

Bench:

Mr. Justice Bhishmadev Chakrabortty

And

Mr. Justice A.K.M. Zahirul Huq

First Miscellaneous Appeal No. 62 of 1997

Louis Dreyfus & Co Ltd, London through Louis
Dreyfus & Co Ltd, 47, Motijheel Commercial Area,
Dhaka appellant

-Versus –

Anwara Jute Mills Limited, Al Islam Chamber,
91, Agrabad Commercial Area,
Doublemoorings, Chittagong

..... respondent

Mr. Md. Waliullah, Advocate

..... for the appellants

No one appears for the respondent

Judgment on: 07.08.2025.

Bhishmadev Chakrabortty, J:

This first miscellaneous appeal is directed against the judgment and order of the then Subordinate Judge, Second Court, Chattogram passed on 21.01.1997 in Arbitration Miscellaneous Case No. 50 of 1986 rejecting the case filed under section 14(ii) of the Arbitration Act, 1940 (the Act, 1940) for making the award Rule of the Court.

Facts relevant for disposal of the appeal, in brief, are that the appellant herein entered into an agreement with the respondent on 27.06.1984 to purchase 390 bells of New Zeland carbon sacks quality jute bags. The respondent on 03.07.1984 agreed to supply those goods as per agreement. It was stipulated in the contract that the respondent will supply 200 bells within August, 1984 and

remaining 190 bells within September, 1984. But the respondent failed to supply the bags to the appellant. Consequently, to meet up the necessity the appellant purchased 200 bells from AR Howlader Jute Mills and 200 bells from DW Rahman Jute Mills. Since the respondent failed to comply with the terms of contract, the plaintiff has faced loss of 10559.75 US dollar. The appellant filed an arbitration case to the Registrar of the Tribunal of Metropolitan Chamber of Commerce and obtained an award directing the respondent to pay the aforesaid amount of compensation to the appellant. After obtaining the award the appellant filed the aforesaid miscellaneous case for making the award Rule of the Court. The then Subordinate Judge and Arbitration Court by the judgment and order under challenge rejected the miscellaneous case.

Mr. Md. Waliullah, learned Advocate for the appellant submits that the respondent failed to supply the goods within the time prescribed in the agreement. The failure of the respondent in supplying the goods affects the image and prestige of this country because the appellant is a foreign company. He then submits that the respondent has to prove that it could not comply with the terms of the agreement due to the reason of power failure but it did not produce any document or evidence to prove it. The respondent did not collect any report of the concerned authority for that purpose. The arbitral tribunal correctly appreciated the facts and documents

submitted before it and passed the award. There is no misconduct on the part of the Tribunal in the arbitration proceeding and there is no ground for which the award could have been set aside. The then Subordinate Judge, Court 2, Chattogram travelled beyond his jurisdiction in disposing the case under section 14(ii) of the Act, 1940 and thereby erred in law refusing to make the award Rule of the Court and as such the appeal would be allowed and the impugned judgment be set aside.

No one appears for the respondents, although the concerned section has sent this matter to this bench at the instruction of the Hon'ble Chief Justice for speedy disposal and it has been appearing in the daily cause list for a couple of days with the name of the learned Advocate for the respondent. Therefore, it is taken up for disposal on merit upon hearing the learned Advocate for the appellant.

We have considered the submissions of the learned Advocate for the appellant, gone through the impugned judgment and other materials on record.

It is admitted fact that the respondent entered into an agreement with the appellant to supply 390 bales of jute bags of New Zealand carbon sacks quantity. But the respondent failed to supply those goods within the time prescribed in the agreement. It is found in the record that the respondent alleged that at the

material time it faced shortage of electricity and supply of raw materials. It wrote letters on 25.08.1984 and 21.09.1984 exhibit- 'Kha' series to the appellant for extension of time of the contract. It appears in the evidence of PTW1 that the appellant admitted that it received aforesaid letters but did not take any initiative for extension of time as per contract. In exhibits-Ka-Ka1, the standard agreement between the parties, it is found that clause 2(a) of it provides for supplying goods subject to some conditions and electricity failure is one of the cause. The respondent in evidence successfully proved that at the material time the power supply was interrupted and there was shortage of raw materials and consequently it failed to supply the goods to the appellant as per the agreement. Moreover, the appellant failed to produce any documents that it purchased the required goods from DW Rahman Jute Mills and AH Howlader Jute Mills. We find that the respondent did not contest in the arbitration proceeding. The award has been passed without complying with the provisions of law of passing award under the Act, 1940. The Tribunal did not state on which oral and documentary evidence it relied upon and took decision of passing the award. Under the aforesaid facts, the award passed in favour of the appellant is not an award in the eye of law. Learned Subordinate Judge and Arbitration Court on threadbare discussion rejected the miscellaneous case and refused to make the

award Rule of the Court. We find nothing to interfere with the aforesaid judgment and order.

Consequently, this appeal having no merit is dismissed. No order as to costs.

Communicate this judgment and send down the lower Court records, if any.

A.K.M. Zahirul Huq, J:

I agree.

Rajib