

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

Present:

Mr. Justice Md. Badruzzaman.

And

Mr. Justice Sashanka Shekhar Sarkar

First Miscellaneous Appeal No. 177 OF 2021.

Rashid Ahmed and others.

...Appellants.

-Versus-

Messers Three Star Properties Limited and another.

...Respondents.

Mr. Md. Mansur Habib, Advocate

... For the appellants

Mr. Md. Osman, Advocate

... For the respondent No. 1

Heard on: 21.01.2024, 22.01.2024, 28.01.2024.

Judgment on: 29.01.2024,

Md. Badruzzaman,J

This appeal is directed against judgment and order dated 07.12.2020 passed by the learned District Judge, Chattogram in Arbitration Miscellaneous Case No. 197 of 2018 allowing the miscellaneous case and setting aside the Arbitral Award dated 16.08.2018.

Facts relevant, for the purpose of disposal of this appeal, are that an agreement was signed on 19.03.2009 between the developer (respondents herein) and the land owners, appellants and a dispute arose between the parties and on mutual arrangement the parties constituted an Arbitration Tribunal consisting of three members who, after conclusion of the arbitral proceeding, gave the award on 16.08.2018. The developer respondents filed Arbitration Miscellaneous Case No. 197 of 2018 for setting aside the award in which the land owners filed written objection

and the learned District Judge, after hearing the parties, vide impugned judgment dated 07.12.2020 allowed the miscellaneous case and set aside the award against which the land owners have preferred this appeal.

Respondent No.1 has entered appearance by filing Vokatnama.

Mr. Mansur Habib, learned Advocate appearing for the appellants by taking us to the impugned judgment as well as other relevant documents submits that the learned District Judge, upon a misconception of law illegally held that the award is barred by limitation as the same has been filed beyond the period of 90 days in view of the provisions under Article 178 of the Limitation Act read with section 55 of the Arbitration Act, 2001. Learned Advocate further submits that while dismissing the miscellaneous case on the ground of limitation the learned District Judge did not decide the miscellaneous case on merit upon appreciating the materials and evidence on record and as such, committed illegally.

Mr. Md. Monir-Uj-Jaman, learned Advocate appearing with Mr. Mohammad Osman, learned Advocate for respondent No.1 though opposes the appeal but frankly concedes that the learned District Judge could not properly appreciate that Article 178 of the Limitation Act was applicable in respect of Arbitration Act, 1940 and there is no manner of application of Article 178 in a proceeding under Arbitration Act, 2001.

However, learned Advocate submits that the learned District Judge upon considering the evidence and materials on record found that the Arbitral Tribunal without appreciating the materials on record illegally gave the award in favour of the land owners and as such, rightly set aside the award and accordingly, no interference is called for by this Court.

We have heard the learned Advocates and perused the application, the impugned judgment of the Court below and other materials available on record. It is admitted fact that the parties on mutual consent

constituted the Arbitral Tribunal who, upon considering the materials on record and hearing the parties, gave the award on 16.08.2018.

It is settled principle of law that filing of award by arbitrator does not come under Article 178 of the Limitation Act which applies when parties file an application under section 14 of the Arbitration Act, 1940. It is also settled principle of law that there was provision in the Act of 1940 that an arbitration award shall have to be filed before the Court for making the award Rule of the Court. Article 178 of the Limitation Act made provision that when the arbitrator or umpire gives notice in writing to the parties of making and signing the award, a period of 90 days is fixed for filing the award in the Court by the parties concerned to make the award Rule of the Court and this period of limitation will apply when a notice in writing regarding making of award and signing thereof is given to the parties and from the date of receipt of such notice the parties concerned is to be filed the award before the Court within 90 days. But in the Arbitration Act, 2001 there is no provision that a party should file the award for making the award Rule of the Court because in the present law, the award is treated as a decree and there is no necessity to file the award for making it Rule of the Court.

It appears that the learned District Judge in giving findings as to applicability of section 55 of the Arbitration Act, 2001 came to the finding that the Arbitral Award is barred by limitation whereas in section 55 of the Arbitration Act, 2001 read with Article 178 of the Limitation Act no limitation has been prescribed for filing the Award before the Court. Since there is no provision under the Arbitration Act, of 2001 as well as Limitation Act for filing an award for making it the Rule of the Court, question of limitation in filing the award does not arise at all. As per provision of Arbitration Act, 2001 an award is a decree and an aggrieved party, may file an application under section 42 of the Arbitration Act, 2001 for setting aside the award within sixty days from the receipt of the award.

In that view of the matter, we are of the view that the learned District Judge upon misconception of law came to an erroneous decision that the award is barred by limitation.

It also appears from the impugned judgment that the learned District Judge without evaluating the evidence on record gave finding that the Arbitration Tribunal illegally gave the award. While disposing of the miscellaneous case the learned District Judge should have decided the case on issue basis in view of the provisions under section 43 of the Arbitration Act, 2001.

Accordingly, we are of the view that the miscellaneous case should be sent back on remand for its disposal on merit by the Court below upon proper appreciation of the materials on record.

In that view of that matter, we find merit in this appeal.

In the result, the appeal is allowed and the impugned judgment and order dated 07.12.2020 is set aside.

The Arbitration Miscellaneous Case No. 197 of 2018 is sent back on remand to the Court of learned District Judge, Chattogram for its disposal on merit. Since this matter is an old one, the learned District Judge is directed to dispose of the miscellaneous case within 2 (two) months from the date of receipt of the copy of this judgment.

Both the parties are also directed to render effective assistance to the Court below so that it can dispose of the matter within the time stipulated above.

Send down the L.C.R along with a copy of this judgment to the learned District Judge, Chattogram at once.

(Justice Md. Badruzzaman)

I agree.

(Mr. Justice Sashanka Shekhar Sarkar)