

**Present:**

**Mr. Justice Sheikh Abdul Awal**  
**and**  
**Mr. Justice Md. Mansur Alam**  
In the Matter of:

**First Miscellaneous Appeal No. 166 of 1999**

The Government of Bangladesh  
represented by the Secretary, Ministry of  
Communication, Roads and Highways  
Division and others.

.....Defendant-appellants.

-Versus-

Md. Kamruzzaman Khan and others

.....Plaintiff-respondent.

Mr. Md. Yusuf Ali, D.A.G with

Ms. Kamrunnihar Lipi, A.A.G with

Ms. Ishrat Jahan, A.A.G. with

Billal Ahmed Majumder, A.A.G

..... For the appellants.

**Heard on 24.02.2025, 26.02.2025 and**

**Judgment on 27.02.2025**

**Sheikh Abdul Awal, J:**

This First Miscellaneous Appeal is directed against the order dated 11.03.1991 passed by the learned Subordinate Judge, Rajshahi in Miscellaneous Case No. 84 of 1989 filed under section 14 and 17 of the Arbitration Act, 1940 making the award dated 23.02.1988 passed the Arbitrator (Superintending Engineer, R&H, Rajshahi Road Circle, Rajshahi ) as Rule of Court.

The brief facts necessary for disposal of this first miscellaneous appeal is that the appellant as plaintiff filed Miscellaneous Case No. 84 of 1989 under section 14 and 17 of the Arbitration Act, 1940 in the Court of the learned Subordinate Judge, Rajshahi for making the award dated 23.02.1988 passed the Arbitrator (Superintending Engineer, R&H, Rajshahi Road Circle, Rajshahi ) as Rule of Court.

Defendants entered appearance in the suit and filed written statement denying all the material allegations made in the plaint stating, inter-alia, that the plaintiff has no cause of action and the case is not maintainable in law. The facts of the defendants case is that during inspection of the construction works on 22.04.1986 it was found by the concern officer that plaintiff did not comply with the map and design as given by the concern authority for which a letter dated 09.01.1986 was issued to effect that no additional amount would be paid and he would not do any work beyond the specification dated 04.01.1986 and as such, the authority concerned was justified by writing a letter on 22.04.1986 and 20.10.1986 for realization of the additional amount taken by the plaintiff and the plaintiff is not entitled to get the rule of Court under the law and as such, the case is liable to be dismissed.

The learned Subordinate Judge, Rajshahi after hearing the parties by his judgment and order dated 11.03.1991 was pleased to make Rule of Court.

In this background, the plaintiff filed Execution case No. 4 of 1991 to execute the decree.

On the other hand, being aggrieved by judgment order dated 11.03.1991 the defendants as appellants preferred this First Miscellaneous Appeal before this Court under Order 41, Rule 11 of the Code of Civil Procedure.

In this case, we cannot help ourselves but to say that the appeal has been filed in a careless manner without giving minimum facts to have the background in filing the same. However from the impugned judgment and order we have gathered facts which are stated mentioned above.

Mr. Md. Yusuf Ali, the learned Deputy Attorney General appearing for the appellant submits that in the facts and circumstances of the case it is clear that the respondent-contractor Md. Kamruzzaman withdrawn Tk. 3,10,219.85 from the Government treasury instead of his actual claim.

No one appears for the respondent.

On scrutiny of the record, it appears that the learned Subordinate Judge allowed the Miscellaneous Case No. 84 of 1989 holding that- “প্রতিপক্ষের সাক্ষীর উক্তরূপ জবানবন্দী দৃষ্টে প্রতীয়মান যে উভয়পক্ষের শুনানী অন্তে এবং কাগজাদি পর্যালোচনায় মধ্যস্থতাকারী আইনানুযায়ী এওয়ার্ড প্রদান করেন এবং পূর্বেই উল্লেখ করা হইয়াছে যে উক্ত এওয়ার্ড এর বিরুদ্ধে কর্তৃপক্ষ কোন কার্যকরী ব্যবস্থা গ্রহণ করেন নাই। যথাযথ শুনানী অন্তে এওয়ার্ড প্রস্তুত হওয়ায় এবং উহার বিরুদ্ধে কর্তৃপক্ষ কর্তৃক কোন আপত্তি উত্থাপিত না হওয়ায় প্রদত্ত এওয়ার্ড যথাযথ বিবেচিত হয় এবং উহা রুল অব ডি কোর্ট করিতে কোন আইনগত বাধা দেখা যায় না।”

On a reading of the above quoted findings it appears to us the learned Subordinate Judge considered the material points and taking into consideration all the aspect of case justly passed the

impugned judgment and order. We find no flaw in the reasonings of the learned Subordinate Judge or any ground to assail the same.

On a query from the Court, the learned Deputy Attorney General could not show any legal infirmity or legality from impugned judgment and order. However, he submits that the matter is an old one of 1999 filed without giving sufficient paper and thus, due to shortage of paper it is not at all possible on his part to argue the case in details.

In the result, the appeal is disposed of.

Since the appeals are disposed of, the connected Rule being Civil Rule No. 395 (FM) of 1991 is discharged. The order of stay granted earlier by this Court stands vacated.

Let a copy of this judgment be communicated to the Court concerned at once.

**Md. Mansur Alam, J:**

I agree.