

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

CIVIL REVISION NO. 1204 OF 2023

In the matter of:

An application under Section 115(1) of the Code of Civil Procedure, 1908.

AND

In the matter of:

Gas Transmission Company Limited represented by its Managing Director of GTCL Bhaban, Plot No. F-18/A, Sher-E-Bangla Nagar Administrative Area, Agargaon, Dhaka-1207.

.... Petitioner

-Versus-

Dipon Gas Company Limited, T.K. Bhaban (3rd Floor), 13, Karwan Bazar Commercial Area, Dhaka-1215 represented by its Managing Director and another.

....Opposite-parties

Mr. Ashfaqur Rahman with

Mr. Mohammad Miftaul Alam, Advocates

... For the petitioner

Mr. Imtiaz Mahmood with

Ms. Sumaiya Ifrit Binte Ahmed, Advocates

....For the opposite-party no. 1

Heard on 21.04.2024.

Judgment on 09.05.2024.

Present:

Mr. Justice Md. Mozibur Rahman Miah
And
Mr. Justice Md. Bashir Ullah

Md. Mozibur Rahman Miah, J:

At the instance of the petitioner in Arbitration Miscellaneous Case No. 228 of 2021 initiated under section 42 read with section 43 of the Arbitration Act, 2001, this rule was issued calling upon the opposite-party no. 1 to show cause as to why the order dated 09.11.2022 passed by the learned District Judge, Dhaka in the said Miscellaneous Case rejecting the application for withdrawing the case from the stage of hearing and fix the same for receipt of lower court record (LCR) of the arbitral proceedings should not be set aside and/or such other or further order or orders be passed as to this court may seem fit and proper.

At the time of issuance of the rule, all further proceeding of the said case was stayed for a period of 3(three) months which was lastly extended on 13.03.2024 for another 3(three) months.

The salient facts leading to issuance of the instant rule are:

The present petitioner as applicant filed the aforesaid Miscellaneous Case for setting aside the award so passed in favour of the opposite-party no. 1 dated 21.06.2021 seeking following reliefs:

“Wherefore it is humbly prayed that your Honour would graciously be pleased to issue notice upon the opposite-party no. 1 to show cause as to why the Award dated 21.06.2021

passed by the Arbitral Tribunal comprising Mr. Justice K. M. Hasan, former Chief Justice of Bangladesh, Mr. Justice Shah Abu Nayeem Mominur Rahman, Former Justice Appellate Division, Supreme Court of Bangladesh and Mr. Murad Reza, Advocate, Supreme Court of Bangladesh and in a purported arbitration proceedings between the petitioner and the opposite-party no. 1 shall not be set aside and after showing cause, if any, set aside the said Award dated 21.06.2021 for the end of justice and/or pass such other order or orders as may deem fit and proper.

And

Pending hearing of the instant application, the operation of the Award dated 21.06.2021 may kindly be stayed till disposal of the instant application for ends of justice.”

On the date of filing of the said Miscellaneous Case dated 17.08.2021, the petitioner also filed an application seeking direction upon the opposite-party no. 2 for transmitting all the records (LCR) before the court and the learned District Judge vide order dated 06.09.2021 allowed the said application by calling the records from the opposite-party no. 2. Following that order, though the notice upon the opposite-parties were served but as per the said order dated 06.09.2021, the record from the

opposite-party no. 2 has not been received by the learned District Judge compelling the petitioner to file another application on 09.11.2022 on the heels of the learned District Judge kept on proceedings with the hearing of the said Miscellaneous Case without receiving the record from the Arbitral Tribunal and vide impugned order dated 09.11.2022, the learned Judge rejected the application of the petitioner filed for withdrawing the proceedings from the stage of hearing and to fix it to receive the record from the arbitral tribunal.

It is at that stage, the petitioner of the Miscellaneous Case as petitioner as well filed the instant revisional application and obtained the rule and order of stay.

Mr. Ashfaqr Rahman, the learned counsel appearing for the petitioner upon taking us to the revisional application in particular, the orders passed by the learned District Judge which appeared with the impugned order ranging from 17.08.2021 till the impugned order dated 09.11.2022 at the very outset submits that, though the learned District Judge vide order dated 06.09.2021 called for the records of the proceedings of the arbitral tribunal from the opposite-party no. 2 yet in spite of not receiving the record, he proceeded with the hearing of the case which is totally contrary to his earlier order.

The learned counsel also contends that, if the order dated 06.09.2021 is not complied with, there would be procedural defects in the proceeding of the said case because without complying with the earlier order dated 06.09.2021 if the Miscellaneous Case is disposed of, it will tantamount to disobey of the earlier order of the same court and therefore,

the impugned order passed in the Miscellaneous Case is liable to be set aside.

On the contrary, Mr. Imtiaz Mahmood, the learned counsel appearing for the opposite-party no. 1 at the very outset submits that, since there has been no provision in the Arbitration Act, 2001 to call for the record so the learned District Judge has not committed any error of law.

The learned counsel next contends that, by the impugned order it has not been occasioned any failure of justice as the record is available in the custody of the petitioner as well as the opposite-party vis-à-vis three-members of the arbitral tribunal having no reason to call for the record.

The learned counsel also contends that, for obvious reason, the provision of calling for the record is not there in the Arbitration Act because if the record is called for, there has been every possibility to linger the adjudication of the Miscellaneous Case to be initiated under sections 42 and 43 of the Arbitration Act, 2001.

In that respect, the learned counsel also referred a decision so have been reported in an online portal "*Manupatra*" and draws our attention in paragraph no. 23 thereof and contends that, in that very paragraph, it has been observed that by the impugned order it has not occasioned failure of justice and in the instant case as well none of the parties to the proceeding would have been prejudiced for want of record and finally prays for discharging the rule.

We have considered the submission so advanced by the learned counsel for the petitioner and that of the opposite-party no. 1. Aside from

that, we have also very meticulously gone through the revisional application and all the documents appended therewith.

On going through the order passed in the Miscellaneous Case, we find that, after admission of the Miscellaneous Case, the learned District Judge vide order dated 06.09.2021 called for the records from the arbitral tribunal lying with the opposite-party no. 2 on the basis of the application so filed by the petitioner at the time of filing of the Miscellaneous Case. It is also on the record that, the notice of the Miscellaneous Case has duly been served upon the opposite-parties even though there has been no stipulation that the record from the opposite-party no. 2 has been received by the learned District Judge. Despite of the said fact, the learned District Judge kept on proceeding with the Miscellaneous Case and fixed the matter for hearing for which the petitioner has compelled to file another application for withdrawing the Miscellaneous Case from the stage of hearing and to set the next date for receiving the record from the opposite-party no. 2 but from the impugned order, we don't find any reason ever assigned by the learned District Judge why the application so filed by petitioner will not be entertained. By any means through impugned order, the learned District Judge himself has deviated from his earlier order dated 06.09.2021 even on the date of passing the impugned order, the learned District Judge fixed 07.02.2023 to show cause by the petitioner as to why the said Miscellaneous Case will not be dismissed and then he fixed the matter on 12.04.2023 for submitting written argument by both the parties which sounds hilarious. Once the learned District Judge passed an order calling for the records but without receiving the same, he then

went for hearing of the case and subsequently fixed the matter for argument hearing without bothering to examine whether his earlier order has been materialized. Be that as it may, though there has been no provision in the Arbitration Act, 2001 to call for the record but since the learned District Judge once called for the record from the opposite-party no. 2 then without reversing the said order, he cannot pass the impugned order. Though the learned counsel for the opposite-party no. 1 has placed his reliance on the decision reported on an online portal “*Manupatra*” but we don’t find that upon calling for the records from the opposite-party no. 2, it has prejudiced any interest of the parties in the proceedings and in such an event, the said decision is inapplicable with the facts and circumstances of the instant case.

Regard being had to the above facts and circumstances of the case, we find merit in the rule.

In the result, the rule is made absolute however without any order as to cost.

The impugned judgment and order dated 09.11.2022 passed by the learned District Judge, Dhaka in Arbitration Miscellaneous Case No. 228 of 2021 is thus set aside.

The learned District Judge, Dhaka is hereby directed to dispose of the Miscellaneous Case No. 228 of 2021 within a period of 3(three) months upon receiving the record from the opposite-party no. 2 and directed to do the needful moment it receipts the copy of the judgment by intimating the learned Advocates of the parties.

The order of stay granted at the time of issuance of the rule stands recalled and vacated.

Let a copy of the judgment be communicated to the court concerned forthwith.

Md. Bashir Ullah, J:

I agree.