

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

*Present:*

*Mr. Justice S M Kuddus Zaman*

*And*

*Mr. Justice Md. Saiful Islam*

*First Miscellaneous Appeal No.266 of 2022*

M/S Alam and Associate

....Appellant

-Versus-

Chan Mia

....Respondent

Mr. Md. Mahabubur Rahman Kishore, Advocate

.... For the appellant.

Mr. Pronob Kanti Bhowmick, Advocate

.... For the respondent No.1.

*Heard on 03.11.2025 and 16.11.2025.*

*Judgment on 23.11.2025.*

*S M Kuddus Zaman, J:*

This First Appeal is directed against the impugned judgment and order dated 06.10.2022 passed by the learned District Judge, Dhaka in Arbitration Miscellaneous Case No.55 of 2019 allowing the case.

Facts in short are that the respondent as petitioner filed a petition under section 12 of the Arbitration Act, 2001 for appointment of arbitrators for settlement of dispute arising out of the deed of contract dated 25.11.2008 through arbitration alleging that the petitioner is the owner of above land and opposite party is a Property Development Company and above parties executed above deed of contract dated 25.11.2008 for construction of a eight storied

building in above land. To authorize the opposite party to sale the apartments of his share the Petitioner executed and registered a deed of power of attorney on 07.01.2008. After construction of 3<sup>rd</sup> floor of above building opposite party abandoned above work giving rise to a dispute. Clause 19 of above deed of contract dated 25.11.2008 provides for settlement of any dispute arising out of above contract through arbitration. The petitioner served a notice upon the opposite party for arbitration but the opposite party did not respond to above notice.

The learned District Judge appointed two arbitrators who unanimously appointed a Chairman constituting a three member arbitral Tribunal. The petitioner and the opposite party appeared before the Tribunal who fixed the fees of the arbitrators and expenses of arbitration and directed the parties to deposit above money. The petitioner did not turn up and deposit his share of above fees and expenses nor the petitioner submitted his statement of claims. The Tribunal on receipt of fees and expenses and counter claim from the opposite party initiated arbitration and passed an award ex-parte.

Being aggrieved by and dissatisfied with above award above petitioner as petitioner filed Arbitration Miscellaneous Case No.55 of 2019 to the District Judge under section 43 of the Arbitration Act, 2001 for cancellation of above award. The opposite party entered

appearance and submitted a written objection and on consideration of submissions of the learned advocate for the respective parties and materials on record the learned District Judge allowed above case cancelled above arbitral award.

Being aggrieved by and dissatisfied with above judgment and order of the learned District Judge above opposite party as appellant moved to this Court and preferred this First Miscellaneous Appeal.

Mr. Md. Mahabubur Rahman Kishore, learned Advocate for the appellant submits that the respondent as petitioner moved to the learned District Judge with a petition under Section 12 of the Arbitration Act, 2001 for appointment of arbitrators for settlement of the dispute arising out of deed of contract dated 25.11.2008. The learned District Judge rightly appointed arbitrators and the appellant and respondent both entered appearance before the arbitral Tribunal. The Tribunal fixed the honorarium of the arbitrators and expenses for arbitration and directed both the parties to deposit their respective share of fees and cost. The respondent did not comply with above order of the Tribunal and did not deposit fees and expenses. The Tribunal on receipt of fees and expenses from the appellant rightly initiated arbitration and passed the impugned award. The learned Advocate further submits that the respondent initiated above proceedings and he should and he should have participated in the

arbitration but the respondent opted not to participate in the arbitration. On consideration of above evidence and materials on record the arbitral Tribunal rightly and lawfully passed the impugned award. The deed of contract dated 25.11.2008 and registered deed of power of attorney dated 27.11.2008 was executed by the appellant and respondent and on the basis of above deeds the appellant has constructed above multistoried building and transferred the apartments of his share but the learned District Judge utterly failed to take in to account all above facts and circumstances of the case and most illegally cancelled above award which is not tenable in law.

On the other hand Mr. Pranab Kanti Bhowmick, learned Advocate for respondent No.1 submits that the respondent initiated above arbitration proceedings by presenting a petition under section 12 of the Arbitration Act, 2001 to the District Judge. The respondent also appeared before the arbitral Tribunal but the fees and expenses as was determined by the Tribunal was beyond the financial capacity of the respondent and he was unable to deposit tk.4,00,000/-. The Tribunal kept the respondent outside of above arbitration proceedings. The respondent as claimant did not submit statement of claim and the Tribunal conducted above arbitration on the basis of counter claim of the appellant which is not tenable in law. On consideration of above facts and circumstances of the case and

materials on record the learned District Judge rightly cancelled above arbitral award which calls for no interference.

We have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record.

It is admitted that the respondent is the owner of the disputed land and appellant is the Property Development Company and they entered into a deed of contract on 25.11.2008 for constructing a eighth storied building and the respondent executed and registered a deed of power of attorney on 27.11.2008 authorizing the appellant to sale out the apartments of his share to prospective buyers. It is also admitted that the respondent as petitioner moved to the District Judge with an application under Section 12 of the Arbitration Act, 2001 for appointment of arbitrators for settlement of a dispute arising out of above contract dated 25.11.2008 through arbitration and the learned District Judge allowed above petition and a three member Arbitral Tribunal was constituted and the appellant and respondent both entered appearance before above Arbitral Tribunal who directed them to deposit Taka 4,00,000/- each as fees for the arbitrators and expenses of arbitration and the respondent failed to deposit above money and abstained from submitting statement of claim.

It turns out from record that the Arbitral Tribunal on receipt of fees and expenses from the appellant initiated above arbitration. There is nothing on record to show that after receipt of the fees and expenses from the appellant the Arbitral Tribunal gave any opportunity to the respondent to submit statement of claim and participate in above arbitration. As mentioned above the respondent claimant did not submit his statement of claim as provided in Section 29(1) of the Arbitration Act but the appellant submitted his defense or counter claim and arbitration was concluded on the basis of counter claim or defense of the appellant.

In an Arbitration proceedings the claimant must first submit his statement of claim and if there is no statement of claim the question of filing defense or counter claim does not arise at all. Since the appellant-claimant did not submit statement of claim the Arbitral Tribunal should have terminated the arbitral proceedings under Section 35(2) Clause (A) of the Arbitration Act, 2001. The appellant if he was aggrieved by termination of arbitration could initiate a fresh arbitration proceedings by sending a notice for arbitration to the respondent.

Section 43 of the Arbitration Act, 2001 provides the grounds on which an arbitral award can be cancelled by the Court. Section 43(b) Clause (II) of above Act provides that an arbitral award may be

cancelled by the court if it appears to be prima-facie opposed to any law for the time being in force in Bangladesh. Above facts and materials show that above award was passed in breach of the provision of Section 35(2) Clause (1) of the Arbitration Act, 2001 and the learned District Judge rightly cancelled above award which calls for no interference.

Above deed of contract and the registered deed of power of attorney are lawful deeds and invoking the arbitration clause of above deed of contract the respondent initiated above arbitration. The learned Advocate for the appellant submits that on the strength of above deed of power of attorney dated 27.11.2008 the appellant has already transferred the apartments of his share and he is apprehensive that if above award is set aside his buyers will unnecessarily suffer.

A deed of power of attorney if acted upon becomes irrevocable. Admittedly above registered deed of power of attorney dated 27.11.2008 has not yet been cancelled by the respondent and the appellant claims to have transferred apartments of his sharer to third persons in lie of money on the strength on above deed.

In above view of the facts and circumstance of the case and materials on record we are unable to find any illegality or irregularity in the impugned judgment and order passed by the learned District

Judge nor we find any substance in this First Miscellaneous Appeal which is liable to be dismissed.

In the result, this First Miscellaneous Appeal is dismissed.

Send down the lower Court's records immediately.

**Md. Saiful Islam, J:**

I agree.

MD. MASUDUR RAHMAN  
BENCH OFFICER