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

Present:
Mr. Justice S M Kuddus Zaman
And
Ms. Justice Tamanna Rahman Khalidi

FIRST APPEAL NO.17 OF 2023 WITH
CIVIL RULE NO.318(F) OF 2023

Rahima Khatun being dead her heirs-Mohammad Morshedur Rahman and others
....Appellants
-Versus-
Home Design Limited and others
... Respondents
Mr. Probir Neogi, Senior Advocate with
Mr. T. M. Sakil Hasan, with
Mr. T. M. Abed Hasan, Advocate
Ms. Arfan Sultana, Advocate
... For the appellants.
Mr. Sk. Md. Morshed, Senior Advocate with
Mr. Samarendra Nath Biswas, Advocate
… For the respondent Nos.1-2 and 6.
Heard on 02.03.2026, 21.07.2026, 22.07.2026, 27.07.2026, 03.08.2026, 08.09.2026 and 10.09.2026.
Judgment on 13.09.2026.

S M Kuddus Zaman, J:

This First Appeal at the instance of the opposite parties is directed against the judgment and decree dated 23.02.2023 passed by the learned District Judge, Dhaka in Arbitration Miscellaneous Case No.259 of 2020 setting aside the award.

Civil Rule No.318(F) of 2023 having arisen out of this First Appeal above Civil Rule is heard along with this First Appeal and being disposed of by this single judgment.

Facts in short are that the appellants, owners of the disputed land and the respondents a Property Development Company executed and registered Deed of Agreement No.6894 on 31.05.2010 for construction of a ground plus nine storied building namely Home Joltoronga in above land with the investment of the respondents and in return the respondents shall get five apartments. The appellants executed and registered an irrevocable Power of Attorney deed on above date authorizing the appellants to transfer apartments of his share. It was stipulated that the respondents would on completion of construction work hand over four livable apartments to the appellants by 01.09.2014. But the respondents failed to complete the construction work by above date. Pursuant to Clause No.25 of above deed of agreement both parties executed a Memorandum of Understanding on 04.04.2018 and the date of completion of construction work was extended to 30.07.2008. But the respondents failed to complete the construction work by above extended date. The appellants initiated arbitration proceedings under Section 12 of the Arbitration Act, 2001 and an Arbitral Tribunal consisting of one Chairman and two Members was constituted. The appellants and the respondents participated in above proceedings and the tribunal

passed an award for Taka 1,15,60,000/- and cancelled above Deed of Agreement and deed of Power of Attorney.

Being aggrieved by and dissatisfied with above arbitral award above respondents as petitioners preferred Arbitration Miscellaneous Case under Sections 42 and 43 of the Arbitration Act, 2001 to the District Judge, Dhaka who allowed above case and set aside the arbitral award.

Being aggrieved by and dissatisfied with above judgment and decree of the learned District Judge opposite party Nos.1-8 as appellants moved to this Court and preferred this First Appeal.

Mr. Probir Neogi, learned Senior Advocate for the appellants submits that in the deed of agreement dated 31.05.2010 it was stipulated that the respondents shall on completion of construction work handover four livable apartments to the appellants by 01.09.2014. The respondents failed to complete the construction works and above parties by executing a Memorandum of Understanding on 04.04.2018 mutually extended the date of completion of construction works to 30.07.2019. Admittedly the respondents failed to complete the construction work and handover livable apartments to the appellants by 30.07.2018. The appellants initiated arbitration proceedings on 30.08.2018 and the respondents participated in arbitration proceedings and the Arbitral Tribunal rightly held that civil works of Taka 14,00,000/- remained incomplete

and lift, generator and electric substation were not installed and the appellants were entitled to get compensation and unpaid house rent and accordingly passed an award for Taka 1,15,60,000/-. The Arbitrators directed the appellants to complete the above unfinished civil works and install lift, generator and other equipments utilizing the award money and to enable the appellants to do above works cancelled above power of attorney deed. The Arbitral Tribunal rightly held that above deed of contract has died a natural death and accordingly cancelled the same to pave the way for completion of unfinished works by the appellants. The learned District Judge totally failed to appreciate above facts and circumstances of the case and evidence on record most illegally allowed above Miscellaneous Case under Sections 42 and 43 of the Arbitration Act, 2001 and set aside above lawful award which is not tenable in law.

The learned Advocate for the appellants lastly submits that the appellants should have preferred Arbitration Appeal against above judgment and order of the learned District Judge under Section 48 of the Arbitration Act, 2001 but the appellants have erroneously filed this First Appeal. Above irregularity was caused due to error of the appointed Advocate of the appellants. The respondents did not raise any objection nor above technical irregularity has in any way affected the merit of the appeal.

On the other hand Mr. Sk. Md. Morshed, learned Senior Advocate for respondent Nos.1-2 and 6 submits that the arbitral award rightly found that the value of the remaining civil works was of Taka 14,00,000/- which shows that only a small percentage of construction works remained undone. The respondents completed 85 percentage of construction work of the Home Jaltaranga building. The respondents purchased the lift for above building but the same could not be installed. The respondents could not procure and install generator and electric substation. The Tribunal has granted compensation of Taka 17,40,000/- but the dispute as to payment of compensation was not referable for arbitration. By Article 27.4 of the Deed of Contract the parties kept the issue of compensation for adjudication by Civil Court. The granting of compensation of Taka 17,40,000/- to the appellants was unlawful and beyond the jurisdiction of the Tribunal. The arbitrators have passed award of Taka 75,00,000/- for procurement and installation of lift, generator and electric substation. Admittedly the respondents purchased the lift and stored in the project site spending Taka 21,00,000/-. As such above issue was also not referred to arbitration but the arbitrators most illegally passed above part of the award which was beyond the scope of arbitration. The learned Advocate further submits the respondents on the strength of power of attorney deed have transferred five apartments to third parties by registered sale deeds.

By cancellation of above power of attorney deed the Tribunal has travelled beyond its jurisdiction and jeopardized the lawful title of above purchasers of five apartments. The cancellation of power of attorney deed was not necessary nor the tribunal had jurisdiction to cancel above deed. A registered bilateral deed can be rectified or cancelled by a Civil Court not by an arbitral tribunal. The cancellation of the power of attorney deed has vitiated above award with illegality which is liable to be set aside.

On consideration of above facts and circumstances of the case and materials on record the learned Joint District Judge has rightly set aside above 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 appellants as the lawful owners of the disputed land entered into an agreement on 31.05.2010 with the respondents for construction of a ground plus nine storied building namely Home Jaltaronga. It was agreed upon that the respondent shall deliver 4 livable flats to the appellants and the respondents shall get five flats and above construction works must be completed by 01.09.2014. The appellants executed and registered an irrevocable power of attorney deed on above date authorizing the respondents to transfer five apartments of their share. Admittedly respondents failed

to complete above construction works by above date and above parties entered into a Memorandum of Understanding and extended the date of completion of construction works to 04.04.2018. The respondents failed to comply with above terms of the MOU and failed to complete construction works and handover apartments to the respondents by 13.07.2018. After expiry of above extended date for conclusion of construction works the appellants initiated arbitration proceeding pursuant to Article No.27.2 of above deed of agreement.

Article 27.4 of above deed of agreement runs as follows:

> "That if the developer second party refuses to handover the possession of the Schedule-C apartments (land owners share) and fails to make payments in cash the compensation money the land owners first party shall have right to file appropriate suit."

Article 27 of above deed of agreement provides that the parties shall settle each and every dispute arising out of above agreement through arbitration. Article 27.4 gives the appellants an additional right to file s suit in a Civil Court for recovery of compensation money if the respondents fail to handover livable apartments within the stipulated time and pay compensation. The issue of compensation was not expressly kept outside of the purview of arbitration. Nor the

appellants filed a Civil Suit for recovery of compensation. The appellant demanded compensation to the tribunal and the respondents did not raise jurisdictional objection at any stage of proceedings. The appellants have waived the right to file a Suit for recovery of compensation. In above view of the materials on record we are unable to find any substance in above submissions of the learned Advocate for the respondents that the Arbitral Tribunal did not have jurisdiction to pass an award for compensation.

The learned Advocate for the respondents submits that the lift was purchased by the respondents with Taka 21,00,000/- and stored in the project site and the learned Advocate for the appellants accepts above claim and concedes that the lift was purchased by the respondents but the same was not installed. Above lift was subsequently installed by the appellants and it appears from above purchase voucher (Annexure- 6 and 7) that the purchase price includes the cost of installation, testing and commission. The learned Advocate for the appellants concedes that the lift was installed by the company from which it was purchased and the price of the lift included installation cost-. Annexure-6 and 7 shows that the respondents paid Taka 21,00,000/- for purchase, installation, testing and commission of above lift. It is clear from above materials that there was no dispute between the parties as to purchase and installation of lift nor the same was referred to arbitration.

The beauty of arbitration is that an arbitral award instantly gets finality and the same is not subject to appeal or revision. The District Judge has jurisdiction to set aside an arbitral award only if the award is hit by Section 43 of the Arbitration Act, 2001. This Court while hearing an appeal from the judgment of the District Judge under Section 42 of the Arbitration Act, 2001 mainly examines if the judgment of the learned District Judge is based on Section 43 of the Arbitration Act, 2001. Section 43(1)(Ka)(E) of the Arbitration Act, 2001 provides that if an award is mixed with the issue referred to arbitration and the issue not referred to arbitration then this Court may exclude the part of the award passed on the issue not sent for arbitration. It is an admitted fact that the respondents spent Taka 21,00,000/- for purchase, supply, installation, testing and commission of the lift and there was no dispute as to above lift nor the same was referred to arbitration but the arbitrators have erroneously passed an award of Taka 75,00,000/- including Taka 21,00,000/- of above lift which may be excluded from the award.

Arbitration as a tool for dispute settlement was invented for settlement of international commercial disputes. On the passage of time arbitration has been extended to all domestic contractual disputes where both the parties agree to settle such a disputes through arbitration. A Civil Court has exclusive jurisdiction to try all suits involving disputes of civil nature which means disputes as to

right to office and right to property. Section 89B of the Code of Civil Procedure, 1908 provides as follows:

> 89B.(1) "If the parties to a suit, at any stage of the proceeding, apply to the Court for withdrawal of the suit on ground that they will refer the dispute or disputes in the suit to arbitration for settlement, the Court shall allow the application and permit the suit to be withdrawn; and the dispute or disputes, thereafter, shall be settled in accordance with Salish Ain, 2001 (Act No. 1 of 2001) so far as may be applicable:
>
> Provided that, if, for any reason, the arbitration proceeding referred to above does not take place or an arbitral award is not given, the parties shall be entitled to re-institute the suit permitted to be withdrawn under this sub-section.
>
> (2) An application under sub-section (1) shall be deemed to be an arbitration agreement under section 9 of the Salish Ain, 2001 (Act No. 1 of 2001)."

Above provision of the Code of Civil Procedure, 1908 shows that in Bangladesh disputes relating to right to office or right to property may also be settled through arbitration on the basis of

consent of the parties to the suit without a previous agreement for arbitration. Arbitral tribunal is empowered to determine or adjudge the legality and correctness of any document which is the subject matter of the dispute referred to arbitration.

In above view of the jurisdiction of Arbitration Tribunal we are unable to accept the submissions of the learned Advocate for respondents that the arbitral tribunal had no jurisdiction to cancel the registered deed of power of attorney.

Admittedly the deed of contract dated 31.05.2010 died a natural death due to failure of the respondents to complete the construction work and deliver livable apartments to the appellants within 30.07.2018, the extended date. It is admitted that on the strength of power of attorney deed the respondents had transferred five apartments of their share to third parties by registered sale deeds. A deed of power of attorney creates an agency and all actions taken or done by the attorney before cancellation of above deed is binding upon his Principal. The respondents having transferred above apartments before cancellation of above power of attorney deed by Arbitral Tribunal above sales of five apartments are lawful and binding upon the appellants. The learned Advocate for the appellants submits that the appellants admit lawful title and possession of above purchasers in their respective apartments.

Admittedly a part of the civil work and installation of generator and electric substation remain incomplete and the arbitrators have directed the appellants to complete above works using the award money. If above deed of power of attorney remains alive then the appellants cannot complete above incomplete works. On the other hand cancellation of above power of attorney deed does not in any way affect the interest of the respondents since they have already transferred all apartments of their share. In above view of the facts and circumstances of the case and materials on record we are unable to accept the submissions of the learned Advocate for the respondent that the Arbitral Tribunal did not have any authority or necessity for cancellation of above power of attorney deed and we hold that the Arbitral Tribunal did not commit any illegality by cancellation of above deed of agreement and the deed of power of attorney.

The learned Advocate for the respondent Nos. 1-2 and 6 rightly pointed out that the appellants should have filed this appeal under Section 48 of the Arbitration Act, 2001 as an Arbitration Appeal instead of this First Appeal. But above technical error does not in any affect the merit of this First Appeal.

On consideration of above facts and circumstances of the case and materials on record we hold that the Arbitral Tribunal on correct appreciation of materials on record rightly passed above award excepting granting Taka 21,00,000/- on account of installation of the

lift which needs to be excluded from the award but the learned District Judge most illegally setting aside the award which is not tenable in law.

In the result, this First Appeal is allowed.

The impugned judgment and decree dated 23.02.2023 passed by the learned District Judge, Dhaka in Arbitration Miscellaneous Case No.259 of 2020 is set aside and the award passed by the Arbitration Tribunal on 02.09.2020 is modified to Taka 94,60,000/-. Respondents are directed to pay Taka 94,60,000/- to the appellants within three months from the date of receipt of this order in default the appellants shall get the same through Court with interest at the rate of 6% per annum.

The connecting Civil Rule No.318(F) of 2023 is accordingly disposed of.

However, there will be no order as to cost.

Send down the lower Court's records immediately.

Tamanna Rahman Khalidi , J:

I agree.

MD. MASUDUR RAHMAN
BENCH OFFICER