

**IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(Civil Appellate Jurisdiction)  
First Miscellaneous Appeal No. 7 of 2022  
with  
(Civil Rule No. 371 (FM) of 2021)  
In the matter of:**

Prince Builders Limited and another  
Opposite party nos. 9 and 10-Appellants  
-Versus-  
Najmun Nahar and others  
Applicants-Respondents

Mr. A.K.M. Badruddoza, Senior Advocate with  
Mr. Deluwar Hussain, Advocate  
...For the appellants

Mr. Md. Akhtaruzzaman, Advocate with

Mr. S.M. Jahangir Alam, Advocate  
... For the respondents.

**Heard on 18.05.2025**  
**Judgment on 19.05.2025**

**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, those have heard together and are being disposed of by this common judgment.

At the instance of the opposite parties in Arbitration Miscellaneous Case No. 193 of 2018 initiated under section 12 of the Arbitration Act, 2001, this appeal is directed against the order dated 07.02.2021, passed by the learned District Judge, Chattogram allowing the case on contest.

The short facts leading to preferring this appeal are:

The respondent nos.1 to 3 as applicants filed the above-mentioned Arbitration Miscellaneous Case under section 12 of the Arbitration Act before the learned District Judge, Chattogram seeking appointment of arbitrators. The case of the applicants, as stated in the application, is that the opposite party nos. 1-6 on receipt of Taka 18 lakh from the applicants entered into a registered agreement being No. 14320 dated 24.08.2011 and on receipt of further sum of Taka 14 lakh appointed Prince Builders Ltd. as attorney by irrevocable power of attorney No. 14321 to construct a multistoried building, preserve, sale, purchase, develop, with 58% shares of the constructed building along with corresponding land. It is stipulated in clause 28 of the agreement that if any dispute arises between the parties, that shall be resolved under the Arbitration Act. The opposite parties could not hand over possession of the scheduled property to the applicant nos.1-3 as per condition no. 26 of the contract and violated condition no. 24 of the said contract. Though the opposite parties described the schedule properties as of viti-land in the contract but the Chattogram Development Authority (CDA) treated the land as of hilly land for which they did not give permission for the development of the land and construction of the building. Subsequently, when the applicants contacted the opposite parties, they requested the applicants to do everything necessary to construct the building. The applicants made the hilly, uncultivated jungle land to plain land and constructed retaining wall surrounding the scheduled property conducting different types of surveys including digital survey, soil test,

land survey and obtained approval of the plan for erecting eight-storey building from the CDA spending Taka 78 lakh and commenced construction of the building. The applicants constructed eight-storey building spending Taka 9 crore. The applicants on 07.09.2015 entered into flat distribution contract with the opposite parties. Thereafter, the opposite parties took possession of their respective flats. Internal dispute has been created by the Chairman of Prince Builders Limited who out of greed managed to halt the work in the scheduled property. She even filed Miscellaneous Case Nos. 452 of 2017 and 1652 of 2017 and suspended the construction work for a long time. She in collusion with the opposite parties disconnected the electric line which caused total postponement of the construction work giving rise to various proceeding and suits among the Chairman and directors of the Company. After that, the opposite parties filed several cases with false statements against the applicants and in those cases the opposite parties admitted the execution of registered power of attorney and registered contract. The applicants filed Other Class Suit No. 105 of 2018 on 08.07.2018 before the Court of Senior Assistant Judge, Chattogram against the opposite parties and Chairman of the Company seeking permanent injunction so that they cannot make further damage to the Company, illegally evict and dispossess the applicants from the scheduled property. The opposite parties illegally created a deed of revocation of power of attorney No. 10076. The Board of Directors served notice upon Jahanara Begum under Section 4(3) of the Power of Attorney Act. The opposite parties unilaterally and unlawfully misappropriated and grabbed the building

constructed by the company creating deed of revocation of power of attorney No. 10076 on 29.07.2018, unlawfully and collusively.

The applicants have failed to settle the dispute amicably in accordance with the notice served upon the opposite parties through their lawyers on 08.08.2018 to appoint Arbitrator under the the Arbitration Act, 2001 and section 36(3) of the Real Estate Development and Management Act, 2010 within 30 days. The opposite parties though received the notice regarding resolve the dispute through Arbitration within 30 days but without making any reply to the notice or taking any step to that affect rather remained silent which caused a serious loss to the Company. Hence, the applicants filed the Arbitration Miscellaneous Case.

The opposite party nos. 1 to 6 and proforma opposite party nos. 9 and 10 contested the case by filing separate written objection denying all the material allegations so made in the application, contending *inter alia* that the application has not been preferred under the provisions of the Arbitration Act, 2001. No resolution of the Board of Directors of the Company has been passed to file the Arbitration Miscellaneous Case in the present form. The Arbitration Miscellaneous Case in question has been filed by 3 individuals named Nazmunnahar, Abu Niaz Md. Shafiqul Islam and Monjurul Islam who have no legal right to file the case. The applicants did not comply with the provisions of the Real Estate Act, 2010 in filing the case. The notice dated 08.08.2018 of the applicants is totally illegal, beyond jurisdiction and unauthorized exercise because no bilateral contract or power of attorney has been

executed by the land owners in favour of the applicants and as such the Arbitration Miscellaneous Case being filed on the basis of so-called notice dated 08.08.2018 is liable to be dismissed. It has also been stated that Prince Builders Ltd. is the opposite party no. 9 of the Arbitration Miscellaneous Case and if it is necessary to take legal steps to protect the title, interest of the opposite party no. 9 then it would take legal and proper steps. It is admitted by both sides that opposite party number 10, Jahanara begum is the Chairman of the opposite party no. 9. The instant Arbitration Miscellaneous Case has been preferred to destroy the company and as such the Arbitration Miscellaneous Case is liable to be dismissed.

Upon hearing the parties, the learned District Judge, Chattogram allowed the Arbitration Miscellaneous Case No. 193 of 2018 vide judgment and order dated 07.02.2021 and thereby appointed one, Advocate Shobuj Chowdhury as Arbitrator for the applicants and Advocate Mohammad Nazmul Ahasan Khan, the Government Pleader (G.P), Chattogram as Arbitrator for opposite party and directed the arbitrators to appoint an umpire.

Being aggrieved by and dissatisfied with the said order dated 07.02.2021 passed by the learned District Judge, Chattogram in Arbitration Miscellaneous Case No. 193 of 2018 the opposite party nos. 9 and 10 as appellants preferred the instant appeal.

On the date of admitting the appeal, the appellants as applicants filed an application for stay of the impugned order dated 07.02.2021 and this court vide order dated 11.08.2021 issued rule which gave rise to

Civil Rule No. 371 (FM) of 2021. Afterwards, the appellants filed an application before the learned District Judge, Chattogram for stay of the operation of the impugned order but without passing any order the learned judge asked the appellants to submit an order of stay of this court. At that stage, the opposite parties-appellants filed another application for an order of stay. The respondents-opposite party nos. 2 and 3 contested the application by filing a counter-affidavit. Upon hearing the parties, this court allowed the application and stayed the operation of the impugned order dated 07.02.2021 passed in Arbitration Miscellaneous case no.193 of 2018 for a period of three months on 18.01.2022 which was extended from time to time and lastly the same was extended on 19.03.2025 for further period of two months.

Mr. A.K.M. Bodruddoza, the learned senior Advocate along with Mr. Deluwar Hossain, the learned counsel appearing for the appellants contends that, the respondent nos. 1-3 as applicants initiated the Arbitration Miscellaneous Case on the basis of Clause-28 of the registered contract dated 24.08.2011 of which they are not parties, rather the contract was executed among opposite party nos. 1-6 as land owner and Prince Builders Ltd. represented by its Chairman, Jahanara Begum (appellant-opposite party no.10) as developer. Moreover, the opposite party nos. 1-6 executed registered irrevocable general power of attorney in favour of appellant-opposite party no. 10 and therefore the applicants nos. 1-3 have no *locus standi* to file the arbitration Miscellaneous Case but the trial court has failed to appreciate the said vital aspect of the case

and very unfairly passed the impugned judgment and order which cannot be sustained in law.

He next contends that, the applicants-respondents without having any resolution passed by the company filed the Arbitration Miscellaneous Case but the Court below very illegally overlooked that very legal aspect and passed the impugned order without applying its judicial mind and as such, it is liable to be set aside. With such submissions, the learned Counsel finally prays for allowing the appeal by setting aside the impugned order and make the rule absolute.

*Per contra*, Mr. Md. Akhtaruzzaman, the learned counsel along with Mr. S.M. Jahangir Alam, the learned Advocate appearing on behalf of the opposite parties-respondents contends that the opposite party no.1 is the Managing Director of Prince Builders Ltd. and opposite party nos. 2 and 3 are the directors of the said company. On the other hand the appellant no. 2-proforma opposite party no. 10 is the Chairman of the company and the Chairman of the company has no *locus standi* to file this appeal and hence, the appeal is liable to be dismissed and the rule issued by this Court is liable to be discharged.

We have considered the submissions so advanced by the learned counsels for the appellants and the respondents at length, perused the memorandum of appeal, counter-affidavit, impugned order and the materials on record.

It appears from registered agreement deed dated 24.08.2011 (Annexure-C to the application for stay) that the same was executed between one, Md. Ozi Ullah and others (opposite party nos.1-6 of the

Arbitration Miscellaneous Case) and Jahanara Begum, Chairman, Prince Properties and Developer (Proforma opposite party no.10) for the construction of a high rise building. In the agreement, there is an arbitration clause vide clause no. 28, which speaks as follows:

“২৮। পক্ষদ্বয় অত্র চুক্তিপত্রের শর্তাবলী মানিয়া চলিতে বাধ্য থাকিবেন। তবে কোন কারণে পক্ষদ্বয়ের মধ্যে অত্র চুক্তিপত্রের শর্ত কিংবা প্রাসঙ্গিক কোন বিষয়ে মনোমালিন্য হইলে (স্থানীয় গণ্যমান্য) সালিসদের মাধ্যমে প্রচলিত সালিশী আইন মোতাবেক বিতর্কিত বিষয়ে মিমাংসা করিয়া লইবেন।”

It is evident that the arbitration will be held between the parties to the agreement dated 24.08.2011. Since, the applicants-respondents of the Arbitration Miscellaneous Case are not parties to the above- mentioned agreement so, they have no *locus standi* to file the Arbitration Miscellaneous Case before the learned District Judge, Chottogram.

It also appears from Annexure-C1 to the application for stay that one, Md. Ozi Ullah and others (opposite party nos.1-6 of the Arbitration Miscellaneous Case) executed an irrevocable power of attorney dated 24.08.2011 in favour of Jahanara Begum, Chairman, Prince Builders Ltd. (Proforma opposite party no.10) and therefore applicants of the Arbitration Miscellaneous Case are also not party in the above mentioned power of attorney in respect of construction of a high rise building.

Further, upon perusal of the written objection filed by the opposite party nos. 9 and 10 in Arbitration Miscellaneous Case it appears that the said opposite parties categorically stated in paragraph no. 4 that the petitioners did not obtain any resolution passed by the Board of



Directors of the Prince Builders Ltd. and hence they have no *locus standi* to file Arbitration Miscellaneous Case. The opposite party nos. 9 and 10 of the Arbitration Miscellaneous Case categorically stated in paragraph nos. 5, 7 and 9 of the written objection that the petitioners have no right to file the case since they are not the parties to the agreement.

It also appears from the deed of agreement dated 24.08.2011 the appellant-opposite party no.10 signed the agreement as Chairman of “Prince Properties and Developer” but the petitioner no. 1 is claiming as Managing Director of the “Prince Builders Limited” and petitioner nos. 2 and 3 are claiming as Directors of the Prince Builders Ltd. However, the learned District Judge without considering the written objection and without applying judicial mind passed the impugned order which is bad in law.

It is our considered view that a third party who is not a signatory or any person who is not party to the arbitration agreement does not have the right to initiate proceedings under section 12 of the Arbitration Act, 2001 and he/she also can not file an application for appointment of arbitrators under the aforesaid section when there is no exceptional circumstances or specific cause.

Given the above facts, circumstances and discussion, we do not find any earthly reason to sustain the impugned order which is liable to set aside.

Resultantly, the appeal is allowed, however without any order as to cost.

The impugned order no. 24 dated 07.02.2021 passed by the learned District Judge, Chattogram in Arbitration Miscellaneous Case No. 193 of 2018 is hereby set aside.

Since the appeal is allowed, the connected rule being Civil Rule No. 371 (FM) of 2021 is thus made absolute.

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

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

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

I agree.