

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

CIVIL REVISION NO. 3417 OF 2024

In the matter of:

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

AND

In the matter of:

Litmond Shipping Ltd, Sharif Mansion, (3rd Floor) 56-57, Motijheel C/A Dhaka and 105, Hossain Chamber, Agrabad Commercial Area, Chittagong represented by its Sr. Executive (Shipping) Md. Abdul Malek.

.... Petitioner

-Versus-

Tiryaki Agro FZE of the United Arab Emirates, P.O. Box 10559, United Arab Emirates represented by their Attorney Mohammad Waliullah, son of late Abdul Malek, Village- Astragram, P.O. Miar Bazar, Police Station- Nangolkot, District- Comilla and another.

...Opposite parties

Mr. Muhammad Ohiullah with
Mr. Abu Bakar Siddique, Advocates

... For the petitioner

Mr. Mohammed Belayet Hossain with
Mr. M. Mahmudul Hasan, Advocates

....For the opposite party no. 1

Heard on 18.02.2025, 23.02.2025 and 24.02.2025.

Judgment on 24.02.2025.

Present:

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

Md. Mozibur Rahman Miah, J:

At the instance of the judgment-debtor, namely, Litmond Shipping Limited in Money Execution Case No. 01 of 2017, this rule was issued calling upon the opposite party no. 1 to show cause as to why the order no. 39 dated 29.04.2024 passed by the learned District Judge, Dhaka in the said Money Execution Case should not be set aside and/or such other or further order or orders be passed as to this court may seem fit and proper.

At the time of issuance of the rule, the operation of the impugned order no. 39 dated 29.04.2024 was stayed for a period of 3(three) months which was lastly extended on 14.01.2025 for another 3(three) months.

The short facts leading to filing of this revision are:

The present opposite party no. 1 obtained an award from London Maritime Arbitrators Association against the present petitioner for an amount of US\$ 825094.17 on 13.02.2014 and in order to execute the said award, the present opposite-party no. 1 filed an execution case being Money Execution Case No. 01 of 2017 before the learned District Judge, Dhaka to execute the said decree on 09.01.2017. The present petitioner entered appearance in the said execution case and filed application on 10.05.2023 under section 46 of the Arbitration Act, 2001 for non-recognition and non-enforcement of the said Foreign Arbitral Award dated 13.02.2014 passed by the opposite party no. 2 mainly on the ground that no notice of that very arbitration proceeding initiated before London Maritime Arbitrators Association has been served and it had no knowledge about the proceeding of the arbitration case held therein. The

said application then gave rise to Arbitration Miscellaneous Case No. 258 of 2023 and ultimately the same was taken up for hearing and vide order dated 25.07.2023, the case was rejected on the ground that the original copy of award was not attested with the Miscellaneous Case. Again, the self-same petitioner filed another Miscellaneous Case under order IX, rule 9A(1) read with section 151 of the Code of Civil Procedure for restoring the said Miscellaneous Case to its original file and number on condoning the delay of 202 days. That Miscellaneous Case was also taken up for hearing and ultimately vide order dated 29.04.2024, the Miscellaneous Case was also rejected holding that the remedy of the petitioner lies before the higher court to set aside a foreign award. On the same date, that is, on 29.04.2024, the original Money Execution Case No. 01 of 2017 filed by the opposite party no. 1 was fixed for submitting explanation by the petitioner as judgment-debtor of the show cause issued upon it when the petitioner filed an application praying for time for filing explanation. On the same date, an application was also filed at the instance of the opposite party no. 1-decree-holder to attach the property of the petitioner which has been described in schedules-‘A’-‘F’ to the execution case. The learned Senior District Judge, Dhaka though allowed the application for adjournment filed by the petitioner but attached the property described in schedules-‘A’-‘F’ to the execution case fixing 30.06.2024 for filing the explanation of the petitioner as well as the hearing of the petition.

Being aggrieved by and dissatisfied with the said order passed in the said Money Execution Case No. 01 of 2017, the judgment-debtor as

petitioner came before this court and obtained the instant rule and order of stay.

Mr. Muhammad Ohiullah, the learned counsel appearing for the petitioner upon taking us to the impugned judgment and order at the very outset submits that since an appeal being Arbitration Appeal No. 19 of 2024 is pending before this Hon'ble court challenging the judgment and order passed dated 29.04.2024 in Miscellaneous Case No. 74 of 2024 filed by the petitioner, so until and unless, the said appeal is disposed of, the further proceedings of the execution case is required to be stayed.

Insofar as regards to the propriety of the impugned order, the learned counsel further contends that since on the one hand, the learned Judge of the executing court allowed the application of the petitioner extending time for filing explanation against the show cause notice issued earlier but on the other hand, the learned Judge has proceeded with attaching the property of the judgment-debtor described in schedules-'A'- 'F' which is self-contradictory though in the impugned order the learned Judge also fixed on 30.06.2024 for hearing of the application for attachment.

The learned counsel further contends that since the application under section 46 of the Arbitration Act, 2001 was filed for non-recognition and non-enforcement of the foreign arbitral award which gave rise to Miscellaneous Case No. 74 of 2024 and the same has not yet been disposed of, so it may not be wise to proceed with the execution any further. With those submissions, the learned counsel finally prays for making the rule absolute.

On the flipside, Mr. Mohammed Belayet Hossain, learned counsel appearing for the opposite party no. 1 opposes the contention taken by the learned counsel for the petitioner and contends that though the opposite party got an award on 13.02.2014 but it has not be enforced as yet for non-cooperation of the parties though within three years of getting the award, the opposite party no. 1 as decree-holder filed Money Execution Case No. 01 of 2017 and almost 8(eight) years have elapsed to get the fruit of the award so a direction may be given to the executing court so that the execution case can be disposed of within a shortest possible of time.

Insofar as regards to the impugned order, the learned counsel contends that since the learned Judge of the executing court granted time to the petitioner to file explanation against the show cause issued earlier, so the learned Judge could have waited for 7 to 15 days more enabling the petitioner to file the explanation and to take up the matter for hearing. Having said that, if a direction is given by this Hon'ble court to the executing court by giving a time frame to dispose of the execution case in that case, none of the parties to the execution case will be prejudiced- the learned counsel concluded though prayed for discharging the rule.

Be that as it may, we have considered the submissions so placed by the learned counsels for the petitioner and that of the opposite party no. 1. We have also gone through the impugned judgment and order and all the documents appended therewith in the revisional application.

There has been no gainsaying the facts that, on 29.04.2024, the Money Execution Case was fixed for filing explanation by the petitioner

against the show cause notice issued earlier when both the parties entered appearance and on that very date, the application filed by the decree-holder for attaching the property as schedules-‘A’-‘F’ has been attached but the duration of such attachment has not been mentioned in the said order which also cast a reasonable doubt in the mind of the judgment-debtor-petitioner about the efficacy of the attachment though on 30.06.2024 it was fixed for filing explanation as well as hearing. So on the face of the impugned order, it turns out to be a self-contradictory one.

Furthermore, since challenging the order passed on the same date in Miscellaneous Case No. 74 of 2024 dismissing the Miscellaneous Case, the petitioner also preferred an Arbitration Appeal No. 19 of 2024 so it would be expedient if the appeal so preferred by the petitioner is disposed of. Because a pertinent legal question has arisen as to whether the said award given in favour of the opposite party no. 1 can be enforced or not. Nonetheless, since we find apparent illegality and impropriety in the order dated 29.04.2024 passed in Money Execution Case No. 01 of 2017 so the same cannot be sustained in law.

Regard being had to the facts and circumstances, we find ample substance to the submission so passed by the learned counsel for the petitioner.

In the result, the rule is made absolute however without any order as to cost.

The impugned judgment and order dated 29.04.2024 passed by the learned District Judge, Dhaka in Money Execution Case No. 01 of 2017 is thus set aside.

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

However, the learned District Judge, Dhaka is hereby directed to dispose of the Money Execution Case No. 01 of 2017 as expeditiously as possible preferably within a period of 90(ninety) days from the date of receipt of the copy of this order.

Let a copy of the judgment be communicated to the court concerned through **special messenger** with the cost to be borne by the petitioner and the petitioner is directed to deposit requisite cost to the office by 1(one) week.

Md. Bashir Ullah, J:

I agree.