IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Civil Revisional Jurisdiction)

Present
Madam Justice Kashefa Hussain

Civil Revision No. 594 of 2020

Anamika Corporation Ltd. and others
.....petitioners
-Versus-
Humayun Mazhar Chowdhury and others
------- Opposite parties.

Mr. Kamal Ul Alam, Senior Advocate with
Ms. Shahnaj Akther, Advocate with
Mr. A.K.M Zakir Uzzaman Khan, Advocate
------ For the petitioners

Mr. M.I. Farooqui, Senior Advocate with
Mr. M. Sadekur Rahman, Advocate with
Ms. Razia Sultana, Advocate
---- For the opposite parties

Heard on: 01.02.2022, 20.02.2022, 23.02.2022, 01.03.2022, 02.03.2022 and Judgment on 13.03.2022.

Rule was issued in the instant Civil Revisional application calling upon the opposite parties to show cause as to why the order dated 26.01.2020 passed by the learned District Judge and Arbitration Court, Cumilla in Arbitration Miscellaneous Case No. 07 of 2019 in allowing the application filed by the opposite parties under Section 45 of the Evidence Act for identification of hand writing by expert should not be set aside and or pass such other order or further order or orders as to this court may seem fit and proper.

The instant petitioners Anamika Corporation Ltd. represented by its Managing Director as appellant filed Arbitration Miscellaneous Case No. 07 of 2019 under section 7(ka) of the Arbitration Act 2001 before the court of learned District Judge inter alia praying for an order of restraining the opposite parties in transferring, encumbering, entering into deed of agreement or otherwise disposing of the schedule property to any third party or otherwise create any interest therein and also prayed for directing the parties to maintain status-quo with respect of the ownership and possession of the schedule property until disposal of the arbitration proceedings under Section 7A(a)(b) and Section 7A(1)(c) of the Arbitration Act, 2001.

The court of learned District Judge initially admitted the Arbitration Miscellaneous Case by its order No. 1 dated 07.10.2019 and also passed an ad-interim injunction for transferring, encumbering, entering into deed of agreement or otherwise disposing of the schedule property to any third party or otherwise create any interest therein and also directed the parties to maintain status-quo in the meantime on the ownership of the property.

Subsequently the trial court passed several orders on 28.10.2019, 24.10.2019, 4.11.2019, 18.11.2019, 09.01.2020, 16.01.2020, 19.01.2020 and finally passed order No. 9 dated 26.01.2020 which is the impugned order. Previous to the

impugned order dated 26.01.2020 the court of learned District Judge inter alia on the application of the opposite parties in the Arbitration Miscellaneous Case (opposite party here) passed an order for hearing of the opposite parties application under Order 7 Rule 11 of the Code of Civil Procedure along with Section 17(ka) of the Arbitration Act, 2001 including other applications filed by the opposite parties which is on record. The opposite parties made an application under Section 45 of the Evidence Act, 1872 for examination of the signature of the opposite parties by hand writing expert in accordance with the relevant laws and procedures attached to it. The court of learned District Judge fixed 26.01.2020 for objection if any by the petitioners and also for hearing of the application under Section 45 of the Evidence Act, 1872 subject to obtaining the relevant documents by its order No. 8 dated 19.01.2020. The court also passed an order that the application under 7 Rule 11 read along with Section 7(ka) of the Arbitration Act, 2001 and the application filed by the opposite parties praying for vacating the order of status-quo dated 7.10.2019 be all kept for hearing. The court of learned District Judge passed the impugned order by its order No. 9 dated 26.01.2020 and allowed in part the application of the instant opposite parties for examining the signature of the opposite parties by hand writing expert under the provisions of section 45 of the Evidence Act, 1872. It appears from the record that the instant civil revision being Civil Revision No. 594 of

2020 was filed and Rule and stay of the impugned order was granted by this Division on 10.03.2020. In this matter it appears from order No. 10 dated 12.03.2020 passed by the learned District Judge that the hand writing expert had already submitted its report on 09.03.2020. By the last order of the learned District Judge that is order No. 11 dated 9.03.2020 the court of learned District Judge, issued an order that all further proceedings of the Arbitration Miscellaneous Case be stayed for a period of 06(six) months pursuant to the Rule and stay order granted by this division by its order dated 10.03.2020 in the instant Civil Revision.

It appears that an application was filed by the opposite parties land owner for discharging the Rule as being infructuous against the Order of Rule and stay granted by this Division. The opposite parties land owner filed an application for Stay before the Chamber Judge court of the Appellate Division and the learned Chamber Judge sent it to the full bench of our Apex court. Civil Petition for Leave to Appeal No. 1758 of 2020 was filed by the opposite parties land owner and the full bench of the Appellate Division by its order dated 03.01.2021 dismissed the Civil Petition for Leave to appeal as being infructuous. However the Appellate Division dismissed the petition filed by the opposite parties in the Civil revision as being infructuous since the opinion of the hand writing expert has been already received

by the learned District Judge by giving its report. The order dated 03.01.2021 passed by our Apex court dismissing the petition as being infructuous is annexure 1 of the application. Against the order passed by the full bench dated 07.01.2021 the instant petitioners (developer) filed a Civil Review Petition No. 164 of 2021. After hearing the civil review petiton No. 164 of 2021 the Appellate Division issued an order that the rule itself be disposed of on the merits by this division presided by this particular single bench.

The relevant facts for purpose of disposal of the instant Rule inter alia is that the instant petitioners (developer) as petitioner filed the Arbitration Miscellaneous Case No. 07 of 2019 under Section 7(ka)/7(a) of the Arbitration Act, 2001 impleading the opposite parties (landowner) as opposite parties in the Arbitration Miscellaneous Case inter alia praying for restraining order against the opposite parties (landowner).

The opposite parties landowner entered into a contract and executed 4 deeds of agreements along with 4(four) deeds of power of attorney. The instant opposite parties landowner initially entered into a contract and thereby executed 4(four) deeds of agreement. The opposite parties Nos. 1 and 2 executed four deeds of agreement in favour of Anamika Corporation Limited upon receiving their proportionate share of consideration money. The opposite parties executed a deed of agreement dated

22.12.2011 in favour of Anamika Corporation Ltd, deed of agreement dated 18.11.2012, deed of agreement dated 22.04.2014 and deed of agreement dated 13.07.2017 along with registered power of attorney. All these agreements were executed between the petitioners (company) Anamika Corporation Limited and the opposite parties (landowner) and which deed of agreements are admitted. It also admitted that the agreements were executed for purpose of development of the land by way of real estate. Subsequently however all the four deed of agreements were admittedly cancelled and the power of attorney were also cancelled. Admittedly all the agreements were cancelled on separate dates that is on 18.11.2012, 22.04.2014, 13.07.2017, 21.04.2019 along with all the registered power of attorneys also being cancelled. The cancellation of these deeds originally executed however are admitted facts.

The dispute arises from the fact that Anamika Corporation Ltd. claims that on the same date that is on 21.04.2019 the land owner executed a fresh deed of agreement and power of attorney dated 21.04.2019. It is the petitioner's claim that although a fresh power of attorney was executed on 21.04.2019 between the instant petitioners (developer company) and the opposite parties landowner but however those deeds are not registered. The petitioners further claims that although subsequently through notice, reminder etc, the petitioner sought for registering the

fresh deed of agreement but the opposite party refrained from doing so including denying granting of fresh power of attorney. The opposite parties landowner evidently deny the execution of the fresh deed of agreement on 24.09.2019 and also deny granting any fresh power of attorney on the same date to the petitioner developer. Therefore the dispute arising out of which the Arbitration Miscellaneous Case No. 7 of 2019 was filed under section 7(ka) of the Arbitration Act, 2001 arose out of the fact that the instant petitioners (developer) claim that the fresh deed of agreement was executed between the parties on 21.04.2019 but the opposite parties deny the execution of any such agreement and power of attorney whatsoever. Hence the Arbitration Miscellaneous case which subsequently gave rise to the instant civil revision.

Learned Senior Advocate Mr. Kamal Ul Alam along with Ms. Shahanaj Akther, Advocate along with Mr. A.K.M Zakir Uzzaman, Advocate appeared for the petitioners while learned Senior Advocate Mr. M.I. Farooqui, learned Senior Advocate Mr. Mehedi Hasan Chowdhury along with Mr. M. Sadekur Rahman, Advocate along with Ms. Razia Sultana, Advocate represented the opposite parties.

Learned Senior Advocate Mr. Kamal Ul Alam on behalf of the petitioners submits that the court of learned District Judge upon arrogating the powers conferred on the arbitral tribunal

wrongly issued the order for examination of the signature by hand writing expert under section 45 of the Evidence Act, 1872. He submits that the learned District Judge while entertaining the Miscellaneous Case filed under section 7 (ক) 1 of the Arbitration Act 2001 travelled beyond its jurisdiction in issuing the impugned order dated 26.01.2020 which order is not sustainable and ought to be set aside for ends of justice. He draws attention to the previous orders of the learned District Judge and submits that although the learned District Judge earlier issued order for hearing all the applications filed by the parties together, but however by its order dated 26.01.2020 he issued the order for hand writing expert without hearing of the learned Advocate for the developer company. Upon a query from this bench he argues that the learned Advocate for the developer company could not be found when the matter came up for hearing. The learned Advocate for the petitioners contended that an isolated inadvertent absence of the learned Advocate cannot deprive the parties from being heard on the matter. He argues that the court of learned District Judge without hearing or considering any of the other applications filed by the parties however only issued the order of the examination of signature by hand writing expert filed by the opposite parties. He vehemently asserts that the law does not confer such jurisdiction on the learned District Judge. Upon elaborating his submission the learned counsel submits that the Arbitration Act, 2001 is an enactment by way of special law

and therefore the special statutory provision of the Arbitration Act, 2001 must be construed strictly. He reiterates that the Arbitration Miscellaneous Case No. 7 of 2019 was evidently filed under section 7(ka) of the Arbitration Act, 2001. Upon drawing this bench's attention to section 7(ka) of the Arbitration Act, 2001 he continues that it is evident from the prayer in the Arbitration Miscellaneous case No. 7 of 2019 that the ingredients of the prayer under Section 7(ka) shows that the prayer is within the ambits of Section 7(ka)-(Uma) of the Arbitration Act, 2001. He draws attention to Section 7(ka) of the Arbitration Act, 2001 and submits that from the head note of Section 7(ka) of the Arbitration Act, 2001 it is clear that Section 7(ka) only contemplates an ad-interim order (অন্তবর্তীকালীন আদেশ). He submits that 7(ka) of the Arbitration Act, 2001 clearly contemplates where a circumstance or circumstances may arise where a civil court meaning the court of District Judge and High Court Division may pass an ad-interim order under circumstances of urgency which by its very nature is a temporary order pending final hearing on the issue. He takes this bench through the provisions of section 7 (1) (ক) (Kha)(Ga)(Gha)(Uma)(Cha) and (Chha). He points out that section the provisions clearly set out the criteria and the circumstances under which a temporary order may be passed following an application filed under section 7ক of the Arbitration Act, 2001. He draws attention to Section 7ক (1)

and sub-section (Uma) which provides (অন্তবর্তীকালীন নিষেধাজ্ঞা). Revolving around section 7ক (1) he submits that by no stretch of imagination can it be assumed that an ad-interim temporary injunction (অন্তবর্তীকালীন নিষেধাজ্ঞা) may contemplate or include examination of signature by hand writing expert under the provisions of section 45 of the Evidence Act, 1872. Pointing out to sub-rules of section 7ka (1) he contends that the criteria and the circumstances under which an ad-interim order can be passed under section 7ka of the Arbitration act, 2001 is limited in its scope. He submits that none of the sub-rules under section 7ka (1) contemplate empowering the civil courts to issue any order under section 45 of the Evidence Act, 1872.

He next submits that while section 7(ka) of the Arbitration Act, 2001 does not contemplate conferring of any power to civil courts to pass an order under Section 45 of the Evidence Act, 1872, rather on the other hand Section 17(ka) of the Arbitration Act, 2001 expressly and specifically confers such power on the arbitral tribunal. He draws attention to Section 17(ka) of the Arbitration Act, 2001 and points out that Section 17(ka) clearly contemplates that unless it is otherwise upon agreed by the parties the arbitral tribunal may rule on its own jurisdiction on any question which include the existence of a valid arbitration agreement. The learned Advocate for the petitioner draws this Bench’s attention to Section 17(ka) of the Arbitration Act, 2001

and points out that Section 17(ka) unambiguously and expressly states that the Arbitral tribunal shall give decision if the existence of a valid arbitration agreement is disputed. He submits that in this case it is clear that the petitioner claims that a fresh valid agreement was executed on 21.04.2019 while the opposite parties clearly deny the existence of any valid arbitration agreement. He submits that the gist of the opposite parties' contention is that the opposite parties never executed any fresh deed of agreement on 21.04.2019. He points out that therefore the pivotal issue to adjudicate upon in this matter is whether a valid deed of agreement was at all executed or not.

He continues that from the provisions of the Arbitration Act, 2001 it is clear that Section 17(ka) of the Arbitration Act, 2001 expressly confers the jurisdiction to decide and give finding on the existence of a valid arbitration agreement and/or validity thereof on the arbitral tribunal and not upon any civil court. He submits that the power conferred upon the learned District Judge and the High Court Division under Section 7ka is limited in its scope and no court can exceed the limits beyond those powers that has been conferred upon it. He argues that the learned District Judge by the impugned order dated 26.01.2020 evidently arrogated upon itself the powers conferred upon the tribunal under the Arbitration Act, 2001 which Act is a special enactment of law specifically enacted for purposes relating to any issues

related to any Arbitration agreement. He continues that keeping the special nature of the law in mind, in this particular case since the existence of a valid arbitration agreement is in dispute and to be decided, therefore it can be decided only by an arbitrator tribunal following appointment of arbitrator in accordance with the provisions of the Act of 2001.

He next points out to section 19(1)(4) of the Arbitration Act, 2001 and contends that it is clear from this section that if any person has any objection to the jurisdiction of the arbitrator tribunal such objection may be raised only before the Arbitration tribunal itself. He submits that Section 17(ka) read with section 19(1)(4) clearly contemplate that if any person raises objection upon questioning or challenging the jurisdiction of an arbitral tribunal, the arbitral tribunal shall dispose of the matter itself on the jurisdictional issue and the tribunal shall also dispose of and decided upon it. He next points out to the provisions of section 32 of the Arbitration Act, 2001 and reads there from. He submits that section 32 clearly contemplate some of the powers conferred upon the Arbitrator Tribunal. He continues that upon scrutiny of Section 32 it shows that the arbitral tribunal is clearly conferred with the power to appoint experts, legal advisers to report on specific issues to be determined by the tribunal. He submits that the provisions of Section 32 particularly Section 32(ka) and (ga) clearly contemplate that the tribunal shall also have the power to

appoint expert which evidently include a hand writing expert within the meaning of section 45 of the Evidence Act, 1872.

He next submits that it is a settled principle of law that a statute must be read as a whole and not in part. He contends that upon a plain reading of the provisions of Section 7(ka) along with 17(ka) read with section 19(1)(4) and provisions of section 32 particularly Section 32 (ka) the scheme of the law clearly contemplate that the power of issuing an order to call for examination of signature or signatures whatsoever by hand writing expert or any other investigating power arising out of any matter shall be conferred upon the arbitrator tribunal and not upon any civil court.

Upon a query from this bench following the contention of the learned Advocate for the opposite party that the learned District Judge also has similar power to decide on the existence of a valid arbitration agreement including the power to call for hand writing expert, he controverts the learned Advocate for the petitioner. He argues that it would be absurd to presume that the law would confer simultaneous power on two entities. He continues that further more the provisions of section 7ka (1) of the Arbitration act, 2001 has clearly expressed the circumstances under which an ad-interim temporary order may be passed by the learned District Judge or by the High Court Division. He continues that therefore keeping with the criterias expressly set

out in the sub rules of the provision it is clear that the learned District Judge has no power or jurisdiction to entertain any application under Section 45 of the Evidence Act, 1872 while entertaining an application under section 7ka(1) of the Arbitration Act, 2001. In support of his contentions, the learned Advocate for the petitioner cited two decisions including in the case of Eklas Khan and others Vs. Prajesh Chandara and others reported in 1987 BLD(AD) 142 and another in the case of Multiplan Limited Vs. Principal, Md. Zaynal Abedin reported in 23 BLC(2018) 561.

He next agitates that the Arbitration Act-2001 is a special statutory enactment and it is principle of rules of interpretation that special statutory enactments must be read strictly unless otherwise contemplated elsewhere. He continues that therefore in an application under Section 7ka(1) of the Arbitration Act, 2001 the learned District Judge clearly does not have any power beyond what is categorically conferred upon it. He further reiterates that Section 17(ka) of the Arbitration Act, 2001 has clearly conferred the power to decide inter alia the validity of an Arbitration agreement upon the arbitral tribunal and not upon any civil court. He submits that the Arbitration Act, 2001 has specified the particular power which has been conferred upon the tribunal specifically empowering the arbitral tribunal. He contends that upon examination of section 17 (ক) it clearly shows

that section 17 (ক) does not contemplate the exercise of the expressly conferred powers upon the tribunal, to be exercised by any civil court nor any other forum to decide on the particular issue. He reiterates that by no stretch of imagination can it be presumed that the provisions of the Arbitration Act 2001 may contemplate the conferring of any of the powers conferred upon the Tribunal to be conferred upon any civil court nor any other forum. He submits that therefore the impugned order dated 26.01.2020 was passed by the learned District Judge beyond jurisdiction and beyond the powers conferred upon a civil court. He asserts that the learned District Judge clearly arrogated the powers specifically conferred upon the arbitral tribunal under the clear provisions of section 17 (ক) of the Arbitration Act. He concludes his submission upon assertion that therefore the impugned order dated 26.01.2020 was illegally passed by the learned District Judge and the impugned order dated 26.01.2020 ought to be set aside and the Rule bears merits ought to be made absolute for ends of justice.

On the other hand learned Senior Advocate Mr. M.I. Farooqui vehemently opposes the Rule. He agitates that the impugned order dated 26.01.2020 was lawfully passed and the judgment of the learned District Judge needs no interference with in revision. In support of his contention he submits that the provisions of the Evidence Act, 1872 including the provisions of

the Code of Civil Procedure, 1908 and the Limitation Act, 1908 are not excluded by the Arbitration Act, 2001. He draws attention of this bench to the definition of terms in Section 2 of the Arbitration Act, 2001 and submits that Section 2 of the Arbitration Act, 2001 which is under chapter 2 of the Act of 2001 provides the definition of general provisions. He draws particular attention to Section 2, 2(Gha) (ঘ), 2(Uma)(ঙ), 2(Tha)(ঠ) of the Act. He contends that Section 2(Kha), 2(Uma) and 2(Tha) clearly contemplates that the provisions of civil law including those of the Limitation Act, Code of Civil Procedure, 1908 and the Evidence Act, 1872 respectively are not excluded by the Arbitration Act 2001. He submits that the Act does not intend to exclude the applicability of the provisions of the Code of Civil Procedure 1908, Evidence Act 1872, Limitation Act, 1908 and which feature in the definitions of general provisions under Section 2 in chapter 2 of the Arbitration Act, 2001. He argues that since the provisions of the Evidence Act, 1872 read with the Code of Civil Procedure, 1908 is expressly stated in Section 2 in the definition of General Provisions in Section 2 of the Acts, therefore it may be assumed that the Arbitration Act, 2001 clearly contemplate the powers that may be granted to a Civil Court including the power to call for hand writing expert under given circumstances under the provision of Section 45 of the Evidence Act, 1872. He agitates that given that the Code of Civil Procedure 1908 is not excluded by the Arbitration Act,

2001 therefore the learned District Judge is not committing any illegality while entertaining an application under Section 7(ka)(1) of the Arbitration Act, 2001. He submits that the learned District Judge certainly has the authority to scrutinize any documents under the authority conferred upon it under the Evidence Act, 1872 including the authority to examination any report by any expert over any disputed documents. He pursuades that the provisions of Arbitration Act, 2001 does not exclude the jurisdiction of a District Judge to issue an order for examination of any signature whatsoever by hand writing expert specifically the jurisdiction to issue any order under Section 45 of the Evidence Act including passing of any order under any other provision of Evidence Act, 1872 and the Code of Civil Procedure, 1908 etc. He continues that if the intention of the legislature is to exclude the applicability of the laws in that event the Arbitration Act, 2001 would not have included the Evidence Act, 1872 Code of Civil Procedure, 1908 including the Limitation Act, 1908 in section 2 of the Act. He persuades that in chapter 2 Section 2 of the Arbitration Act, 2001 these Acts have been defined in the definition clause (সংজ্ঞা). He contends that the learned District Judge, while sitting in court is not a persona designata rather he is a District Judge within the definition of law including the Code of civil Procedure 1908 and other laws.

He next also draws attention of this bench to Section 476 of the Code of Criminal Procedure, 1908 read along with section 195 and section 190 B and submits that upon perusal of the provisions it may be assumed that the learned District Judge has wide powers and jurisdiction. He also draws attention to Section 193 of the Penal Code, 1860 and submits that Section 193 confers the power to a normal criminal court to decide upon an allegation of giving false evidences. He submits that the Arbitration Act, 2001 does not debar the civil court or the learned District Judge from its power to examine any fraudulent and false evidences whatsoever.

Upon a query from this Bench regarding the Arbitration Act 2001 being a special statutory enactment, he argues that although a special law may be enacted by the legislature but by such enactments previous laws are not repealed. He contends that the legislature also by enactment of Arbitration Act, 2001 did not contemplate the exclusion of the general laws which confers upon the District Judge wide powers under the Code of civil Procedure,1908 Code of Criminal Procedure,1898 Penal Code 1860 etc . On the same strain he continues that for issuing an order calling for hand writing expert lies within the purview of a District Judge's jurisdiction.

He draws attention to Broom's Legal Maxims 10th Edition and submits that the Maxim "generalia specialibus non derogant"

entails that in the absence of an indication of a particular intention to the effect the presumption is that the general words were not intended to repeal the earlier and special legislation. He submits that since the Latin Maxim "Generalia Specialibus non Derogant" has been practiced in common law court including the courts in this country inter alia Civil courts, therefore it may be assumed that the legislator while enacting special provisions of law including section 17(ka) of the Arbitration Act, 2001 did not exclude or take away the powers of the learned District Judge which has been conferred upon him under the prevailing laws of the land including the Code of Civil Procedure 1908, The Code Criminal Procedure etc. Next he draws attention to Broom's Legal Maxims 10th Edition and submits that a provision which gives a new right does not destroy an existing statutory right, unless the intention of the legislators is clearly apparent that the two rights should not co-exist.

He reiterates that the District Judge has wide powers conferred under the Code of Civil Procedure 1908, Evidence Act, 1872 and the Code of Criminal Procedure to issue any orders calling for examination of any signature by hand writing expert under Section 45 of the Evidence Act, 1872 including conferring power of issuing other relevant orders. Controverting the submissions of the learned Advocate for the petitioner he contends that in this case the learned District Judge is not

arrogating himself from the powers conferred upon the arbitral tribunal. On this point he continues that neither under the Arbitration Act, 2001 nor anywhere in any other law is it stated that the learned District Judge may not invoke the power to examine documents by hand writing expert under the provisions of Section 45of the Evidence Act 1872.

Regarding the contention of the petitioner on the issue of arrogation of power of the tribunal he argues that the learned District Judge here is not arrogating any of the powers conferred upon the tribunal since it did not decide on the merits of the Arbitration agreement but simply issued an order to verify some signatures by hand writing expert. He argues that Section 7(ka-1) including the provision of Section (ka-1)-Uma of the Arbitration Act, 2001 does not prohibit the learned District Judge from issuing any order which may be of assistance to the court while entertaining an application under section 7(ka) of the Arbitration Act, 2001. In support of his submissions he cites a few decisions particularly the decision in the case of Corona Fashion Vs. Milestone Clothing LCC reported in 71 DLR(2019)106. He assails that in this decision this division found that the court (learned District Judge) is competent to carry out necessary scrutiny as to the existence of an Arbitration agreement. Drawing support from this decision inter alia also relying on his submissions he submits that therefore the learned District Judge

did not commit any illegality in passing the impugned order dated 26.01.2020 and therefore the learned District Judge acted within its jurisdiction and the impugned order needs no interference here.

Learned Senior Advocate Mr. M.I. Farooqui next draws attention to the application filed by the opposite parties for discharging the Rule as being infructuous. He draws attention to the Civil Petition for Leave to Appeal No. 1758 of 2020 filed before the Appellate Division. The learned Senior Advocate draws attention to Annexure no. '1' of the application and agitates that the Apex court in its order in Civil Petition for Leave to Appeal No. 1758 of 2020 discharged the Rule as being infructuous mainly on the ground that the opinion of the hand writing expert has already been received by the court of District Judge previous to the order of stay passed by the High Court Division. He submits that therefore the Rule be also discharged as unfructuous. He however concludes his submission upon assertion that the Rule bears no merits ought to be discharged for ends of justice.

Next Learned senior Advocate Mr. Mehedy Hasan Chowdhury for the opposite parties submits that the Arbitration Miscellaneous Case No. 7 of 2019 is not maintainable in limine since there is no Arbitration agreement in existence at all. Drawing attention to the Order of the learned District Judge he

points out that the opposite parties land owner made an application before the court of the learned District Judge for rejection of plaint under the provisions of Order 7 Rule 11 of the Code of Civil Procedure 1908. He draws attention to Section 7 and 7(ka) of the Arbitration Act, 2001 and draws attention to the word 'পক্ষগণ'. Revolving around the term 'পক্ষগণ' he argues that Section 7 and 7ka contemplate পক্ষ and পক্ষগণ which implies parties to an agreement and not parties to the arbitration case. He submits that therefore since in this case there is no arbitration agreement in existence at all therefore the arbitration miscellaneous case in limine is not maintainable. Next he draws attention to section 10 of the Arbitration Act, 2001 and argues that Section 10 also contemplates a situation when the arbitration agreement is admitted by both parties. He contends that in the instant case it is clear that the opposite parties do not acknowledge the agreement dated 21.04.2019 followed by power of attorney. He submits that Section 10(2) of the Arbitration Act, 2001 contemplates that only when the court is satisfied that an arbitration agreement exists, only then it shall refer the parties to arbitration and stay the proceedings unless in the event the court finds that the arbitration agreement is void, inoperative or is otherwise incapable of determination by arbitration. He submits that therefore the learned District Judge did not commit any illegality in passing the order to have the signature examined. He submits that depending on the result of the report the learned

District Judges' decision shall decide the fate of the Miscellaneous case as to whether such Miscellaneous case under the provision of section 7 (ক) (1) of the Act is maintainable or not. In support of his submissions he cites a decision in the case of Corona Fashion Vs. Milestone Clothing LCC reported in 71 DLR(2019)106. He continues that the learned District Judge therefore committed no illegality in issuing the order to examine the signature in the document by handwriting expert following the provisions of Section 45 of the Evidence Act, 1872. He contends that the learned District Judge passed its order within its jurisdiction and committed no illegality and therefore the Rule bears no merits ought to be discharged for ends of justice.

I have heard the learned counsels from both sides and I have perused the application and all the materials on record including the order of the court of the learned District Judge. Evidently the arbitration miscellaneous case was filed by the petitioner Anamika corporation Ltd. under Section 7(ka) of the Arbitration Act, 2001. It is an admitted fact that originally four sets of agreement were executed including four power of attorneys and which were admittedly later cancelled upon consent by both parties. The petitioners claim that pursuant to the cancellation of the agreement and the power of attorney however on the date of cancellation of the 4 deeds of agreement on the same date, that is on 24.01.2019 another fresh agreement

was executed between the parties, that is between the developer company and the land owner (opposite parties). However the opposite parties land owner totally deny the execution of any fresh agreement on 24.01.2019 and they refused to register the deed of agreement dated 24.01.2019.

The gist of the opposite parties land owners case is that there is no agreement in existence between the parties and so the opposite parties are not under any legal obligation to the petitioner against their property at all. When the opposite party refused to acknowledge the agreement inter alia any legal obligations the petitioner thereafter filed the Arbitration Miscellaneous case No. 7 of 2019 under section 7(ka)(1) of the Arbitration Act, 2001.

The primary prayer in the Arbitration Miscellaneous case No. 7 of 2019 is that upon admitting the Arbitration Miscellaneous Case inter alia to pass an order restraining the opposite parties from transferring, encumbering, entering into deed of agreement or otherwise disposing of the scheduled property to any third party or otherwise create any interest therein and also with prayer to direct the parties to maintain status-quo with respect to the ownership and possession of the scheduled property until disposal of the arbitration proceedings under Section 7A (1)(b) and Section 7A (1)(c) of the Arbitration

Act, 2001 and /or pass such order and further orders as the court may deem fit and proper.

I have perused the provision of section 7ক (১) (ক-ছ) of the Arbitration Act, 2001. Which is reproduced below:

৭ক। আদালত এবং হাইকোর্ট বিভাগের অন্তবর্তীকালীন আদেশ প্রদানের ক্ষমতা।- (১) ধারা ৭এ যাহা কিছুই থাকুক না কেন, পক্ষগণ ভিন্নভাবে সম্মত না হইলে, কোন পক্ষের আবেদনের প্রেক্ষিতে সালিসী কার্যধারা চলাকালীন কিংবা তৎপূর্বে অথবা ৪৪ বা ৪৫ এর অধীন সালিসী রোয়েদাদ কার্যকর না হওয়া পর্যন্ত আন্তর্জাতিক বানিজ্যিক সালিসের ক্ষেত্রে হাইকোর্ট বিভাগ এবং অন্যান্য সালিসের ক্ষেত্রে আদালত নিম্নবর্ণিত বিষয়ে আদেশ প্রদান করিতে পারিবে, যথা:-

(ক) নাবালক বা অপ্রকৃতিস্থ ব্যক্তির পক্ষে সালিসী কার্যধারা পরিচালনার জন্য অভিভাবক নিয়োগ;

(খ) সালিসী চুক্তির অন্তর্ভুক্ত কোন বিষয়বস্তু হিসাবে অন্তর্ভুক্ত কোন মালামাল বা সম্পত্তির অন্তবর্তীকালীন হেফাজত বা বিক্রয় বা অন্য কোন সংরক্ষণমূলক ব্যবস্থা গ্রহণ;

(গ) কোন পক্ষ কর্তৃক সালিসী রোয়েদাদ কার্যকর করিবার ক্ষেত্রে প্রতিবন্ধকতা সৃষ্টির লক্ষ্যে কোন সম্পত্তি হস্তান্তর কিংবা স্থানান্তরের উপর নিষেধাজ্ঞা;

(ঘ) সালিসী কার্যধারার অন্তর্ভুক্ত কোন বিষয়বস্তু হিসাবে অন্তর্ভুক্ত কোন মালামাল বা সম্পত্তি আটক, সংরক্ষণ, পরিদর্শণ, চিত্রায়ন, ফটোসংগ্রহ, হেফাজতকরণ, তথ্য ও নমুনা সংগ্রহ, পর্যবেক্ষণ, পরীক্ষণ বা সাক্ষ্য গ্রহণ করিবার জন্য এবং তদুদ্দেশ্যে কোন পক্ষের দখলকৃত ভূমি বা ইমারতে প্রবেশের জন্য যে কোন ব্যক্তিতে ক্ষমতা অর্পণ;

(ঙ) অন্তর্বর্তীকালীন নিষেধাজ্ঞা;

(চ) রিসিভার নিয়োগ;

(ছ) আদালত অথবা হাইকোর্ট বিভাগের নিকট যুক্তিসঙ্গত বা যথাযথ প্রতীয়মান হয় এইরূপ অন্য যে কোন অন্তর্বর্তীকালীন সংরক্ষণমূলক গ্রহণ।

Upon perusal of the relevant provisions I am of the considered view that section 7ক (১) contemplate the power of the learned District Judge and High Court Division to issue ad-interim order (অন্তবর্তীকালীন আদেশ) under certain sets of circumstances. I have examined the provisions of section 7ক (১) read with the sub-rules from section 7ক (১) (ক-ছ). It appears that section 7ক (১) (ক-ছ has specified particular circumstances under which and laid down a criteria when an ad-interim order (অন্তবর্তীকালীন আদেশ) under section 7ক (১) may be passed by the civil court. I am also of the considered view that it is clear from the nature of the prayer in the petitioner's application that it falls within the purview of Section 7ক (১) sub-section Uma. Section 7ক (১) ঙ provides an express provision of ad-interim injunction (অন্তবর্তীকালীন নিষেধাজ্ঞা). I am of the considered view that the Arbitration Act, 2001 being a special enactment of law therefore in an application filed under section7(ka) of the Arbitration Act, 2001 it is not possible to travel beyond the particular criteria categorically set out and stated expressly in the provisions of section 7ka (1) and Sub-section (ka-Chha) of the Act.

Section 7ka also states that the parties (পক্ষগণ) if it is not otherwise agreed upon may pray for issuing ad-interim order from the court of learned District Judge and the High Court Division during the arbitration proceeding or before initiation of the proceeding. Section 7ka (1) of the Arbitration Act, 2001 has to that effect used the word তৎপূর্বে (before). In this case since the Arbitration proceeding has not yet been initiated therefore it is to be assumed that ad-interim order was prayed for by the developer company petitioner previous (তদপূর্বে) to the arbitration procedure. As mentioned above the criterias and the circumstances /situation when an ad-interim order may be passed has been categorically stated in section 7ক (১) (ক-ছ) of the Act. As also mentioned above, my considered view it that the present application under section 7ক (১) relates to ad-interim injunction (অন্তবর্তীকালীন নিষেধাজ্ঞা) envisaged in section 7ক (১) sub section ঙ of the Act.

Both the learned Senior Advocate for the opposite parties Mr. M.I. Farooqui and learned senior Advocate Mr. Mehedi Hasan Chowdhury contended that issuing an order to examine the signature whatsoever under the provisions of section 45 of Evidence Act, 1872 is within the contemplation of section 7ক (১) of the Arbitration Act, 2001 and consequently it is within the jurisdiction of the learned District Judge to pass such an order.

I would like to remind both the learned senior Advocates for the opposite parties that the substantive prayer in the Arbitration Miscellaneous case No. 7 of 2019 under section 7ক (১) of the Arbitration Act, 2001 is basically a prayer for an order of restraint till arbitration proceedings are initiated and nothing else. Further I am also of the considered view that section 7ক (১) sub-section Uma including other sections only contemplate the passing of an ad-interim order in case of urgency to address certain circumstances or situations either during an arbitration proceeding or before an arbitration case is initiated.

In the instant case, the prayer for ad-interim injunction was made before the arbitration proceeding was initiated. Although the learned Senior Advocate Mr. M.I Farooqui for the opposite parties contended that the learned District Judge's power is not excluded by the provisions of section 17(ka) of the Arbitration Act, 2001 but my considered view is that even before deciding over the provisions of section 17(ka), for the purpose of adjudicate of this matter, it is most necessary to examine section 7ক of the Arbitration Act, 2001. Upon a plan reading of section 7ক (১) of the Arbitration Act of 2001, I do not find anything in these provisions which may indicate anything beyond the powers already expressly conferred upon the civil court by the said section. It is pertinent to repeat that the Arbitration Act, 2001 is a special enactment of law and the provisions of any special

statutory enactment must be construed strictly unless a different intention is otherwise implied anywhere in any other law. I am of the considered opinion that if the legislature intended to confer the power upon the learned District Judge besides what is expressly stated in section 7ka (1) of the Arbitration Act, 2001 in that event it would not have expressly laid the specified conditions and situations under which an order may be passed under section 7ক (১) sub Rule(ক-ছ) including an order of ad-interim injunction (অন্তবর্তীকালীন নিষেধাজ্ঞা) under sub Rule 'ঙ'.

My considered opinion is that the powers conferred upon the learned District Judge in an application under section 7ক of the Arbitration Act, 2001 being categorically stated and the act being a special statutory enactment of law, there is any scope to travel beyond the special provisions laid down in the law.

Learned Advocates from both sides made several submissions regarding the previous orders of the learned District Judge. I am inclined to opine that for the purpose of disposal of the instant civil revision it is necessary to confine myself to the jurisdictional issue of the matter. The duty of this court here is to primarily decide as to whether the learned District Judge while entertaining an application under section 7ক of the Act of 2001 has been conferred the jurisdiction to pass an order under section 45 under the Evidence Act, 1872.

The learned Advocate for the petitioners upon drawing attention to Section 17(ka) of the Arbitration Act, 2001 read along with Section 19(1), 19(2) of Act vehemently argued that the special enactment of law upon reading all these provisions it is clear that the power to examine the validity and existence of a valid arbitration agreement is conferred expressly only upon the arbitral tribunal under the provisions of section 17(ka) of the Arbitration Act, 2001.

The learned Advocate for the petitioners further contended that Section 17(ka) read with section 19(1) and (4) and section 32(1) and section 32(2)(ka) and (ga) of the Arbitration Act, 2001 empower the Tribunal only to adjudicate upon the existence and validity or otherwise of any Arbitration Agreement, and further argued that therefore the learned District Judge acted illegally and without jurisdiction in passing the impugned order dated 26.01.2020 upon arrogating to himself the specific jurisdiction conferred on the Arbitral tribunal under the said provisions of the Arbitration Act, 2001. He also contended that upon examination of these provisions read together it is clear that the power to issue an order under section 45 of the Evidence Act, 1872 has been conferred upon the Tribunal only. He continued that since it is a special enactment of law hence the language of the provisions ought to be strictly interpreted and according to the language of the relevant provisions it is clear that the intention of the

legislators is that it is only the tribunal which can decide on the existence of a valid Arbitration agreement and not a civil court. The learned Advocate for the petitioners contended that in this particular case, the learned District Judge upon issuing the impugned order dated 26.01.2020 under section 45 of the Evidence Act, 1872 arrogated upon itself the powers conferred upon the arbitrator tribunal under section 17(ka) and hence travelled beyond his jurisdiction.

Upon hearing the counsels of both sides and going through all materials on records, it appears that the learned Advocate for both sides contended several other legal points and factual issues. But however I am of the considered opinion that my duty for the purpose of adjudication of the instant matter is to mainly confine myself to the jurisdictional issue. Therefore I am primarily inclined to examine the power conferred upon the arbitrator tribunal under section 17(ka) read with the other provisions and I am further inclined to examine as to whether the learned District Judge travelled beyond its jurisdiction by issuing an order directing to have the signatures examined by hand writing expert under the provisions of Section 45 of the Evidence Act, 1872.

Upon a plain ready of the provisions of section 17 of the Arbitration Act, 2001 it is clear that the section contemplates the extent of the jurisdiction that may be exercised by an Arbitrator Tribunal. Section 17 (a) (b) (c) (d) and (e) prescribes primarily 5

issues on which the arbitral tribunal is empowered to exercise and rule on its own jurisdiction. The intention of section 17(ক) of the Arbitration Act, 2001 is to categorize and lay down the circumstances and situation when the arbitrator tribunal may exercise to rule on its own jurisdiction and is competent there to.

I have carefully scrutinised both the heading of the language of section 17 which is under chapter 5 of the Arbitration Act 2001. It may be pertinent to note that chapter 5 essentially deals with the jurisdiction of an arbitral tribunal. The heading of chapter 5 reads "Jurisdiction of Arbitral Tribunals" (নালিশী ট্রাইবুনালের এখতিয়ার). Therefore it is needless to state that chapter 5 of the Arbitration Act, 2001 specifically deals with the jurisdictional power of any arbitral tribunal. Section 17 (ক) (খ) (গ) (ঘ) এবং (ঙ) specifies the criteria and circumstances when an arbitral tribunal may rule on it is own jurisdiction. The heading of section 17 of the Arbitration Act, 2001 categorically states " সালিশী ট্রাইব্যুনালের স্বীয় এখতিয়ার বিষয়ে সিদ্ধান্ত প্রদানের ক্ষমতা" (Competence of arbitral tribunal to rule on its own jurisdiction). Therefore it is clear that section 17 expressly and unambiguously lay down the circumstances under which the arbitral tribunal may Rule on its own jurisdiction. Section 17 further states " পক্ষগণ ভিন্নভাবে সম্মত না হওয়ার ক্ষেত্রে প্রশ্নে সালিশী ট্রাইব্যুনাল স্বীয় ক্ষেত্রে সিদ্ধান্ত প্রদান করিতে পারে।" The word "যে কোন" (on any question) confers a wide power upon the arbitral tribunal to Rule on its own jurisdiction arising out of any

issue or any question involving an arbitration agreement. Besides Section 17 (ka) confers wide power and expressly states 5 specific criterias clearly embodied expressing situation and/or circumstances as to when the arbitral tribunal may exercise on its jurisdiction.

For purposes of adjudication on the jurisdictional issue of the Tribunal, I am inclined to sddress Section 17(ka) of the Arbitration Act, 2001. Section 17(ka) of the Arbitration Act, 2001 is the first criteria under which an Arbitral tribunal may Rule on its jurisdiction. Section 17 (ক) expressly contemplate " বৈধ সালিশ চুক্তির অস্তিত্ব থাকা " which entails that an arbitral tribunal has been conferred with the jurisdiction which empowers it to Rule as to whether there is existence of a valid arbitration agreement.

I am of the considered opinion that section 17(ka) gives a wide power to the arbitrator tribunal but yet again 17 (ক) further specifies the criteria of issues on which an arbitral tribunal may decide upon. I am also of the further considered opinion that the intention of the legislature while enacting the provisions of the Arbitration Act, 2001 including Section 17(ka) of the Arbitration Act, 2001 clearly contemplate that the power to decide as to whether a valid arbitration agreement is in existence or not is specifically conferred upon the tribunal.

It is a principle of law that a statute in particular where a statute is a special piece enactment of law and addressing certain situations and circumstances, in that event unless a different intention is expressed elsewhere in the law the statute must be construed and interpreted in accordance with the strict meaning of the language as it expressly appears. The language of section 17(ka) is quite clear and there is no ambiguity as such in the provision. It is also a settled principle of law that where a specific provision of law is expressly stated such specific provision shall prevail over the general law.

I have also perused the other provisions of chapter 5 (পরিচ্ছেদ-৫) of the Arbitration Act, 2001 which deal with the scope and extent of the jurisdiction of any arbitral tribunal. I have particularly perused section 19(1)(2) of the Act. Section 19(1) provides that any objection challenging the jurisdiction of the tribunal shall not be raised later than the submissions of the statement of defence. Section 19(2) of the Act contemplate a situation where any objection may be raised that the tribunal is exceeding the scope of its authority in that event such objection shall be raised as soon as the allegation is raised. Therefore it clearly appears that section 19(1) and 19(2) read along with other provisions of chapter 5 including section 17(ka) also contemplate that an objection against the jurisdiction of the tribunal shall also be heard by the tribunal itself and not by any other forum.

It is a principle of rules of interpretation that a statute cannot be read or construed in part but must be read as a whole. Therefore in this particular case also the Arbitration Act, 2001 over all including chapter 5 of the Act must be read as a whole and not in part along with the other chapters of the Act. After perusal of section 17(ka) read along with the other provisions of chapter 5 particularly section 19(1), 19(2) of the Arbitration Act, 2001, I am of the considered view that the power to decide on the existence of a valid arbitration agreement has been conferred upon the arbitral tribunal under a specific enactment of law by way of the Arbitration Act, 2001 and has not been conferred upon the learned District Judge. If the intention of the law was to confer simultaneous or parallel jurisdiction to the learned District Judge in that case the statutory provision of Section 17would not have expressly contemplated and stated the power so unambiguously as it has been expressly and unambiguously stated in section 17 of the Arbitration Act, 2001 including section 17(ka-Uma) and for our purpose particularly section 17(ka) of the Arbitration Act, 2001.

The learned Advocate for the opposite parties land owner cited a decision of this division in the case of Corona Fashion Vs. Milestone Clothing LLC reported in 71 DLR(2019)106. The learned Advocate for the opposite parties land owner argued that in this decision the High Court Division in the 71 DLR decision

decided that the “court” being the “District court” is competent to carry out any necessary scrutiny as to the existence of an arbitration agreement. The learned Advocate for the opposite parties further contended that the High Court Division correctly found that a civil court being the court of learned District Judge may decide and is competent to carry out any necessary scrutiny and examination as to the existence of an arbitration agreement. He further contended that necessary scrutiny evidently entails an order or orders to carry out an investigation under section 45 of the Evidence Act, 1872.

I have carefully perused the 71 DLR decision of this division. I have particularly perused paragraph No. 31, 32 and 33 of this decision. Upon perusal it appears that the learned Advocate for the opposite parties did not concentrate on the overall observation and finding of the High Court Division in this case. In paragraph No. 31 of this decision this division state as hereunder :

> “ In other words, while the court is competent to carry out the necessary scrutiny as to existence of an arbitration agreement (সালিস চুক্তির অস্তিত্ব) in an appropriate application under section 17(a) of the Arbitration Act, the arbitral tribunal will determine the “existence of a valid arbitration agreement” (বৈধ সালিস চুক্তির অস্তিত্ব).

Therefore this decision of this division found that the power to decide on the existence of a valid agreement " বৈধ সালিশ চুক্তির অস্তিত্ব থাকা " upon the Tribunal under section 17(ka) of the Arbitration Act, 2001. In paragraph No. 33 of this decision this division also distinguished between the existence of an arbitration agreement and the existence of a valid arbitration agreement. I am of the considered opinion that the two situations are different. Whereas the existence of an arbitration agreement may be decided by the civil court being the learned District Judge, but where the existence of an arbitration agreement so far as its validity is challenged or under question that question must be decided by the arbitral tribunal following the provisions of section 17(ka) of the Arbitration Act, 2001.

It is evident that in this particular case which is presently before me the existence of the validity of the arbitration agreement is in dispute. The petitioner claims that the arbitration agreement is a valid arbitration agreement signed by the developer company and land owner while the land owner opposite parties vehemently denies having executed the agreement. Therefore in this particular case rather the existence of a 'valid' arbitration agreement is in question. I am of the considered view and also upon drawing support from the decision in the case of Corona Fashion Vs. Milestone Clothing LLC reported in 71 DLR(2019)106 read along with the provision

of Section 17 and 17(ka-uma) and also section 19(1) and 19(2) and other provisions of the Act, that the jurisdiction to decide the existence of a valid arbitration agreement " বৈধ সালিশ চুক্তির অস্তিত্ব থাকা " is specially conferred upon the arbitral tribunal and not upon any other court. I have also perused paragraph No. 43 of the 71 DLR(2019)106 decision wherein this division laid down some criterias for determining the existence of an arbitration agreement as to the conditions that are to be satisfied to constitute the existence of an arbitration agreement.

Section 19(2)(c) of the Act of 2001also contemplates a situation on the existence of an arbitration agreement when the arbitration agreement alleged by one party is not denied by the other. Therefore it is clear that to constitute a valid arbitration agreement within the meaning of the Act of 2001 the existence of the agreement must be agreed upon by both parties. In this case it is clear that the opposite parties denies the existence of the agreement itself. Therefore under the provisions of Section 17(ka) of the Arbitration Act, 2001 read with other provisions of the Act it is my considered view that the legislature has conferred the power to decide as to whether a valid arbitration agreement is in existence upon the tribunal only.

As mentioned elsewhere in this judgment section 7(ka) of the Arbitration Act, 2001 under which the instant application has been filed and which subsequently led to the issuance of the

impugned order passed by the District Judge and against which the instant civil revision has been filed, the said section 7ka contemplates a situation where an ad-interim order or orders may be passed in matter in situations, which situations which have been expressly stated envisaged under the provisions of section 7ক (১) (ক-ছ) of the Act.

As mentioned elsewhere in this judgment for our purpose we may concentrate on section 7ক (১)(Uma) ‘‘অন্তবর্তীকালীন নিষেধাজ্ঞা’’ (ad-interim injunction) Even for sake of discussion drawing upon the principles of pari materia, if we compare section 7ক (১) (uma) ‘‘অন্তবর্তীকালীন নিষেধাজ্ঞা’’ (ad-interim injunction) with Order 39 Rule 1 and 2 of the Code of Civil Procedure and draw a comparison and analogy thereupon, it is clear that ‘‘অন্তবর্তীকালীন নিষেধাজ্ঞা’’ (ad-interim injunction) may be passed only to address situation/ circumstances wherein there is some urgency to restrain a particular party or person from doing certain acts pending the case. I am also of the considered view that while issuing an order of ad-interim restraint or injunction whatsoever, the learned District Judge is not empowered to pass an order under section 45 of the Evidence Act, 1872 for purpose of having any signature examined by a hand writing expert.

It is also necessary to be reminded that a report under section 45 of the Evidence Act, 1872 submitted by a hand writing expert is not a conclusive evidences of finding of facts

but which must be corroborated by supporting evidences. It is needless to state that such assessment and adducing of such evidences is a longer process under the relevant procedural law. By no stretch of imagination can it be contemplated that section 7ক of the Arbitration Act, 2001 including section 7ক (১) ঙ contemplate the power of a District Judge for passing of the ad-interim order beyond a situation of urgency. Section 7ক (১) particularly sub section (ঙ) of the Act of 2001, does not contemplate a lengthy trial pursuant to adducing evidences whatsoever. Therefore the provision of Section 7ক is limited to passing certain orders under certain situations and circumstances. The intention of the legislators in enacting of those provision also upon comparison and analogy with Order 39 Rule (1) and (2) of the Code of Civil Procedure, 1908 is to address circumstances of urgency and nothing beyond.

I have also perused some other provisions of the Arbitration Act, 2001 including the provisions of section 32 of the Act, which section contemplates the power of the tribunal to appoint experts, legal adviser etc. to determine a specific issue before the tribunal. For purposes of interpretation the term ‘expert’ in my considered opinion also entails a hand writing expert within the meaning of the provisions of The Evidence Act, 1872.

Therefore under the facts and circumstances and upon comparison with several other sections of the Arbitration Act, 2001 and in particular upon perusal and comparison of the provisions of section 7ক of the Act of 2001 along with section 17(ka), Section 19(1) and 19(2) and section 32 inter alia other provisions, my considered finding is that in the power to issue an order for examination of any signature by hand writing expert is conferred upon the arbitral tribunal only under the provisions of section 17(ka) of the Arbitration Act,2001. Section 7ক has limited powers and the civil court cannot travel beyond the limited powers while exercising the power conferred upon it under Section 7ক of the Act of 2001.

Therefore I am also of the considered finding that the impugned order dated 26.01.2020 passed by the learned District Judge and Arbitration Court, Cumilla in Arbitration Miscellaneous Case No. 07 of 2019 in allowing the application filed by the opposite parties under section 45 of the Evidence Act, 1872 is unlawfully passed and therefore the said order ought to be set aside.

Under the facts and circumstances and upon hearing the leaned senior Advocate for both sides and upon perusal of the decisions including careful examination of the Arbitration Act, 2001 read with other laws I find merits in this Rule.

In the result, the Rule is made absolute and the impugned order dated 26.01.2020 passed by the learned District Judge and Arbitration Court, Cumilla in Arbitration Miscellaneous Case No. 07 of 2019 in allowing the application filed by the opposite parties under section 45 of the Evidence Act, 1872 is hereby set aside.

The order of stay granted earlier by this court is hereby vacated.

Communicate the judgment and order at once.

Arif(B.O)