

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

**CIVIL REVISION NO. 7045 OF 2023**

In the matter of:

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

AND

In the matter of:

MSE-FA-MRM JV, 1216, East Monipur, Mirpur, Dhaka  
1216 represented by Formila Akther, Proprietor of M/s.  
Formila Akther a partner 01552362905.

.... Petitioner

-Versus-

Tangail Central Co-operative Bank Ltd., Old Adalat  
Road, Tangail represented by its Chairman.

....Opposite-party

Mr. Aneek R. Haque with  
Mr. Rafsan Al-Alvi, Advocates

... For the petitioner

Mr. Bivash Chandra Biswas with  
Mr. Shishir Kanti Mojumder, Advocates

....For the opposite-party

**Heard on 23.04.2024 and 24.04.2024.**

**Judgment on 24.04.2024.**

**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. 328 of 2023, this rule was issued calling upon the opposite-party to show cause as to why the order dated 12.11.2023 passed by the learned Senior District Judge, Dhaka in the said Miscellaneous Case returning the petition of the Miscellaneous Case to the petitioner filed under section 7ka of the Arbitration Act, 2001 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 issuing of the rule, this court also directed the parties to maintain status quo in respect of construction work for a period of 6(six) months.

The precise facts so have been figured in the instant revision are:

The present petitioner filed the said Arbitration Miscellaneous Case under section 7ka of the Arbitration Act, 2001 seeking following reliefs:

*“(a) Admit this Arbitration Miscellaneous Case and issue notice upon the opposite-party to show cause as to why they shall not be restrained by an order of injunction from dispossessing the Manpower (Site Engineer, Site Manager, Mason and Labour etc.) of the petitioner from the construction site (10 Storied under Construction Modern Super Market-Cum-Multipurpose Commercial Building at Old Adalat Road, Tangail) upon cancellation of the Contract Agreement dated 03.08.2015 and to carry on the remaining works of the contract building by themselves or in any other mode/manner; and further*

*to direct the opposite-party to execute Revised Contract Agreement with the petitioner for the remaining works up to Level-6, to provide drawings (Architectural, Electrical and Plumbing Works), to make payment of the submitted bill together with subsequent work done bill and to extend the validity of the completion period up to 30.06.2024;*

*(b) Upon hearing of the parties and on perusal of the cause shown, if any, restrain the opposite-party by an order of injunction and give direction upon them in the above manner and/or pass such other or further order or orders as the learned Court may deem fit and proper;*

*AND*

*Pending hearing of the application, restrain the opposite-party by an interim order of injunction from dispossessing the Manpower (Site Engineer, Site Manager, Mason and Labour etc.) of the petitioner from the construction site (10 Storied under Construction Modern Super Market-Cum-Multipurpose Commercial Building at Old Adalat Road, Tangail) upon cancellation of the Contract Agreement dated 03.08.2015 and to carry on the remaining works of the contract building by themselves or in any other mode/manner.”*

On the date of filing of the Miscellaneous Case, the petitioner also filed another application for restraining the opposite-party by an order of injunction from dispossessing the manpower of the petitioner from the construction site of the opposite-party following cancelling the contract agreement dated 03.08.2015 and to carry on the remaining works of the contracted building by themselves. The opposite-party entered appearance and prayed for dismissing the Miscellaneous Case. However, the learned District Judge took up the Arbitration Miscellaneous Case for hearing on 12.11.2023 and passed the impugned order returning the petition to the petitioner holding that, the case is premature one.

It is at that stage, the petitioner of the Miscellaneous Case filed this revisional application and obtained the instant rule and order of status quo as has been stated hereinabove.

Mr. Aneek R. Haque, the learned counsel appearing for the petitioner upon taking us to the impugned order at the very outset submits that, the learned District Judge has committed a grave error of law in not finding that, there has been no scope to return the petition in view of the clear provision provided in section 7(ka) of the Arbitration Act where the application of section 7 of the Act has been made redundant with the phrase “ধারা ৭ এ যাহা কিছুই থাকুক না কেন” and for that obvious reason, the impugned order is liable to be set aside.

To supplement the said submission, the learned counsel further contends that, section 7ka of the Arbitration Act is an independent provision of law and it is not dependant either on section 7 or section 12 of the Arbitration Act, 2001 and therefore, there has been no scope to find

that, without filing a Miscellaneous Case under section 12 or section 7, no Miscellaneous Case can be filed under section 7ka of the Arbitration Act.

The learned counsel by referring to the supplementary-affidavit dated 14.12.2023 and then referring to clause 94(1) and 94(2) to the “Contract Agreement” furnished among the parties dated 03.08.2015 also contends that, after arising out of the dispute, the petitioner invoked the ‘settlement of dispute’ so provided in those clauses and ultimately the parties to the dispute furnished a deed of agreement for settlement of dispute on 17.01.2021 and then an award was pronounced on consensus among the parties on 06.02.2021. Then to implement the said award, the petitioner also filed a Money Execution Case being Money Execution Case No. 07 of 2023 before the learned District Judge, Dhaka even though the said case was ultimately dismissed vide order dated 12.11.2023. But challenging the said order passed in the Money Execution Case, the petitioner preferred an appeal being Arbitration Appeal No. 01 of 2024 which is still pending.

The learned counsel in his second leg of submission also contends that, by invoking the provision provided in clause no. 94(3) in the “Contract Agreement” dated 03.08.2015 (Annexure-‘M’ to the supplementary-application dated 14.12.2023), the petitioner then issued a ‘notice of arbitration’ upon the opposite-party on 02.11.2023 but since the opposite-party neither responded to the said notice nor appointed its arbitrator, the petitioner thus compelled to file Arbitration Miscellaneous Case No. 57 of 2024 under section 12 of the Arbitration Act which is now pending.

The learned counsel finally prays that, since the petitioner has taken all out effort to resolve the dispute relying on the “terms and conditions” so laid out in the original contract agreement dated 03.08.2015 so under no circumstances, can the impugned order be sustained and finally prays for making the rule absolute.

On the contrary, Mr. Bivash Chandra Biswas along with Mr. Shishir Kanti Mazumder, the learned counsels appearing for the opposite-party no. 1 vehemently opposes the said contention taken by the learned counsel for the petitioner and submits that, there has been no scope on the part of the petitioner to file Miscellaneous Case under section 7ka of the Arbitration Act without resorting to the provision of section 7 or section 12 of the Arbitration Act which is the substantive relief opened to the petitioner and without resorting to that, the petitioner cannot pray for an ad interim relief basing of section 7ka of the Arbitration Act.

The learned counsel by referring to section 7ka of the Arbitration Act also contends that though in the said section it has been provided that, the aggrieved party may file application under section 7ka before filing any Miscellaneous Case which construe that, the petitioner at the first instance has to file a Miscellaneous Case under section 7 then to file Miscellaneous Case under section 7ka of the Arbitration Act and the learned Judge has rightly found so in the impugned order and return the plaint which is liable to the sustained.

The learned counsel by referring to the provision provided in order 43, rule 1 of the Code of Civil Procedure next contends that, since the petition of the Miscellaneous Case is to be construed as a “plaint” and

since it has been returned by the impugned order so the instant revision itself is not maintainable rather the petitioner ought to have preferred an appeal and in that sense, the Miscellaneous Case is not maintainable.

The learned counsel by referring to section 141 of the Code of Civil Procedure also contends that, since the procedure to be followed in the Miscellaneous Case be treated as a proceeding to be guided under Code of Civil Procedure so the impugned order returning the plaint to the petitioner even will come within the purview of order 43 rule 1 of the Code of Civil Procedure so only appeal can lie and this revision is not maintainable.

Mr. Shishir Kanti Mazumder in his second thought also contends that, since the opposite-party no. 1 is a “co-operative society” (*Samabay Samity*) so the order passed by the learned District Judge is an appealable order within the meaning of section 50 of the Samabay Samity Ain. With those submissions, the learned counsels finally prays for discharging the rule.

We have considered the submission so advanced by the learned counsels for the petitioner and that of the opposite-party no. 1 at length. We have also very meticulously gone through the revisional application, the documents appended therewith, the application for vacating the order of status quo as well as the supplementary-affidavit so filed by the petitioner.

There has been no gainsaying the fact that, the crux of the dispute among the parties is whether the Miscellaneous Case filed under section 7ka of the Arbitration Act before the District Judge is maintainable

without filing any substantive case under section 12 or section 7 of the Arbitration Act. For that obvious reason, we feel it expedient to reproduce the provision so provided in section 7ka of the Arbitration Act, 2001 which runs as follows:

“৭ক। আদালত এবং হাইকোর্ট বিভাগের অন্তর্বর্তীকালীন আদেশ প্র দানের ক্ষমতা।-(১) ধারা ৭ এ যাহা কিছুই থাকুক না কেন, পক্ষগণ ভিন্নভাবে সম্মত না হইলে, কোন পক্ষের আবেদনের প্রেক্ষিতে সালিসী কার্যধারা চলাকালীন কিংবা তৎপূর্বে অথবা ধারা ৪৪ বা ৪৫ এর অধীন সালিসী রোয়েদাদ কার্যকর না হওয়া পর্যন্ত আন্তর্জাতিক বাণিজ্যিক সালিসের ক্ষেত্রে হাইকোর্ট বিভাগ এবং অন্যান্য সালিসের ক্ষেত্রে আদালত নিম্ন বর্ণিত বিষয়ে আদেশ প্র দান করিতে পারিবে, যথাঃ-

(ক) নাবালক বা অপ্র কৃতিস্থ ব্যক্তির পক্ষে সালিসী কার্যধারা পরিচালনার জন্য অভিভাবক নিয়োগ,

(খ) সালিসী চুক্তির অন্তর্ভুক্ত কোন বিষয়বস্তু হিসাবে অন্তর্ভুক্ত কোন মালামাল বা সম্পত্তির অন্তর্বর্তীকালীন হেফাজত বা বিক্রয় বা অন্য কোন সংরক্ষণমূলক ব্যবস্থা গ্রহণ,

(গ) কোন পক্ষ কর্তৃক সালিসী রোয়েদাদ কার্যকর করিবার ক্ষেত্রে প্র তিবন্ধকতা সৃষ্টির লক্ষ্যে কোন সম্পত্তি হস্তান্তর কিংবা স্থানান্তরের উপর নিষেধাজ্ঞা,

(ঘ) সালিসী কার্যধারার অন্তর্ভুক্ত কোন বিষয়বস্তু হিসাবে অন্তর্ভুক্ত কোন মালামাল বা সম্পত্তি আটক, সংরক্ষণ, পরিদর্শন, চিত্রায়ন, ফটোসংগ্রহ হ, হেফাজতকরণ, তথ্য ও নমুনা সংগ্রহ হ, পর্যবেক্ষণ, পরীক্ষণ বা সাক্ষ্য গ্রহণ করিবার জন্য এবং তদুদ্দেশ্যে কোন পক্ষের দখলকৃত ভূমি বা ইমারতে প্র বশের জন্য যে কোন ব্যক্তিকে খমতা অর্পণ,

(ঙ) অন্তর্বর্তীকালীন নিষেধাজ্ঞা,

(চ) রিসিভার নিয়োগ, এবং



(ছ) আদালত অথবা হাইকোর্ট বিভাগের নিকট যুক্তিসঙ্গত বা যথাযথ  
প্র তীয়মান হয় এইরূপ অন্য যে কোন অন্তর্বর্তীকালীন সংরক্ষণমূলক  
গ্র হণ।

(২) কোন আইনগত কার্যধারার বিষয়ে আদালত বা হাইকোর্ট বিভাগের যেইরূপ  
ক্ষমতা রহিয়াছে উপ-ধারা (১) এর অধীন আদেশ প্র দানের ক্ষেত্রেও আদালত বা,  
ক্ষেত্রমত, হাইকোর্ট বিভাগের সেইরূপ ক্ষমতা থাকিবে।

(৩) উপ-ধারা (১) এর অধীন প্র াপ্ত আবেদন সম্পর্কে আদালত বা  
হাইকোর্ট বিভাগ কর্তৃক আদেশ প্র দানের পূর্বে অপর পক্ষকে নোটিশ প্র দান  
করিতে হইবেঃ

তবে শর্ত থাকে যে, আদালত বা, ক্ষেত্রমত, হাইকোর্ট বিভাগ যদি এই মর্মে  
সন্তুষ্ট হয় যে, কোন বিষয়ে তাৎক্ষণিক আদেশ প্র দান করা না হইলে  
অন্তর্বর্তীকালীন ব্যবস্থা গ্র হণ সংক্রান্ত উদ্দেশ্য ব্যর্থ হইবে, তাহা হইলে উক্তরূপ  
নোটিশ প্র দানের প্র যোজন হইবে না।

(৪) আদালত বা হাইকোর্ট বিভাগ যদি এই মর্মে সন্তুষ্ট হয় যে, কোন বিষয়ে উপ-ধারা  
(১) এর অধীন কার্যক্রম গ্র হণের ক্ষমতা সালিসী ট্র াইবুনাালের নাই অথবা  
সালিসী ট্র াইবুনাাল ধারা ২১ এর অধীন সংশ্লিষ্ট বিষয়ে আদেশ প্র দানে ব্যর্থ  
হইয়াছে, তাহা হইলে আদালত বা, ক্ষেত্রমত, হাইকোর্ট বিভাগ, এই ধারার অধীন  
আদশ প্র দান করিতে পারিবে।

(৫) এই ধারার অধীন প্র দত্ত কোন আদেশ আদালত বা, ক্ষেত্রমত,  
হাইকোর্ট বিভাগ, যথার্থ মনে করিলে বাতিল, পরিবর্তন বা সংশোধন করিতে পারিবে।

(৬) উপ-ধারা (১) এর অধীন প্র দত্ত কোন আদেশ সংশ্লিষ্ট কোন বিষয়ে  
ক্ষমতাপ্র াপ্ত কোন সালিসী ট্র াইবুনাাল কিংবা অন্য কোন প্র তিষ্ঠান বা ব্যক্তি  
কর্তৃক উক্ত বিষয়ে কোন আদেশ প্র দান করা হইলে, সেই বিষয়ে আদালত বা,  
ক্ষেত্রমত, হাইকোর্ট বিভাগ কর্তৃক প্র দত্ত আদেশ সম্পূর্ণ কিংবা ক্ষেত্রমত উক্ত  
আদেশের সংশ্লিষ্ট অংশ বিশেষ অকার্যকর হইবে।”

On plain reading of the said provision, we simply find that, the application of section 7 has been made redundant in filing any application under section 7ka of the Arbitration Act. So it is crystal clear that, without resorting to section 7, an aggrieved party has every authority to pray for any restrained order in regard to dispute occurred by invoking section 7ka of the Act where the provision of either section 7 or section 12 will not put any bar where clause (umo) of section 7ka of the Act empowers the District Judge to pass any interim order. So, invariably, the petitioner has rightly filed the application under section 7ka without filing any application either under section 7 or section 12 of the Act. So, the submission placed by the learned counsel for the opposite-party no. 1 clearly falls through.

Furthermore, the revision itself is well maintainable despite of the fact that, the petition of the Miscellaneous Case has been returned to the petitioner which cannot be termed as any appealable order within the meaning of order 43, rule 1 of the Code of Civil Procedure. Because on going through the Code of Civil Procedure, in particular, section 2 thereof, we don't find any definition in regard to the "plaint" therein. But what we find from section 141 of the Code of Civil Procedure that, the procedure in proceeding any civil suit will equally be applicable in the proceeding of Miscellaneous Case. That Miscellaneous Case by and large arises out of any order passed in a civil suit against various orders like under order 9 or 21 of the Code of Civil Procedure. But admittedly to file a Miscellaneous Case under section 7, 7ka or section 12 of the Arbitration Act, it has to be

initiated through a “petition” which cannot be treated as plaint nor it is guided by section 141 of the Code of Civil Procedure.

Then again, only in section 48 of the Arbitration Act, there has been provision to prefer an appeal before this court and other than that, any order passed by the learned District Judge while adjudicating a Miscellaneous Case under sections 7, 7ka or 12 will certainly be revisable order and thus the instant revision is quite maintainable having no application of order 43 rule 1 of the Code of Civil Procedure.

Insofar as regards to the legal recourse so taken by the petitioner, we find that, as per the “contract agreement” dated 03.08.2015, the petitioner at the first instance invoked the provision provided in clause 94.1 and 94.2 which denotes “settlement of disputes” and since it has been failed. the petitioner then invoked the provision so provided in clause 94.3 by initiating an Arbitration Miscellaneous Case for appointing arbitrator.

So we can find that, the petitioner has left no stone unturned to resolve the dispute with the opposite-party who should not have resisted such endeavour rather to co-operate the petitioner in order to resolve the dispute within the frame work of the contract agreement dated 03.08.2015. All in all, since section 7ka of the Arbitration Act is not dependent on section 7 or 12 so there is no legal bar to proceed with the Arbitration Miscellaneous Case No. 328 of 2023 and hence, we don't find any iota of substance in the impugned judgment and order which is liable to be struck down.

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

The order dated 12.11.2023 passed by the learned Senior District Judge, Dhaka in Arbitration Miscellaneous Case No. 328 of 2023 is thus set aside.

The learned District Judge, Dhaka is hereby directed to re-admit the Miscellaneous Case No. 328 of 2023 filed under section 7ka of the Arbitration Act, 2001 and then proceed with the same and dispose it of within a period of 3(three) months.

The order of status quo granted at the time of issuance of the rule will continue till disposal of the said Miscellaneous Case.

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

**Md. Bashir Ullah, J:**

I agree.