

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

First Miscellaneous Appeal No. 128 of 2024

In the matter of:

BASIC Bank Limited
... Claimant- Decree-Holder Appellant
-Versus-
Business Resources Limited and another
...Judgment-Debtor-Respondents

Mr. Shamim Khaled Ahmed, Senior Advocate
with
Mr. Md. Asaduzzaman, Senior Advocate and
Mr. Md. Imam Hasan, Advocate
...For the Appellant

Mr. Kamal Ul Alam, Senior Advocate with
Mr. Mohammad Imam Hossain and
Mrs. Yeasmin Akhter, Advocates
... For the Respondent nos. 1 and 2

Heard on 20.11.2024
Judgment on 26.11.2024

Present:

Mr. Justice Md. Mozibur Rahman Miah
And
Mr. Justice Md. Bashir Ullah

Md. Bashir Ullah, J.

At the instance of the decree-holder in Title Decree Execution Case No. 12 of 2023, this appeal is directed against the judgment and order dated 15.01.2024, dismissing the decree execution case.

The salient facts leading to preferring this appeal are:

The claimant-appellant decided to purchase 51,500 square feet of floor space from the ground floor to the 11th floor (in total 12 floors) of

the building to be built on Schedule-A land described in the application for execution of decree with proportionate, undivided and undemarcated land and 14 (fourteen) car spaces at a total price of Tk. 80 crore from the lowest bidder-respondents. In this regard, a tripartite agreement was executed between the respondents and the claimant-appellant on 01.04.2010. The claimant-appellant paid Tk. 40,00,00,000/- (Taka Forty Crore) as advance at the time of signing the agreement. It was decided that the construction works would be completed within 30.03.2013 and the respondents would hand over the physical possession of the floor spaces to the claimant-appellant. However, the respondents failed to complete the construction within the stipulated time. The claimant-appellant repeatedly requested the respondents to complete the construction and execute the sale deed and hand over the possession of the floors of the project but they did not pay any heed to the repeated requests.

However, the claimant-appellant agreed to settle the dispute through arbitration and then requested the respondents to appoint their Arbitrator within 10(ten) days under section 36 of the Ain but in vain. Having failed to settle the dispute amicably through negotiation with the respondents, the claimant decided to refer the matter to arbitration and sent notice of arbitration to the respondents and then filed Arbitration Miscellaneous Case being no. 89 of 2018 before the District Judge, Dhaka. Upon hearing, the learned District Judge, Dhaka constituted an Arbitral Tribunal, comprising of Mr. Justice K. M. Hasan as Chairman; Mr. Justice Mohammad Fazlul Karim and Mr. Justice Abdur Rashid as

Arbitrators. However, receiving the notice of appointment, the Arbitral Tribunal directed the parties to submit statements of claim and statements of defence and counterclaim, if any by the parties. Accordingly, BASIC Bank Ltd. as the 'claimant' by filing a statement of claim before the Arbitral Tribunal prayed for an award where the respondents also filed a statement of defence and counterclaim against the statement of claim praying for dismissal of the claim. Upon hearing the parties, the Arbitral Tribunal, by a majority of 2:1 passed the award on 09.02.2023 in favour of the claimant-appellant under section 38 (2) of the Arbitration Act, 2001.

The claimant-decree-holder herein appellant then filed Title Decree Execution Case No. 12 of 2023 before the learned District Judge, Dhaka against the respondent-judgment-debtor praying for (1) recovery of the money as per award by way of sale of movable and immovable properties and attachment of all Bank Accounts of the Judgment-Debtors; (2) For recovery of rental compensation till delivery of possession of the Schedule-A and B properties, (3) For delivery of the possession of the Agreed Floor Space and Parking Spaces as fully described in schedule-A and Schedule-B after completing all the works as described in Schedule-C to the tripartite Agreement dated 01.04.2010 executed between the Decree-Holder and Judgment-Debtors and to register the sale deed upon receipt of the balance taka 3,99,99,999/- within a period of 1 year from the date of award in default to deliver possession of the project in favour of the Claimant-Decree-Holder with the help of police for completing the project as per requirement of the

Agreement and get the expenses adjusted with the outstanding installments, (5) confine the Judgment-Debtor in Civil Prison to compel them to pay the awarded money with cost and interest and also comply the other directions.

However, challenging the said award dated 09.02.2023, passed by the Arbitral Tribunal, the respondents as petitioners filed Arbitration Miscellaneous Case No. 210 of 2023 before the District Judge, Dhaka under Section 42 read with section 43 of the Arbitration Act for setting aside the Award. The claimant-appellant entered appearance in the case by filing a written objection. Upon hearing the parties, the learned District Judge, Dhaka allowed the Arbitration Miscellaneous Case on 15.01.2024 on contest, setting aside the award dated 09.02.2023 passed by the Arbitral Tribunal holding that the arbitration proceeding is not maintainable being violative to public policy.

Being aggrieved by and dissatisfied with the judgment and order dated 15.01.2024 passed by the learned Senior District Judge, Dhaka in Arbitration Miscellaneous Case No. 210 of 2023 the claimant-appellant preferred First Miscellaneous Appeal No. 129 of 2024 before this Court.

But meantime the appellant to execute the Award dated 09.02.2023 filed Title Decree Execution Case No. 12 of 2023. As the Arbitration Miscellaneous Case No. 210 of 2023 initiated by the respondents was allowed. So the learned District Judge then rejected the said execution case vide order dated 15.01.2024.

However, upon hearing, this Court allowed First Miscellaneous Appeal No. 129 of 2024 on 26.11.2024.

Since, the First Miscellaneous Appeal no. 129 of 2024 preferred before this Court has been ultimately allowed setting aside the judgment and order dated 15.01.2024 passed by the learned Senior District Judge, Dhaka in Arbitration Miscellaneous Case no. 210 of 2023 and the award dated 09.02.2023 has been affirmed, so there is no bar to proceed with the Title Decree Execution Case No. 12 of 2023.

Accordingly, the appeal is allowed, however without any order as to costs. The order dated 15.01.2024 passed by the learned Senior District Judge, Dhaka in Title Decree Execution Case No. 12 of 2023 is thus set aside.

Let a copy of this order along with the lower court records be communicated to the concerned court forthwith.

Md. Mozibur Rahman Miah, J.

I agree.