

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

**Civil Revision No. 571 of 2022**

**IN THE MATTER OF**

The Engineering Works represented by  
Mirazul Islam and another

..... Petitioners

-Versus-

1. Md. Shafiqur Rahman

..... Opposite Party

2. Zahirul Islam

.....Pro-forma opposite party

Ms. Alo Mandal, Advocate

.....For the petitioners

Mr. Tapash Kumar Biswas, Advocate

.....For opposite party No. 1

**Heard on 14.05.23, 01.06.23, 09.07.23**

**and judgment passed on 17.07.2023**

*Present:*

*Mr. Justice Kazi Md. Ejarul Haque Akondo*

**Kazi Md. Ejarul Haque Akondo, J.**

This Rule, under section 115(1) of the Code of Civil Procedure,  
1908, was issued in the following term-

*“Records need not be called for. Let a Rule be issued  
calling upon opposite party No. 1 to show cause as to why order  
No.23 dated 06.12.2021 passed by the learned District Judge,*

*Dhaka in Arbitration Miscellaneous Case No. 211 of 2018  
rejecting petitioners' application filed under Order 9 Rule 9(A)  
of the Code of Civil Procedure and refusing to recall/set aside  
order No. 11 dated 29.10.2019 dismissing the case for default  
should not be set aside and/or pass such other or further order  
or orders as to this Court may seem fit and proper."*

At the time of issuance of the Rule all further proceedings of Title Execution Case No. 8 of 2017 pending before the learned District Judge, Dhaka stayed for 06(six) months from the date and lastly, it was extended on 31.01.2023 for 6(six) months from the date.

The present opposite party No. 1 filed Arbitration Misc. Case No. 492 of 2016 before the learned District Judge, Dhaka under section 12 of the Arbitration Act, 2001 praying for the appointment of an Arbitrator in terms of the agreements executed between the parties for resolving the disputes arising out of the agreements signed on 01.12.1985 and 01.07.2010 as a tenancy agreements and got an award thereon on 26.08.2017. According to the award, the opposite party filed Title Execution Case No. 8 of 2017. Thereafter, the present petitioners filed an application under section 42 of the Act, 2001 before the learned District Judge, Dhaka, and the same was numbered Arbitration

Miscellaneous Case No. 211 of 2018 for setting aside the arbitration award dated 26.08.2017 stating that they were not aware of the award as no notice of the case was served upon them. The case was fixed for hearing on 29.10.2019 but on that date the petitioner filed an application for adjournment but the learned Judge rejected the application and directed the parties to get ready for the hearing. But thereafter another application for adjournment was filed but the learned Judge rejected the same and dismissed the case for default. Thereafter, the present petitioners filed an application under Order 9 Rule 9(A) read with section 151 of the Code of Civil Procedure, 1908 for restoration of the miscellaneous case by recalling/setting aside the said order of dismissal dated 29.10.2019. After hearing the same the learned Judge by his order dated 06.12.2021 rejected the application holding that since the miscellaneous case has been filed under section 42 of the Act, 2001, a special law the provision of the Code, 1908 will not be applicable. Being aggrieved by the said impugned order dated 06.12.2021 the petitioner had filed this civil revision before this Court and obtained the instant Rule which is before us for consideration.

Ms. Alo Mandal, the learned Advocate appearing for the petitioners submits that though the Arbitration Act, 2001 is a special

law and there is a bar in invoking the jurisdiction of the code of civil procedure in section 24 of the Act, 2001, there is no provision to invoke any jurisdiction while the case is dismissed for default and hence, the learned Judge could invoke the civil jurisdiction in such a special circumstance and refusing to invoke the same the learned Judge committed an error in the decision occasioning failure of justice.

On the other hand, Tapash Kumar Biswas, the learned Advocate appearing for opposite party No. 1 submits that there is no scope to entertain an application under Order 9 Rule 9(A) of the Code of Civil Procedure in the instant case as the arbitration law is a special provision and as per section 24 of the Act, 2001, the code of civil procedure is not applicable in a case like this.

Hearing the learned Advocates of the contending parties and perusing the materials on record it appears that the learned District Judge rightly passed the impugned order rejecting the application filed under Order 9 Rule 9(Ka) read with section 151 of the Code of Civil Procedure, 1908 and thereby committed no illegality occasioning failure of justice.

Given the above, I do not find any substance in the submissions made by the learned Advocate for the petitioner, rather; I find

substance in the submissions so made by the learned Advocate for the opposite party. Accordingly, the Rule fails.

As a result, the Rule is discharged without cost.

Stay, if any, vacated.

The impugned order No.23 dated 06.12.2021 passed by the learned District Judge, Dhaka in Arbitration Miscellaneous Case No. 211 of 2018 rejecting the petitioners' application filed under Order 9 Rule 9(A) of the Code of Civil Procedure, 1908 is hereby affirmed.

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

(TUHIN BO)