

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(CIVIL REVISIONAL JURISDICTION)

**CIVIL REVISION NO. 1173 of 2021**

**In the matter of:**

An Application under section 115(1) of  
the Code of Civil Procedure, 1908.

**And**

**In the matter of:**

Mrs. Mohsina Rahman

..... Petitioner.

**Vs.**

A.K.M. Zakaria Hossain Chowdhury  
and another.

.....Opposite Parties.

Mr. Kamal-Ul-Alam with

Mr. K.S. Salah Uddin Ahmed, Advocate  
(Appearing Physically).

....For the petitioner.

Mr. Mehedi Hassan Chowdhury,  
Additional Attorney General (appearing  
in personal capacity) with

Mr. A.K. Rashedul Huq with

Ms. Nasrin Akhtar Sheela, Advocates  
(Appearing Virtually).

..For the opposite party No.1.

Mr. Mohammad Abdul Hannan,  
Advocate

..For the opposite party No.2.

**Heard on 22.09.2021, 29.09.2021,  
01.11.2021 and 02.11.2021.**

**Judgment on 03.11.2021.**

<p><b><u>Present (Physically in Court Room) :</u></b> <b>Mr. Justice Sheikh Hassan Arif</b> <b>And</b> <b>Mr. Justice Ahmed Sohel</b></p>
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**SHEIKH HASSAN ARIF, J**

1. At the instance of the petitioner in Arbitration Miscellaneous  
Case No. 98 of 2016, pending before the Court of Joint  
District Judge, Dhaka, Rule was issued calling upon the

opposite parties to show cause as to why the Order No. 35 dated 03.02.2021 passed by the said Court in the said Arbitration Miscellaneous Case allowing the application filed by the opposite party No. 1 for adding him as party in the said miscellaneous case, should not be set aside and/or such other or further order or orders be passed as to this Court may seem fit and proper.

## 2. **Background Facts:**

- 2.1 Facts, relevant for the disposal of the Rule, in short, are that the petitioner filed the said Arbitration Miscellaneous Case No. 98 of 2016 before the Court of District Judge, Dhaka under Section 7Ka of the Arbitration Act, 2001 impleading therein the opposite party No. 2 (developer) thereby seeking an order of injunction for restraining the said developer from transferring, selling any part of the floors, spaces constructed on Plot No.1, Mohakhali Commercial Area (“the said plot”).
- 2.2 The case of the petitioner, in the said miscellaneous case, in short, is that she is the owner of the said plot, who entered into a development agreement with the said developer (opposite party No. 2) on 27.06.2005 for

construction of apartment building thereon. That the petitioner, accordingly, executed power of attorney in favour of the developer on 03.06.2005. That dispute arose between the petitioner and the said developer and, accordingly, the petitioner cancelled the said power of attorney by deed of revocation dated 01.02.2009. That the dispute was referred to arbitration and, during said arbitration, the parties reached a settlement agreement on 13.09.2011 to resolve the said dispute. That, subsequently, further dispute arose between the parties and again such dispute was referred to arbitration wherein the developer gave reply. That the disputes were involving huge amount of money and the petitioner had definite information that the developer was trying to sell the floor spaces on the said building to different third parties in order for frustrating the said arbitration proceeding. Accordingly, the petitioner filed the said arbitration miscellaneous case under Section 7Ka of the Arbitration Act, 2001 seeking the said order of injunction.

2.3 Thereupon, when the learned District Judge refused to grant any ad-interim injunction and instead issued show cause notice, the petitioner preferred Civil Revision No. 449

of 2016 before the High Court Division. The High Court Division then disposed of the Rule issued therein thereby maintaining the order of ad-interim injunction granted at the time of issuance of the Rule till disposal of the said arbitration miscellaneous case pending before the learned District Judge. That the developer (opposite No. 2) then challenged the said judgment of the High Court Division by filing Civil Petition for Leave to Appeal No. 42 of 2019. At that stage before the Appellate Division, the opposite party No. 1 filed an application for adding him as a party therein and in the said arbitration miscellaneous case. Thereupon, the Appellate Division disposed of the said Civil Petition for Leave to Appeal maintaining an order of status-quo in respect of transfer of disputed property upon directing the learned District Judge to dispose of the injunction application on merit within a period of one month. The Appellate Division also directed the learned District Judge to dispose of the said application filed by the opposite party No. 1 for adding him as party.

- 2.4 The opposite party No. 1 then filed an application before the learned District Judge for adding him as party, as against which the petitioner filed written objection. Thereupon, the

Court below, after hearing the parties, allowed the said application vide impugned order dated 03.02.2021. Being aggrieved by this order, the petitioner in the said arbitration miscellaneous case has obtained the aforesaid Rule under civil revisional jurisdiction of this Court. At the time of issuance of the Rule, this Court, vide ad-interim order dated 30.06.2021, stayed operation of the impugned order for a period of 45 (forty-five) days. Immediately after that, the opposite party Nos. 1 and 2 entered appearance and, on the prayer of the opposite party no. 1, the Rule was fixed for hearing before this bench.

- 2.5 It is contended by the petitioner that the opposite party No. 1 is not a necessary party in the arbitration miscellaneous case concerned at all. That the said opposite party No. 1 filed a Title Suit No. 18 of 2018 before the First Court of Joint District Judge, Dhaka seeking various reliefs impleading therein the petitioner and others and that the prayer for mandatory injunction sought by the said opposite party No. 1 in the said suit was not allowed by the Court below and the said order was affirmed up to the Appellate Division. It is further stated that the petitioner, at one stage, has executed a power of attorney in favour of the opposite

party No. 1 in respect of the said property. However, the same was subsequently cancelled and the said civil suit was filed by the opposite party No. 1 challenging such cancellation and seeking other relief. That since the injunction sought by the opposite party No. 1 before the Court below in respect of the said power of attorney was not granted up to the Appellate Division, the opposite party No. 1 cannot be allowed to act on the strength of such power of attorney and that in disallowing such injunction in favour of opposite party No. 1, the civil Court concerned has considered all relevant documents including the undertaking allegedly executed by the petitioner in favour of the opposite party No.1. That merely relying on the said undertaking, learned District Judge has allowed the opposite party no. 1 to be added as party which is against the earlier order of the civil Court concerned refusing injunction in favour of the opposite party No. 1, particularly when such refusal was affirmed up to the Appellate Division. By filing supplementary-affidavits dated 31.06.2021 and 16.09.2021, the petitioner has annexed various documents.

2.6 The Rule is opposed by opposite party Nos. 1 and 2 by filing separate counter-affidavits. The case of the opposite party No. 1 is that the plot in question originally belonged to the father of opposite party No. 1, late Mr. Abdul Barik Chowdhury, being a long-term lessee of the then Dhaka Improvement Trust (at present RAJUK) vide Lease Deed No. 3821 dated 18.02.1976 and Rectification Deed No. 3756 dated 02.04.1989. That his late father obtained approved plan form RAJUK to construct multistoried building thereon, but he passed away subsequently. That after his demise, all other heirs of Abdul Barik Chowdhury, by a family arrangement dated 24.06.1999, transferred the ownership of the said plot in favour of this opposite party. That in order to realize some commercial benefits, he gifted the said property in favour of his wife (former), Mrs. Sabrina Chowdhury, by way of oral heba dated 27.12.2000. That his former wife then gifted the said property in favour of her mother (petitioner) by another heba dated 18.03.2001 and, accordingly, the property was mutated in her name.

2.7 It is contended by opposite party No. 1 that the said transfers by heba etc. in favour of the petitioner was part of a scheme devised by him in order to realize some

commercial benefits. That, subsequently, as part of such scheme, the petitioner entered into a development agreement with the opposite party No. 2 on 27.06.2005 and an irrevocable power of attorney was executed by her on 30.06.2005 in favour of the said developer. That on the strength of such power of attorney and development agreement, opposite party No.2 mortgaged the property to two banks to obtain finance for the construction of the said building. That the petitioner, subsequently, cancelled the said power of attorney and, accordingly, dispute arose between the petitioner and the said developer which ended-up with a settlement agreement dated 13.03.2011. That, thereafter, when further dispute arose, the petitioner filed the said application under Section 7Ka of the Arbitration Act, 2001 before the learned District Judge at the instance of this opposite party No. 1.

2.8 That the opposite party No. 1 is the real owner of the said plot behind the scene and the initial correspondences with the developer were actually done by this opposite party No. 1. That the petitioner received signing money of Tk. 10 crore from the said developer and the said money was transferred in favour of the opposite party No. 1 under the



said scheme. That in the dispute between the petitioner and the developer, it was the opposite party No. 1 who engaged lawyers, paid the lawyer's fees etc. and the petitioner was merely a name lender. However, it is stated, when the dispute arose between the opposite party No. 1 and his former wife, which ended up in a divorce, acknowledging the real ownership of the opposite party No. 1 behind the scene, the petitioner executed unregistered heba transferring the said property in favour of the opposite party No. 1 and executed a registered power of attorney, being No. 4286 dated 09.10.2016, thereby giving the entire power of transferring the said property etc. in favour of the opposite party No. 1. That along with the said power of attorney, the petitioner also executed an undertaking wherein she acknowledged the said scheme and accepted the opposite party No. 1 as the real owner of the property behind the scene. That it is evident from the said undertaking executed by the petitioner that the petitioner has acknowledged therein execution of the said power of attorney and heba deed in favour of the opposite party No. 1 empowering the opposite party No. 1 to sell and transfer the said property etc.

2.9 That in the power of attorney as well, the petitioner acknowledged the execution of the said undertaking thereby accepting the opposite party No. 1 as the real owner of the property. That the scheme was going smoothly until the relationship between the opposite party No. 1 and his ex-wife ended up with a divorce and that thereafter the petitioner, the mother of his ex-wife, has been trying to grab the property by cancelling the said power of attorney as well as denying the execution of the said undertaking, heba etc. That challenging such cancellation of power of attorney, the opposite party No. 1 has filed Civil Suit No. 18 of 2018 before the concerned civil Court which is still pending. That under such circumstances, since the opposite party No. 1 is the real owner of the property, he is a necessary party in the arbitration miscellaneous case pending before the learned District Judge, Dhaka and, accordingly, he has filed the said application which has been allowed by the impugned order. Thus, the opposite party No. 1 was rightly added as party by the Court below in the said arbitration miscellaneous case.

### 3. **Submissions:**

3.1 Mr. Kamal-Ul-Alam, learned senior counsel appearing for the petitioner, has made the following submissions:

- (a) That Section 7Ka of the Arbitration Act, 2001 refers to the application to be filed by a party (কোন পক্ষের). Since according to the definition as provided by Section 2 (ছ) of the Arbitration Act, 2001, a party means a party to arbitration agreement, no individual or persons may be added as party in an arbitration miscellaneous case filed under Section 7Ka of the Arbitration Act who is not a party to the arbitration agreement. By referring to the arbitration clause in the development agreement (Annexure-G-1 to the petitioner's supplementary-affidavit dated 30.06.2021), in particular Clause 34 of the development agreement dated 27.06.2005, Mr. Alam submits that there are only two parties in the said arbitration agreement, namely the petitioner and the Advanced Development Technologist Ltd. Therefore, according to him, there is no scope under the law of arbitration to add the opposite party No. 1 as one of the petitioners in the said arbitration miscellaneous case.

(b) That it is admitted position in the case that the opposite party No. 1 is not a party to the arbitration agreement as well as the subsequent settlement agreement between the petitioner and opposite party No. 2. Therefore, the Court below has committed gross illegality occasioning failure of justice in adding the opposite party No. 1 as one of the petitioners in the arbitration miscellaneous case concerned.

(c) That since the petitioner in the arbitration miscellaneous case has been protecting the interest of the land owner, whatever may be the dispute between the petitioner and opposite party No. 1 regarding ownership of the said property, there is no necessity under the law and equity that the opposite party No. 1 be added as petitioner. In support of his such submissions, he has referred to some decisions of this Court and the Courts of our neighbouring country, namely the decisions in **Anowar Hossain vs. Reya Builders Ltd. 65 DLR (2013)-152, Firm Ashok Traders vs. Gurumukh Das Saluja, (2004) 3 SCC-155 and Srei Infrastructure Finance Ltd. vs. Bhageeratha Engineering Ltd. 2009 (3) Arb. LR-342 (Gauhati).**

3.2 As against above submissions, Mr. Mehedi Hassan Chowdhury, learned Additional Attorney General (appearing in personal capacity), appearing along with Mr. A.K. Rashedul Huq, learned advocate, on behalf of the opposite party No.1, has made the following submissions:

(i) By referring to some initial correspondences between the opposite party No. 1 and the said developer, namely Annexure-8 series to the counter-affidavit filed by this opposite party, he submits that even before the development agreement, the correspondences to develop the said property basically started between the opposite party No. 1 and the developer concerned, and in the said correspondences, the opposite party No. 1 was recognized by the developer as the real owner of the property.

(ii) That to realize some commercial benefit, in particular to avoid some complications regarding opposite party No. 1's liability towards bank, they invoked a device to transfer the property by way of gift in favour of the former wife of the opposite party No. 1, who then gifted the said property in favour of the petitioner. Accordingly, the name of the petitioner was used as

land owner in the development agreement. By referring to different bills paid to the learned advocates in the arbitration and other dispute, as annexed to the counter affidavit as part of Annexure-8 series, he submits that even the lawyers were engaged by the opposite party No. 1 to conduct the cases on behalf of the petitioner which clearly suggests that the petitioner was merely a name lender in order to implement the said scheme.

(iii) By referring to the registered power of attorney dated 09.10.2016 (Annexure-9 to the counter-affidavit) executed by the petitioner, heba deed dated 09.10.2016 (Annexure-10 to the counter-affidavit) and notarized undertaking (Annexure-11 series) executed on the same day by the petitioner in favour of the opposite party No. 1, learned advocate submits that by executing these registered and un-registered instruments, the petitioner has accepted the opposite party No. 1 as the real owner of the said property and further accepted that she was just a name lender in the said development agreement and that the opposite party No. 1 was the real party behind the scene.

3.3 Mr. Mohammad Abdul Hannan, learned advocate appearing for the opposite party no. 2 (developer), has also opposed the Rule. According to him, because of this legal dispute between the petitioner and opposite party No. 1, the entire construction of the multistoried building on the said property is being hampered seriously and the opposite party No.2-developer has been suffering huge loss.

**4. Deliberations, Findings and Orders of the Court:**

4.1 Before addressing the issues raised by the parties, let us first examine the relevant law along with the development agreement dated 27.06.2005, which admittedly contains the arbitration agreement between the parties concerned. It appears from Section 7Ka that ‘any party’ may maintain an application before the District Judge in respect of a local arbitration seeking injunction or restraint orders for the protection of the subject matter of arbitration. The word party (পক্ষ) has been defined by Section 2 (ছ) of the Arbitration Act, 2001, which is quoted below:

“(ছ) পক্ষ অর্থ সালিস চুক্তির কোন পক্ষ”

4.2 However, the definition given under Section 2 of the Arbitration Act are to be read with Section 2 itself, which

provides that the definitions given under Section 2 are the definitions unless there is anything repugnant in the subject or context (বিষয় বা প্রসঙ্গের পরিপন্থি কোন কিছু না থাকিলে). Therefore, the Legislature, by Section 2, has made it clear that the definitions given under different clauses Section 2 are not the absolute definitions of the terms defined thereby. Rather, they are the primary definitions unless there is anything repugnant in the subject or context of the matter involved. Therefore, we are of the view that the word ‘পক্ষ’ (party), as appearing in Section 7Ka of the Arbitration Act, has to be understood as against the context and subject of each and every case.

4.3 As against this, let us now examine the development agreement, which is agreement dated 27.06.2005 (as annexed to the supplementary-affidavit of the petitioner dated 16.09.2021 as part of Annexure-I series). It appears from the said development agreement (which admittedly contains the arbitration agreement between the parties by virtue of Clause-34 therein) that apparently two parties in the said agreement are Mrs. Mohsina Rahman (petitioner) and Advanced Development Technologies Ltd. (opposite party No. 2). However, if the title of the said agreement is



examined more carefully, it will be clear that the parties in the said agreement will include other persons, namely *“where the context so admits shall include her heirs, successors, administrators, executors, legal representatives and assigns”*. Therefore, the expression ‘land owner-first party’ in the said agreement cannot be said to be confined to one individual only, namely Mrs. Mohsina Rahman, as because the parties themselves extended the meaning of the terms ‘land owner-first party’ and ‘developer-second party’ where the contexts so admit to include their legal heirs/successors/administrators/executors/legal representatives and assigns. Therefore, it appears that although, apparently, Mrs. Mohsina Rahman is shown to be the ‘land owner-first party’ in the said agreement, the expression ‘land owner first party’ may be extended to include her heirs, successors, administrators, executors, legal representatives and assigns.

- 4.4 As against this, the specific case of the opposite party No. 1 is that he is the real owner of the said property. To establish such case, he has relied on the original lease deed executed by the then DIT in favour of his late father, Abdul Barek Chowdhury, in the year 1976. Initial correspondences

with the developer, namely Annexure-8 series, as well as the payment of bills to different advocates further show that the opposite party No. 1 had a vital role in initiating the prospect of development of the said property by way of development agreement dated 27.06.2005 with the developer Advanced Development Technologies Ltd. (ADT) (opposite party No. 2). Power of attorney dated 09.10.2016 along with heba deed dated 09.10.2016 and undertaking dated 09.10.2016 further suggest that at one stage, the petitioner has accepted the opposite party No. 1 as a real owner of the said property. Although the said power of attorney has subsequently been cancelled by the petitioner by revocation deed and such cancellation has been challenged by the opposite party No.1 in Civil Suit No. 18 of 2018 pending before the concerned civil Court, facts remain that the opposite party No. 1 has somehow been behind the scene in respect of the development of the said property and he has had a stake in the said property.

4.5 Although opposite party No. 1 has been claiming that he is the real owner of the said property and petitioner is merely a name lender, we cannot decide this issue in this civil revision, particularly when that issue is pending in the said

Title Suit No. 18 of 2018 filed by opposite party No. 1. However, from the documents annexed by the parties, it is apparent that the opposite party No. 1 has serious stake in the property in question and as such as against the context of the present case, the definition of the word ‘পক্ষ’ (party), as defined by Section 2 (ছ) of the Arbitration Act, 2001, cannot be accepted mechanically as suggested by the learned advocate Mr. Kamal-ul-Alam. The power of attorney dated 09.10.2016, heba deed and undertaking executed by the petitioner on the same date clearly suggest that the arbitration proceedings, or any proceeding in respect of the said property, cannot be resolved properly unless and until opposite party No. 1 is made party in such proceedings. Therefore, in the context of the present case and in respect of the subject matter of the present case, we are of the view that the meaning of the term ‘পক্ষ’ (party) has to be given an extended meaning in view of the provisions under Section 2, namely the words “unless there is anything repugnant in the subject or context”.

- 4.6 On the other hand, since the development agreement dated 27.06.2005 itself has given an expression of the term ‘land owner-first party’ to include her legal representatives and

assigns, and since she has executed a power of attorney in favour of the opposite party No. 1 on 09.10.2016, although the effectiveness of the said power of attorney is a disputed issue in the said suit filed by the opposite party No. 1, we are of the view that until such issue is resolved by the competent civil Court in the said civil suit, the opposite party No. 1 should be allowed to place his case before any competent authority or Court when such authority or Court is adjudicating the issues or disputes in respect of the said property. Therefore, we hold that although the learned District Judge below has not explained in detail the reason for adding the opposite party No. 1 as one of the petitioners in the said arbitration miscellaneous case, the ultimate order, namely the impugned order passed by the learned District Judge, does not suffer from any illegality.

4.7 In this regard, we have examined the decisions as referred to by learned advocate for the petitioner. However, we are of the view that since the facts and circumstances on which the said decisions were given are quite different from the present facts and circumstances and context, the said decisions have no manner of application in the facts and circumstances of the present case. Accordingly, we do not

find any merit in the Rule and as such the same should be discharged.

4.8 In the result, the Rule is discharged. The ad-interim order, if any, thus stands recalled and vacated. The learned District judge concerned is directed to dispose of the said arbitration miscellaneous Case within a period of 30(thirty) days from receipt of the copy of this order.

Communicate this.

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**(Sheikh Hassan Arif, J)**

I agree.

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**(Ahmed Sohel, J)**