

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

Present:

**Mr. Justice Md. Mozibur Rahman Miah
and**

Mr. Justice Md. Bashir Ullah

Civil Revision No. 263 of 2024

In the matter of:

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

And

In the matter of:

Md. Nur-un Nabi

--- Opposite party no. 2-Petitioner.

-Versus-

Karamat Ali Chowdhury and others

--- Petitioner-Opposite parties.

Mr. Mohammad Sajjadur Rahman, Advocate

---For the petitioner.

Mr. Syfuzzaman, Advocate

--- For the opposite party no. 1.

Heard on 09.03.2025

Judgment on: 10.03.2025

Md. Bashir Ullah, J

At the instance of the opposite party no. 2 in Arbitration Miscellaneous Case No. 82 of 2021, this Rule was issued calling upon opposite party no. 1 to show cause as to why the order being No. 20 dated 28.08.2023 passed by the learned District Judge, Chattogram in the aforesaid case directing the parties to submit name and address of an arbitrator for each should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

At the time of issuance of the Rule, the operation of the impugned order dated 28.08.2023 passed by the learned District Judge, Chattogram in the said Arbitration Miscellaneous Case was stayed for a period of 06(six) months however, no further step was taken by the petitioner to extend the earlier order of stay.

The salient facts, relevant for the disposal of the Rule are:

The opposite party no. 1 entered into an agreement being No. 13876 dated 01.09.2009 with the petitioner, company named, “Prachir Properties Limited” for development of the land and construction of a 9-storey building thereon subject to the terms and conditions set out therein. The opposite party no. 1 also executed a registered Irrevocable General Power of Attorney being No. 13877 dated 01.09.2009 and thereafter he handed over the vacant possession of the said land to the petitioner company. Subsequently, the petitioner company, also entered into a separate Deed of Agreement with the opposite party Nos. 2 to 6, to adjoin the land of the opposite party no. 1 with the land of opposite party Nos. 2 to 6 and construct 2 (two) separate 14-storey residential buildings adjacent to each other having common access road, stairs, lifts and other common facilities on the said lands for the mutual benefits of the parties. The parties agreed to adjoin the lands and share the common facilities including access roads with a view to avail more heights of the building and also to comply with the necessary Building Code and related rules and regulations. As per the said Agreement, the petitioner company was obligated to complete the construction and hand over the project within 30 (thirty) months along with 6 (six) months grace period totalling, 36

(thirty-six) months from the date of obtaining the plan to be approved from the concerned authorities. The agreement was executed in the year 2009 and the land was handed over to the petitioner company on 15.05.2010. The petitioner company took more than 3 years to obtain the approval of the plan from the Chattogram Development Authority (CDA) on 03.02.2013. It is assumed that the construction period commenced counting from the date of CDA approval, however, the period of 36 (thirty-six) months expired on 01.02.2016. Unfortunately, the company, utterly failed to construct even one-third of the proposed building within the validity of the said Agreement, thereby caused and has still been causing huge financial losses to the opposite party no. 1. Even after several requests and a series of meetings, the petitioner company, utterly failed to proceed and complete the construction of the said building. Finding no other alternative, the opposite party no. 1 vide letter dated 03.12.2017 informed the petitioner company, as to the expiry of the said agreement and cancelled the said Power of Attorney pursuant to section 4(3) of the Power of Attorney Act, 2012. After that, the opposite party no. 1 through his Advocate sent a legal notice under section 36(1) of the Real Estate Development and Management Act 2010 for settlement of the dispute but the petitioner did not come forward to settle the issues. Finding no other alternative, the opposite party no. 1 through his lawyer sent a 'Notice of Arbitration' dated 09.12.2021 manifesting its intention to invoke arbitration. The petitioner received the said Notice of Arbitration though in the said notice, the opposite party no. 1 informed the petitioner that the opposite party no. 1

has appointed one, Mr. Nawroz Md. Rasel Chowdhury, Barrister-at-Law & Advocate, Supreme Court of Bangladesh as Arbitrator on his behalf and requested the petitioner to appoint their arbitrator within 30 (thirty) days of receipt of that notice. The petitioner received the notice of arbitration but no arbitrator was appointed on their behalf though the statutory period of 30 (thirty) days elapsed compelling the petitioner to file Arbitration Miscellaneous Case under Section 12 of the Arbitration Act, 2001.

The petitioner as opposite party No.2 appeared in the Arbitration Miscellaneous Case by filing an application on 28.08.2023 under Section 36 (5) of the Real Estate Development and Management Act, 2010 praying for rejecting the Arbitration Miscellaneous Case stating *inter alia* that the application submitted under section 12 of the Arbitration Act, 2001 is not maintainable. There is no arbitration clause inserted in the agreement no. 13876, so the Miscellaneous Case initiated under section 12 is barred by section 9 of the Arbitration Act, 2001.

The learned District Judge, after hearing the parties by order no. 20 dated 28.08.2023 directed both the parties to submit the name and addresses of an arbitrator each.

Being aggrieved by and dissatisfied with the said order passed by the learned District Judge, the opposite party no. 2 as petitioner preferred this Civil Revision and obtained instant Rule and order of stay.

Mr. Mohammad Sajjadur Rahman, learned Advocate appearing on behalf of the petitioner contends that it has been prescribed in sections 9 & 12 of the Arbitration Act, 2001 that there must be an

arbitration agreement or arbitration clause between the contending parties to resolve the dispute where in the agreement dated 01.01.2009, there is no arbitration clause and hence, the proceeding initiated under section 12 is barred within the purview of section 9 of the Arbitration Act, 2001.

He further contends that no notice was served upon the petitioner following the provision of section 36 of the Real Estate Development and Management Act, 2010.

Mr. Rahman also submits that the learned District Judge, Chattogram committed an error of law resulting in an error in the decision occasioning failure of justice in passing the impugned order and therefore the same is liable to be set aside.

With those submissions, the learned counsel finally prays for making the Rule absolute.

Per contra, Mr. Syfuzzaman, learned Advocate appearing on behalf of the opposite party no. 1 contends that the petitioner-opposite party no. 1 filed the application under section 12 of the Arbitration Act, 2001 following the provisions enshrined in the *রিয়েল এস্টেট উন্নয়ন ও ব্যবস্থাপনা আইন, ২০১০* and Arbitration Act, 2001 and upon hearing the parties the learned District Judge, Chattogram very legally passed the order dated 28.08.2023 directing the parties to submit the name and address of arbitrator.

He further submits that the petitioner-opposite party no. 1 sent notice for arbitration nominating his own arbitrator asked the opposite

party nos. 1-2 to nominate an arbitrator within 30 days of the receipt of the notice, but the opposite party nos. 1 and 2-petitioner did not come forward to act as per the request compelling the petitioner-opposite party no. 1 to file the application under section 12 of the Arbitration Act, 2001 before the learned District Judge in terms of Clause 27 of the agreement dated 01.09.2009 having no illegality in it and finally prays for discharging the Rule.

We have heard the submissions of the learned Advocates for both sides, perused the Civil Revision application filed under section 12 of the Arbitration Act, the application filed by the opposite party no. 2 for rejecting the case, the impugned order passed by the Court and other materials on record.

Section 36(1) provides that if a dispute arises among the purchaser, developer and the land owner then they will try to settle and resolve the dispute by themselves amicably. If the parties fail to settle the dispute then the aggrieved party will send notice to his/her adversary expressing his intention to invoke arbitration through an arbitral tribunal following the provision of the Arbitration Act, 2001 and upon receipt of the notice, the notice receiver will constitute an arbitral tribunal within 30 days.

Section 12 of the Arbitration Act, 2001 provides that if the parties fail to appoint an arbitrator within 30 days from the receipt of a request by one party from the other party then the appointment of arbitrator shall be made by the District Judge.

It appears from the application filed under section 12 of the Arbitration Act, 2001 filed by the petitioner-opposite party no. 1 that they appointed one Barrister Nawroz Md. Rasel Chowdhury as arbitrator and they requested opposite parties-petitioner to appoint their arbitrator within 30 days of receipt of that notice. Meantime, the statutory period of 30 days has elapsed. So, the learned District Judge is empowered to appoint the arbitrator for and on behalf of the opposite party-petitioner. However, the learned District Judge without appointing the arbitrator by himself passed the impugned order directing the parties to submit the name and address of the arbitrators which runs counter to the express provision enshrined in section 12 of the Arbitration Act, 2001 and is devoid of any basis.

Regard being had to the above facts and circumstances, we do not find any substance in the impugned order which is liable to be set aside.

Resultantly, the rule is disposed of, however without any order as to costs.

The learned District Judge, Chattogram is hereby directed to appoint an arbitrator for the opposite party-company-petitioner by himself following the provisions of section 12 of the Arbitration Act, 2001.

The impugned order No. 20 dated 28.08.2023 passed by the learned District Judge, Chattogram in Arbitration Miscellaneous Case No. 82 of 2021 is thus set aside.

The learned District Judge, Chattogram is also directed to proceed with the Arbitration Miscellaneous Appeal No. 82 of 2023 and dispose

of the same as expeditiously as possible, preferably within 60(sixty) days from the date of receipt of the copy of this judgment.

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.

Md. Ariful Islam Khan
Bench Officer