Bench:
Mr. Justice Bhishmadev Chakrabortty
And
Mr. Justice Murad-A-Mowla Sohel

Arbitration Appeal No.07 of 20205

Continental Health Care Services Ltd.
..... appellant
-Versus-
Paramout Engineering & Construction Company Ltd. ..... respondent

Mr. Probir Neogi and Mr. Md. Asaduzzaman, Senior Advocates with Mr. Md. Shahbul Alam Chowdhury, Mr. Md. Sumon Ali, Mr. Nabil Ahmed Khan and Ms. Joydeepta Deb Choudhury, Advocates ..... for the appellant

Mr. A.B.M. Altaf Hossain, Senior Advocate with Mr. Md. Abul Kashem, Advocate
..... for respondent

Judgment on 14.12.2025

Bhishmadev Chakrabortty, J:

This appeal under section 48 of the Arbitration Act, 2001 (Act, 2001) is directed against the judgment and order of the District Judge Dhaka passed on 20.10.2020 in Arbitration Miscellaneous Case 188 of 2019 rejecting the miscellaneous case for setting aside the award dated 27.03.2019 passed by sole arbitrator.

Facts relevant for disposal of the appeal, in brief, are that the appellant claimed that their company Continental Health Care Services Limited is a company limited by shares incorporated under the Companies Act, 1994. Most of the shareholder directors of the company are renowned doctors of this Country. In response to the advertisement of the respondent for letting a 5 storied building situated at plot 28, Road 13, Sector-6, Uttara Commercial Area,

Dhaka the appellant agreed to take it lease with a view to establish a modern specialised hospital. The appellant entered into an agreement for lease with respondent company on 27.08.2014. The appellant was satisfied while the respondent showed them a copy of fitness certificate dated 30.06.2013 prepared by BUET and Engineer Abu Yousuf Md. Ferdous approved by RAJUK. As per the terms of the agreement the appellant engaged a consultant firm and appointing civil engineers started renovation work by using latest technology. But during renovation activities, the project engineers found so many cracks in the main columns and beams of the building. The appellant then informed it to the respondent and without having any response approached to BRTC and BUET with a view to confirm as regard the structural situation of the building, i.e., whether the building was fit for running a modern hospital. The BRTC and BUET had given a report that the strength of the building was found much below standard. The appellant forwarded the report to the respondent by giving several intimations and having no reply was bound to stop the renovation work of the building. In the meantime, RAJUK sent a show cause notice to the respondent on 21.05.2015 giving him 7 days time to demolish the building but the respondent did not make any response and consequently RAJUK finally a sent notice on 18.06.2015 with a direction to demolish the building within 7 days. The appellant then sent a proposal to the respondent for alteration of

the agreement with some reasonable condition. The appellant sent another notice on 18.08.2015 to cancel the lease agreement dated 27.08.2014 with request to negotiate the matter with alternative proposal. But without moving to the negotiation respondent finally on 23.08.2015 sent a letter to the appellant to pay the due monthly rent without considering the difficulties, financial loss and situation of the building. The appellant informed the respondent through a series of letters that the building was unfit and as such it was not willing to continue the lease agreement but the respondent always demanded monthly rent as per the terms of the agreement. Through a letter dated 08.10.2015 the respondent claimed Taka 1,05,00,000/- with other charges to the appellant within 90 days. The appellant then finding no other alternative sent a notice under clause 14 of the agreement to resolve the matter through arbitration but the respondent did not make any response to it. The appellant then filed an application under section 12 of the Act, 2001 to the District Judge and accordingly a retired District Judge Md. Mahabubor Rahman was appointed as sole arbitrator. In the arbitration the appellant claimed Taka 10,17,04, 29,078/- as compensation.

The respondent appeared in the arbitration proceeding and filed counter claim. In the counter claim it stated that the appellant knowing fully well everything about the disputed building entered into the agreement with the respondent. The appellant appointed unskilled

persons to renovate the building to turn it to a hospital. They removed all partition walls, side walls and other partitions by breaching the terms of agreement. Furthermore, in the lease agreement there was no term to change the structural design of the building which they did. The appellant managed the certificate issued by BUET and BRTC when the respondent did not agree with the appellant's proposal of reconstruction of the building in joint venture. The appellant also managed the notice of RAJUK issued to the respondent. By the act of the appellant, the building was turned into useless for which the respondent caused a serious financial loss. The respondent claimed Taka 1116,70,75,711.73/- as compensation.

In the arbitration the appellant examined 5 witnesses and produced a series of documents in support of its claim. On the other hand, respondent examined 3 witnesses and produced some documents in its favour. However, the sole arbitrator passed award on 27.03.2019 of Taka 2,71,50,327/- against the claimant-appellant, i.e., the rent of 13 ½ months after deduction of advanced money and others the appellant paid.

Being aggrieved by the claimant filed Arbitration Miscellaneous Case 188 of 2019 in the Court of District Judge, Dhaka under section 42 of the Act, 2001. Learned District Judge by the judgment and order passed on 20.10.2020 dismissed the miscellaneous case on contest and affirmed the award passed by the

arbitral Tribunal which prompted the appellant to approach this Court with the present appeal.

Mr. Probir Neogi, learned Senior Advocate for the appellant taking us through the materials on record submits that the respondent misled the appellant as to the fitness of the disputed building and the appellant having been misconceived of the oral information supplied by the respondent entered into the agreement for lease to establish a modern hospital in the building owned by the respondent. Although all the documents were produced and relevant laws were placed in the arbitral tribunal but the Tribunal without considering those rejected the claim of the appellant and accepted the counter claim of the respondent in part and gave award against the appellant directing to pay 13½ months rent of the building. Mr. Neogi refers to the provision of section 43 (b) (ii) and (iii) of the Act, 2001 and submits that if this Court finds that the award is *prima facie* opposed to the law for the time being in force in Bangladesh and the arbitral award is in conflict with the public policy of Bangladesh in that cases this Court can interfere with the award in an appeal under section 48 of the Act, 2001 even the miscellaneous case for setting aside the award is rejected. Mr. Neogi advanced his argument particularly on two points, firstly he submits that the fitness certificate alleged to have been issued by RAJUK as has been claimed by the lessor dated 30.06.2013 was never handed over to the appellant. Despite order of the arbitral

Tribunal, the respondent-lessor did not produce it in the arbitration proceeding. He refers to a part of the award and submits that subsequently it came out in evidence that such report, if any, was obtained fraudulently by the previous lessor which was within the knowledge of the respondent. The view of the Tribunal that the lessor-respondent was innocent and was convinced at the information supplied by previous lessor Dada Garments, is opposed to the law. Secondly, he refers to the provisions of section 2(a) and 3 of Town Improvement Act, 1953 and 2(a), 3A and 3B of the Building Construction Act, 1952 and submits that the notice for eviction from RAJUK was issued upon the respondent for unauthorised construction of 5th floor of the building and the Authorised Officer ordered to demolish the same within the specified period. The notice issued by the authorised officer of RAJUK is in compliance of law, therefore, the findings of the Tribunal that at the influence of the appellant such notice was served is also opposed to the law. Mr. Neogi adds that the arbitral award supporting the respondent's case is also in conflict with the public policy, because if a hospital is established in such a building where cracks were found on the columns and beams, it may cause accident and can take away lives of people and patients. He then refers to the case of Government of Bangladesh, represented by the Secretary, Ministry of Defence and others vs. Aminul Haq, represented by its constituted Attorney Mujtaba Quli Khan, 72 DLR

(AD) 246 and submits that the arbitrator shall look into the evidence both oral and documentary, if any, before him in passing any award, otherwise it will not be an award in the eye of law. Here, the arbitral award suffers from legal misconduct of the arbitrator but not his moral lapse. In the above factual aspect and legal position, the District Judge ought to have set aside the award of the arbitral tribunal but without doing so affirmed the award parrot like version. In the premises above, the appeal would be allowed and the arbitral award be set aside.

Mr. A.B.M. Altaf Hossain, learned Senior Advocate for the respondent on the other hand opposes the appeal and supports the impugned judgment passed by the District Judge. He submits that under section 48 of the Act, 2001 the scope of interference with the award which has been affirmed by the District Judge is very limited. The provisions of section 43 of the Act, 2001 can be applied by the District Judge only and if he do not apply it in that case this Court may interfere with the award. The grounds agitated in this appeal was not raised in the Court of District Judge. He refers to the provisions of section 43 (b)(ii) and (iii) of the Act, 2001 and submits that the aforesaid provisions shall not apply in present case because the arbitrator as well as the District Judge discussed all the papers produced and the witnesses examined. He refers to the provisos of section 24 of the Act, 2001 and submits that the provisions of Code of

Civil Procedure shall not apply in dealing with an arbitration proceeding. It would be guided under the provisions of sections 17-35 of the Act, 2001. He then submits that the appellant entered into a lease agreement with the respondent on 27.08.2014 and as such the disputed report of RAJUK dated 30.06.2013 is found irrelevant here. The appellant appointed unskilled persons in renovation work and for their mishandling the building became unusable. The appellant started altering the architectural design and other major renovation work without taking permission from RAJUK under the provisions of Building Construction Act, 1952 which they were legally bound to do as per lease agreement. The witnesses taken in a criminal case has no manner of application in this proceeding and as such the previous report of fitness of RAJUK cannot be ignored. He then refers to the provisions of Town Improvement Act and submits that the notice issued by RAJUK for demolishing the building served upon the respondent on 21.05.2015 ought to have been served upon the lessee-appellant but without doing so, it was served upon the respondent which supports the findings of the District Judge that at the instance of the appellant, RAJUK served it upon the respondent. Mr. Hossain further submits that since the Act, 2001 is a special law, the provisions laid therein should be strictly followed. He refers to the evidence of CW 1 and CW 3 and submits that, if their evidence is considered as a whole, it would be difficult to understand actually who was appointed

for renovating the building. As per evidence of CW2 the appellant removed the partition wall, changed the structural design of the building which is in gross violation of the agreement for lease. Although the agreement was signed on 27.08.2014 but the appellant for the first time on 19.02.2015 informed the respondent about finding of cracks in the building which it could have do much earlier. The District Judge on threadbare discussion of evidence and other materials on record rejected the miscellaneous case for setting aside the award. Here the appellant has no leg to stand. The award has been given so far it relates to the rent of 13 ½ months as per the agreement and termination of the contract after deduction of advance payment. The award is found innocent and is not opposed to the law or not in conflict with the public policy. He refers to the cases of Bangladesh Railway vs. Pamkaya (M) SDN BHD, 2 CLR 114 and 2 CLR (AD) 139 and relied on the *ratio* laid therein as to the scope and limitation of the High Court Division under section 43 of the Act, 2001 as well as section 42 exercised by the District Judge. In the premises above, the appeal would be dismissed and the judgment and order passed by the District Judge, Dhaka in the miscellaneous case upholding the award would be affirmed, he concludes.

We have considered the submissions of both the sides, gone through the materials on record, the grounds taken in the appeal as

well as in the arbitration miscellaneous case and *ratio* of the cases cited by the parties.

It is admitted fact that this appellant as lessee entered in to a lease agreement with the respondent lessor and took rent of the 5 storied building as described in the lease agreement for fifteen years. The appellant alleged that at the time of execution of the agreement respondent showed them a copy of fitness certificate issued by RAJUK dated 30.06.2013. It is found in the record that despite order the respondent did not produce it in the arbitral Tribunal, the reason best known to it. It has been alleged that the appellant started renovation work to build up a modern hospital in the suit building and at one stage they found cracks on the beams and columns of the building. They informed the said fact to the landlord-respondent and prayed for joint survey but it was not done. The terms of agreement 1(a) was as under-

> "That the LESSEE shall if required undertake engagement of reputed Engineering/Consulting firm recognised by the government to certify the existing structure of the building is designed and built up to be converted into a General Hospital and capable to bear required load after conversion at their own cost."

It is found that after finding the cracks the appellant tested the building through BRTC and BUET and it was found in the report that the building was not fit for running a modern hospital even after renovation, if any. The appellant tried but failed to negotiate the matter with the respondent. The appellant terminated the contract, sent

a legal notice to the respondent and then sent it to the Arbitrator for holding arbitration. The arbitrator after haring both the parties passed award against the appellant in part, i.e., it has to pay rent of 13 ½ months and deducted the advance payment of rent. The findings of the arbitral Tribunal as well as the District Judge as to the authenticity of notice issued by the authorised officer of RAJUK dated 21.05.2015 and 13.06.2015 is found perverse and opposed to the law. The Tribunal on wrong notion presumed that such notice was issued at the instance of the appellant. The presumption of such notice as per the provisions of Building Contraction Act is to be treated as correct otherwise its falsehood is proved. The findings of the Tribunal in respect of the aforesaid notice of demolition is found opposed to the law. It is further found that the respondent approved the original plan for construction of a 4 storied building in the suit premises but he constructed a 5 storied building therein and entered into an agreement for its lease with the appellant. It is found that at the very initial state of signing the agreement, the lessor-respondent suppressed the aforesaid fact to the appellant.

On going through the record including some photographs laying with the record it is found that although in the agreement for lease there was bar of making any alteration of the structural design of the building but in the name of renovation work the lessee-appellant did it. In naked eyes it is found that the appellant lessee did renovation

work in the building by violating the terms of the agreement which it cannot. In case of alteration of the structural design, it had to take approval from RAJUK but it did not do so. If all the documents and evidence adduced by the parties in the Tribunal is considered, it is found that both the parties are responsible for their acts and consequently the agreement for lease of the house for setting up hospital went in vain. But since the respondent suppressed the facts of constructing a 5 storied building on taking permission of 4 storied building from RAJUK and did not produce the alleged certificate of fitness to the arbitral Tribunal and that RAJUK issued a show cause notice upon the respondent to demolish the building, we are of the view that the building was not fit for running a modern hospital even after renovation. Since, we find fault of both the parties in dealing with matter, and as such we are of the view that the arbitral Tribunal ought to have dismissed claims of both the parties. The award passed although for rent of 13 ½ months after deduction of advance money but it is opposed to the law for the time being in force and the agreement for lease to establish a hospital on such a building is in conflict with the public policy if Bangladesh.

In view of the above position, the judgment and order of the District Judge passed in the miscellaneous case through which the award passed by the arbitral Tribunal was affirmed is required to be interfered with. The action of the arbitral Tribunal in passing the

award ignoring the material documents produced is legal misconduct but not his moral lapse [reliance placed on 72 DLR (AD) 246]. The *ratio* of the cases referred to by the learned Advocate for the respondent are found not applicable in this case considering the fact of those upon which the *ratio* has been laid.

The appeal is consequently allowed. No order as to costs. The arbitral award as well as the judgment and order passed by the District Judge in the miscellaneous case is hereby set aside.

However, the appellant is debarred from claiming the advance money, rent and others which it has paid to the respondent.

Communicate this judgment and send down the lower Court records.

Murad-A-Mowla Sohel, J.

I agree.