeds 50.00 lac, an appeal may be preferred to Honourable High Court Division of the Supreme Court within 60 days of the decree. Otherwise, such appeal shall be barred by limitation. ***

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