

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

First Miscellaneous Appeal No. 163 of 2023

In the matter of:

Monjil Housing and Developer Limited, House
No. 61, Road No. 18, Sector-7, Uttara, Dhaka
represented by the Managing Director Md.
Zahirul Alam Chowdhury.

... Appellant

-Versus-

Mst. Kohinur Begum, wife of Md. Esob Khan
and others

... Respondents

Mr. ASM Shahriar Kabir with
Mr. Md. Saiyedul Islam, Advocates

... For the appellant

Mr. Md. Shareful Islam, Advocate

... For the respondent nos. 1-3

Heard on 23.06.2025 and 24.06.2025.
Judgment on 24.06.2025.

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

Md. Mozibur Rahman Miah, J.

At the instance of the respondent-petitioner (Developer) in
Arbitration Miscellaneous Case No. 510 of 2018, this appeal is directed
against the judgment and order dated 04.04.2023 passed by the learned
District Judge, Dhaka in the said Miscellaneous Case which was heard
along with the Arbitration Miscellaneous Case No. 525 of 2018 filed by

the present respondent nos. 1-3 (some of the land owners) dismissing both the Miscellaneous Cases.

The short facts leading to preferring this appeal are:

The present appellant, namely, Monjil Housing and Developer Limited on 20.03.2011 entered into an agreement with the respondent nos. 1-5 for constructing a 9-storey building in 9.5 kathas of land. Subsequently, a power of attorney was also executed among the parties on 15.06.2011. It was agreed in the agreement that the developer will complete construction of the building within 36(thirty-six) months with a grace period of another 6(six) months and to hand over possession of the building by the appellant. In view of the above condition, the property was handed over to the appellant on 01.02.2012. Since the tenure of completing the building expired on 12.08.2015 and the appellant could not complete constructing the building dispute arose among the parties and then the land owners, respondent nos. 1-5 served a notice of arbitration on 14.02.2016 to the appellant requesting it to appoint its arbitrator to resolve the dispute. But as the present appellant failed to appoint its own arbitrator, the land owners then initiated an Arbitration Miscellaneous Case No. 257 of 2016 under section 12 of the Arbitration Act, 2001 before the learned District Judge, Dhaka and accordingly, it appointed one, Mr. Md. Mozibur Rahman, Advocate Supreme Court of Bangladesh as the arbitrator for the land owners and one, Mr. Muhammad Ashraf Ali, Advocate Supreme Court of Bangladesh as the arbitrator for the appellant-developer. Following such appointment both the arbitrators then nominated one, Mr. Justice Farid Ahmed as the

Chairman of the arbitral tribunal. In the proceeding, the land owners and the developer then filed statement of claim and statement of defence and that of counter-claim. However, after considering the respective assertion of both the parties, the tribunal then on 02.07.2018 passed award in the following manner:

- “i. the claim of the Claimants is partially allowed.*
- ii. the Claimants are entitled to get the rental damage at the rate as agreed in clause 18 of the Contract from 12.08.2015 till the completion of project;*
- iii. the Respondents are directed to complete the rest of the construction work within 9(nine) months from the date of receipt of the award;*
- iv. the Claimants are directed to hand over the vacant land to the Respondent to facilitate the construction work and not to create an obstruction in the construction work; the Respondent must pay the entire rental damage from 12.08.2015 to July 2018 i.e. Tk. 1,20,00 x 36 months= Tk.43,20,000/- (forty three lacs and twenty thousand taka) to the Claimants before starting construction work and continue to pay the rental damage till completion of work; the Respondent shall not hand over possession to any new purchaser before handing over possession of the completed flats to the Claimants according to their respective share; the possession of one of the Claimants according to their respective share; the possession of one of the Claimants*

who is staying in the project should not be disturbed; if the respondent fails to pay up to date rent to Claimants and start construction work within 2(two) months from the date of award then both the agreement dated 20.03.2011 Power of Attorney dated 15.06.2011 shall stand terminated;

v. in the event of termination of contract, the Claimants would be entitled to get the rental damages from the Respondent at the rate as agreed in clause 18 of the contract from 12.08.2015 till date and the Claimant is entitled to get back the possession of the land including the structure there on free from all encumbrances;

vi. The Respondent is entitled to get back Tk. 50,00,000/- (fifty lacs taka) from the signing money they have paid to the Claimants and Tk. 2,79,25,704/- (two crore seventy nine lacs twenty five thousand seven hundred and four taka) as the cost of construction as per report of the experts after adjudgment of the up to rent subject to condition that respondent would have to furnish encumbrance no objection certificate from the Bank regarding the loan obtained in respect of the disputed property.

vii. the counter-claim of the Respondent is rejected;

viii. all other issues shall accordingly stand disposed of, and

ix. the Claimants and the Respondent shall bear their all own costs and expenses.”

Nevertheless being aggrieved with the said award both the developer-appellant and that of the land owners-respondent nos. 1-3 preferred two Miscellaneous Cases being Arbitration Miscellaneous Case No. 510 of 2018 as well as Arbitration Miscellaneous Case No. 525 of 2018 respectively before the District Judge under sections 42 and 43 of the Arbitration Act, 2001. In order to dispose of the said Miscellaneous Cases, the learned District Judge then framed as many as 8(eight) different issues and after hearing the parties to the Miscellaneous Cases, the learned District Judge by an exhaustive judgment ultimately dismissed both the Miscellaneous Cases vide impugned judgment and order dated 04.04.2023.

Feeling aggrieved by and dissatisfied with the said judgment and order passed in Arbitration Miscellaneous Case No. 510 of 2018, the developer as appellant then preferred this appeal.

Mr. ASM Shahriar Kabir along with Mr. Md. Saiyedul Islam, the learned counsels appearing for the appellant by reading out the impugned judgment and order at the very outset submits that he would not press the ingredients so provided in section 43 of the Arbitration Act for setting aside an award but only submits that since both the parties to the Miscellaneous Cases prayed for setting aside the award, the learned District Judge ought to have allowed the cases. In that regard, the learned counsel by supplying us a photocopy of “Law of Arbitration and Conciliation” authored by S. K. Chawla and by referring to paragraph no. 11 thereof submits that, the learned District Judge ought to have allowed both the Miscellaneous Cases on setting aside the award on the basis of

consent or compromise among the parties and without doing so, the learned Judge erred in law in dismissing the cases. With that lone submission, the learned counsel finally prays for allowing the appeal.

On the contrary, Mr. Md. Shareful Islam, the learned counsel appearing for the respondent nos. 1-3 submits that there has been no illegality or impropriety in the impugned judgment and order which calls for any interference by this Hon'ble court.

The learned counsel further contends that since there has been no ground taken by the appellant meant for setting aside the award as provided in section 43 of the Arbitration Act and any ground to that effect in the appeal so the appeal is liable to be dismissed.

Though the matter has been appearing at the top of the list and we heard the learned counsel for the appellant and that of the learned counsel for the respondent nos. 1-3 yet the learned counsel for the respondent nos. 4 and 5 did not turn up. Further, the respondent nos. 4 and 5 did neither contest Miscellaneous Case No. 510 of 2018 so preferred by the appellant nor of the Miscellaneous Case No. 525 of 2018 so preferred by the respondent nos. 1-3, nor they preferred any appeal against the impugned judgment so we are of the view that the respondent nos. 4 and 5 has got no *locus standi* to contest the instant appeal.

Be that as it may, we have considered the submission so placed by the learned counsels for the appellant and those of the respondent nos. 1-3 and perused the impugned judgment and order vis-à-vis the provision so provided in section 43 of the Arbitration Act, 2001.

On going through the impugned judgment and order, we find that though the learned District Judge has penned a very exhaustive judgment but it does not contain any discussion or observation in regard to the legal point provided in section 43 of the Act. The learned District Judge rather in the fag-end of the judgment observed that, “*The impugned award is not opposed to the law of the country and is not in conflict with the public policy of Bangladesh*”. The said observation however is the *sine qua non* for setting aside an award which has been enshrined in section 43 (খ) (আ) and (ই) of the Arbitration Act, 2001. The learned counsel appearing for the appellant going beyond the said legal proposition rather relied upon paragraph no. 11 of “Law of Arbitration and Conciliation” authored by S.K. Chawla which has got no manner of application in setting aside an award. On top of that, what has been stated in the said paragraph has nothing to do with the provision of section 43 of the Act basing on which an award can be set aside as neither the appellant nor the respondent nos. 1-3 ever arrived at any compromising among themselves for setting aside the award when they preferred two separate Miscellaneous Cases challenging the award dated 02.07.2018. Since we don’t find the award runs counter to any public policy and it is opposed to any law of our country so we are of the view that, there has been no scope to allow the appeal on setting aside the impugned judgment and order passed by the learned District Judge.

Regard being had to the above facts and circumstances, we don’t find any iota of substance in the appeal.

Accordingly, the appeal is dismissed however without any order as to costs and the impugned judgment and order dated 04.04.2023 passed in Arbitration Miscellaneous Case No. 510 of 2018 by the learned District Judge, Dhaka is hereby affirmed.

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

Md. Bashir Ullah, J.

I agree.