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

Present:
Mr. Justice Md. Toufiq Inam.

First Miscellaneous Appeal No. 385 of 2025.
(F.M.A.T No. 215 of 2025)

In the Matter Of:

Mohammad Moazzam Hossain, Son of late Mvi K.M. Khaleque, of Vill-Kasba, P.S-Gournadi, District-Barishal, represented by his Constituted Attorney: Advocate Rabiul Islam Tarafder (Robin), House No: 08, Road No. 21, Sector: 04, Uttara Model Town, Dhaka.

--------- Appellant.

-Versus-

Dr. Gias Uddin Miah and others.

--------------- Respondents.

Mr. Zulhas Uddin Ahmmed, Senior Advocate with
Mr. Md. Shyuel Islam Khan, Advocate and
Mr. Rabiul Islam Tarafder (Robin), Advocate (in person).

-------- For the Plaintiff-Petitioner.

Mr. Syed Mamun Mahbub, Senior Advocate with
Mr. Minhazul Hoque Chowdhury, Advocate with
Mr. Md. Adnan Sarker, Advocate and
Mr. Md. Abdul Bari, Advocate.

----- For the Defendant-Respondent Nos.1-7.

Mr. Zamirul Akhtar, Advocate with
Mr. Habibur Rahman, Advocate.

------ For the Defendant-Respondent Nos.8-9.

Mr. Shah Amran, Advocate with
Mrs. Salina Akter, Advocate and
Mr. Jasim Uddin, Advocate.

--- For the Pro-forma Respondent Nos.13,14 & 16.

Judgment Delivered On: 04.08.2026.

Present:

Md. Toufiq Inam, J:

The appellant has preferred the instant First Miscellaneous Appeal, being aggrieved by and dissatisfied with the judgment and order dated

21.06.2025 passed by the learned Senior District Judge, Dhaka, in Arbitration Miscellaneous Case No. 21 of 2023, whereby the learned Judge rejected the application filed under sections 42 read with 43 of the Arbitration Act, 2001, seeking to set aside the arbitral award dated 20.06.2022 passed by the Sole Arbitrator directing respondent No. 8 to execute and register the sale deeds in favour of respondent Nos. 1 to 7 in respect of the apartments allotted to them.

Factual Background :

The facts, shorn of unnecessary details, are that one Md. Moazzem Hossain was allotted Plot No. 8, Road No. 21, Sector-4, Uttara, Dhaka, measuring 589 square yards and 7 square feet by the then DIT (now RAJUK). A lease deed in respect of the said plot was executed on 17.05.1983 and registered on 05.06.1983 as Deed No. 2438. Subsequently, on 27.03.1986, RAJUK approved a building plan for construction of a four-storied building on the leased property. However, the landowner could not undertake the construction.

As the landowner had permanently been residing in the United States of America, he decided to develop the property through a joint venture with a real estate developer. After negotiations with different developers, he entered into an agreement with Western Developer Limited, respondent No. 8, for construction of a six-storied residential building. While residing in California, USA, the landowner executed a development agreement on 15.11.2005 in favour of the developer. His signature on the agreement was authenticated by a Notary Public in the United States. Thereafter, upon his arrival in Bangladesh in early January 2006, a fresh Development Agreement dated 08.01.2006 was executed between the parties incorporating substantially the same terms and conditions as those contained in the earlier agreement. Under both agreements, the developer was entitled to 60% of the constructed area together with the corresponding undivided share in the land and parking spaces, while the landowner was entitled to the remaining 40%.

Pursuant to the Development Agreement, the landowner executed and registered an Irrevocable Power of Attorney on 15.01.2006, being Power of Attorney No. 809, authorising the developer to construct the building and to execute and register conveyance deeds in respect of the developer's allocated apartments in favour of intending purchasers. Following registration of the Power of Attorney, RAJUK approved a revised building plan for construction of a six-storied building by memo dated 05.09.2006 in the name of the landowner. The developer thereafter commenced construction and submitted the registered Power of Attorney before RAJUK for necessary purposes.

During construction, the developer marketed the apartments allocated to its share under the Development Agreement. Respondent Nos. 1 to 7 entered into separate agreements with the developer on different dates, namely, 05.08.2006, 17.07.2007, 16.08.2007, 28.10.2007, 31.01.2008, 27.03.2008 and 18.05.2008, for purchase of Apartment Nos. 3A, 3C, 4A, 4B, 4C, 5A and 5C respectively. Except for the apartment numbers and consideration amounts, the terms and conditions of all the agreements were substantially identical.

Clause 3 of the Development Agreement specifically allocated the developer's share of apartments, namely, Flats Nos. 2A, 3A and 4A, each measuring 1,370 square feet; Flats Nos. 2B, 4B and 5B, each measuring 1,353 square feet; and Flats Nos. 3C, 4C and 5C, each measuring 1,331 square feet. Out of these nine apartments, the developer sold seven apartments to respondent Nos. 1 to 7. Subsequently, upon the landowner's application dated 06.12.2007, Flats Nos. 2A and 2B were allocated to him. Thus, all nine apartments allocated to the developer's share under the Development Agreement stood allocated either to respondent Nos. 1 to 7 or to the landowner.

Although the registered Power of Attorney had been submitted to RAJUK, approval of the same was delayed due to the absence of the landowner on scheduled dates and the non-availability of certain original title documents. Nevertheless, the developer completed construction of the building and handed over possession of the seven apartments to respondent Nos. 1 to 7 between January and March 2009. Respondent Nos. 1 to 7 have remained in uninterrupted possession of their respective apartments since 2009 and have been using the same as their residences upon paying holding tax and all utility charges in respect of the apartments.

After delivery of possession, the developer assured the purchasers that the respective sale deeds would be executed and registered immediately upon obtaining transfer permission from RAJUK. Thereafter, the developer applied to RAJUK for transfer permission. By letter dated 08.09.2010, RAJUK informed the developer that approval of the registered Power of Attorney had first to be obtained before transfer permission could be considered. According to the respondents, despite requests made by the developer, the landowner did not cooperate in obtaining the necessary approval and transfer permission.

Finding no alternative, the developer instituted Title Suit No. 69 of 2011 before the Court of the Joint District Judge, 1st Court, Dhaka, seeking, inter alia, a declaration that the landowner was obliged to obtain transfer permission from RAJUK and, in default, a direction upon RAJUK to issue such permission. In his written statement filed in the said suit, the landowner admitted execution and registration of the Development Agreement and the registered Power of Attorney in favour of the developer but alleged that the developer had committed various irregularities, including carrying out substandard construction.

Since the landowner permanently resided in the United States, he appointed Advocate R. I. Tarafdar Robin to represent him in Bangladesh for negotiating with the developer and addressing matters relating to the project. During March-April 2009, a meeting was held among the landowner, the developer and the apartment purchasers, where the Western Neer Apartment Management Committee was formed and respondent Nos. 1 and 6 were elected as its President and General Secretary respectively. The respondents further contend that Advocate R. I. Tarafdar Robin subsequently acted fraudulently. Although he had allegedly been authorised only to facilitate obtaining transfer permission from RAJUK and to deal with the landowner's own apartments, he procured another registered Power of Attorney dated 02.08.2009 purporting to cover the apartments which had already been sold by the developer to respondent Nos. 1 to 7.Upon discovering the alleged fraud, the landowner executed another registered Power of Attorney dated 19.07.2023 in favour of one Syed Firoz Alamgir, empowering him, inter alia, to revoke the earlier Power of Attorney dated 02.08.2009.

As the dispute between the landowner and the developer regarding transfer permission remained unresolved, respondent Nos. 1 to 7 became apprehensive about obtaining registered title to their apartments. Consequently, invoking Clause 31 of their respective allotment agreements, they served an arbitration notice upon the developer and thereafter filed Arbitration Miscellaneous Case No. 14 of 2020 under section 12 of the Arbitration Act, 2001 before the District Judge, Dhaka, seeking appointment of an arbitrator. By order dated 25.01.2022, the learned District Judge appointed a Sole Arbitrator, who entered upon the reference and published his arbitral award on 20.06.2022 directing execution and registration of sale deeds upon obtaining sale permission from RAJUK. In the arbitral proceedings, the RAJUK and landowner was impleaded as pro forma-respondent Nos. 5 and 6 respectively, although they were not signatories to the arbitration agreements executed between the developer and respondent Nos. 1 to 7.

Appellant’s Arguments :

Mr. Zulhas Uddin Ahmed, learned Senior Advocate appearing with for the appellant, submits at the outset that although the appellant, being the landowner, was not party in the arbitral proceedings, he could not lawfully be treated as an award-debtor in the execution case. Referring to Order XXI Rule 11 of the Code of Civil Procedure, he contends that an arbitral award, like a decree of a civil court, is executable only against the award-debtor and cannot be enforced against a person who is not party to the award. According to him, the appellant is neither an award-debtor nor a judgment-debtor, and, therefore, any attempt to execute the award against him is wholly without jurisdiction and contrary to law.

He next submits that the subject matter of the dispute is inherently incapable of settlement by arbitration within the meaning of section 43(b)(i) of the Arbitration Act, 2001. He contends that the dispute substantially concerns ownership, title and transfer of immovable property, namely, a residential building and the apartments constructed thereon. The arbitral award directs execution and registration of sale deeds in favour of respondent Nos. 1 to 7, thereby effectively determining and transferring proprietary rights in immovable property. Such questions, according to him, fall exclusively within the jurisdiction of the competent civil court and cannot be adjudicated by an arbitral tribunal. Consequently, the award is without jurisdiction and liable to be set aside.

Developing his submissions further, Mr. Ahmed argues that the arbitration itself was founded upon an invalid and unenforceable arbitration agreement. According to him, the arbitration clause existed only in the agreements executed between respondent No. 8, Western Developer Limited, and respondent Nos. 1 to 7. The appellant-landowner was neither a party to those agreements nor had he entered into any arbitration agreement with the purchasers. He further contends that Western Developer Limited derived its authority solely from the purported Irrevocable Power of Attorney being Deed No. 809 dated 15.01.2006, which, according to the appellant, is a forged and fabricated document since the landowner was allegedly not present in Bangladesh on the date of its execution. On the contrary, the only valid Power of Attorney, according to him, is Deed No. 7804 executed in favour of Advocate Rabiul Islam Tarafdar Robin. Since the very foundation of the developer's authority rests upon forged documents, the arbitration agreement itself is void and unenforceable in law.

He further submits that the arbitral proceedings were conducted in gross violation of the principles of natural justice, thereby attracting section 43(a)(iii) of the Arbitration Act, 2001. According to him, the landowner, Md. Moazzem Hossain, who has since died, was never duly notified of the arbitral proceedings and was afforded no meaningful opportunity to present his defence. The proceedings were allegedly conducted behind his back and without his knowledge or consent. Such failure to provide proper notice and an effective opportunity of hearing, he contends, vitiates the entire arbitral process and renders the award liable to be set aside.

He also contends that the award was procured by fraud within the meaning of section 43(b)(iv) of the Arbitration Act, 2001. He argues that the claimants, respondent Nos. 1 to 7, in collusion with respondent No. 8, relied upon forged Powers of Attorney and unregistered agreements to establish rights over the property. According to him, the purchasers possess neither any registered conveyance nor any legally recognised title to the apartments, yet they sought to obtain ownership through arbitral proceedings founded upon fabricated documents. Fraud, he submits, vitiates every judicial and quasi-judicial proceeding, including arbitration, and therefore the impugned award cannot be sustained in law.

Finally, Mr. Ahmed submits that the learned District Judge failed to appreciate that the arbitral tribunal had exceeded the scope of its jurisdiction, thereby attracting section 43(a)(iv) of the Arbitration Act, 2001. He contends that by directing execution and registration of sale deeds, the tribunal effectively adjudicated upon questions of ownership and title to immovable property, matters lying wholly outside the scope of the arbitration agreement. Since the appellant, as the admitted owner of the land, was not a party to any valid agreement with respondent Nos. 1 to 7, his proprietary rights could not legally be determined or affected by the arbitral award. The learned District Judge, however, failed to address these jurisdictional objections and, on mere surmises and conjectures, illegally rejected the appellant's application under sections 42 and 43 of the Arbitration Act, 2001. Accordingly, he prays that the impugned judgment and order, together with the arbitral award, be set aside.

Respondents’Submissions :

Per contra, Mr. Minhazul Hoque Chowdhury, learned Advocate appearing on behalf of respondent Nos. 1 to 7, controverts the submissions advanced on behalf of the appellant and, at the outset, submits that it is, in fact, Advocate R. I. Tarafdar Robin who has perpetrated fraud upon the landowner, the developer and the apartment purchasers. According to him, by relying upon an invalid and ineffective Power of Attorney, Mr. Robin executed several deeds of agreement (Bainanamas) in favour of different persons in respect of apartments which had already been lawfully sold by the developer to respondent Nos. 1 to 7. Upon discovering such fraudulent transactions, respondent No. 2 lodged Uttara Purba Police Station Case No. 06 dated 24.08.2019 against Mr. Robin and pro forma respondent Nos. 12 to 16 under sections 406, 420, 385, 506 and 34 of the Penal Code, 1860. The matter was subsequently investigated by the Police Bureau of Investigation (PBI), which, upon completion of investigation, submitted charge-sheet on 19.06.2024 against Mr. Robin under sections 406, 420 and 506 of the Penal Code. The case has been registered as G.R. No. 177 of 2023 and is presently pending before the learned Additional Chief Metropolitan Magistrate, Court No. 2, Dhaka, for trial. According to the learned Advocate, the pendency of the criminal case and submission of the charge-sheet lend substantial support to the respondents' allegation that Mr. Robin, and not the developer, committed fraud in relation to the property.

He further submits that the landowner, Md. Moazzem Hossain, voluntarily executed the Joint Venture Development Agreement and, pursuant thereto, granted an irrevocable registered General Power of Attorney dated 15.01.2006 in favour of respondent No. 8, Western Developer Limited, authorising it to construct a six-storied building comprising fifteen apartments and to transfer the developer's allocated share consisting of nine apartments. He contends that the said Power of Attorney expressly stipulated that it was irrevocable and would remain operative until completion of the development project. Consequently, any subsequent Power of Attorney executed by the landowner in respect of the same subject matter during the subsistence of the earlier irrevocable Power of Attorney is void, inoperative and incapable of conferring any legal authority.

Mr. Chowdhury further argues that the appellant's allegation that the registered Power of Attorney dated 15.01.2006 is forged is wholly untenable and contrary to the documentary evidence on record. He submits that the principal himself, namely, the landowner Md. Moazzem Hossain, unequivocally admitted the execution and registration of both the Joint Venture Agreement and the registered Power of Attorney in favour of Western Developer Limited, as reflected in Annexures-6 and 8(A). Moreover, Annexure-10(A), being the report of the competent Sub-Registrar, independently confirms that the Power of Attorney was duly executed and registered. Having himself acknowledged the execution of those documents, neither the landowner nor any person claiming through him can now be permitted to dispute their authenticity.

He also submits that both the registered Power of Attorney dated 15.01.2006 and the subsequent registered Power of Attorney dated 10.08.2023 are registered instruments. If any question arises regarding the genuineness of the earlier Power of Attorney, the legal presumption under section 60 of the Registration Act operates in favour of its due execution and registration. According to him, registration proceedings are presumed to have been regularly and honestly performed, and the certificate of registration itself constitutes prima facie evidence of execution unless rebutted by cogent evidence. In the present case, no such evidence has been produced.

Lastly, Mr. Chowdhury submits that the conduct of the landowner himself completely belies the appellant's present case. He points out that the landowner accepted allotment of two apartments from the developer by allotment letters dated 06.12.2007 and also acknowledged that the Western Neer apartment building had been constructed by respondent No. 8 pursuant to the Joint Venture Agreement. These admissions, according to the learned Advocate, conclusively establish the validity of the development arrangement and the authority conferred upon the developer. He contends that the allegations now advanced through the so-called attorney, Mr. Robin, constitute nothing more than a belated, frivolous and concocted attempt to create disputes over transactions that had long since been completed, with the sole object of extracting undue advantage from respondent Nos. 1 to 7. He, therefore, submits that the learned District Judge rightly rejected the application under sections 42 and 43 of the Arbitration Act, 2001, and that the present appeal is devoid of merit and liable to be dismissed.

Mr. Zamirul Akhter, learned Advocate appearing on behalf of respondent Nos. 8 and 9, adopts the submissions advanced by the learned Advocate for respondent Nos. 1 to 7 in their entirety. He further adds that respondent No. 8 has not challenged the arbitral award, as it accepts and remains bound by the obligations arising therefrom. According to him, under the Joint Venture Agreement as well as the respective allotment agreements executed with respondent Nos. 1 to 7, respondent No. 8 is under a contractual obligation to execute and register the sale deeds in favour of the purchasers in respect of the apartments duly allotted to them and possession whereof had already been handed over in the year 2009. He submits that the arbitral award merely enforces the existing contractual obligations of respondent No. 8 and does not impose any new or extraneous liability upon it. Accordingly, respondent No. 8 has accepted the award and has no grievance against the findings or directions contained therein. He, therefore, prays that the appeal, having been filed by a person who has failed to establish any of the statutory grounds under section 43 of the Arbitration Act, 2001, be dismissed with costs.

Discussion, Findings and Reasons :

Before examining the rival contentions, it is necessary to bear in mind the scope of this Court's jurisdiction under sections 42 and 43 of the Arbitration Act, 2001. The Act embodies the legislative policy of minimal judicial intervention in arbitral proceedings and accords finality to arbitral awards. The jurisdiction of the High Court Division under section 43 is supervisory, not appellate. It is not open to this Court to reappraise the evidence, reinterpret the contract, or substitute its own findings for those of the arbitral tribunal. An arbitral award may be set aside only on one or more of the limited statutory grounds expressly enumerated in section 43.

Before entering into the merits, however, a threshold issue arises regarding the maintainability of the present appeal. It is undisputed that the original landowner, Md. Moazzem Hossain, died on 11.01.2024, whereas the present appeal was instituted in 2025 by Advocate R. I. Tarafdar Robin claiming to act under a registered Power of Attorney executed by the deceased on 02.08.2009.

Since the said Power of Attorney was executed in 2009, its validity falls to be examined under the law then in force. Nevertheless, whether the matter is considered under the erstwhile Powers-of-Attorney Act, 1882 or the present Power of Attorney Act, 2012, the legal consequence remains identical. A power of attorney creates nothing more than an agency between the donor and the attorney. It does not confer upon the attorney any independent or proprietary right in the subject matter of the agency. The attorney derives his authority solely from the donor and acts only as the donor's representative.

Section 201 of the Contract Act, 1872 unequivocally provides that an agency terminates upon the death of the principal unless it is an agency coupled with an interest within the meaning of section 202 of the Act. There is no material before this Court to suggest that the Power of Attorney dated 02.08.2009 was coupled with any proprietary or beneficial interest in favour of the attorney. Consequently, the authority conferred upon Advocate R. I. Tarafdar Robin automatically stood terminated upon the death of Md. Moazzem Hossain on 11.01.2024.

The decisive question is not whether the attorney had validly represented the donor during his lifetime, but whether the authority conferred by the Power of Attorney continued to subsist on the date the appeal was instituted. Although an appeal is, in law, a continuation of the original proceeding, its institution constitutes a fresh procedural act which must be undertaken by a person possessing lawful authority on the date of presentation. A Power of Attorney creates only a derivative and representative authority; it neither survives after the death of the donor nor devolves upon the attorney any independent right to represent the deceased. Upon the donor's death, the attorney cannot step into the shoes of the deceased or assume the legal status of his heirs or legal representatives, for the right to prosecute or defend proceedings thereafter vests exclusively in those upon whom the law confers succession or representative capacity. Accordingly, where an appeal is instituted after the death of the donor solely on the strength of a Power of Attorney that has already become inoperative by operation of law, such appeal is presented by a person lacking legal competence.

The record further reveals that, after alleging that the earlier registered Power of Attorney dated 02.08.2009 had been procured by fraud, donor-Md. Moazzem Hossain himself executed another registered Power of Attorney on 19.07.2023 in favour of Syed Firoz Alamgir, authorising him, inter alia, to take all necessary steps for revocation and cancellation of the earlier instrument. Although it is unnecessary, for the purpose of the present appeal, to determine the precise legal effect of the subsequent Power of Attorney, its execution is nevertheless a significant circumstance demonstrating that the donor had unequivocally withdrawn his confidence from the earlier attorney and had intended to supersede the previous arrangement.

Upon the death of Md. Moazzem Hossain on 11.01.2024, any right, if at all, devolved exclusively upon his legal heirs or legal representatives. They alone became competent in law to decide whether an appeal should be preferred and, if so advised, to institute such appeal themselves or authorise someone to do so in accordance with law. The authority previously conferred upon the attorney under the Power of Attorney, being purely derivative of the donor's will, stood extinguished upon the donor's death and could not survive so as to enable the attorney to invoke the appellate jurisdiction. There is nothing on record to suggest that Advocate R. I. Tarafdar Robin derived any fresh authority from the legal heirs or legal representatives of the deceased. Consequently, the institution of the present appeal by him, purportedly on the strength of the extinguished Power of Attorney, is wholly without lawful authority and is, therefore, incompetent and not maintainable in law.

Be that as it may, this Court has nevertheless examined the appeal on merits.

The appellant's challenge substantially relates to the alleged invalidity of the Joint Venture Agreement, the registered Irrevocable Power of Attorney dated 15.01.2006, the subsequent Power of Attorney relied upon by Advocate R. I. Tarafdar Robin, the genuineness of certain documents, and the factual conclusions reached by the learned Arbitrator. These submissions essentially invite the Court to reassess the evidence and revisit the factual findings recorded by the arbitral tribunal. Such an exercise is plainly beyond the scope of section 43 of the Arbitration Act, 2001. The Arbitrator considered the documentary evidence, the contractual arrangements and the rival contentions before arriving at the impugned findings. Whether another view of the evidence was possible is wholly immaterial. Section 43 does not authorise this Court to substitute its own appreciation of the evidence or reopen factual controversies merely because one of the parties is dissatisfied with the conclusions reached by the tribunal.

The appellant contended that, since the landowner-appellant was not a party to the arbitral proceedings, he could not lawfully be treated as an award-debtor in the execution case. Referring to Order XXI Rule 11 of the Code of Civil Procedure, he submitted that an arbitral award, like a decree of a civil court, is executable only against the award-debtor and cannot be enforced against a person who is not bound by the award. This Court is unable to accept the said submission. The records reveal that the appellant was impleaded as pro forma respondent No. 6 in the arbitral proceedings. Having been made a party to those proceedings, although in a pro forma capacity, he cannot now contend that the award is wholly unenforceable against him merely because he was not described as an award-debtor. The enforceability of an arbitral award depends upon the nature of the relief granted and the obligations arising therefrom, and not upon the nomenclature assigned to a party in the proceedings.

The appellant further contended that the arbitral tribunal exceeded its jurisdiction by directing execution and registration of sale deeds and by affecting rights relating to immovable property. This contention is equally misconceived. The tribunal derived its jurisdiction from the arbitration agreements incorporated in the allotment agreements executed between respondent No. 8 and respondent Nos. 1 to 7. The impugned directions merely enforce the contractual obligations voluntarily undertaken by the parties. Even assuming that the appellant disputes the correctness of those directions, mere an alleged error in the exercise of jurisdiction cannot be equated with the absence or excess of jurisdiction contemplated by section 43(1)(a)(iv) of the Arbitration Act, 2001.

Equally untenable is the allegation that the award was induced or affected by fraud. Fraud, within the meaning of section 43(1)(b)(iv), is a serious allegation which must be established by cogent and convincing evidence demonstrating that the arbitral award itself was procured by fraud. Mere assertions, collateral disputes, or the pendency of civil or criminal proceedings concerning some of the documents relied upon by the parties do not satisfy the statutory requirement. No such material has been placed before either the learned District Judge or this Court.

The appellant also sought to challenge the award on the ground that he was not a signatory to the arbitration agreement and was not shown as an award-debtor. Even if those assertions are accepted at their highest, they do not constitute any of the statutory grounds prescribed by section 43 for setting aside an arbitral award. The validity of an award must be tested exclusively on the touchstone of the grounds expressly provided by the statute and not on considerations falling outside its ambit.

This Court also attaches significance to the fact that respondent No. 8, the developer and a principal party to the arbitration agreement, has accepted the award and unequivocally affirmed before this Court that it remains bound by the contractual obligations embodied therein, including the execution and registration of the sale deeds in favour of respondent Nos. 1 to 7. Likewise, respondent Nos. 1 to 7, the purchasers and successful claimants in the arbitration, fully support the award. The parties to the arbitration agreement have thus accepted the arbitral determination. The present challenge, therefore, is essentially an invitation to reopen findings of fact and contractual obligations already adjudicated by the arbitral tribunal—an exercise wholly outside the limited jurisdiction conferred by section 43 of the Arbitration Act, 2001.

The expression "prima facie opposed to the law for the time being in force in Bangladesh" occurring in section 43(1)(b)(ii) cannot be construed as conferring a general appellate jurisdiction over every alleged error committed by the arbitral tribunal. Were every alleged error in appreciation of evidence or interpretation of contractual terms to be treated as a violation of law, the distinction between an appeal and an application for setting aside an arbitral award would disappear, thereby frustrating the legislative policy of minimal judicial intervention and finality embodied in the Arbitration Act, 2001.

In *Helm Dungemittel GmbH v. Bangladesh Chemical Industries Corporation* (16 BLC 783), this Court held that proceedings under section 43 do not permit a reassessment of evidence or a reconsideration of the merits of the dispute. Likewise, in *Bangladesh Railway v. Pamkaya (M) SDN BHD* (2 CLR (HCD) 114), affirmed by the Appellate Division (2 CLR (AD) 139), it was held that the Court cannot substitute its own appreciation of the evidence merely because another conclusion appears preferable. The Appellate Division reiterated the same principle in *Bangladesh Water Development Board v. United Builders* (9 ALR (AD) 97), emphasising that judicial intervention is confined to cases where the award suffers from a jurisdictional defect or is otherwise vitiated by one of the statutory grounds recognised by the Arbitration Act.

Having carefully considered the entire record, this Court finds that the appellant has failed to establish any of the statutory grounds enumerated in section 43 of the Arbitration Act, 2001 for setting aside the arbitral award. The challenge is directed not against any jurisdictional defect or statutory infirmity in the arbitral process, but against the correctness of the factual findings, appreciation of evidence, and conclusions reached by the learned Arbitrator. Such matters lie exclusively within the domain of the arbitral tribunal and fall outside the limited scope of judicial review under section 43.

Viewed in its entirety, the application is nothing more than an attempt to reopen the factual and contractual determinations made by the arbitral tribunal. Acceptance of such a challenge would, in effect, convert the limited supervisory jurisdiction conferred by section 43 into a full-fledged appellate jurisdiction, thereby defeating the legislative policy of minimal judicial intervention and finality of arbitral awards embodied in the Arbitration Act, 2001.This Court is, therefore, in complete agreement with the learned District Judge that no jurisdictional infirmity, patent illegality, or any other statutory ground contemplated by section 43 has been made out for setting aside the arbitral award. Consequently, no illegality, perversity, jurisdictional error, or misdirection has been shown in the impugned judgment warranting interference by this Court.

Before parting with the matter, this Court considers it appropriate to observe that a lawyer is under a professional duty to act in the best interests of his client. Such duty, however, does not mean that the lawyer may treat the client's property or affairs as his own. The lawyer's obligation is to safeguard and advance the client's interests while maintaining the necessary professional distance and independence. A lawyer should ordinarily avoid assuming the role of an attorney or agent of the client in respect of the client's property, particularly where such authority involves possession, management, sale, transfer, receipt of consideration or any other dealing with the property. Assuming such a dual role may give rise to an actual or apparent conflict between the lawyer's professional duty and his personal interests and may expose the fiduciary relationship to the risk of abuse. A lawyer occupying a position of trust is required to exercise the authority entrusted to him solely for the benefit of the client who has reposed that confidence in him and must not use such position to secure, directly or indirectly, any personal advantage. The trust and confidence reposed in a member of the legal profession should never be allowed to become a means by which the client's property or interest is converted, in substance or otherwise, into that of the lawyer.

Result of the Appeal :

Accordingly, and for the reasons stated herein before, this Court holds that the appeal is liable to fail both on the ground of maintainability and on merits.

The appeal is, therefore, dismissed. There shall be no order as to costs.

The interim order stands vacated.

(Justice Md. Toufiq Inam)

Sayed.BO.