

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

Present:

Mr. Justice S M Kuddus Zaman

And

Ms. Justice Tamanna Rahman Khalidi

CIVIL REVISION NO.67 OF 2026

In the matter of:

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

And

Md. Abdul Quddus

... Petitioner

-Versus-

Core-Spum Apparel Ltd. and and others

... Opposite parties

Mr. Baki Md. Murtoza, Advocate

... For appellant.

Mr. Mohammed Forrukh Rahman with

Mr. Mohamad Amjad Hossain, Advocates

....For the opposite party Nos.1-3.

Heard on 05.03.2026 and Judgment on 08.03.2026

S. M. Kuddus Zaman, J:

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and order dated 15.01.2026 passed by the learned District Judge, Dhaka in Arbitration Miscellaneous Case No.408 of 2025 allowing the application under Section 12 of the Arbitration Act, 2001 and thereby appointing

Arbitrators both the parties on the date of Service Return (S. R.) should not be set aside and/or pas such order or further order or orders as to this Court may seem fit and proper.

Facts in short are that the opposite party as petitioner filed Arbitration Miscellaneous Case No.408 of 2025 under Section 12 of the Arbitration Act, 2001 to the District Judge, Dhaka for appointed of Arbitrator for the opposite party alleging that Clause 38 of the Articles of Association of Core-Spun Apparel Ltd. provides for Arbitration for settlement of any dispute arising out of interpretation of any article or between a representative of above company and the company. The petitioner appointed Mr. Samir Sattar as his arbitrator and served a notice under Section 12 of the Arbitration Act, 2001 requesting opposite party No.1 for appointment of his Arbitrator but opposite party No.1 did not respond.

The learned District Judge fixed above case for admission hearing on 29.09.2025 and on above date admitted the case and issued notice upon the opposite party fixing 15.01.2026 for receipt of service return. Since the opposite party did not turn up and notice was properly served the learned District Judge took up above case for ex-parte hearing and appointed Arbitrators for both the petitioner and the opposite party vide impugned order dated 15.01.2026.

Being aggrieved by and dissatisfied with above judgment and order of the learned District Judge opposite party as petitioner moved to this Court with this Civil Revisional application under Section 115(1) of the Code of Civil Procedure, 1908 and obtained this Rule.

Mr. Baki Md. Mortaza, learned Advocate for the petitioner submits that the opposite party as petitioner submitted above petition under Section 12 of the Arbitration Act, 2001 on 17.08.2025 but the learned District Judge most illegally fixed above case for admission hearing on 29.09.2025 causing unnecessary delay. Above case was fixed for receipt of service return on 15.01.2026 not for ex-parte hearing but the learned District Judge most illegality took up above case for ex-parte hearing and passed the impugned judgment and order which is not tenable in law. The learned Advocate lastly submits that in above petition under Order 12 of the Arbitration Act, 2001 the petitioner sought appointment of Arbitrator for the opposite party but the learned Judge most illegally appointed Arbitrators for both the petitioner and opposite party disregarding the fact that the petitioner had appointed Mr. Samir Satter as his Arbitrator which is not tenable in law.

On the other hand Mr. Mohammed Forrukh Rahman, learned Advocate for opposite party Nos.1-3 submits that Section 12(11) of the

Arbitration Act, 2001 empowers the District Judge to formulate such scheme as he deems fit for dealing with a petition under Section 12 or Section 7Ka of the Arbitration Act, 2001 and the decision of the learned District Judge has been made final under Section 12(12) of above Act and the learned District Judge is not bound to follow the provisions of the Code of Civil Procedure, 1908. On consideration of facts and circumstances of the case and materials on record the learned District Judge has rightly disposed of above case ex-parte and appointed Arbitrators for both parties which calls for no interference.

We have considered the submissions of the learned Advocates for respective parties and carefully examined all materials on record.

At the very outset arbitration is a dispute resolution procedure where the parties to the dispute agree for settlement of the same outside of the Court by the Arbitrator or Arbitrators appointed by them. The Arbitration Act, 2001 is the regulating Act for arbitration in Bangladesh which provides for intervention of the Court when a party to such a proceeding fails to perform his duty under above Act. To ensure hassle free and speedy conclusion of arbitration proceeding the Arbitration Act, 2001 did not make the Code of Civil Procedure, 1908 applicable to such proceedings. On receipt of an application under Section 12 of the Arbitration Act, 2001 a District Judge is required to

examine if there is an arbitration agreement between the parties to settle the dispute. If such an agreement exists the learned District Judge shall forthwith issue notice upon the opposite party. The learned District Judge must keep in mind the provision of Section 12(8) which requires the learned District Judge to appoint an Arbitrator within 60 days from the date of receipt of such a petition. There is no necessity or provision for fixing a date for admission hearing of a petition under Section 12 or Section 7Ka of the Arbitration Act, 2001. It turns out from record that the petitioner filed above case under Section 12 of the Arbitration Act, 2001 on 17.08.2025 and the learned District Judge instead of passing an appropriate order after examination of above petition most illegally fixed above case for admission hearing on 29.09.2005. Above order of the learned District Judge caused unnecessary delay and inconvenience for the petitioner which is not tenable in law.

It is true that the Arbitration Act, 2001 did not provide for issuance of notice upon the opposite party who allegedly failed to respond to the notice for arbitration and appoint his arbitrator. But the legal principle "Audi Alteram Partem" or none should be condemned unheard requires the issuance of such a notice and the learned District

Judge rightly issued notice upon the opposite party and fixed 15.01.2026 for receipt of service return.

The Arbitration Act, 2001 does not provide for ex-parte hearing or passing a judgment or order ex-parte and those are available in Order 9 Rule 6 of the Code of Civil Procedure, 1908. Above provision of the Code of Civil Procedure, 1908 empowers a Civil Court to proceed ex-parte when the suit is called on for hearing and the plaintiff appears but the defendant does not appear. A suit cannot be called on for hearing unless the same was fixed for hearing. A suit or case cannot be disposed of ex-parte when the same was fixed for receipt of service return.

The learned Advocate for the petitioner rightly pointed out that the opposite party approached the learned District Judge with a petition under Section 12 for appointment of arbitrator for the petitioner. In his notice for arbitration opposite party mentioned that he had appointed Mr. Samir Satter as his arbitrator. Section 12 of above Act empowers the District Judge to appoint the arbitrator for the party who has failed to appoint his arbitrator despite receipt of notice for arbitration. Section 12 of the Arbitration Act, 2001 does not empower the District Judge to appoint an arbitrator for the petitioner who has already appointed his arbitration unless the petitioner

revokes the appointment of his arbitrator and requests the learned District Judge for appointment of his arbitrator.

In above view of the facts and circumstances of the case and materials on record we find substance in this Civil Revisional application under Section 115(1) of the Code of Civil Procedure, 1908 and the Rule issued in this connection deserves to be made absolute.

In the result, the Rule is hereby made absolute. The impugned judgment and order dated 15.01.2026 passed by the learned District Judge, Dhaka in Arbitration Miscellaneous Case No.408 of 2025 is set aside.

The learned District Judge is directed to proceed with above case expeditiously in accordance with law.

However, there will be no order as to cost.

Tamanna Rahman Khalidi, J:

I agree.