

Present:
Mr. Justice Md. Iqbal Kabir
And
Mrs. Justice Jesmin Ara Begum

Civil Revision No. 5837 of 2024

IN THE MATTER OF:

An application under Section 115(4) of the
Code of Civil Procedure
-And-

IN THE MATTER OF:

Rawsan Jesmin
... Applicant-Petitioner
Versus
Government of the People's Republic of
Bangladesh and others
... Defendant-Opposite Parties

Mr. Md. Earul Islam, Advocate
... For the Petitioner

Mrs. Nahid Hossain, D.A.G with
Mr. Sharif Uddin Ahmed, A.A.G,
Mr. Mohammed Saifuddin (Ratan), A.A.G,
Mr. Md. Towhidul Islam, A.A.G,
Mr. A.S.M. Sayem Bhuiyan, A.A.G and
Mr. Abul Khair Khan, A.A.G
.... For the Opposite Party Nos. 1 and 2

Mr. Md. Abdur Razzak, Advocate
.... For the Opposite Party No. 5

Judgment on 04.09.2025

Jesmin Ara Begum, J:

This Rule was obtained by the plaintiff/petitioner upon making a revisional application under section 115(4) of the Code of Civil Procedure against an order dated 10.09.2024, passed by the learned Senior District Judge, Khulna, in Arbitration Misc. Case No. 36 of 2023, which rejected the

application filed under section 7A of the Arbitration Act, 2001, for an interim order of temporary injunction.

At the time of the issuance of the Rule, this Court directed the parties to maintain the *status quo* in respect of goods and property regarding the arbitration contract for a period of 06 (six) months from the date.

Short facts narrated for disposal of the Rule are that the opposite party No. 1 invited Tender, thereby intending to construct the Model Mosque and Cultural Centre in Dakop, Khulna. The petitioner participated in the tender process and, being the highest bidder, was awarded on 08.05.2018 for the work to construct a Model Mosque and Cultural Centre, and an agreement was executed on the same date. Against such work, the petitioner was also furnished Bank Guarantee No. 6/2019 dated 19.05.2019 for Tk. 66,35,858.07/- as security. The contract (Form-W-5) No.80, Memo No.25.36.4700-120-1684 was executed between the parties on 27.05.2019. Subsequently, the petitioner partly completed his work as per tender schedule and agreement investing almost Tk.3,00,00,000/- purchasing all elements and tools thereon, but due to Covid-19 pandemic and lockdown, the construction work could not progress as per schedule. Moreover, due to delay to remove the old mosque, wall of government hospital and electric pillar he could not complete the project in time. On this plea the opposite parties without issuing any notice and not taking any step for arbitration cancelled the agreement causing harm of Tk.13,27,17,161.33/-. As a result the petitioner instituted the instant arbitration case under section 12 of the Arbitration Act, 2001 for appointing an arbitrator in the Court of Senior District Judge, Khulna. On receiving the notice of the aforesaid arbitration case the opposite parties are trying to invite the re-tender for construction of the aforesaid Model Mosque and Cultural Centre and accordingly Circular dated 11.10.2023 was published. As such the petitioner

was afraid if the re-tender is done he would have to face a huge financial loss and for that reason he submitted an application under section 7A of the Arbitration Act to issue an interim order of temporary injunction for restraining the opposite parties from floating re-tender of the Model Mosque project till disposal of the Arbitration proceeding.

Defendant-Opposite party Nos.1 and 2 contested the said application by filing a written objection stating, *inter alia* that the petitioner failed to complete the work within the stipulated time mentioned in the agreement. Due to such failure, upon issuance of a re-tender, the said remaining work has been finalized. In the meantime, all necessary processes have been completed, and a new contractor has commenced the construction work, and against such work, part payment has been made. However, they state that the petitioner may get payment equivalent to the work done or executed by him, but is not entitled to get any order of temporary injunction as prayed for.

After hearing the learned Advocates of both parties, the learned Senior District Judge, Khulna, rejected the application for temporary injunction by his impugned Order No.09 dated 10.09.2024.

Being aggrieved by and highly dissatisfied with the impugned order dated 10.09.2024, passed by the learned Senior District Judge, Khulna, in Arbitration Misc. Case No. 36 of 2023, rejecting the application under section 7A of the Arbitration Act, 2001, for an interim order of temporary injunction, the petitioner filed this revisional application under section 115(4) of the Code of Civil Procedure, wherein the Court granted leave and passed an order of status quo.

Mr. Md. Earul Islam, the learned Advocate appearing on behalf of the petitioner, submits that due to the unavoidable situation in the corona period, the petitioner could not complete the project in time, but without considering the

situation, the agreement has been cancelled without issuing any notice or giving him any chance of being heard about the work.

He submits that the petitioner invested a huge amount of money and completed a large portion of the said work. According to him, huge numbers of workers have been engaged in the project, and a lot of construction materials are kept in the project area. He claims the Arbitration case is pending, and if there is no order of temporary injunction, the opposite parties may execute a new agreement and may remove the construction materials from the project area, which will cause irreparable financial loss, and the petitioner would be prejudiced. However, based on such submission, he prays to make the Rule absolute by setting aside the impugned order.

On the other hand, Mr. A.S.M. Sayem Bhuiyan, the learned Assistant Attorney General appearing on behalf of the opposite party Nos.1 and 2, submits that the petitioner utterly failed to commence and continue the work within the stipulated period as is specified in the notification of award and in the contract. Despite the repeated reminders and instructions, the petitioner remained silent and did not commence work, and failed to mobilize necessary resources at the site.

He next submits that due to the inaction and breach of the contract, a show cause notice (Annexure-2) was issued notifying the failure in performance, but the petitioner neither responded to the show cause notice nor took any effective step to resume the work. Such non-response leads to the cancellation of the contract. However, he brings notice to this court that, being a development project, for the interest of the public, a fresh tender has been floated under the law. However, by showing documents, he claims partial payment has been made against the work that has been done. At this juncture, there is no scope to pass an injunction to stop the development work.

Mr. Md. Abdur Razzak, the learned Advocate for the opposite party No. 5, entered his appearance. However, he contested the rule by submitting a counter affidavit contending inter alia that the petitioner negligently failed to complete the work even within the extended stipulated period of time. Thus, following due process of law, the contract was cancelled vide its memo dated 29.08.2023, and opposite party No. 2 invited re-tender on 11.10.2023, where opposite party No. 5 obtained the work order.

He further brings notice to this court that the opposite party No. 2 invited a re-tender for completing the construction of the remaining part of the model mosque complex. He participated in the process and authority by the order dated 21.03.2024, issued a notification of award, and executed an agreement on 24.03.2024 for completion of the project work. Therefore, the opposite party employed a huge number of manpower and logistics to complete the work of the project.

He submits that under the law, breach of contract can be compensated. According to him, the alleged contract is a commercial contract, and it has been cancelled, and it can be compensated by money, and on that count, a prayer for a temporary injunction can be ignored. However, he submits that the plaintiff is not entitled to any relief.

We have heard the learned Advocates for the parties, perused the impugned order, the revisional application, the counter-affidavits along with the materials on record, and other relevant documents.

On careful scanning and sifting of the case of both the parties, it appears that on 27.11.2023, the Arbitration Miscellaneous Case was filed under section 12 of the Arbitration Act with a prayer to appoint an Arbitrator to resolve a dispute that purportedly arose from the cancellation of the contract for construction of the Model Mosque and Cultural Centre. Indeed, on 29.08.2023,

the contract was terminated, opposite party No. 2 vide its notification dated 11-10-2023 invited re-tender. Thereafter, the opposite party no. 5 obtained an award for the construction work of the remaining part of the complex, which had been started. In such a situation, the petitioner filed an application under section 7A of the Arbitration Act, 2021, thereby praying for an interim order of temporary injunction, which was rejected by the impugned order dated 10.09.2024, and subsequently, he obtained an order of status quo from this Court on 09.12.2024 in respect of goods and property regarding the arbitration contract.

In this case, it was contended by the petitioner that the contract executed between the petitioner and opposite party No. 2 was cancelled without giving him any prior show cause notice or without giving him any chance of being heard. Against which defendant/opposite party brings notice to this Court that a show cause notice dated 28.12.2022 (Annexure-2) was issued to which the petitioner did not respond. The record shows it was one of the main grounds which has assailed by the petitioner for the Rule and interim order. Such misleading statements or acts by the petitioner indicate that he has not come with clean hands.

It is pertinent to note that, admittedly, the construction work of the Model Mosque is an important development project. The public interest would be adversely affected if any obstruction or delay occurred in implementing the project. Thus, for smooth implementation of such work, a fresh re-tender notice was issued, and before that, a show cause notice was issued to cancel the previous contract and conclude all procedures following the law. By this time, a substantive part of the complex has been constructed, against which part payment has been made for partial completion of such work. Further, Annexure-3 to the counter Affidavit filed by the opposite party No.5 shows that

the petitioner, by filing a representation submitted a bill for the works he had done by admitting the fact of his termination as well as the fact of re-tender. However, it has been claimed that the petitioner has spent money on the alleged work and prayed to get such money. In this context, on a query to this Court, Mr. Bhuiyan AAG informs this Court that the authority is willing and positively thinking to pay the amount that the petitioner spent, as the petitioner made such a prayer.

Further, in this case, it was contended that the petitioner can be compensated by money, and such compensation can be an equally efficacious relief. It is a settled principle of law that, where equally efficacious relief is available, the petitioner will not suffer from irreparable loss if no injunction is granted. Indeed, it is admitted by the parties that the alleged breach of contract can be compensated by money, which is also an equally efficacious relief, if no injunction is granted. In the present case, compensation can be granted, and parties may get equally efficacious relief from such compensation; thus, the court below did no wrong in passing the impugned order.

However, the dispute that arose from the cancellation of the contract of the petitioner can rightly be mitigated in the original Arbitration Miscellaneous Case filed by the petitioner under section 12 of the Arbitration Act. It is at this juncture, on behalf of the opposite party Nos. 1 and 2 submitted that they are agreed to make a payment of money to the petitioner equivalent to the work done by him and or settle the issue on the point that the cost which petitioner has expended for the work under contract and dispute arises from the cancellation of the petitioner's contract, can properly be settled down in the Arbitration Misc Case.

In the above-noted circumstances, we do not find any reason to take a view different from that of the impugned judgment and order passed by the

learned District Judge, Khulna, in Arbitration Miscellaneous Case No. 36 of 2023. The learned Court below, by its order, rejected the application filed under section 7A of the Arbitration Act 2001 for an interim order of temporary injunction. The impugned order, therefore, does not suffer from any error or illegality or result in failure of justice.

In light of the above, we are of the view that the learned Court below rightly passed the impugned order dated 10.09.2024; there is no illegality, thus there is no reason to interfere with the order passed by the Court below.

In a result, the Rule is **discharged** without any order as to costs.

The impugned order No.09 dated 10.09.2024, passed by the learned District Judge, Khulna, in Arbitration Misc. Case No.36 of 2023 is hereby affirmed.

The District Judge, Khulna, is hereby directed to dispose of the Arbitration Misc. Case No.36 of 2023 expeditiously, as early as possible, in accordance with the law.

The order of status quo granted earlier by this Court is hereby recalled and vacated.

Communicate the judgment and order.

Md. Iqbal Kabir, J:

I agree.