

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

**First Miscellaneous Appeal No. 248 of 2023**

**In the matter of:**

Managing Director, Concord Progotee  
Consortium Limited and another.

... Claimants-Opposite parties-Appellants  
-Versus-

Rajdhani Unnayan Kartipakkha (RAJUK) and  
another.

... Respondents-Petitioners-Respondents

Mr. Mustafizur Rahman, Advocate  
... For the Appellants.

Not represented  
... For the Respondents.

**Heard on 20.01.2025 and 21.01.2025**  
**Judgment on 06.02.2025**

**Present:**

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

**Md. Bashir Ullah, J.**

This appeal is directed against the judgment and order dated 14.05.2023 passed by the learned Senior District Judge, Dhaka in Money Execution Case No. 27 of 2019, dismissing the same and thereby refusing to enforce the arbitral award dated 08.06.2019 under section 48(b) of the Arbitration Act, 2001.

The salient facts leading to preferring this appeal are:

The claimant-appellant participated in the tender for the construction of Purbachal Link Road and became the lowest bidder and accordingly a Notification of Award was issued on 17.02.2011 in favour of the appellant for the construction of the said project. The value of the contract was fixed at Taka 197,55,79,045.90 and to that effect, an agreement was executed between the appellant and respondent on 05.10.2011. In the contract, it was stipulated that the said construction work would be completed within 18 months that is, by 11.04.2013. Thereafter, the period was extended up to 31.03.2014 but the appellant failed to complete the work within the extended period due to various reasons for which the claimant-appellant was not responsible. On 23.09.2014, the Ministry of Housing and Public Works modified the project and instructed the appellant to work equivalent to Taka 140,73,18,828/- according to variation order No.1. Later on, the respondent found the work was stopped by the appellant from 19.01.2014. On that ground, the respondents terminated the contract on 11.03.2014 by giving a notice.

At that, the appellant requested for amicable settlement on 21.04.2014 and accordingly, a meeting was held at RAJUK Bhaban on 12.05.2014. As the termination issue was not settled in that meeting, a decision was then taken for the appointment of an Adjudicator under GCC clause no. 94.2 of the contract and then one Mr. Md. Idrish Miah, retired Additional Chief Engineer, Roads and Highways Department was appointed as Adjudicator.

In the adjudication process both the parties were asked to submit their written statements.

Accordingly, the appellant and respondent submitted their written statements. Upon hearing the parties and after going through the records, the adjudicator then passed an award on 11.07.2018.

Being aggrieved by the adjudication award dated 11.07.2018 passed by the adjudicator, the respondent as petitioner filed an Arbitration Miscellaneous Case before the learned Senior District Judge, Dhaka. The Court then appointed one, Professor Mohammad Zakaria of the Department of Civil Engineering, BUET, Dhaka and Mr. Md. Mofizul Islam, Former Additional Chief Engineer, Roads and Highway Department as Arbitrators with the consent of both the parties. Thereafter, the arbitrators appointed one, Mr. Justice Farid Ahmed, Former Judge of the High Court Division of the Supreme Court of Bangladesh as Chairman of the Arbitral Tribunal.

After the appointment, the Arbitral Tribunal directed the parties to submit a statement of claim and a statement of defence. Accordingly, the parties submitted their respective statements. However, the Arbitral Tribunal after considering the “Statement of Claim” filed by the appellant and that of the “Statement of Defence” submitted by the respondent and the documents produced by both parties passed a unanimous award on 08.06.2019 in favour of the claimant-appellant.

Feeling aggrieved by the said Award dated 08.06.2019, the respondent Rajdhani Unnayan Kartipakkha (RAJUK) and another as petitioners then filed Arbitration Miscellaneous Case No. 428 of 2019

before the learned District Judge, Dhaka under section 42 read with section 43 of the Arbitration Act, 2001 for setting aside the Award. On the other hand the claimant-appellant filed Money Execution Case No. 27 of 2019.

The claimants as opposite parties contested the Arbitration Miscellaneous Case by filing a written objection annexing relevant documents. However, after hearing the parties and perusing the materials on record, the learned Senior District Judge, Dhaka allowed the case on 14.05.2023 and thereby set aside the Arbitral Award dated 08.06.2019 and on the same day the Court also dismissed Money Execution Case No. 27 of 2019.

Being aggrieved by and dissatisfied with the judgment and order dated 14.05.2023 passed by the learned Senior District Judge, Dhaka in Arbitration Miscellaneous Case No. 428 of 2019 the claimant as appellant preferred First Miscellaneous Appeal No. 247 of 2023 before this Court and the claimant as appellant also filed First Miscellaneous Appeal No. 248 of 2023 before this Court against the judgment and order dated 14.05.2023 passed in Money Execution Case No. 27 of 2019.

However, upon hearing, this Court allowed First Miscellaneous Appeal No. 247 of 2023 on 06.02.2025.

Since, the First Miscellaneous Appeal no. 247 of 2023 preferred before this Court has been ultimately allowed on setting aside the judgment and order dated 14.05.2023 passed by the learned Senior District Judge, Dhaka in Arbitration Miscellaneous Case No. 428 of

2019 and the award dated 08.06.2019 has been affirmed, so there is no bar to proceed with the Money Execution Case No. 27 of 2019.

Accordingly, the appeal is allowed, however without any order as to costs. The order dated 14.05.2023 passed by the learned Senior District Judge, Dhaka in Money Execution Case No. 27 of 2019 is thus set aside.

The learned Senior District Judge, Dhaka is hereby directed to dispose of Money Execution Case No. 27 of 2019 as expeditiously as possible, preferably within a period of 03 (three) months from the date of receipt of the copy of this order.

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

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

I agree.