

Bench:

Mr. Justice Bhishmadev Chakrabortty

Civil Revision No.1954 of 2018

Environ Structure Limitedpetitioner

-Versus-

Dr. Chowdhury Mohammad Hassan and
othersopposite parties

Mr. Md. Rafiqul Imam, Advocate

..... for the petitioner

Mr. Md. Akram Uddin, Advocate

..... for opposite party 1

Judgment on 24.07.2024

In this Rule, issued at the instance of the petitioner a Developer Company, the opposite party landlords were called upon to show cause as to why the judgment and order of the District Judge, Dhaka passed on 28.03.2018 in Arbitration Miscellaneous Case No.683 of 2017 allowing the case filed under section 12 of the Arbitration Act, 2001 (the Act, 2001) for appointment of arbitrators should not be set aside and/or such other or further order or orders passed to this Court seem fit and proper.

Facts relevant for disposal of the Rule, in brief, are that the heirs of late Justice Md. Abdul Quddus Chowdhury filed the aforesaid miscellaneous case in the Court of District Judge and Arbitration Court, Dhaka under section 12 of the Act, 2001. They alleges that during possession and enjoyment of the schedule land their predecessor Mr. Justice Chowdhury entered into an

agreement with the petitioner company on 23.09.2009 to construct a house on the land as described in the schedule to the application for appointment of arbitrator. Amongst with other conditions in the agreement there was an arbitration clause that in case of any dispute between the parties they would resolve it through arbitration as per clause No.29 of the agreement. Despite the agreement was signed on 23.08.2009 the developer company did not take any initiative in constructing the house on the land. Therefore, they filed the case for appointing arbitrators to settle the dispute between them.

The opposite party, petitioner herein, contested the case by filing written objection. In the objection this petitioner claimed that the landed property under agreement is abandoned property and possession of the same has not yet been handed over to it, and as such they could not proceed with construction work. Since possession of the property has not been handed over, and it is abandoned property, therefore, dispute for construction work over it does not arise at all. The case for appointment of arbitrators, therefore, would be rejected.

However, the District Judge upon hearing both the parties allowed the case for appointment of arbitrators and appointed two persons for it as mentioned in the impugned order. Being aggrieved by the aforesaid judgment and order the developer

company approached this Court with this application and obtained this Rule with an order of stay of the impugned judgment and order.

Mr. Md. Rafiqul Imam, learned Advocate for the petitioner taking me through the materials on record submits in the similar line of their objection filed in the case for appointment of arbitrators. He takes me through Annexures-D and D-1 and submits that the aforesaid documents prove that the land in question has not yet been released from the list of abandoned and as such the present petitioner failed to start construction work although he paid signing money amounting to Taka 45.00 to the opposite parties. The dispute will arise after handing over the land to them by the landlords. The opposite party failed to release the land from the list of abandoned property and for that reason the petitioner failed to comply with the terms of contract. In this position there is no necessity of appointing arbitrators as ordered by the learned District Judge. The judgment and order passed, therefore, is to be interfered with by this Court and be set aside.

Mr. Md. Akram Uddin, learned Advocate for opposite parties 1-3 opposes the Rule and submits that the allegation made by the petitioner that the property is abandoned property or it was not released from the gazette is not correct. He refers to the provisions of clauses 9 and 29 of the agreement and submits that

even for the sake of argument the petitioner's allegation is considered as true this is also a dispute between the parties which may be resolved by appointing arbitrators. Learned District Judge correctly allowed the application under section 12 of the Act, 2001 and appointed arbitrators which may not be interfered with.

I have considered the submissions of both the sides and gone through the materials on record particularly the agreement signed by the parties Annexure-C to this petition. Clause 9 of the agreement reads as follows:

“The first party/landowner individually have assured the second party/development company that the former has full exclusive and uncontested right and title to the scheduled land, and that the same is free from any encumbrances and from any litigation and if any such questions, situations, circumstances etc. arises, the landowner will make it free at his own initiative. During this period, if second party suffers any loss due to suspension of construction work, the first party will be liable for the compensation.”

Clause 29 of the agreement reads as follows:

“That all disputes and differences concerning the validity, scope, meaning, construction of this agreement or any dispute or disagreement between the parties as to any matter relating to this agreement or the meaning of any stipulation therein or nay other matter which cannot be settled by mutual discussion between the parties hereto shall be referred to and finally settled by arbitration of two arbitrators, one to be appointed by each of the party, and in the case of difference of opinion between the two Arbitrators the disputes shall be referred to an Umpire, who shall be appointed by the

Arbitrators before they enter upon the reference and the award of the Arbitrators or the Umpire, as the case may be, shall be final and binding on the parties hereto and this shall be deemed to be a submission to arbitration within the Arbitration Act, 2001 or any reenactment or statutory modification thereof for the time being in force which shall be the governing and applicable law.” *(emphasis supplied)*

It appears that although the parties entered in to an agreement in 2009 but admittedly the construction work over the suit land is yet to be started. A time limit has been prescribed in the agreement to perform the work by the petitioner but it has expired long years ago. The allegation of the petitioner is that the land has been enlisted as abandoned property and it has not yet released and handed over to them and as such they failed to make any construction work over the land and no dispute regarding consideration work exists, as such no arbitrator is required to be appointed. On perusal of the terms of agreement and documents, I find that the dispute is regarding the construction work on the suit land as claimed by parties. The fact as claimed by the petitioner of enlisting the property as abandoned property and of not releasing and handing over the same to the petitioner company is also a dispute between the parties as per clause 29 of the agreement. The dispute also requires to be resolved by appointing arbitrators according to the provisions of clause 9 and 29 of the agreement. The parties may sit in arbitration and resolve their dispute by

raising their claim and counter claim before the arbitrators. Considering the aforesaid facts and terms of clause 9 and 29 of the agreement, I find that the learned District Judge did not commit any error of law in allowing the miscellaneous case filed under section 12 of the Act, 2001 by appointing arbitrators.

Therefore, I find no merit in this Rule. Accordingly, the Rule is discharged. No order as to costs. The judgment and order passed by the District Judge, Dhaka is hereby upheld.

However, the parties will take steps for holding arbitration expeditiously to settle their disputes through the arbitrators appointed by the learned District Judge.

The order of stay stands vacated

Communicate this judgment and order to the Court concerned.