

Present:
Mr. Justice Md. Iqbal Kabir
And
Mr. Justice Md. Riaz Uddin Khan

Civil Revision No. 481 of 2024

Kamrul Ashraf Khan
....Petitioner

Versus
Bangladesh Chemical Industries Corporation (BCIC)
represented by its Chairman of BCIC Building (4th
Floor), 30-31, Dilkusha C/A, Dhaka-1000,
Bangladesh, and others.
....Opposite Parties

Mr. Shah Newaz, Advocate
....For the Petitioner

Mr. Mohammad Ashraf Uddin Bhuiyan, Advocate
....For the Opposite Party No. 1

Ms. Umme Apanan, Advocate with
Mr. Md. Abu Nasar, Advocate
....For the Opposite Party No. 3

Judgment on 09.07.2025.

Md. Iqbal Kabir, J:

The instant civil revision has been filed challenging the judgment and order dated 30.11.2023 passed by the learned District Judge, Dhaka in Arbitration Miscellaneous Case No. 11 of 2023 rejecting the application under section 7A of the Arbitration Act, 2001 filed by the applicant petitioner for an order of injunction restraining the opposite party No. 1 for taking any step for encashing the scheduled bank guarantees or to receive any payment there under.

The facts of the case, in short, are that the petitioner conducted his business in the name and style of M/S. Poton Traders, as the sole proprietor engaged in the business of providing services as receiver and transporter of fertilizer to various bodies including the opposite party No. 1. The petitioner being a local carrier entered into several contracts with the opposite party No. 1 for the transportation and stacking of bulk fertilizers imported by the opposite party No. 1 from various foreign sources. Under the terms and conditions, the petitioner should transport and stack the required quantity of fertilizer in the allocated go-downs/warehouses of the opposite party No. 1 and for such

purpose of such business petitioner was required to furnish bank guarantees in various amounts before initiation of the performance, under clause 3 titled as "Security Deposit" of each contract. However, the opposite party No. 1 requested the petitioner to complete the delivery of fertilizer of a total amount of 72680.00 MT. The petitioner, in reply, informed that the actual amount of non-delivered fertilizers is 62360.80 MT and the petitioner will deliver the fertilizers in a short time.

However, it has been alleged, at one point in time, the opposite party No. 1, vide its letters containing several references, asked the Proforma-Opposite Party Nos. 3 and 4 to encash the Bank Guarantee, if the validity period of the Bank Guarantee is not extended.

Against such intimation related to encasement order, this petitioner filed an Arbitration Miscellaneous Case No. 11 of 2023 along with an application under section 7A of the Arbitration Act read with section 151 of the Code of Civil Procedure, and sought an order of injunction from taking any step for encashing the scheduled bank guarantees or to receive any payment there under.

Upon hearing the parties, the Court below vide its order dated 30.11.2023 rejected the application along with the Arbitration Case. Against which the present Petitioner filed this Civil Revision wherein this Court passed an interim order, thereby, Opposite Party by an order of temporary injunction for encashing the scheduled bank guarantees or receiving any payment thereunder for a period of 3 (three) months. Subsequently, the period of injunction was extended.

Mr. Shah Newaz, learned Advocate appearing on behalf of the petitioner, submits that the initiative on the part of the petitioner to resolve the dispute failed due to non-cooperation of the opposite party No. 1. According to him, the dispute has to be settled in the arbitration, without exhausting opportunity to resolve the matter through Arbitration, encashment is illegal. He submits that no notice was served. According to him, without giving any prior show cause notice or giving a reasonable opportunity to the petitioner to clarify that the petitioner's encashment is illegal and arbitrary.

He submits that the relevant warehouse authority refused to accept the deliveries and/ or to store the fertilizers as there was no available space in the warehouses, and in this context, issued several letters. Moreover, during the pandemic, there was a considerable crisis in terms of the availability of workers and transportation, which has brought transportation to a partial halt. Moreover, petitioner was not paid outstanding bills under the Contracts, in order to continue providing uninterrupted service, despite sending multiple letters to opposite party No. 1.

Mr. Mohammad Ashraf Uddin Bhuiyan, the learned Advocate for the opposite party No. 1, by filing counter-affidavit submits that section 126 of the Contract Act, 1872 states that- "A "contract of guarantee" is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the "surety" the person in respect of whose default the guarantee is given is called the "principle debtor", and the person to whom the guarantee is given is called the "creditor". A guarantee may be either oral or written". In this regard, it is submitted that scheduled bank guarantees are indeed guarantees (s) under the law of contract. He submits that Article 2 of ICC Uniform Rules for Demand Guarantees (URDG 758) defines Demand Guarantee "Demand Guarantee or Guarantee as under-or Guarantee means any signed undertaking, however named or described, providing for payment on presentation of a complying demand". In this regard, it is submitted that the said scheduled bank guarantees come under the purview of Article 2 of the ICC Uniform Rules for Demand Guarantees (URDG 758). According to him, being a separate contract, a Bank Guarantee can be encashed at any time before expiry of its validity.

Mr. Bhuiyan, against the contention of the petitioner, argued that if a Bank Guarantee is placed for encasement within time, it can be encashed. Relying upon the principle enunciated in a decision, he submits that if any Bank guarantee is placed in time for encashment, the issuing bank has no legal right to refuse payment unless they have an issue of fraud. This principle has been enunciated in the case of Uttara Bank vs. Macneill & Kilburn, reported in 33 DLR (AD) 298, wherein it has been held that there cannot be any injunction whatsoever upon any Bank Guarantee. Therefore, it would be against the principle of law or the above decision settled by our Apex Court to give an injunction for encashment of the Bank Guarantee. According to him, guaranteeing an injunction decision is erroneous and conflicting with the settled principle of law established by our jurisdiction, as it was held in the case of Nuvista Pharma Limited vs. Chairman, Board of Revenue and others, reported in 65 DLR (AD) 302 that an injunction of the bank guarantee cannot be sustained.

We have gone through the civil revision as well as the counter affidavit filed by the opposite party No. 1 and opposite party No. 3, and also the submission placed before us by the learned Advocate for the petitioner, and we have given our anxious consideration to the submissions made by the parties involved therein.

Upon hearing the parties, it was revealed from the fact that the opposite party No. 1, by issuing a letter, gave intimation to the pro-forma opposite party

Nos. 3 and 4 to encash the Bank Guarantees, if the validity period of those Bank Guarantees is not extended by the petitioner.

It transpired that the petitioner, being a local carrier, executed several contracts with the opposite party No. 1 for the transportation of fertilizers and for such purpose petitioner furnished Bank Guarantees before initiation of the performance, as "Security Deposit" of each contract. However, the contract between the parties has been canceled; therefore, by issuing a letter, the Bank was asked to encash the Bank Guarantees if the validity period is not extended. It is admitted in law that a Bank Guarantee is a separate contract, and being a separate contract, a Bank Guarantees can be encashed at any time before expiry of its validity. In this context, it has been brought to notice that if any Bank Guarantees is placed in time for encashment, the issuing bank has no legal right to refuse payment unless they have an issue of fraud. In the instant matter, it is not the case of the petitioner that there is any allegation of fraud.

In the present case, the demand for encashment of the bank guarantees was not placed before the Bank by the opposite party No. 1. Though the opposite party, by a letter stated that it can be encashed, if the bank guarantees period is not extended by the petitioner.

It has claimed, at the time of hearing of the injunction application, it had informed that the bank guarantees had already been encashed, and on that count Court below did not grant the injunction at the relevant point of time, and such reflection has been made in the impugned order. The contention of the opposite party is not tenable, as long before, it has been settled that there cannot be any injunction whatsoever upon any Bank Guarantees. Therefore, it would be against the principle of law or the decision settled by our Apex Court. In this context, it can be said that the principle enunciated in the cited decisions would be applied, and in the presence of such a decision, there is no scope to grant an injunction, if any one place bank guarantees to the concerned Bank for encashment within the time. The Court below made such a decision, based on the principle enunciated earlier, not based on submission. Therefore, such a submission did not play any role in rejecting the injunction application.

In view of the above settled proposition of law, there cannot be any injunction whatsoever upon any Bank Guarantees only exception is in case of fraud, of which the bank has notice. Otherwise, it will be against the settled principle of law enunciated in the above-cited decisions. However, on such a view of law and facts, the submissions of the learned Advocate for the petitioner have no substance. The learned District Judge, Dhaka, correctly took the view, thereby rejected the application filed by the petitioner under section 7A of the Arbitration Act, 2001 for an order of temporary injunction from encashing the

scheduled bank guarantees or receiving any payment thereunder. Indeed, the impugned order dated 30.11.2023 does not suffer from any infirmity or illegality.

Given the above, we find no merit in the Rule, thus, the Rule has no legs to stand on, being devoid of substance, is destined to fail.

Accordingly, the Rule is discharged.

The order of injunction granted at the time of issuance of the Rule is hereby recalled and vacated.

No order as to cost.

Let a copy of this judgment and order be communicated to the Court concerned forthwith.

Md. Riaz Uddin Khan, J:
I agree.