

**4 SCOB [2015] AD 28**

**APPELLATE DIVISION**

**PRESENT:**

**Mr. Justice Surendra Kumar Sinha,  
  Chief Justice**  
**Mrs. Justice Nazmun Ara Sultana**  
**Mr. Justice Syed Mahmud Hossain**  
**Mr. Justice Hasan Foez Siddique**

CIVIL PETITION FOR LEAVE TO APPEAL NO.43 OF 2015  
(From the judgment and order dated 28.05.2014 passed by the High Court Division in Civil  
Revision No.1280 of 2014.)

**Mosharaf Composite Textile Mills Ltd:**                     .....Petitioner.

=Versus=

**ECOM Agroindustrial Corp. Ltd. and others:** .....Respondents.

For the Petitioner :                     Mr. Rokanuddin Mahmud, Senior  
  Advocate with Mr. Ahsanul  
  Karim, Advocate instructed by  
  Mvi. Md. Wahidullah, Advocate-  
  on-Record.

For the Respondents :                     Mr. Ajmalul Hossain, Senior  
  Advocate (with Mr. Omar Sadat,  
  Advocate) instructed by Mrs.  
  Madhumaloti Chowdhury Barua,  
  Advocate-on-Record.

Date of hearing               : 25-06-2015

**Arbitration proceeding:**

**It appears from the judgment of the High Court Division that the High Court Division found that there was a valid agreement between the plaintiff and defendant wherein an arbitration clause has been stipulated and pursuant to the said agreement an arbitration proceeding has already been commenced before the Arbitration Tribunal at Liverpool. This suit has been instituted subsequent to the arbitration proceeding. The High Court Division held that though written statement has been filed but, in fact, the same can be treated as information to the court regarding pendency of arbitration proceeding before Arbitration Tribunal at Liverpool.**

**Since arbitration proceeding has already been initiated between the parties before initiation of the instant suit, we are of the view that the High Court Division rightly disposed of the Rule staying further proceeding of the suit with a direction to settle the dispute in the arbitration proceeding.                     ...(Para 7 &8)**

## JUDGMENT

### **Hasan Foez Siddique, J:**

1. This civil petition for leave to appeal is directed against the judgment and order dated 28.05.2014 passed by the High Court Division in Civil Revision No.1280 of 2014.

2. The relevant facts, for the disposal of this petition, in short, are that the petitioner as plaintiff instituted Title Suit No.73 of 2012 in the First Court of Joint District Judge, Dhaka for declaration that the contract No.315510058 dated 31.01.2011 was illegal, void and the same is not binding upon the plaintiff; and for further declaration that the reciprocal performance of the plaintiff under the said contract is barred by law, and for further declaration that initiation of arbitration before International Cotton Association under reference No.AO1/2011/2000 by the defendant No.1 against the plaintiff is illegal and void and for permanent injunction. The respondent appeared in the said suit and filed an application under Order VII Rule 11(d) read with section 151 of the Code of Civil Procedure for rejection of the plaint. The plaintiff filed objection against the said petitioner.

3. The trial Court rejected the said application for rejection of the plaint by the order No.29 dated 22.01.2014.

4. Against the said order, the respondent No.1 filed Civil Revision in the High Court Division and obtained rule. The High Court Division disposed of the rule with an order to stay the further proceeding of Title Suit No.73 of 2012 and directed the parties to settle the matter through arbitration. Against the said order the plaintiff has filed this petition for leave to appeal.

5. Mr. Rokanuddin Mahmud, learned Senior Counsel appearing for the petitioner submits that the instant revision was filed against the order rejecting the prayer for rejection of the plaint. The moot question before the High Court Division was as to whether the trial Court has rightly rejected the said application for rejection of plaint or not, the High Court Division erred in law in staying in the further proceeding of the suit.

6. Mr. Ajmalul Hossain, learned Senior Counsel appearing for the respondent that there is a valid agreement between the parties with an arbitration clause, pursuant to the agreement an arbitration proceeding has already been commenced before Arbitration Tribunal at Liverpool. The High Court Division rightly stayed the further proceeding of the suit.

7. It appears from the judgment of the High Court Division that the High Court Division found that there was a valid agreement between the plaintiff and defendant wherein an arbitration clause has been stipulated and pursuant to the said agreement an arbitration proceeding has already been commenced before the Arbitration Tribunal at Liverpool. This suit has been instituted subsequent to the arbitration proceeding. The High Court Division held that though written statement has been filed but, in fact, the same can be treated as information to the court regarding pendency of arbitration proceeding before Arbitration Tribunal at Liverpool.

8. Since arbitration proceeding has already been initiated between the parties before initiation of the instant suit, we are of the view that the High Court Division rightly disposed

of the Rule staying further proceeding of the suit with a direction to settle the dispute in the arbitration proceeding.

9. We do not find any wrong in the judgment and order of the High Court Division.

10. Accordingly, the petition is dismissed.