

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

**Present:**

**Mr. Justice Md. Badruzzaman.**

**And**

**Mr. Justice Sashanka Shekhar Sarkar**

**CIVIL REVISION NO. 151 of 2021**

**Sofiur Rahman**

...Petitioner

-Versus-

**Equity Property Management (Pvt.) Limited**

**Represented by the Managing Director and others**

...Opposite parties

None appears

... For the petitioner

Mr. Md. Ziaul Huq, Advocate

... For opposite party No. 1

**Heard on: 21.01.24, 28.01.24, 22.04.24**

**Judgment on: 19.05.2024,**

**Md. Badruzzaman, J:**

This Rule was issued calling upon the opposite parties to show cause as to why order dated 02.03.2020 passed by learned District Judge, Chattogram in Arbitration Miscellaneous Case No. 293 of 2015 allowing the case filed by opposite party No.1 under section 12 of the Arbitration Act, 2001 and appointing Arbitrators should not be set aside.

At the time of issuance of Rule this Court vide order dated 18.01.2021 stayed operation of the impugned order for a period of 6 (six) months which was, subsequently, extended time to time.

Facts, relevant for the purpose of disposal of this Rule, are that opposite party No. 1 is a developer company who is engaged with real estate development business. Petitioner and opposite party Nos. 2-13 are Land-owners who entered into joint venture agreements on 02.07.2009, 24.11.2009, 03.12.2009 and 18.09.2010 with opposite

party No. 1 followed by Irrevocable General Powers of Attorney dated 03.07.2009, 23.09.2010 and 04.12.2009 for construction of multi-storied apartment building in the land owned by the petitioner and opposite party Nos. 2-13. In terms of the agreement as well as Powers of Attorney the land owners handed over possession of their land in favour of opposite party No. 1 who started construction of the multi-storied building. However a dispute arose between the Developer and Land-owners and in terms of the agreement, opposite party No. 1 on 1.7.2015 served a notice upon the Land-owners for appointment of Arbitrator to resolve the dispute between them but the Land-owners did not pay any heed to said notice and accordingly, opposite party No. 1 filed Arbitration Miscellaneous Case No. 293 of 2015 under section 12 of the Arbitration Act, 2001 before the learned District Judge, Chattogram for appointment of Arbitrators. The Land-owners filed written objection to contest the miscellaneous case and the learned District Judge, upon hearing the parties, vide impugned order dated 02.03.2020 allowed the miscellaneous case and appointed two Arbitrators under section 12 of the Arbitration Act, 2001 to resolve the dispute between the parties.

Being aggrieved by said order dated 02.03.2020 one of the Land-owners namely, the petitioner has come up with this application under section 115(1) of the Code of Civil Procedure and obtained the instant Rule.

Opposite party No. 1 has entered appearance and filed counter-affidavit to oppose the Rule.

When the Rule was taken up for hearing on 21.01.24, 28.01.24 and 22.04.24, Mr. Mustafizur Rahman learned Advocate appeared on behalf of the petitioner and made his submissions in presence of the learned Advocate for opposite party No. 1. At one stage the learned

engaged Advocate for the petitioner by an Affidavit (sworn-in on 6.5.2024) informed this Court that the petitioner took back the case file from him and submitted that he was not a position to conduct the case on behalf of the petitioner and after hearing, this Court vide order dated 12.05.2024 exonerated the engaged learned Advocate from appearing on behalf of the petitioner. Thereafter, the petitioner did not engage any Advocate to conduct the Rule when the matter is taken up for hearing.

However, we have perused the revisional application as well as the grounds stated therein. It has been stated in the grounds that the learned District Judge committed illegality in allowing the arbitration miscellaneous case and appointing two Arbitrators and as such, the impugned order is liable to be set aside.

Mr. Md. Ziaul Huq, learned Advocate appearing for opposite party No. 1 submits that in view of the terms of the deed of agreements opposite party No. 1 initiated the arbitration miscellaneous case under section 12 of the Arbitration Act, 2001 and the learned District Judge passed order in exercising jurisdiction under section 12 of the Arbitration Act. Learned Advocate further submits that in view of sub-section (12) of section 12 the Arbitration Act, 2001 the decision passed by the learned District Judge is final and not revisable by this Court and accordingly, this revisional application is not maintainable. By drawing our attention to the case of Jumana Oil Company Limited vs. Additional District Judge, 4<sup>th</sup> Court, Chattogram passed in Writ Petition No. 307 of 2004 (unreported, judgment delivered on 9.8.2007) learned Advocate submits that a Division Bench of this Court while exercising writ jurisdiction observed that 'the decision passed under section 12 of the Arbitration Act, 2001 is final in view of sub-section (12) of section 12 of the Act' and held the writ petition maintainable and accordingly, the

Rule issued earlier should be discharged as the civil revision itself is not maintainable.

We have heard the learned Advocate for opposite party No. 1, perused the revisional application and other relevant documents available on record. It is not denial of the fact that opposite party No. 1 initiated the arbitration proceeding under section 12 of the Arbitration Act, 2001 for appointment of Arbitrators to resolve the dispute between the parties and the learned District Judge in exercising jurisdiction under section 12 (3) of the Arbitration Act appointed two Arbitrators by the impugned order.

Sub-section (12) of section 12 of the Arbitration Act stipulates that the decision of the learned District Judge under sub-sections (3), (4) and (7) of section 12 of the Act, 2001 shall be final. Since the decision of the learned District Judge in respect of appointment of Arbitrator(s) under section 12 is final in view of the provision under sub-section (12) of the Arbitration Act, 2001 no revision under section 115 of the Code of Civil Procedure is maintainable before this Court against such decision of the learned District Judge. Accordingly, this civil revision is not maintainable.

In that view of the matter, the Rule is discharged as the civil revision is not maintainable.

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

Communicate a copy of this judgment to the Court below at once.

**(Justice Md. Badruzzaman)**

**I agree.**

**(Mr. Justice Sashanka Shekhar Sarkar)**