

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. 75 OF 2020.**

**Executive Engineer, Roads and Highways  
Department, Roads Division, Sylhet.**

...Appellant.

-Versus-

**Faruque Chowdhury @ Zahanur Reza Chowdhury.**

...Respondent.

Mr. S.M. Zahirul Islam, Advocate

... For the appellant

Mr. Abdul Barek Chowdhury, Advocate

... For the respondent

**Heard and Judgment on: 29.04.2024.**

**Md. Badruzzaman,J**

This miscellaneous appeal is directed against an order dated 12.01.2015 passed by learned Additional District Judge, 4<sup>th</sup> Court, Sylhet in Miscellaneous (Arbitration) Case No. 16 of 2012.

At the time of admission of appeal this Court vide order dated 17.01.2020 stayed all further proceeding of Money Execution Case No. 1 of 2015 now pending before the learned Joint District Judge, 2<sup>nd</sup> Court, Sylhet till disposal of the appeal.

Facts relevant, for the purpose of disposal of this appeal, are that the respondent filed the above Arbitration Miscellaneous Case under section 12 of the Arbitration Act, 2001 for appointment of Arbitrator to resolve the dispute between the parties. The learned District Judge, after hearing the parties, vide impugned order dated 12.01.2015 allowed the miscellaneous case.

Being aggrieved by said order dated 12.01.2015 the defendant-opposite party has preferred this appeal.

The respondent entered appearance to contest the appeal.

Mr. S.M. Zahirul Islam, learned Advocate appearing for the appellant submits that the learned District Judge travelled beyond its jurisdiction in passing the impugned order so far it relates to **“The Arbitrator is hereby directed to dispose of the matter within 60 days from the date of receiving the order, failing which the petitioner is at liberty to realize the claim money amounting to Tk. 23,47,766/- through Court as per law”**, because of the fact that in view of the provision under section 12 of the Arbitration Act, 2001 the learned District Judge is only authorized to appoint Arbitrator and he has no jurisdiction to impose any condition upon any party in default of the conclusion of arbitration proceeding by the Arbitrator. Learned Advocate further submits that the condition imposed by the learned District Judge amounts to decree in favour of the plaintiff-respondent. Learned Advocate further submits that taking the advantage of the impugned order the respondent has, in the meantime, filed execution case to realize the amount as has been fixed by the learned District Judge. Learned Advocate further submits that the respondent has no objection if Arbitrator is appointed to settle the dispute between the parties and as such, appropriate order should be passed by this Court.

As against the above contention Mr. Abdul Barek Chowhury, learned Advocate appearing for the respondent submits that the learned District Judge committed no illegality in appointing the Arbitrator to settle the dispute. However, learned Advocate concedes that the learned District Judge passed the default order which is without jurisdiction.

We have heard the learned Advocates and perused the impugned order as well as other relevant documents available on record.

It is not denial of the fact that the respondent initiated arbitration proceeding under section 12 of the Arbitration Act, 2001 but the learned District Judge by exercising power under section 16 of the Arbitration Act appointed the Superintendent Engineer, Roads and Highways, Sylhet as Arbitrator to settle the dispute. Save and except appointment of Arbitrator under section 12 or section 16 of the Arbitration Act, 2001 the District Judge has got no jurisdiction to impose a condition that 'if the Arbitrator fails to dispose of the arbitration proceeding in a specified time fixed by the District Judge the petitioner may realize his/her claimed amount through Court'. Accordingly, the impugned order so far it relates to **"The Arbitrator is hereby directed to dispose of the matter within 60 days from the date of receiving the order, failing which the petitioner is at liberty to realize the claim money amounting to Tk. 23,47,766/- through Court as per law"** is without jurisdiction and liable to be expunged from the impugned order. Since the appellant has no objection to settle the dispute through arbitration and does not challenge the appointment of Arbitrator, the impugned order so far it relates to appointment of Arbitrator should be maintained.

Considering the facts and circumstances of the case and the materials on record we find partial merit in this appeal.

In the result, the appeal is allowed in-part. The impugned order so far it relates to appointment of the Superintendent Engineer, Roads and Highway, Sylhet as Arbitrator is maintained and the impugned order so far it relates to **"The Arbitrator is hereby directed to dispose of the matter within 60 days from the date of receiving the order,**

**failing which the petitioner is at liberty to realize the claim money amounting to Tk. 23,47,766/- through Court as per law” is expunged.**

The order of stay granted earlier is hereby recalled and vacated.

The Arbitrator is hereby directed to conclude the Arbitration proceeding as expeditiously as possible preferably within 06 (six) months from the date of receipt of the copy of this judgment.

Send down the L.C.R along with a copy of this judgment to the Court below at once.

**(Justice Md. Badruzzaman)**

**I agree.**

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