IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL APPELLATE JURISDICTION)
Present:
Mr. Justice Sheikh Md. Zakir Hossain
And
Mr. Justice A.F.M. Saiful Karim

FIRST MISC. APPEAL NO. 275 OF 2024.
With
CIVIL RULE NO.356(FM) OF 2024.

IN THE MATTER OF :

Md. Mohsin Miah @ Md. Mohosin Miah and another.

..... Appellants.

-Versus-

Buddhadev Mukherjee and others.

..... Respondents.

Mr. Zainul Abedin, Advocate with
Mr. SK. Golam Hafiz, Advocate with
Mr. Md. Shahidur Rahman, Advocate with
Mr. Syed Shameem Ahsan, Advocate with
Ms. Nasreen Begam, Advocate

.....For the Appellants.

Mr. Khandaker Quamrul Hassan Ripon, Advocate

....For the Respondents.

Heard on: 31.08.2025, 28.10.2025, 29.10.2025, 04.11.2025, 05.11.2025, 10.11.2025 & 11.11.2025 and Judgment on: 30.11.2025.

A.F.M. Saiful Karim, J:

This appeal has been preferred under section 48(a) of the Arbitration Act, 2001 against the judgment and order dated 09.05.2024 passed by the Court of learned District Judge, Dhaka in Arbitration Miscellaneous Case No. 172 of 2020 disallowing the same filed under sections 42 and

43 of the Arbitration Act, 2001 for setting aside the impugned award dated 18.02.2020 passed by the learned Arbitral Tribunal comprising of Mr. Justice Md. Azizul Haque- Chairman; Mr. Justice Afzal Hossain Ahmed and Mr. Syed Mizanur Rahman, Advocate, Supreme Court of Bangladesh both of Arbitrators.

2. Chronology of Procedural events:

2A. Appellants and the respondents as the 2nd parties and the first party respectively entered into an agreement for sale dated 18.08.2016 of shares of Bangladesh Tea Plantation Limited under certain terms and conditions.

2B. The Claimant-Petitioners invoked the arbitration clause of the deed of agreement in giving notice to the Respondent-Opposite parties to constitute an Arbitral Tribunal to resolve the dispute between the parties.

2C. Through various proceedings the instant Arbitral Tribunal was constituted finally. The constituted Arbitral Tribunal entered into reference after due notices to the parties and directed the parties to submit their respective statement of claim and the statement of defence.

2D. The Claimant-Petitioners-Appellants filed statement of claim.

2E. <u>Appellants Case in the Arbitral proceedings:</u>

Brief case of the Claimants i.e. Petitioners-Appellants as stated in the statement of claim is that the object of the Bangladesh Plantation Limited, a public limited company (hereafter referred to as the Company) is of manufacturing tea and obtaining lease of tea plantation. The Company is the lessee of Baikunthapur Tea Estate together with buildings and structures thereon comprising 922.59 acres of land within mouza- Baikunthapur Tea Estate under Police Station, Madhabpur, District-Hobiganj (hereafter called as the Tea Estate) from the President of the People's Republic of Bangladesh by Registered Lease Deed No. 4704 Dated 23.02.1985. The present respondent Nos. 1-7 is shareholders of the Bangladesh Plantation Limited owning 79.10% of total shares. After taking lease of the Tea Estate, the Company tried its best to make the Tea Estate profitable but in vain as a result of which workers' discontent and agitation

started. The wages and ration of the workers fell in arrear for a long time. The workers of the Baikunthapur Tea Plantation (hereafter called the Tea Plantation) started agitation and demonstration for getting their wages etc. This led the present respondent Nos. 1-7 concern for collecting fund as an exigency to abate the worker's discontent and movement. To abate the workers' agitation and discontent, and run the Tea Estate, the respondent needed money and for that they agreed to sell their 79100 shares in the Company to the claimants. Both parties assessed the price of 100% shares of the Company at Tk. 30 (Thirty) crore and then entered into an agreement for sale dated 18.08.2016 of shares of Bangladesh Plantation Limited duly authenticated by a Notary Public and the claimants thereupon paid an advance of Tk. 40,00,000.00 (Forty Lac) in favour of the Company on the date of execution of the agreement and thereafter they paid Tk. 6,60,000.00.

As per statement of claim dated 31.01.2019, amendment dated 11.04.2019 and another amendment

dated 25.11.2019 it is the case of the claimant that after execution of agreement on 24.08.2016, the Chairman of the Bangladesh Tea Board (hereafter called the Board) went to the Tea Estate for holding a local inquiry about the workers discontent and movement when respondent No. 2 on behalf of the Company informed him of the sale agreement stating that they would transfer their shares and possession of the Tea Estate in favour of the claimants within 10/15 days. But thereafter respondent Nos. 1 & 2 on behalf of all the respondent Nos. 1-7 dilly dallied in performing their promise of the agreement disclosing that they would not sell their shares in the Company. The claimants were then compelled to cause a general notice of caution of sale of said shares of the company published in the Daily Jugantor and other dailies dated 10.09.2016 through their appointed Advocate. Thereafter, they, by letter dated 20.09.2016, applied to the Chairman of the Board for the implementation of agreement upon which the Secretary of the Board by letter dated 06.10.2016,

directed the respondents to implement the said agreement but the respondent side remained silent.

Finding no other alternative, the claimants then instituted Writ Petition No. 12745 of 2016 in the High Court Division for the implementation of the letter dated 24.08.2016 of the Chairman of the Board and being unsuccessful upto the Appellate Division, the claimants then caused a notice of caution published in the Daily Manob Zamin dated 29.09.2016 and Bhorer Kagoj dated 30.09.2016 requesting all concern to refrain from doing any transaction in respect of the Tea Plantation. They also asked the respondents to carry out the agreement by legal notices dated 08.09.2016 and 15.09.2016. The respondent Nos. 1-2 then verbally assured the claimants that they would perform their part of the agreement and thereafter the claimants paid Tk. 2,60,000.00 on 09.11.2016 and Tk. 4,00,000.00 on 15.11.2016 in favour of the respondents and asked the respondents on 22.11.2016 for the performance and implementation of the agreement when the respondents refused to do so. The claimants then by

legal notice dated 23.11.2016 asked the respondents for the performance of the agreement but to no effect. Then at the instance of the claimants, Mr. Md. Tashadduk Hasan, Advocate, being appointed as Arbitrator vide agreement notified both parties for arbitration but the respondents did not appear before him. The said learned Arbitrator informed the claimants of his recommendation dated 05.12.2016 asking for arbitration under the Arbitration Act, 2001 following which the claimants served arbitration notice dated 14.12.2016 upon the respondents but without success. The claimants then instituted the Arbitration Miscellaneous Case No. 92 of 2017 and this arbitration was launched accordingly. The respondent No. 8 and respondent No. 9 entered into a registered deed of agreement No. 3748 dated 31.07.2017 relating to appointment of Managing Agent in violation of clause 15 of transferring 90% of the ownership of the Tea Estate in favour of the respondent No. 9 in the form of authority of managing the Tea Estate nullifying the earlier agreement which is illegal and, as such, the claimants are entitled to

compensation from the respondents to the tune of Tk. 5 (five) crore. Hence, the claimants pray for an award of declaration that the deed of agreement No. 3748 dated 31.07.2017 is illegal and invalid; of direction for the enforcement of the sale agreement dated 18.08.2016; and of compensation of money of Tk. 5 (five) crore against the respondents.

2F. Respondents Case in the Arbitral proceedings:

The Respondent-Opposite Parties entered appearance in the said Arbitral Tribunal and submitted its statements of defence and counter claim. The case of the respondents in brief is that this arbitration is not maintainable in law and the agreement for sale of shares of the Company is not executable under the Contract Act and Specific Relief Act and the claimants have no locus standi to bring this arbitration; They have denied the material allegations made in the statement of claim; The contentions of respondent Nos. 1-7 are that during 2014-2015 AD tea sales slumped in the world market and duty on imported

tea was withdrawn which affected the sales of tea produced locally. The Deputy Commissioner, Hobiganj by his office letter dated 16.08.2016 asked the respondents to show cause as to why their lease of the Tea Estate would not be cancelled on the ground of violation of terms and conditions being Nos. 1, 2 and 3 of the Lease Policy published in the official Gazette dated 25.01.2010 and clause 27 of lease deed due to non-payment of wages of workers and mismanagement and want of tranquility within the Tea Estate. Respondent No. 1 submitted his reply dated 30.08.2016, stating that workers wages for 10 weeks were paid and the arrears of wages would be paid soon; pay of the employees for two months was paid and ration was giving usually; The Deputy Secretary, Ministry of Commerce by his office letter dated 23.08.2016 asked the Chairman, Tea Board to submit a report after taking the necessary steps in respect of the prevailing situation of the Tea Plantations due to non-payment of wages of workers and accordingly, the Secretary of the Board submitted his report dated 24.08.2016 to the Ministry of

Commerce stating that the Chairman, Tea Board gave instructions to dispose of the transfer of shares of the Company. The respondent No. 1 by letter dated 23.08.2016 requested the Chairman of the Board about the solution of the payment of wages of the workers. The claimant No. 1 by letter dated 20.09.2016 requested the Chairman of the Board for the transfer of shares of the company without seeking any direction, however the Secretary of the Board by his office letter dated 06.10.2016 requested the respondent side to take necessary steps for transferring the shares of the Company and handing over possession of the Tea Estate in favour of claimant No. 1.

The further case of respondent Nos. 1-7 is that Mr. Md. Tashadduk Hasan, Advocate as the selected Arbitrator vide issued notice dated 27.11.2016 to both parties for arbitration, but the respondents failed to appear before him because of receiving notice after expiry of the date of appearance mentioned in the notice. In order to run the Tea Plantation, the claimants did not continue their

payment to meet the expenses of the Plantation after payment of Tk. 40 lac at the time of execution of deed of agreement, however they most cunningly to show the agreement alive paid Tk. 2.60 lac and 4.00 lac in the bank account of the Company. As the claimants did not pay money to meet the weekly expenses of the Tea Plantation, the respondent Nos. 1 & 2 failed to get approval of the agreement from the Board of Directors of the Company by submitting the said deed of agreement.

The further case of the respondent Nos. 1-7 is that a handsome money was required to meet the weekly expenses of the Tea Plantation and the claimants were fully aware of it and they undertook as many as 07 times before the representative of the Board through the Director/Deputy Director of the Board for paying money to meet the wages, ration and medical expenses of the workers but without effect causing irreparable loss to the respondents and consequently, the Company was compelled to appoint a Managing Agent to meet the expenses of the Tea Plantation and thereupon by executing

a registered deed dated 31.07.2017 appointed respondent No. 09 as the Managing Agent. The respondent Nos. 1-7 incurred loss of money amounting to Tk. 3 (Three) crore due to non-cooperation of the claimants. They prayed for an award of compensation of an amount of Tk. 3 (Three) crore as counter claim against the claimants as per statement of defense dated 05.05.2019

The case of respondent No. 9 is that it is not a party to the agreement dated 18.08.2016, and, as such, it is not a necessary party to this arbitration proceeding and the claimants cannot get any relief against it. The respondent No.1 in the middle of July, 2017 came to the Managing Director of respondent No. 9 and disclosed that he failed to run the Tea Plantation for want of money stating all difficulties and also the official activities of the Board and Deputy Commissioner, Hobiganj and proposed him to take over the liability and charge of running the Tea Plantation as Managing Agent by giving full financial support when the latter agreed to it and, as a result, they entered into a registered deed of agreement No. 3748

dated 31.07.2017. Since execution of this agreement, respondent No. 9 has been paying the running capital for workers' wages, ration, medical expense and development costs and thus paid Tk. 9,44,66,606.00 from 01.08.2017 to 30.04.2019. Now, the Tea Plantation has been running with modern and improved management causing huge development thereof. Besides, respondent No. 9 paid Tk. 3,10,00,000.00 as a loan to the Company for repayment of its Krishi Bank debt. The Company did not transfer any of its shares in favour of the Respondent No. 9 by deed. the claim of the claimants is liable to be dismissed with costs.

2G. On perusal of the Statement of Claim and the Statement of Defence and Counter Claim made by the parties the Learned Arbitral Tribunal framed issues. Thereafter, the learned Arbitral Tribunal heard the learned advocates appeared on behalf of both the parties and on perusal of the Statement of Claim, Statement of Defence and the documents produced on behalf of both the parties, and passed the impugned award dated 18.02.2020 made by a majority of all its members. It is mentionable that the

dissenting Arbitrator passed separate award on the same date. Being aggrieved by and dissatisfied with the Award dated 18.02.2020 the Claimant-Appellants as petitioners instituted the Miscellaneous Case No. 172 of 2020 under section 42 of Arbitration Act, 2001 for setting aside the award.

2H. The Respondents as opposite parties appeared in the said miscellaneous case and submitted written objection in supporting the impugned award.Thereupon, the learned District Judge, after hearing the parties rejected the said Miscellaneous case vide impugned judgment and order dated 09.05.2024 mainly on the ground that the scope under section 42(1) read with section 43 of the Arbitration Act is very narrow as prescribed by law and the award may only be interfered on the grounds set forth under section 43 of Arbitration Act, 2001 which the appellant could not satisfy.

2I. Being aggrieved by and dissatisfied with the Judgment and Order the appellants preferred this appeal under section 48 of the Arbitration Act, 2001.

2J. The Respondent Nos. 2, 8 and 9 appeared in the case and submitted Counter Affidavit supporting the impugned judgment and order dated 09.05.2024 passed by the learned District Judge, Dhaka.

3. <u>Point for determination:</u>

Whether the impugned Judgment and Order dated 09.05.2024 passed by the learned District Judge, Dhaka is liable to be set aside and consequently, whether the award dated 18.02.2020 is also liable to be set aside through the present proceedings.

3A. We found that the tribunal framed 6(six) issues as follows:

> "1. Is the instant arbitration proceeding maintainable?
>
> 2. Is the agreement for sale of share 79.10% of the Bangladesh Plantation Ltd. dated 18.08.2016 between the parties still in existence and capable of being performed?
>
> 3. Is the deed of agreement dated 31.07.2017 between the Respondents and Farm 2 Firm

Management Ltd. for appointing Managing Agent invalid or not?

4. Are the Claimants entitled to compensation of Tk. 5,00,00,000.00?

5. Are the Respondents entitled to compensation amounting to Tk. 3,00,00,000.00?

6. To what relief or reliefs, if any, are the parties entitled?"

After hearing the parties the Arbitral Tribunal passed impugned award dated 18.02.2020 by majority.

3B. For consideration the ordering portion of the majority award is reproduced below.

"The claim of the claimants in the alternative form of relief is allowed on contest against the respondent Nos. 1-7 and 9 and ex-parte against the rest with costs. The claimants do get an award of money of Tk. 72,86,170.00 (Seventy Two Lac Eighty Six Thousand One Hundred Seventy) only. The respondents nos. 1-7 are directed to pay the above award amount to the claimants by bank crossed

cheque/pay order or in their bank account within 60 (sixty) days from this day failing which, the claimant shall get the award money realized through court, and in that event of execution, they are at liberty to charge interest on the award money at the rate of 10% per annum after expiry of the above 60 (sixty) days and until realization thereof."

3C. The order passed by the dissenting Arbitrator dated 18.02.2020 is also given below for consideration:

"That the claim of the Claimants is allowed on contest against the Respondent Nos. 1-7 and 9 and ex-parte against the rest with cost.

The Respondent Nos. 1-7 are directed to perform the Agreement, Ext. 4, by doing all the necessary legal formalities on their part as necessary for performance of the Agreement (Ext. 4) within 60 (sixty) days from this order serving due notices on the Claimants in compliance of their part whereupon the claimants shall cooperate the Respondent Nos. 1-7 with regard to the Form 117 and after having done all necessary legal formalities by the

Respondent Nos 1-7 as required for compliance of the Agreement, in question ensure payment of the rest amount of consideration to the Respondent Nos. 1-7.
The registered deed of Agreement being no. 3748/17 of Chara Bhanga Sub-Registrar's Office dated 31-07-2017 (marked Ext 19) executed by respondent No. 1 Mr. Buddhadev Mukherjee on behalf of himself and of respondent Nos. 2-7 and of Respondent No. 8 Bangladesh Plantation Limited as its Managing Director, in favour of Farm 2 Farm Management Limited and on its behalf its Managing Director Mohammad Halel Miah appointing him as Managing Representative of Baikanthapur Tea Estate, is hereby declared fraudulent, void, ineffective and not binding upon the Claimants and also hit by the doctrine of lis pendense.

The Respondent Nos. 1-7 are ordered to pay the claimants the compensation of total Tk. (5,00,00,000.00 +15,00,000.00) =5,15,00,000.00 (Five Crore Fifteen Lac) only within 6 (six) months of this Judgment and Order, failing which the Claimants are entitle to get the same by way of attaching and selling the immovable and/or movable

property of the Respondent Nos. 1-7 an accordance with law."

4. <u>Submissions of the learned Advocates of Appellants:</u>

Mr. SK Golam Hafiz, the learned Advocate appearing for the Appellants submits that there was no mentioning of the weekly expenditure of almost Tk.8 lacs or any weekly amount to be paid by the second party to the first party in the impugned Agreement even there was no such claim has been raised by the respondents at any stage earlier but the Arbitrator's of the majority award considered weekly cost of the Tea Plantation of taka 8 lacs as terms of the contract while passing the award which attracts the provision of section 43(1)(Kha)(আ)of Arbitration Act, 2001 and therefore the award may kindly be set aside.

Mr. Hafiz also submits that that the respondents willfully did not perform their promise by taking steps for transferring their shares of the company and, as such, the appellants got no scope to pay consideration money as the

price of their shares in the company and that the agreement dated 18.08.2016 was capable of being performed if the respondents would make official formalities for transferring their Shares in the company as per the terms of the agreement but without considering these aspects of the case impugned award has been passed by the Arbitral Tribunal and therefore the same falls under the mischiefs of the provision under section 43(1) (Kha)(ই) of Arbitration Act.

He next submits as the period of 90 days the agreement dated 18.08.2016 for arranging necessary approval from the Board of Directors by adopting Resolution can be extended under the provision of clause 7, thus the agreement was enforceable and as that the respondents breached the terms and conditions of deed of agreement dated 18.08.2016 by entering agreement No. 3748 for appointment of Managing Agent dated 31.07.2017 the Arbitral Tribunal failed to consider these aspect of the case and thereby acted as opposed to law but the Arbitration Court below i.e. the District Judge failed to

consider the same in passing the impugned judgment and therefore the appeal may kindly be allowed.

Mr. Hafiz further submits that in the context of specific performance of contract, granting solatium is not applicable and under section 38 of the Specific Relief Act solatium is only applicable for rescission of contract and therefore awarding solatium to the claimant is not lawful and also submits that without applying judicial mind and without considering the whole agreement and only considering two clauses (clause no.2 and 3) of the agreement the Arbitration Tribunal acted as opposed to law and as such the award is liable to be set aside under the provision of sub-clause (আ) of clause (খ) of sub-section 1 of section 43 of Arbitration Act, 2001 and failing to consider this aspect the learned District Judge, Dhaka passed the impugned Judgment and as such the same is liable to be set aside.

Mr. Hafiz also submits that under section 38(2) of the Arbitration Act 2001, without statements of reasoning regarding the omission of the dissenting arbitrator's

signature in the majority award, the majority award is defective and in the present case there is no such statement in the majority award and thus the award being in conflict with public policy fall under the provision of section 43(1)(Kha)(ই) of Arbitration Act, 2001 and therefore that cannot be allowed to survive but the learned District Judge failed to consider these vital aspect of the case and thus the appeal may kindly be allowed and consequently the award is liable to be set aside.

In support of his submissions in the context of section 43 of the Arbitration Act, 2001, Mr. Sk Golam Hafiz referred a decision of Appellate Division which is reported in 15 BLC (AD) Page 186 wherein the Hon'ble Appellate Division held that the High Court Division was right in holding that the 3rd Arbitrator was neither consulted nor given an opportunity by the Chairman to deliberate and express his views on the issues before making and signing the award in question and considering exclusion from the process of deliberation of one of the arbitrator is against public policy and also upheld the

judgment passed by the High Court Division in setting aside the award and submits that in the present case since there is no reasoning regarding omission of one of the Arbitration's signature in the majority award which attracts the provision of section 38(2) read with section 43(1)(Kha)(ই) and therefore the award is liable to be aside and in this regard Mr. Hafiz also referred a decision in the case of ISC Projects Private Limited Vs. Steel Authority of India Limited of Delhi High Court (MANU/DE/1070/2025) wherein award passed by arbitration tribunal has been set aside on the ground that there was no justification of missing signature.

Today, Mr. Zainul Abedin, Senior Advocate appearing on behalf of the Appellants submits, emphasing the submissions made by Mr. Hafiz, that appeal may kindly be allowed and the award may kindly be set aside accordingly.

5. <u>Submissions of the learned Advocate for the Respondents:</u>

On the other hand, Mr. Dr. Khondaker Quamrul Hassan Ripon, learned Advocate appearing for the respondent Nos. 2, 8 and 9 submits that all the grounds take in the memorandum of appeal and the submissions made by the learned counsels of the appellants are misconceived and not tenable in the eye of law.

He also submits that Appellant has miserably failed to take any ground in his application for setting aside the award as required under section 43 of the Arbitration Act and therefore the learned Court below rightly disallowed the Arbitration Miscellaneous Case and therefore the appeal is liable to be dismissed.

He also submits that the power of the District Judge to set aside an arbitral award under section 42 is not unfettered rather the power is strictly confined and limited to the specific conditions and grounds as set forth in section 43 of the Arbitration Act, 2001 and also submits that and the learned District Judge rightly pointed out that he cannot sit on the award as a court of appeal and also cannot reassess the findings arrived at by the Tribunal and

therefore the issues regarding cost of taka 8(eight) la, extension of period for adopting Resolution by the Board of Directors for arranging necessary approval, payment of solatium to the claimant, enforceability of the agreement dated 18.08.2016 as raised by the appellants being matters of reappraisal and reassessment has rightly not been done by the District Judge and as such there is no scope in law to interfere with the impugned judgment passed by the learned District Judge.

He also submits that under section 48 of the Arbitration Act, power and jurisdiction of the Hon'able High Court Division is to examine whether the learned District Judge is correct in deciding the appeal considering conditions and grounds as set forth under the provision of section 43 of the Arbitration Act, 2001 and therefore this court is not permitted by law to examine any other point either of law or of fact in deciding the appeal and, as such, there is nothing to interfere with the impugned judgment.

He has also submits that the reason of entering into the agreement dated 18.08.2016 is exigency of fund i.e.

financial support to meet the weekly expenses of the Tea Estate in order to abate the discontent, agitation and movement and the Claimants/Appellants completely failed to perceive the above exigency and did not pay cost of the Tea Estate to the respondents to meet the aforesaid exigency and by not doing so the appellants clearly violated the terms and conditions of agreement dated 18.08.2016 wherein under clause No. 2 it is clearly cited that **"after executing the instant agreement the cost in respect of the Baikunthapur Tea Estate shall be paid by the 2nd party." and Tribunal rightly appraised these aspect of the case as well as the learned District Judge below rightly considered these appeal of the case keeping the provision of section 43 of the Arbitration Act, 2001 in mind and therefore the impugned judgment is not liable to be set aside."**

He also submits that merely showing that there is another reasonable interpretation or possible view of the material on record is insufficient to set aside an award unless the Arbitration suffered from perversity or serious

error of law or that the arbitrators have otherwise misconducted themselves but there is nothing to show that the awards have been improperly procured or unfair or they have not heard both the parties or that the tribunal has not fairly considered the submission of the parties in making the award in question and therefore the judgment passed by the District Judge is proper and this the Appeal may kindly be disallowed.

He further submits that the arbitral award is generally not open to review by courts for any error in findings of facts and applying law for the simple reason that it would defeat the very purpose of the arbitration proceedings as whenever an award is challenged before any court, i.e. either District Court or the High Court Division, the court does not sit on appeal over the decision of the learned Arbitrator and therefore, the scope of considering the merits of the case and factual aspects is again very limited and the factual and contractual positions are matters for decision of the arbitrator and as such, neither the High Court Division nor the Appellate

Division would enter into the merit of such arguments and these principles have been settled by our Appellate Division in Saudi Arabian Airlines Case vide 73 DLR (AD) 277 (2 SCOB 2015 (AD) 15 and therefore the impugned judgment is not liable to set aside.

Mr. Dr. Khondaker Quamrul Hassan Ripon submits referring the finding of the learned Majority Arbitrators that entire terms and conditions of the agreement has been considered by the Arbitral Tribunal and therefore on the context of non-consideration of the terms and conditions of the agreement the award cannot be termed as being against public policy and this the appeal may kindly be disallowed.

On the point of solatium Mr. Dr. Khondaker Quamrul Hassan Ripon, the learned advocate of the respondents, argued that solatium is properly awarded upon consideration of the facts and circumstances of the case and arbitrator's have given lawful reason of awarding solatium in the majority award and as the reasons given by the arbitrators do not attract any of the ground

incorporated under section 43 of the Arbitration Act, 2001 the same cannot be a ground of setting aside an award.

Mr. Dr. Khondaker Quamrul Hassan Ripon, the learned Advocate on behalf of respondents lastly submits that in the impugned award all the ingredients of section 38 of the Arbitration Act, 2001 is fulfilled since there is a dissenting award signed by the third Arbitrator Mr. Justice Afzal Hossain Ahmed which clearly states and explains the absence of reasons of dissenting opinion and signature as well as and he also submits that section 38 of the Act contemplates a single award and there is no plurality of award and as a result, dissenting award as a part of the majority award, it is sufficient that the statement of absence of reasons and signature of dissenting arbitrator is present in the dissenting award and he submits more in this regard that Order No. 24 dated 18.02.2020 of the Arbitral Tribunal arising out of the Arbitration Case No. 92 of 2017 clearly stated the reasons of dissenting award and signature of the dissenting arbitrator and therefore the appeal may kindly be disallowed.

6. Deliberation, findings and Orders of the Court:

To address the issues raised by the parties, let us first examine the scope of the provisions under sections 42 and 43 of the Arbitration Act, 2001. The provisions of both the sections are quoted below:

> **"৪২। সালিসী রোয়েদাদ বাতিলের আবেদন-**
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> (১) কোন পক্ষ কর্তৃক সালিসী রোয়েদাদ প্রাপ্তির ষাট দিনের মধ্যে দাখিলকৃত আবেদনের ভিত্তিতে আদালত আন্তজাতিক বাণিজ্যিক সালিসে প্রদত্ত রোয়েদাদ ব্যতীত এই আইনের অধীন প্রদত্ত কোন সালিসী রোয়েদাদ বাতিল করিতে পারিবে।
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> (2) কোন পক্ষ কর্তৃক সালিসী বোয়েদাদ প্রাপ্তির ষাট দিনের মধ্যে দাখিলকৃত আবেদনের ভিত্তিতে হাইকোর্ট বিভাগ বাংলাদেশে অনুষ্ঠিত আন্তর্জাতিক বাণিজ্যিক সালিসে প্রদত্ত কোন সালিসী রোয়েদাদ বাতিল করিতে পারিবে।
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> **৪৩। সালিসী রোয়েদাদ বাতিলের কারণসমূহ:**
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> -(১) কোন সালিসী রোয়েদাদ বাতিল করা যাইতে পাবে, যদি-
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> (ক) কোন পক্ষ আবেদন দাখিল করিয়া এই মর্মে প্রমাণ উপস্থাপন করে যে-
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> (অ) সালিসী চুক্তির কোন এক পক্ষের কোনরূপ অক্ষমতা ছিল,
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> (আ) যে আইনের অধীন পক্ষগণ সালিস চুক্তি করিয়াছে সেই আইনটি বৈধ আইন নহে;
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> (ই) আবেদনকারী পক্ষকে সালিসকারী নিয়োগে বা সালিসী কার্যধারা সম্পর্কে যথাযথ নোটিশ প্রদান করা হয় নাই অথবা উক্ত পক্ষ তাহার

মামলা উপস্থাপন করিতে অন্য কোন যুক্তিসংগত কারণে অক্ষম হইয়াছিল;

(ঈ) সালিসী রোয়েদাদ এমন কোন বিরোধীয় বিষয় সম্পর্কিত যাহা সালিসে প্রেরিত বিষয়ের উদ্দেশ্য বা শর্ত বহির্ভূত বা উহাতে এমন সিদ্ধান্ত রহিয়াছে যাহা সালিসে প্রেরিত বিষয়ের পরিধি বহির্ভুতঃ তবে শর্ত থাকে যে, যদি সালিসে প্রেরিত হয় নাই এইরূপ বিষয়কে সালিসে প্রেরিত না হওয়া বিষয়ের উপর সিদ্ধান্ত সম্পর্কিত অংশ বাতিল করা যাইতে পারে;

(উ) সালিসী ট্রাইব্যুনালের গঠন বা সালিসী পদ্ধতি পক্ষপণের চুক্তির সহিত সংগতিপূর্ণ ছিল না অথবা এইরূপ চুক্তির অবর্তমানে এই আইনের বিধানাবলীর সহিত সংগতিপূর্ণ নয়;

(খ) আদালত কিংবা ক্ষেত্রমত, হাইকোর্ট বিভাগ এই মর্মে সন্তুষ্ট হয় যে-

(অ) বিরোধের বিষয়বস্তু বাংলাদেশে প্রচলিত আইন অনুসারে সালিসের মাধ্যমে নিষ্পত্তিযোগ্য নহে,

(আ) সালিসী রোয়েদাদ দৃশ্যতঃ বাংলাদেশে প্রচলিত কোন আইনের পরিপন্থী;

(ই) সালিসী রোয়েদাদ বাংলাদেশের জননীতির পরিপন্থী; অথবা

(ঈ) সালিসী রোয়েদাদ তঞ্চকতা বা দুর্নীতি ছারা প্ররোচিত বা প্রভাবান্বিত।

২) কোন পক্ষ রোয়েদাদ বাতিল করার জন্য আবেদন দাখিল করিলে আবেদন নিষ্পত্তি না হওয়া পর্যন্ত আদালত বা ক্ষেত্রমত, হাইকোর্ট বিভাগ রোয়েদাদের অধীনে প্রদেয় কোন অর্থ, যদি থাকে, আদালতে বা ক্ষেত্রমত হাইকোর্ট বিভাগে নগদে অথবা অন্য

কোনভাবে জামানত হিসাবে জমা করিবার জন্য উক্ত পক্ষকে আদেশ করিতে পারিবে।

ব্যাখ্যা।-এই ধারায় "আদালত" অর্থে যে আদালতের অধিক্ষেত্রের স্থানীয় সীমার ভিতরে সালিসী রোয়েদাদটি চূড়ান্তভাবে প্রদত্ত ও স্বাক্ষরিত হইয়াছে উক্ত আদালতকে বুঝাইবে।"

We have also considered the provision of sections 36(3), 37 and 38 of the Arbitration Act, 2001 which are reproduced herein below:

"৩৬। বিরোধের বিষয়বস্তুতে আইনের প্রয়োগ।-(১) কোন বিরোধের বিষয়বস্তুর ক্ষেত্রে কোন আইন প্রযোজ্য হইবে মর্মে পক্ষগণ কর্তৃক নির্ধারিত হইলে সালিসী ট্রাইব্যুনাল সংশ্লিষ্ট আইনের বিধান অনুসারে উক্ত বিরোধ নিষ্পত্তি করিবে:

তবে শর্ত থাকে যে, সংশ্লিষ্ট ক্ষেত্রে পক্ষগণ যেই দেশের আইন বা আইনগত ব্যবস্থা নির্ধারণ করিবে, সেই দেশের প্রচলিত আইনের ভিন্নতার ক্ষেত্রে শুধুমাত্র মৌলিক আইনকে বুঝাইবে।

(২) উপ-ধারা (১) এর অধীন কোন দেশের

আইন নির্ধারণ করা না হইলে সালিসী ট্রাইব্যুনাল বিবেচনায়, ভিন্নতার ক্ষেত্রে, যে আইন উপযুক্ত বিবেচিত উক্ত আইন প্রয়োগ করিবে।

(৩) সালিসী ট্রাইব্যুনাল চুক্তির শর্ত অনুযায়ী সাধারণ ন্যায় বিচারের স্বার্থে সংশ্লিষ্ট বিষয়ে প্রথা, যদি থাকে, বিবেচনায় আনিয়া সিদ্ধান্ত প্রদান করিবে।

৩৭। একাধিক সালিসকারীর সমন্বয়ে গঠিত সালিসী ট্রাইব্যুনালের সিদ্ধান্ত গ্রহণের পদ্ধতি।-(১) পক্ষগণ অন্যভাবে সম্মত না হইলে, একাধিক সালিসকারী সমন্বয়ে গঠিত সালিসী ট্রাইব্যুনালের সিদ্ধান্ত উহার সংখ্যাগরিষ্ঠ সদস্যের সমর্থনে গৃহীত হইবে।

(২) উপ-ধারা (১) এ যাহা কিছুই থাকুক না কেন, পক্ষগণের দ্বারা অথবা সালিসী ট্রাইব্যুনালের সকল সদস্যের দ্বারা ক্ষমতাপ্রাপ্ত হইলে, পদ্ধতি সম্পর্কিত সকল প্রশ্নের সালিসী ট্রাইব্যুনালের চেয়ারম্যান সিদ্ধান্ত প্রদান করিবেন।

৩৮। সালিসী রোয়েদাদের নমুনা ও বিষয়বস্তু।-(১) সালিসী ট্রাইব্যুনালের রোয়েদাদ লিখিত এবং সালিসকারী বা সালিসকারীগণ কর্তৃক স্বাক্ষরিত হইতে হইবে।

(২) সালিসকারীর একাধিক সালিসকারীর সমন্বয়ে গঠিত সালিসী ট্রাইব্যুনালের রোয়েদাদে সংখ্যাগরিষ্ঠ স্বাক্ষর পর্যাপ্ত হইবে এবং কোন সালিসকারী স্বাক্ষর না করিলে উহার কারণ রোয়েদাদে উল্লেখ করিতে হইবে।"

It appears from the above quoted provisions under sub-section (1) of section 42 that any party to a dispute before the Arbitration Tribunal may challenge an award passed by such Tribunal seeking cancellation of the same by filing application before the learned District Judge concerned, particularly when the Arbitration agreement is

not an International Commercial Arbitration Agreement. The grounds for cancellation of such award have been provided by section 43 under sub-section (1) as quoted above. It appears from the said provisions under sub-section (1) of section 43 that such an award may only be cancelled if the same is hit by the mischiefs as provided under Clauses-(ক) and (খ) of sub-section (1) of section 43.

The only points against the awards in question, as raised by the learned advocate for the appellant, are that the said awards are hit by sub-Clause-(আ) and (ই) of Clause-(খ) of sub-section (1) of section 43. Sub-Clause-(আ) of clause (খ) of sub-section (1) provides that such award may be cancelled if the same is apparently contrary to any law applicable in Bangladesh. Sub-Clause (ই) of Clause (খ) of sub-section (1) provides that such award may be cancelled if the same is contrary to the public policy of Bangladesh. Therefore, we need to address these two issues so that we can examine properly as to whether

the Court below has lawfully dismissed the aforementioned miscellaneous case filed by the appellant.

It is true that if the learned District Judge would sit on these awards as an appellate Court, it would have the option to take a different view on the same. But because of absence of such option, the awards cannot be cancelled in view of the provisions under section 43 of the Arbitration Act, 2001. This legal position has been reaffirmed by our Appellate Division in the above referred case of Saudi Arabian Airlines vs Saudi Bangladesh, 73 DLR (AD) 277 which reviewed the earlier judgment of the Hon'ble Appellate Division reported in 15 BLC(AD) page-186. Therefore, it appears that learned District Judge concerned in fact did not have any option but to hold that such awards could not be cancelled as because the same did not suffer from the mischiefs as provided by section 43 of the said Act.

Let us focus on the argument made by the appellant regarding:

1. weekly cost of taka 8,00,000/=,

2. Tenure of the agreement could be extended and
3. Compensation awarded in favour of the claimant in violation of laws.

It is found that the claimant appellant is the proprietor of 'Sree Gobindapur Tea Plantation' within Moulavibazar District. It is also found that from the exhibit Ema Report dated '24.08.2016' that the issue of payment of weekly cost has been raised there and the statement of RW-1 to the effect that Tk.8 (eight) lac is required as weekly cost of the Tea Plantation has not been controverted by the CW-1 and CW-2 in their depositions.

It is also mentionable here that clause No. 2 of the agreement it is clearly stipulates that **"after executing the instant agreement the cost in respect of the Baikanthapur Tea Estate shall be paid by the 2nd party."**

In the issue of extension of the tenure of the agreement we found that the Arbitral Tribunal dealt with this issue and thus the submission of the learned Advocate of the Appellant is not tenable.

About the issue of awarding compensation in favour of the claimant in violation of laws we found that though compensation has been considered under the Specific Relief Act but there is no gross violation of laws which can be termed as being conflict with public policy.

Moreover, in our view all these three issues are matters of reappraisal or of different interpretation of fact or of reassessment of fact which does not fall under the mischief of the provision of section 43 of the Arbitration Act, 2001 under which the District Judge below can set aside the award and therefore our irresistible conclusion is that the learned District Judge below rightly disallowed the Arbitration Miscellaneous case.

Now, let us examine the question of public policy as raised by the learned advocate for the appellant that award passed by the majority arbitrators would be considered as being in conflict with public policy. The term public policy has been addressed by our Appellate Division in the above referred Saudi Arabian Airlines Case [73 DLR

(AD) 277]. Relevant observation of the Appellate Division therein on the sand point is quoted below:

> **“Interpretation and conceptualization of the term public policy' is vital to understand the extent and scope of its applicability as a ground to challenge arbitral award. The words "public policy" used in section 43(b) (iii) connotes some matters, which concern public good and the public interest. "Public policy" is to be understood in the context of each and every case. The term "Public policy" is not defined in the Arbitration Act and it is difficult to derive a straight jacket formula to define and determine the scope of public policy. Black's Law Dictionary defined Public policy as community common sense and common conscience extended and applied throughout the state to matters of public morals, health, safety, welfare, and the like; it is that general and well-settled public opinion relating to man's plain, palpable duty to his fellowmen. Having due regard to all**

circumstances of each particular relation and situation. It is a dwindling concept and given its flexibility and adaptability, can be interpreted to stall the enforcement process, Public policy can be generally defined as a system of laws, regulatory measures and course of action enacted by the government in response to public. Public policy manifests the common sense and common conscience of the citizens as a whole that extends throughout the state. It is a decision to either act or not act in order to resolve a problem. It can be stated that the concept of public policy connotes some matter which concerns public good and the public interest what is for public good or in public interest or that would be injurious or harmful to the public good or public interest has varied from time to time. In the current era of globalization, liberalization, and growing international trade, the term 'public' covers an expanding range of issues. An award would be

> **contrary to public policy if it were 'patent illegal", Illegality must go to the root of the matter and if the illegality is of trivial nature it cannot be held that award is against the public policy. Award could be set aside if it is so unfair and unreasonable that it shocks the conscience of the Court."**

It appears from the above observation of the Appellate Division that an award may be termed as contrary to the public policy only if any patent illegality is found therein and the patent illegality is such illegality which is so unfair and unreasonable that it shocks the conscience of the Court. Upon reading the impugned awards themselves, we have not found any such element therein which may shock of the conscience the Court. Therefore, we are of the view that the submissions made by the learned advocate for the appellants on the point of public policy does not have any substance.

It appears that the dissenting arbitrator gave a separate award on the same day i.e on 18th February, 2020. He started his award with an opening para which is as under-

> **"In deciding the instant Arbitration Case may learned brother Arbitrators have framed as many as 6(six) issues of which except their views on Issue Nos. 1 and 6 as to maintainability of the proceeding and grant of any other relief I, in the facts, circumstances and evidence of the case on record, dissent with their views on other Issues being Nos. 2 to 5, as such, I am giving my own findings and decision on Issue Nos. 2 to 5 as under."**

We also found from the order No. 24 that Arbitrator Justice Afzal Hossain Ahmed prepared separate award with different decision.

The order No. 24 dated 18.02.2020 of the Arbitral Tribunal arising out the Arbitration Case No. 92 of 2017 which is follows;

"Order No.24" Dated 18.02.2020:

Today is fixed for delivery of award. The award prepared by the Chairman which is agreed by Arbitrator Syed Mizanur Rahman. Arbitrator Justice Afzal Hossain Ahmed prepared separate award with different decision. Both the awards are delivered. According to section 37(1) of the Arbitration Act, 2001, on the basis of majority decision, the award is to the effect;

That the claim of the Claimants in the alternative form of relief is allowed on contest against the Respondent Nos. 1-7 and 9 and ex-parte against the rest with costs. The Claimants do get an award of money of Tk. 72,86,170.00 (Seventy Two Lac Eighty Six Thousand One Hundred Seventy) only.

The Respondents nos. 1-7 are directed to pay the above award amount to the claimants by bank crossed cheque/pay order or in their bank account within 60 (sixty)

days from this day failing which, the Claimant shall get the award money realized through court, and in that event of execution, they are at liberty to charge interest on the award money at the rate of 10% per annum after expiry of the above 60 (sixty) days and until realisation thereof. Both the parties may take back their original documents, if any after replacing photocopy thereof.

Both the parties are directed to deposit court fees with vat at Tk. 23,000.00 by equal share.

The Administrative Secretary shall keep the record in his custody for a period of maximum one year."

Therefore, considering the opening para of the award and order No. 24 we found that third arbitrator have participated and made consultation in the process of deliberation and he also put his signature in order No. 24 and in the dissenting award and thus we found no reason to hold that the award is defective for non compliance of the provision of section 38(2) of the Arbitration Act, 2001 and that the award can be treated as being in conflict with public policy.

We have gone through the memorandum of appeal and counter affidavit filed by the respondents along with the materials and evidence on record. We have also considered the submissions advanced by the learned Advocates for the respective parties.

Having considered all the facts and circumstances of the case, the evidence on record, the submissions of the respective parties and the propositions of law cited and discussed above, we are led to hold the view there is no reason to interfere with the impugned judgment and order dated 09.05.2024 passed by the learned District Judge.

Accordingly, this first miscellaneous appeal is dismissed.

Resultantly, for the reasons stated above, the connecting Rule being Civil Rule No. 356(FM) of 2024 is discharged and order of stay granted at the time of issuance of the Rule hereby recalled and vacated. There is no order as to cost.

Let a copy of this judgment together with LCR be sent down to the learned judge of the concerned court below, at once.

A.F.M. Saiful Karim, J:

Sheikh Md. Zakir Hossain, J:

I agree.

Sheikh Md. Zakir Hossain, J:

AZOM(BO)