

**IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(Statutory Appellate Jurisdiction)**

**Arbitration Appeal No. 16 of 2023**

**With**

**Civil Revision No. 5204 of 2023**

**In the matter of:**

Rupayan Housing Estate Limited

... Appellant

-Versus-

Hazi Mohammad Mustafa Zaman

...Respondent

Mr. Md. Khalilur Rahman, Senior Advocate  
with

Mr. Nitai Roy Chowdhury, Senior Advocate  
with

Mr. Md. Ruhul Quddus Kazal, Senior  
Advocate with

Mr. Md. Kayser Kamal, Senior Advocate with  
Mr. Md. Moniruzzaman Asad, Senior  
Advocate with

Mr. Md. Tajul Islam, Senior Advocate with  
Mr. Mohammad Shishir Manir with

Mr. Md. Mozibur Rahman with

Mr. Md. Rashidul Karim with

Mr. Md. Sazzad Hossain and

Mr. Md. Tariqul Islam, Advocates

...For the Appellant

Mr. Probir Neogi, Senior Advocate with

Mr. Md. Asaduzzaman, Senior Advocate and  
Mr. Rumi Islam with

Mr. Sharif Uddin Ahmed, Advocates

...For the Respondent

**Heard on: 26.01.2025, 03.03.2025,**

**10.03.2025 and 19.03.2025**

**Judgment on: 22.04.2025**

**Present:**

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

**Md. Bashir Ullah, J.**

Since the point of law and facts so figured in the appeal and the Rule are intertwined and there has been an order to hear the appeal with the rule vide order dated 27.08.2023 in the above rule, so we have heard the appeal and the rule together and are being disposed of by this common judgment.

This appeal is directed against the judgment and order dated 08.06.2023 passed by the learned District Judge, Dhaka in Arbitration Miscellaneous Case No. 387 of 2018, dismissing the miscellaneous case, affirming the arbitral award dated 28.05.2018, passed by the sole arbitrator in Arbitration Case No. 01 of 2016.

The salient facts leading to preferring this appeal are:

A registered Memorandum of Understanding (agreement) being no. 3935 was executed on 09.04.2013 between the appellant as second party and the respondent as first party in respect of sale and purchase of 53.75 *Kathas* equivalent to 88.69 decimals of land described in the schedule to the agreement under Nalbhog *Mouza*, Uttara, Dhaka. It is stipulated in the agreement that the 1<sup>st</sup> party, Hazi Mohammad Mustafa Zaman would arrange land measuring 53.75 *Kathas* from himself, his successors and relatives within the said *Mouza* and would sell, register and hand over the possession of said land to the 2<sup>nd</sup> party, Rupayan Housing Estate Limited within 30.04.2013. The price of the land was fixed at Taka 18,00,000/- per *Katha* and accordingly, 2<sup>nd</sup> party paid an amount of Taka 1,00,00,000/- (one crore) by 2 cheques as advance to the 1<sup>st</sup> party out of total value fixed at Taka 9,67,50,000/- and it was agreed

that, the balance amount of Taka 8,67,50,000/- would be paid through cheque at the time of registration of the contract land.

Subsequently, when a dispute arose among the parties with regard to providing the agreed land they then appointed one, Mr. Sardar Mohammad Suruzzaman an Advocate as a sole arbitrator for resolving the dispute to settle whether the 1<sup>st</sup> party-respondent has saleable right relating to land situated in District- Dhaka, Police Station- Turag, Mouza- Nalbhog appertaining to C.S. plot nos. 600, 599, 522, 521, 604, 586, 601, 602, 605, 606, 609, 610, 618, 619, 625, 626, 611 and Mouza- Ranavola appertaining to C.S. plot nos. 169, 168, 243, 179, 171, and 173. Accordingly, the sole arbitrator on 25.08.2016 instructed the parties to submit statement of claim and statement of defence in support of their respective assertion by 27.8.2016. Accordingly both the parties filed relevant documents to the Arbitrator. Subsequently, dispute arose among the parties as to whether the 1<sup>st</sup> party-respondent has saleable right relating to land measuring an area of 2.65 *Kathas* of plot nos. 601 and 602; 3.64, *Kathas* of plot no. 600; 5 *Kathas* of plot nos.599 and 600; 2.5 *Kathas* of plot nos. 617 and 619; 9.26 *Kathas* of plot no. 617; 1 *Katha* of plot no. 606; 21 *Kathas* 3.03 *Kathas* of plot nos. 625 and 626 in total 27.29 *Kathas* land under Mouza- Nalbhog, P.S.- Turag, District- Dhaka claimed to be included by the said arbitral proceedings.

The 2nd party-appellant by a petition dated 15.01.2018 applied for the appointment of a committee to determine the value of the land owned by the 1st party. In view of this, the 1st party proposed his name and one, Md. Gafur Mia on 13.05.2018. On the other hand, the 2nd party

proposed the name of Director, Operations (Rupayan Housing Estate) and Mr. Sajjad Hossain Senior Manager Land (Rupayan Housing Estate). A meeting was then held on 16/05/2018 to determine the value of the land awarded to Mr. Mustafa Zaman and his relatives in presence of the learned lawyer of the 1st party, Md. Ashraf Ali and the learned lawyer Mr. Manik Roy for the 2nd party.

On consideration of the facts and circumstances of the case and documents and evidence adduced by the parties, the sole Arbitrator passed an award on 28.05.2018 fixing the price of the land at Taka 1,26,50,000/- per *Katha*.

Challenging the said award dated 28.05.2018, the appellant as petitioner preferred Arbitration Miscellaneous Case No. 387 of 2018 under sections 42 and 43 of the Arbitration Act for setting aside the same contending *inter alia* that the learned Sole Arbitrator was biased and failed to consider the documents and oral evidence adduced by the petitioner in making the impugned award which is liable to be set aside.

The 1<sup>st</sup> party-respondent entered appearance in the case by filing a written objection. Upon hearing the parties, the learned District Judge, Dhaka dismissed the Arbitration Miscellaneous Case on 08.06.2023 on contest against the present appellant and affirmed the award dated 28.05.2018 passed by the sole arbitrator.

Being aggrieved by and dissatisfied with the judgment and order dated 08.06.2023 passed by the learned Senior District Judge, Dhaka in Arbitration Miscellaneous Case No. 387 of 2018, the claimant petitioner

of the said Miscellaneous Case as appellant then preferred the instant appeal before this Court.

It is worthwhile to mention here that the present respondent as petitioner filed an application before the learned District Judge, Dhaka under section 7A of the Arbitration Act, 2001 for not to change the nature and character of 251.1315 decimals of land or to transfer the same to any 3<sup>rd</sup> party till enforcement of the Award dated 28.05.2018. The said application then gave rise to Arbitration Miscellaneous Case No. 373 of 2018. Against that application, present appellant as opposite party filed an application for dismissing the said Miscellaneous Case. However, upon hearing the parties, the learned District Judge allowed the said Miscellaneous Case in modified form directing the parties to maintain *status quo* in respect of scheduled land till enforcement of the Award.

Being aggrieved by the said order, the present appellant filed an application under section 115(1) of the Code of Civil Procedure before this Court on which this Court issued rule on 27.08.2023 which gave rise to the above-mentioned Civil Revision.

Mr. Md. Khalilur Rahman, learned Senior Advocate appearing for the appellant upon taking us to the impugned judgment and order, Award and all other documents appeared in the paper book at the very outset contends that the learned District Judge erred in law in dismissing the Miscellaneous case violating the provisions of sections 42 and 43 of the Arbitration Act.

Mr. Rahman then contends that since the arbitral award in question in respect of immovable property has not been written in the non-judicial stamp which is the mandatory provision as per sections 12, 13, 14, 15 and 35 of the Stamp Act, 1899 and barred by section 17(e) and section 49 of the Registration Act, 1908 therefore, the said arbitral award is not at all award in the eye of law, and as such the judgment and order dated 08.06.2023 passed by the learned District Judge, Dhaka in Arbitration Miscellaneous Case No. 387 of 2018 should be set aside for ends of justice.

Mr. Rahman further argues that the impugned award was given in respect of 2.5113 acres of land which is beyond 0.8869 acres as described in the arbitral agreement dated 10.04.2013 in other words, the award was given  $(2.5113 - 0.8869)$  1.6244 acres of excess land which is void as per section 43(1)(a)(iv) of the Arbitration Act, 2001.

The learned counsel next contends that the award was given against the law of the country in respect of the portion of the land even though the said portion of the land is not covered by arbitral agreement which is void as per section 43(1)(b)(ii) and (iii) of the Arbitration Act, 2001.

The learned counsel further contends that out of 0.8869 acres of land described in the arbitration agreement dated 10.04.2013, the respondent, Mostafa Zaman had only valid title over 0.4572 acres of land through different sale deeds which the appellant is always ready to purchase at the rate of Tk. 18,00,000/- (Eighteen lac) per *Katha* with 18% interest from the date of the sale deed up to encashment of the post-

dated cheque as has been agreed in the arbitral agreement so, there is no bar in giving an award in respect of 0.4572 acre un-encumbered land.

Mr. Rahman further submits that excess 1.6244 acres of land are also beyond the boundary of the project of Rupayan Housing Estate Ltd. namely Rupayan City, so, the appellant is not interested in purchasing the excess land, as such, the court cannot compel to purchase the same as per section 25 of the Specific Relief Act against the will of the vendee because as per the said provision relief can only be given in favour of the vendee, not in favour of the vendor.

Mr. Rahman next submits that the award is biased, unwarranted and uncalled for in respect of excess 1.6244 acres of land *vis-a-vis* the fixation of the price of the land at Taka 1,26,50,000/- which seems exorbitant and of violative to sections 91 and 92 of the Evidence Act.

He next contends that the award is vague and unenforceable award as in the operative portion of it there is only fixation of price of 2.5113 acres of land awarded without giving any direction, who would pay the said price and within how many days and even nothing was stated about the consequences of non-payment of the price fixed by the Arbitrator in absence of which the award given by the Arbitrator is unenforceable through the process of the court as stated in section 44 of the Arbitration Act, 2001.

In the same vein, Mr. Md. Moniruzzaman Asad, learned Senior Advocate appearing for the appellants by adopting the submissions made by Mr. Rahman contends that the arbitrator did not receive any statement of claim and statement of defence and no witness was examined and no

issue was framed and hence the arbitral award is void and the impugned judgment and order dated 08.06.2023 passed by the learned District Judge, Dhaka in Arbitration Miscellaneous Case No. 387 of 2018 is arbitrary as the same has been delivered with mala fide intention in order to victimize the appellant, who made his mark as an outstanding company throughout its real estate business and as such the impugned judgment and order ought to be set aside for ends of justice.

Mr. Asad also contends that the learned District Judge, Dhaka committed an error of facts and law on the point that the Arbitrator had to proceed within the purview of the agreement dated 10.04.2013 for resolving the dispute in respect of 53.75 *katha* or 88.69 decimals of scheduled land, but he travelled beyond the agreement which is clear violation of Section 43(1)(a)(iv) of the Arbitration Act, 2001 and as such the impugned judgment and order dated 08.06.2023 passed by the learned District Judge, Dhaka in Arbitration Miscellaneous Case No. 387 of 2018 is liable to be set aside for ends of justice.

The learned counsel goes on to submit that the learned District Judge, Dhaka did not apply his judicious mind in passing the impugned judgment and order despite having clear evidence that Sarder Md. Suruzzaman (sole arbitrator) was an engaged lawyer of the respondent (i.e. Mostofa Zaman) in Land Survey Tribunal Case No. 400 of 2009 and therefore, it is crystal clear that the Arbitrator was biased, and out of the biasness, he delivered the arbitral award in favour of the respondent, and hence the arbitral award is liable to be set aside under section 43(1)(b)(iv) of the Arbitration Act and hence the impugned judgment



and order passed by the learned District Judge ought to be set aside for ends of justice.

Mr. Asad lastly submits that no Arbitrator in the arbitral award can impose any punishment upon any person to make him bound to purchase the property whose right and title is defective and as such, the judgment and order dated 08.06.2023 passed by the learned District Judge should be set aside.

By adopting most of the argument placed by Mr. Md. Khalilur Rahman, Mr. Mohammad Shishir Manir another learned counsel for the appellant refers to the decision passed in the case of *Tata Power Company Limited Vs. Dynamic Construction*, reported in 35 BLD(AD)147=1LM(AD)(2016)456.

He then contends that the respondent has no lawful title to the property and he cannot transfer or sell the property belonging to others and such activities are a clear violation of sections 53B, 53C, 53D and 53E of the Transfer of Property Act, of 1882.

The learned counsel next contends that no arbitrator in an arbitral award can impose any punishment upon any person to make him bound to purchase the immovable property whose right and title is defective which is directly violative to sections 12, 21, 22II of the Specific Relief Act, 1877 and it clearly goes against public policy.

Mr. Manir further argues that the arbitrator fixed the price of the land at Taka 1,26,50,000/- per *katha* enhancing from the amount of Taka 18,00,000/- per *katha* which is violative to section 22II of the Specific

Relief Act and thus the arbitrator traveled beyond his jurisdiction and the award is thus against public policy as well as opposed to the law.

He next contends that the sole arbitrator was the engaged lawyer of the respondent in a Land Survey Tribunal Case (as evident at page no. 303 of the paper book). The appellant was not aware of the involvement of the learned arbitrator with the respondent before the award is passed and thus the appellant could not raise the said question. But the arbitrator should have expressed his involvement with respondent, Mostafa Zaman and refrained from performing as an arbitrator as justice should not only be done but it must be shown to have been done. The learned Advocate then contends that after coming to know about the said involvement the appellant had informed the learned District Judge with proof by annexing *vokalatnama* and also proceeding of the cases by him (Arbitrator) engaging for the respondent (vide page 324 of the paper book) yet the learned District judge did not take into account of the said vital ground even though such question of impartiality may raise at any stage of the proceeding. However, in support of his contention, learned counsel has referred section 13 of the Arbitration Act.

He also submits that, the decision passed in the case of *Saudi Arabian Airlines Corporation Vs. Saudi Bangladesh Services Company Limited*, reported in 73 DLR(AD)(2021)277 is not applicable in the facts and circumstances of the present case.

Mr. Mohammad Tajul Islam, learned senior counsel appearing for the appellant submits that, if impartiality under section 13 of the

Arbitration Act is proved then the award will be set aside under section 43(a)(iv) of the Arbitration Act.

In agreement with all the above submissions, Mr. Md. Kayser Kamal, the learned counsel submits that, the award is not legally sustainable and the arbitrator has exceeded the limit of his lawful authority in passing the award when the learned District Judge has just evaded such legal shortcomings and hence the impugned judgment is liable to be set aside. In support of his contention learned counsel refers to the case of *Misha Corporation (Pvt.) Limited Vs. BSMMU*, reported in 18 BLC(HCD)(2013)194. With those submissions, the learned counsel finally prays for allowing the appeal and making the rule absolute.

*Per contra*, Mr. Probir Neogi, learned Senior Advocate with Mr. Rumi Islam, Advocate appearing on behalf of the respondent contends that the court below rightly rejected the application for setting aside the arbitral award, inasmuch as the Arbitration Act, 2001 allows limited scope of judicial intervention and the grounds to challenge the arbitral award under section 43 are very restrictive as section 43 prohibits to take any extraneous grounds while setting aside an arbitral award.

He further contends that, when a court entertains an application to set aside the arbitral award, it does not act as a court of appeal for reassessing or re-appreciating the evidence, and thus an error of facts cannot be corrected while setting aside an Arbitral Award. In support of his contention, the learned counsel then referred to the decision passed in

the case of *Saudi Arabia Airlines V. Saudi Bangladesh*, reported in 73 DLR(AD) 277.

Mr. Neogi further contends that the question as to whether the award is required to be stamped and registered is relevant only when the parties file an award for enforcement under Section 44 of the Act, 2001 and the adverse party to the award can only raise such objections regarding the award's admissibility on account of non-registration of award under Section 17 of the Registration Act, 1908, and its non-stamping under the relevant provision of Stamp Act, 1899. In support of his such contention, the learned counsel then referred to the decision passed in the case of *M. Anasuya Devi and ors. Vs. M. Manik Reddy and ors.*, reported in (2003) 8SCC 565.

The learned senior counsel next contends that, an arbitral award can only be challenged if it is not prepared in terms of section 38 of the Arbitration Act, 2001 which does not create a legal obligation on the parties to the arbitration to pay stamp duty on an award rather a party on whose favour an award is given is obligated to affix stamp when the said party will go to enforce the award and at that time the Court shall be guided by the provisions of the Stamp Act, 1899.

In support of his such contention, the learned counsel then referred to the decision passed in the case of *Mohini Electricals Ltd. Vs. Delhi Jal Board*, reported in 2021 II AD (Delhi) 288.

He further contends that the decision of an arbitrator is binding on the parties to the arbitration agreement and or any other person(s) claiming through or under them as per contemplation made in section 39

of the Arbitration Act, 2001, and Clause 6 of the Memorandum of Understanding dated 09.04.2023, and therefore, the power of the Court to set aside an award would only be exercised when the Court finds that the arbitral award is erroneous or patently illegal or in contravention of the provisions of section 43 of the Act, 2001, and since there is no illegality or violation of any provisions of the Act, 2001 so the arbitrator has acted within his statutory authority and in such a situation, the Court has nothing to interfere with the award unless the award suffers from perversity. In this regard, the learned counsel relied upon a decision passed in the case of *Tata Power Company Ltd v M/S Dynamic Const.*, reported in 1 LM (AD) 456.

Mr. Neogi further contends that section 19 of the Arbitration Act deals with “objection as to the jurisdiction of the arbitral tribunal” and such objection has to be taken at the earliest possible opportunity, that is, before filing of the statement of defence or as soon as arbitral tribunal starts exercising its authority which has not been done in the instant case.

The learned Senior Counsel goes on to submit that the arbitral tribunal is not bound to follow the provisions of the Code of Civil Procedure and the Evidence Act in disposing of a dispute under the Arbitration Act as contemplated in section 24 of the said act and therefore the appellant’s contention as to ‘framing of issue’ and mode of taking evidence is misconceived and contrary to law.

He lastly submits that, a party to a contract cannot escape the agreed terms and stipulations of a contract and therefore the appellant cannot raise any question with regard to the legality of the business of

the respondent as a facilitator (may also be termed as 'broker'), after entering into an agreement with the respondent to facilitate the transfer of the respondent's relatives' property in favour of the appellant, inasmuch as it is a settled principle of law that if any act is not prohibited by law, it is legal. He further adds that in Bangladesh, a broker, as defined in section 2(c) of the Securities and Exchange Ordinance, 1969 any person or entity engaged in the business of effecting transactions in securities (like stocks or bonds) on account of others, essentially acts as an intermediary. With those submissions, the learned Advocate finally prays for dismissing the appeal.

Mr. Md. Asaduzzaman, the learned Senior Advocate by adopting the submission made by Mr. Neogi contends that the learned District Judge cannot travel beyond what has been laid down in section 43 of the Arbitration Act in setting aside an award which the Court has been perfectly done vide impugned judgment. He also submits that the appellant did not exhaust section 14 of the Arbitration Act regarding misconduct of the arbitrator as under section 14 of the Arbitration Act any party to the Arbitration proceeding is free to the authority of an Arbitrator but as the appellant did not do so his objection as to the biasness of the arbitrator will be regarded as waived under section 6 of the Arbitration Act, and hence the contention as advanced by the appellant about the biasness of the arbitration cannot be entertained. With those submissions, the learned counsel finally prays for dismissing the appeal and discharging the rule.

We have considered the exhaustive submissions placed by the learned Counsels for the contending parties, perused memorandum of appeal, the impugned judgment and order, arbitral award, materials on record and the cited decisions referred.

It is the contention of the learned Senior Counsel for the respondent that the arbitral tribunal is not bound to follow the provisions of the Code of Civil Procedure and the Evidence Act in disposing of a dispute as per provision so stipulated in section 24 of the Arbitration Act. So, the contention of the learned counsel for the appellant that the Arbitrator has not 'framed any issue' and of taking evidence is found to be misconceived and contrary to the above law. Further, on going through the arbitral award, we find that the arbitral tribunal directed the parties to submit statements and relevant documents within 27-08-2016 (vide paragraph no. 2 of the Award) and the parties submitted their relevant documents on 27.08.2016 (vide paragraph no.3 of the Award) and the 1<sup>st</sup> Party submitted written evidence, while 2<sup>nd</sup> Party also filed written evidence on 1-03-2017 (vide paragraph no.4 of the Award). So, we find no substance to the contention raised by the learned counsel for the appellant that the arbitrator did not receive any statement of claim and statement of defence as well. It is evident from section 24 of the Arbitration Act, that the arbitral tribunal is not bound to follow the provisions of the Code of Civil Procedure and the Evidence Act in disposing of a dispute under the Arbitration Act.

Further, it is the contention of the learned counsel appearing for the appellant that since the arbitral award in question in respect of

immovable property is not written in non-judicial stamp which is the mandatory provision under sections 12, 13, 14, 15 and 35 of the Stamp Act, 1899 requiring registration under section 17(e) of the Registration Act, 1908, so, the same (Award) does not create any right, title and interest in favour of the respondent as per section 49 of the Registration Act and therefore, the said arbitral award cannot be termed as an award in the eye of law. In reply to that Mr. Probir Neogi candidly submits that whether an award is required to be stamped and registered is relevant only when the award winning party would file the award for its enforcement under section 44 of the Arbitration Act, 2001. He further submits that, an arbitral award is furnished in compliance with section 38 of the Act and therefore the said provision of the Arbitration Act, 2001 does not even create a legal obligation upon the party to the arbitration to pay stamp duty on an award.

In support of his contention, the learned counsel referred to the decisions passed in the cases of *M. Anasuya Devi and ors. Vs. M. Manik Reddy and ors.* (supra) and *Mohini Electricals Ltd. Vs. Delhi Jal Board* (supra).

We have considered the said submission of the learned counsels and gone through the provision and find from sub-section (1) of section 38 of the Arbitration Act, 2001 that an arbitral award shall be made in writing and shall be signed by the arbitrator or arbitrators having no provision therein to the effect that, the arbitral award is required to be stamped and/or registered.



In this regard, reference may be placed in the case of *M. Anasuya Devi and ors. Vs. M. Manik Reddy and ors.* (Supra) the Supreme Court of India where it was held:

“The question as to whether the award is required to be stamped and registered would be relevant only when the parties would file the award for its enforcement under Section 36 of the Act. It is at this stage the parties can raise objections regarding its admissibility on account of non-registration and non-stamping under Section 17 of the Registration Act. In that view of the matter, the exercise undertaken to decide the said issue by the civil court as also by the High Court was entirely an exercise in futility. The question of whether an award requires stamping and registration is within the ambit of section 47 of the Code of Civil Procedure and not covered by section 34 of the Act.”

The High Court of Delhi also in the case of *Mohini Electricals Ltd. Vs. Delhi Jal Board* (supra) held:

“the Arbitration Act does not even create a legal obligation on the parties in arbitration to pay stamp duty on an award. It is only when they begin taking steps to enforce the award that the parties are obligated to ensure that the instrument has been duly stamped, at which point the Court shall be guided by the provisions of sections 33, 35 and 38 of the Indian Stamp Act, 1899.”

The learned counsel for the appellant alleged that the appellant as petitioner in the miscellaneous case raised objection that the sole arbitrator was the engaged lawyer of the respondent in Land Survey Tribunal Case No. 400 of 2009 (vide page no. 303 of the paper book) and thus the arbitrator was biased and out of that biasness he delivered the arbitral award in favour of the respondent yet the learned District Judge did not consider such vital grievance of the appellant. In that connection the learned counsel placed section 13 of the Arbitration Act which runs as follows:

“১৩। (১) সালিসকারী হিসাবে নিয়োগের অনুরোধপ্রাপ্ত প্রত্যেক ব্যক্তি প্রথমে তাহার নিরপেক্ষতা ও স্বাধীনতা সম্পর্কে সম্মত সন্দেহের উদ্ভব হইতে পারে এইরূপ সকল পরিস্থিতি প্রকাশ করিবেন।

(২) প্রত্যেক সালিসকারী তাহার নিয়োগের সময় হইতে সালিসী কার্যধারা চলাকালীন যে কোন সময়ে উপ-ধারা (১) এ উল্লিখিত পরিস্থিতি অনতিবিলম্বে চুক্তির সকল পক্ষকে এবং অন্য সকল সালিসকারীকে অবগত করিবেন, যদি ইতোমধ্যে তাহারা তৎসম্পর্কে অবহিত না হইয়া থাকেন।

(৩) কোন সালিসকারীর বিরুদ্ধে আপত্তি উত্থাপন করা যাইবে যদি তাহার নিরপেক্ষতা ও স্বাধীনতা সম্পর্কে সন্দেহ থাকার কোন পরিস্থিতি বিদ্যমান থাকে বা পক্ষগণ কর্তৃক সম্মত যোগ্যতা তাহার না থাকে।”

In reply, Mr. Neogi contends that the sole arbitrator was appointed when the dispute arose with the free consent of both the parties on 25.08.2016 in presence of the lawyers of both the parties and even during the entire proceeding of arbitration, the appellant did not raise any objection even though section 19 deals with “objection as to the jurisdiction of the arbitral tribunal”, which requires any objection will have to be raised at the earliest possible opportunity, that is, before filing of the statement of defence or as soon as arbitral tribunal starts exercise

its authority. So, failure to raise an objection by the appellant both about the fairness of Arbitrator or of the Jurisdiction of the arbitral tribunal within the stipulated time as observed above clearly precludes the appellant from raising such objection at a belated stage. So, the appellant's contention is misconceived and contrary to law. However, we find ample substance to the submission of the learned counsel for the respondent. In this connection we have examined the provision of section 6 of the Arbitration Act, 2001 which runs as follows:

**আপত্তির অধিকার পরিত্যাগ**

৬। কোন পক্ষ-

(ক) পক্ষগণ ব্যত্যয় ঘটাইতে পারে এই আইনের এমন কোন বিধান প্রতিপালিত হয় নাই; বা

(খ) সালিস চুক্তির অধীন কোন আবশ্যিকতা প্রতিপালিত হয় নাই-

এমর্মে অবগত থাকিয়া উক্ত পক্ষ যদি অযৌক্তিক বিলম্ব ব্যতীত বা তদবিষয়ে কোন সময়সীমা থাকিলে অনুরূপ সময়সীমার মধ্যে আপত্তি না করিয়া সালিসে অগ্রসর হয়, তাহা হইলে উক্ত পক্ষ আপত্তির অধিকার পরিত্যাগ করিয়াছে বলিয়া গণ্য হইবে।

So, as the appellant did not raise any objection with regard to the fairness of the sole arbitrator or jurisdiction of the Arbitral Tribunal so its belated assertion to that effect, will thus be treated as waiver of such right under section 6 of the Act and we find total nexus of the decision held in the case of *Joinal Abedin Jamal vs. Noor Afza*, reported in 63 DLR(2011)432 with the fact and circumstances of the instant case wherein this Court held:

“ The appointment of the sole arbitrator made under section 12 of the Act being not objected to by the

appellant at any time before any authority at the earliest possible stage, such appointment/jurisdiction of the arbitrator cannot be called in question after the award is passed. The same cannot be the ground for cancellation of the award under section 43 of the Act, 2001 as the appellant waived their statutory right of such objection under section 6 of the Act.”

In this context, the submission of Mr. Shishir Manir that the earliest opportunity means when it comes to the knowledge of any party about the impartiality of an arbitrator and may be raised at any stage is simply devoid of any substance.

Mr. Md. Asaduzzaman, learned Senior Advocate has thus rightly submitted that the appellant has failed to take resort to section 14 of the Arbitration Act as to the fairness of the arbitrator and then subsequent allegation of the fairness of an arbitrator will be treated as waived under section 6 of the Arbitration Act.

It is evident from the award that the sole arbitrator was appointed on the basis of joint written proposal of the parties (vide page no. 92 of the paper book) *vis-a-vis* paragraph no. 1 of its application for setting aside the arbitral award filed before the District Judge, Dhaka in Misc Arbitration Case No.387 of 2018, (vide page no.322 of the paper book).

It is also not denied that, the appellant did not raise any objection regarding the biasness or impartiality of the sole arbitrator during the entire proceeding of the Arbitral Tribunal ranging from 25.08.2016 to 28.08.2018 even though the appellant had ample opportunity under

section 13 of the Arbitration Act, 2001 to challenge the appointment of arbitrator by following the provisions of sections 14 and 19 of the Arbitration Act, 2001. However, we find no endeavour on the part of the appellant in that regard rather after passing the award, the allegation against the arbitrator is not acceptable. Thus we find substance in the submissions placed by the learned senior counsels for the respondent.

Moreover, the appellant has failed to prove any 'misconduct' 'fraud' or 'corruption' against the sole arbitrator or the arbitral award is induced or affected by fraud or corruption. So, the grounds taken by the appellant in the appeal clearly does not come within the ambit of section 43(1) (b) (II) and (IV) either for setting aside the Award or allowing the appeal.

It is the contention of Mr. Shishir Manir, the learned counsel for the appellant that no arbitrator in the arbitral award can impose any punishment upon any person to make him bound to purchase the immovable property whose right and title is defective which is violative to sections 12, 21, 22 II of the Specific Relief Act, 1877 and it goes against public policy so, the award given by the Arbitrator is unenforceable through the process of the Court under section 44 of the Arbitration Act, 2001.

However, we find no substance in the above-mentioned arguments raised by the learned counsel for the appellant as it appears from the record that during the arbitration proceeding, the appellant filed an application on 15.01.2018 before the sole arbitrator for constituting a

committee for fixing the price of land (vide page no. 298 of the paper book). Accordingly, a committee was constituted and they held a meeting on 16.05.2018 in the presence of the lawyers of both sides. The parties submitted various documents to show the price of the contract land and after scrutiny and examining the documents, the learned arbitrator fixed the price of the land at Taka 1,26,50,000/- per *katha* on 28.05.2018. In totality, the grounds taken by the appellants are all found to be disputed question of facts which does never come within the mischief of section 43 of the Act basing on which an award can only be set aside and clearly absent in the petition of the Miscellaneous Case filed under sections 42/43 of the Act and in the Memo of Appeal.

Regard being had to the above materials on record and submission advanced as observed herein above, we find no merit in the appeal.

Resultantly, the appeal is dismissed, however without any order as to costs. Consequently, the judgment and order dated 08.06.2023 passed by the learned District Judge, Dhaka in Arbitration Miscellaneous Case No. 387 of 2018 is thus affirmed.

The award dated 28.05.2018 passed by the sole arbitrator is affirmed.

Since the appeal is dismissed, the rule issued in Civil Revision No. 5204 of 2023 is discharged.

Accordingly, the judgment and order dated 08.06.2023 passed by the learned District Judge, Dhaka in Arbitration Miscellaneous Case No. 373 of 2018 filed under section 7A of the Arbitration Act, 2001 is hereby affirmed.

Let a copy of this judgment and order along with the lower courts record be communicated to the Court concerned forthwith.

**Md. Mozibur Rahman Miah, J.**

I agree.

Md. Ariful Islam Khan  
Bench Officer