

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

CIVIL REVISION NO. 5216 OF 2024

In the matter of:

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

AND

In the matter of:

Mohammad Moazzam Hossain

.... Petitioner

-Versus-

Md. Gias Uddin Mia and others

....Opposite-parties

Mr. Md. Jafor Ali, Advocate

With

Mr. Md. Kamal Hossain Miah, Advocate

... For the petitioner

Mr. Md. Ozi Ullah, senior Advocate

With

Ms. Umme Apnan, Advocate

....For the opposite party nos. 1-9

Heard on 12.01.2025, 13.01.2025

and Judgment on 13.01.2025

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

Md. Mozibur Rahman Miah, J:

At the instance of the petitioner in Arbitration Miscellaneous Case
No. 21 of 2023 who stands opposite party no. 1 in Title Suit No. 69 of
2011, this rule was issued calling upon the opposite-parties to show cause

as to why the judgment and order dated 30.09.2024 passed by the learned District Judge, Dhaka in Arbitration Miscellaneous Case No. 21 of 2023 rejecting an application filed by the present petitioner under section 10 of the Code of Civil Procedure for staying further proceedings of the said Arbitration Miscellaneous 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, this court also stayed all further proceedings of Other Class Suit No. 14 of 2020 (though we find it incorrect which would be Miscellaneous Case No. 21 of 2000) for a period of 06(six) months.

The short facts leading to issuance of the instant rule are:

The opposite party nos. 1-7 as petitioners originally filed a case being Miscellaneous Case No. 14 of 2020 under section 31 and 32 of erstwhile Arbitration Act 1940 and that of section 12 of the Arbitration Act, 2001 for appointing a sole arbitrator to pass an award arose between the present opposite party nos. 1-7 and 8-9 contending inter alia that, one Mohammad Moazzam Hossain, herein the petitioner got the suit property as a lease hold property of *Rajdhani Unnion Kartipakkha* (shortly “RAJUK) by of lease deed dated 05.06.1983. Subsequently, that Mohammad Moazzam Hossain in order to construct a 3-multi storied apartment entered into an agreement with the present opposite party nos. 8 and 9 (herein after referred to as “developer”) and accordingly a deed of agreement was executed between them on 08.01.2006. Thereafter the said developer obtained a power-of-attorney from the land owner, the petitioner and started constructing the apartment over that scheduled property. During

the course of construction, the present opposite party nos. 8 and 9, the developer offered to sale the flats it got under the agreement and entered into contacts with present opposite party nos. 1-7 on different occasions. After making payment of entire price so the claimed by the developer, the opposite party nos. 1-7 then insisted the developer to execute and register sale deeds in respect of the flats when it (the developer) disclosed that until and unless a permission for sale is given by the RAJUK, to the flat owner, it would not be possible to register any sale deed even though 10 years have elapsed following execution of the contract between the developer and the flat purchasers herein the opposite party nos. 1-7. However, failing to obtain sale “permission” by the developer through its land owner and the developer could not register any sale deed in favour of the opposite party nos. 1-7, they then took resort to the condition nos. 31 and 32 of the agreement and requested the developer to settle the dispute amicably but the developer, did not pay any heed to the request, compelling the opposite party nos. 1-7 to invoke to the provision of section 12 of the Arbitration Act for appointing a sole arbitrator to settle the dispute among themselves and filed a Miscellaneous Case No. 14 of 2020. The learned District Judge after hearing the claimants flat purchasers then vide judgment and order dated 25.01.2022 appointed a sole arbitrator namely Mr. Manzarul Basit, retired District Judge in that Miscellaneous Case. Having been appointed an arbitrator, the sole arbitrator then passed an award on 20.06.2022 in favour of the opposite party nos. 1-7. To execute the said award the opposite party nos. 1-7 then filed an Execution Case being Executino Case No. 14 of 2022. But challenging the award dated 20.06.2022, the appellant-

petitioner that is, the land owner filed Arbitration Miscellaneous Case No. 21 of 2023 under section 42 and 43 of Arbitration Act, 2001 making following reliefs:

অতএব বিনীত প্রার্থনা এই যে, মোকদ্দমা শুনানীর জন্য গ্রহণ করিয়া
উভয়পক্ষ ারি
ট্রাইব্যুনাল কর্তৃক প্রদত্ত আরবিট্রেশন এওয়ার্ড যাহা আরবিট্রেশন মিস মোকদ্দমা নং
১৪/২০২০ হইতে উদ্ভব তাহা বাতিল করার আদেশ প্রদান করিতে;
অত্র মোকদ্দমা নিষ্পত্তি না হওয়া পর্যন্ত বিগত ২০.০৬.২০২২ ইং তারিখে
প্রদত্ত আরবিট্রেশন এওয়ার্ড এর আদেশের কার্যক্রম স্থগিত রাখার আদেশ প্রদান
করিতে;
এবং
আরবিট্রেশন মিস ১৪/২০২০ নং মোকদ্দমা হইতে উদ্ভব ডিক্রীজারী
১৪/২০২২ নং মোকদ্দমার কার্যক্রম স্থগিত রাখার আদেশ দানে জনাবের মর্জি হয়।

It is worthwhile to mention here that, before initiating those two Miscellaneous Cases that is, Arbitration Miscellaneous Case No. 14 of 2020, Execution Case No. 14 of 2022 vis-a-vis Arbitration Miscellaneous Case No. 21 of 2023, the developer, herein the opposite party nos. 8 and 9 had filed a Title Suit being Title Suit No. 69 of 2011 also making following reliefs:

(ক) নালিশী তফসিল বর্ণিত সম্পত্তির ব্যাপারে রাজধানী উন্নয়ন
কর্তৃপক্ষের নিকট হইতে প্রয়োজনীয় সেল পারমিশন নি
মর্মে ১নং বিবাদীর বিরুদ্ধে এক ঘোষনামূলক ডিক্রী প্রচার করিতে;
(খ) আদাল
কর্তৃপক্ষের নিকট হইতে সেল পারমিশ প্রয়োজনীয় ব্যবস্থা আদালত
কর্তৃক ধার্যকৃত একটি নির্দিষ্ট সময়ের মধ্যে গ্রহণ না করিলে সেল পারমিশ

‘খ’ তফসিলে বর্ণিত সম্পত্তি বিভিন্ন ক্রেতার নিকট বিক্রয় করার জন্য সেল পারমিশ

বিবাদীদের বিরুদ্ধে ডিক্রী দিতে; ২নং বিবাদী আদালত কর্তৃক ধার্যকৃত সময়ের মধ্যে বাদী

আদালতের মাধ্যমে সেল পারমিশন প্রাপ্তপূর্বক বাদীর নিকট হইতে ক্রয়কৃত ‘খ’ তফসিলে বর্ণিত ফ্ল্যাট গুলির মালিকগণের বরাবর সাফ কবলা দলিল রেজিস্ট্রি করিয়া দিতে পারি

(গ) বাদী ও ১নং বিবাদীর সহিত সম্পাদিত চুক্তি অনুযায়ী বাদী কর্তৃক তফসিল বর্ণিত সম্পত্তিতে নির্মিতব্য এবং চুক্তি অনুযায়ী বাদী প্রাপ্য ‘খ’ তফসিল বর্ণিত ফ্ল্যাট গুলি ১নং বিবাদী অন্যত্র হস্তান্তর দান, বিক্রয়, মটগেজ, বন্ধক প্রদান করি নিষেধাজ্ঞার আদেশ প্রদান করিতে।

(ঘ) মোকদ্দমায় আদালত বিবাদীর বিরুদ্ধে ;

(ঙ) আইন ও ইকুইটি মতে বাদী আরো যে সকল প্রতিকার পাইতে পা

Against these backdrops, when the Arbitration Miscellaneous Case No. 21 of 2023 reached at the stage of passing judgment, the present petitioner on 01.09.2024 filed an application under section 10 of the Code of Civil Procedure for staying all further proceeding of the said Case (that is Miscellaneous Case No. 21 of 2023, the petitioner himself filed for setting aside the award) till disposal of that Title Suit No. 69 of 2011 filed by the developer (herein opposite party nos. 8-9). Though against that application no written objection was filed by the petitioner, however the learned District Judge upon hearing the petitioner rejected the same vide

impugned order dated 30.09.2024 holding that, section 10 of the Code of Civil Procedure has got no application to stay further proceedings of the Arbitration Miscellaneous Case No. 21 of 2023.

Being aggrieved by and dissatisfied with the said order, rejecting the application of the petitioner, he obtained the instant rule and that of an order of stay as has been stated herein above.

Mr. Md. Jafor Ali, the learned counsel appearing for the petitioner upon taking us to the impugned judgment and order at the very outset submits that, since the subject matter of two Miscellaneous Cases initiated under Arbitration Act and that of Title Suit No. 69 of 2011 are same, so the learned judge ought to have allowed the application for stay of the further proceedings of Miscellaneous Case No. 21 of 2023.

The learned counsel by taking us to the observation of the impugned order also contends that, though the Title Suit No. 69 of 2011 has not filed by the present petitioner, rather the developer, yet the learned judge misconcievely asserted that, the title suit was filed by the present petitioner, and erroneously came to a conclusion that, the plaintiff-petitioner has prayed for staying the further proceedings of the case which reflects non-application of judicial mind of the learned District Judge and therefore the impugned judgment and order cannot be sustained in law.

The learned counsel lastly contends that, since the core point of the suit as well as the Miscellaneous Case revolves around the suit land even though the nature of the Miscellaneous Case and the suit is different yet section 10 of the Code of Civil Procedure will be applicable in staying further proceedings of Miscellaneous Case No. 21 of 2023 and finally

prays for making the rule absolute on setting aside the impugned judgment an order.

By contrast, Mr. Md. Ozi Ullah, the learned senior counsel appearing for the opposite party nos. 1-9 by filing an application for discharging the rule, at the very outset submits that, the learned District Judge has rightly rejected the application finding no application of section 10 of the Code of Civil Procedure in staying further proceedings of the Miscellaneous Case No. 21 of 2023 which has been filed under separate statute making prayers totally different from the Title Suit having no scope to stay the further proceedings of the Miscellaneous Case No. 21 of 2023.

The learned counsel further contends that, since the subject matter of the Miscellaneous Cases and that of the title suit is distinct so there is no scope to stay the further proceedings of the Arbitration Miscellaneous Case No. 21 of 2023.

The learned counsel next contends that, the application under section 10 of the Code of Civil Procedure was filed at a time when the Arbitration Miscellaneous Case No. 21 of 2023 was fixed for passing judgment which construe that, only to delay the disposal of the said Miscellaneous Case, the application was filed by the petitioner.

The learned counsel lastly contends that, to execute the award passed in Arbitration Miscellaneous Case No. 14 of 2020 since an Execution Case being No. 14 of 2020 is pending so it would be expedient for both the parties if the Miscellaneous Case no. 21 of 2023 filed by the petitioner himself be disposed of expeditiously enabling these opposite parties to

proceed with the Execution Case and get it disposed and finally prays for discharging the rule.

At the fag end of the submission, however the learned counsel contends that, since the petitioner filed the application for staying further proceedings of the Miscellaneous Case No. 21 of 2023 till disposal of Title Suit No. 69 of 2011 and meantime the said suit was withdrawn vide order dated 13.11.2024, so the application so filed for staying the further proceedings of the Miscellaneous Case NO. 21 of 2023 ceased to have any effectiveness resulting, in there has been no legal bar now to proceed with the Miscellaneous Case No. 21 of 2023.

But on the contrary, Mr. Jafar Ali, the learned counsel appearing for the petitioner submits that, since that very application for withdrawing the suit had not been filed by the petitioner rather at the instance of the defendant no. 3 of that title suit, so the order withdrawing the case was defective one.

Be that as it may, we have considered the submission so advanced by the learned counsel for the petitioner and that of the learned senior counsel for the opposite parties. We have also very meticulously gone through the impugned order and all the documents appended therewith together with the photo copy of the arbitral award supplied by the learned senior counsel for the opposite parties and that of the application for discharging the rule as well as the counter-affidavit filed there against by the petitioner.

The pivotal point to adjudicate this rule, is to examine, whether the provision of section 10 of the Code of Civil Procedure will be applicable in staying the further proceedings of Arbitration Miscellaneous Case No. 21

of 2023 filed by the petitioner for setting aside the award. It would be profitable if we reproduce the provision provided in section 10 of the Code of Civil Procedure here:

No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in Bangladesh having jurisdiction to grant the relief claimed, or in any Court beyond the limits of Bangladesh established or continued by the Government and having like jurisdiction, or before the Supreme Court.

Explanation.-The pendency of a suit in a foreign Court does not preclude the Court in Bangladesh from trying a suit founded on the same cause of action.

On going through the section, we find that in different places of that section the word “suit” has been mentioned. Furthermore, the prayer of the Miscellaneous Case No. 21 of 2023 is to set aside the award passed in favour of the present opposite party nos. 1-7 in Miscellaneous Case No. 14 of 2020. So in bare eyes, it can easily be presumed that the subject matter of Title Suit No. 69 of 2011 and that of Miscellaneous Case No. 21 of 2023 is totally different having no scope to apply section 10 of the Code of Civil Procedure for staying the further proceedings of the Miscellaneous Case. Furthermore, though the learned counsel for the petitioner submits that, the dispute among the parties revolves around the “suit property” but we are not at one with that very submission, because the Miscellaneous Case No. 14 of 2020 was filed for appointing a sole arbitrator followed by passing an “award” then of initiating an execution case being Miscellaneous Case No.

14 of 2022 to execute the award whereas the present petitioner as applicant filed Miscellaneous Case No. 21 of 2023 for setting aside the award. So there has been no scope to find the subject matter of Miscellaneous case and the Title Suit is same. On top of that, since the Arbitration Miscellaneous Case No. 21 of 2020 was filed by the present petitioner for setting aside the award so if he gets the relief he prayed in the said Miscellaneous Case then how come he will be benefited if the Arbitration Miscellaneous Case is stayed is totally incomprehensible to us whereas Title Suit No. 69 of 2011 was filed by the developer the opposite party nos. 8-9 having no nexus of the reliefs sought in that suit with the adjudication of Miscellaneous Case. The last submission so placed by the learned counsel for the opposite parties that, since in the meantime Title Suit No. 69 of 2011 was withdrawn so no cause of action now exists of the present petitioner to stay the further proceedings of Arbitration Miscellaneous Case No. 21 of 2023. Though the learned counsel for the petitioner robustly opposes the said contention on its validity but we are not putting any emphasis on that, since on the face of the statutory provision of law that is, section 10 of the Code of Civil Procedure does not attract to stay the further proceedings of the Arbitration Miscellaneous Case No. 21 of 2023. Invariably we don't find any merit of such vexatious application.

Given the above facts and circumstances we don't find any illegality or impropriety in the impugned judgment and order which is liable to be sustained.

Accordingly, the rule is discharged however without any order as to costs.

The learned District Judge, Dhaka is hereby directed to dispose of the Arbitration Miscellaneous Case No. 21 of 2023 as expeditiously as possible preferably within a period of 02(two) months from the date of receipt of the copy of this order.

At any rate, the order of stay grated at the time of issuance of the rule stands recalled and vacated.

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

Md. Bashir Ullah, J:

I agree.