

Present:

Mr. Justice Sheikh Abdul Awal
and

Mr. Justice Md. Rafizul Islam

In the Matter of:

First Miscellaneous Appeal No. 157 of 2011

Zia Fertilizer Company Limited

....Appellant–Petitioner.

-Versus-

The Dowla Prokaushal and another

.....Respondent-Opposite parties.

Mr. Nasir Ahmed, Advocate

..... For the Appellant.

Heard in part on 11.05.2026 and

judgment on 16.07.2026.

Md. Rafizul Islam, J:

This First Miscellaneous Appeal is directed against the impugned order dated 14.07.2010 passed by the court of learned Joint District Judge, 1st Court, Brahmanbaria in Arbitration Miscellaneous Case No.01 of 1995 accepting the award passed on 18.06.2009 by the sole Arbitrator.

Facts, relevant for disposal of this Appeal, in brief are that, the appellant as petitioner (Zia Fertilizer Company Limited) instituted the Miscellaneous Case being Arbitration Miscellaneous Case No.01 of 1995. In that case an arbitrator was appointed by the Court and the arbitrator passed arbitration award on 18.06.2009. Subsequently the Court fixed the date on 29.07.2009 for filing written objection. On that date the petitioner filed a petition for time to file the written objection and the case was fixed on 25.08.2009 for filing written objection and on that date the petitioner filed a petition for time to file the written objection. The petition was allowed and the case was again fixed on 09.09.2009 for filing written objection and on that date the

petitioner filed a written objection against the award dated 18.06.2009.

Upon hearing the parties and on considering the materials on record, the learned Joint District Judge, 1st Court, Brahmanbaria passed the impugned order on 14.07.2010.

Being aggrieved by and dissatisfied with the impugned order dated 14.07.2010 passed by the learned Joint District Judge, 1st Court, Brahmanbaria, rejecting the written objection, the petitioner preferred the instant appeal before this Court.

Learned Advocate Mr. Nasir Ahmed appearing for the appellant-petitioner frankly submits that the appellant-petitioner is inclined to deposit the award money in accordance with law.

We have heard the learned Advocate for the appellant and perused the materials on record including the impugned order.

It appears from the record that upon appearance of the parties and after considering the materials on record, the learned Joint District Judge on 14.07.2010 passed the impugned order stating in the following language that-

"অদ্য পুনঃ আপত্তি শুনানীর জন্য দিন ধার্য আছে। বাদী ও বিবাদীপক্ষ হাজিরা দাখিল করিয়াছে। নথি আপত্তি শুনানীর জন্য পেশ করা হইল। উভয় পক্ষের বিজ্ঞ কৌশলীর বক্তব্য শ্রবন করিলাম। বাদীপক্ষ Arbitration Act এর ৩৩ ধারানুযায়ী ৩০ দিনের মধ্যে award এর বিরুদ্ধে আপত্তি দাখিল না করায় বাদীর দাখিলীয় আপত্তি আইনত অচল। তাছাড়া বাদীপক্ষ দরখাস্তের সাথে ৩৩ ধারার proviso অনুযায়ী কোন 'ডিপোজিট' দাখিল করে নাই। Limitation Act এর ১৫৮ ধারা অনুযায়ী অত্র আপত্তি চলেনা। সুতরাং বাদীর award এর বিরুদ্ধে দাখিলীয় আপত্তি না মনজুর করা হইল। Award গৃহীত হইল।"

On plain reading of the impugned order, it appears that the learned Joint District Judge has stated in the impugned order that according to the Article 158 of the Limitation Act, 1908, the written

objection filed by the petitioner was not maintainable. Besides the appellant-petitioner did not deposit the award money according to section 33 of the Arbitration Act, 1940.

On perusal of the record it transpires that after submitting the arbitral award on 18.06.2009, the learned Joint District Judge fixed a date for submitting of written objection on 29.07.2009 and on that date the petitioner-appellant filed an application for time for filing written objection and the learned Court fixed the case on 25.08.2009 for filing written objection. On 25.08.2009 the appellant-petitioner again filed an application for time and that was allowed and the case was fixed on 09.09.2009 for filing written objection and on that date on 09.09.2009 the written objection was filed by the appellant-petitioner.

On perusal, back to back orders of the Arbitration Miscellaneous Case No.01 of 1995 it appears that there is no fault of the appellant-petitioner to file the written objection beyond the stipulated time, inasmuch as, the trial court fixed the date for filing written objection beyond the stipulated time.

At this stage the learned Advocate for the appellant-petitioner submits that the appellant-petitioner is inclined to deposit the award before the trial court. As the appellant-petitioner is inclined to deposit the award, we are also inclined to direct the appellant-petitioner to deposit the award money in Arbitration Miscellaneous Case No.01 of 1995, in accordance with law.

In view of the above discussion, we find that the instant appeal must succeed. Accordingly, the appeal should be allowed.

In the result, the appeal is allowed.

The impugned order dated 14.07.2010 passed by the court of the learned Joint District Judge, 1st Court, Brahmanbaria in Arbitration Miscellaneous Case No.01 of 1995 is hereby set-aside.

The appellant-petitioner is directed to deposit the award money amounting to Tk.1,92,857.20 within 3 (three) months from the date, failing which this order shall stand recalled.

As the arbitration miscellaneous case is an old one of 1995, the trial Court concerned is directed to dispose of the same expeditiously in accordance with law.

The order of stay granted earlier by this Court stands vacated.

Send down the lower court's records and communicate this order at once.

Sheikh Abdul Awal, J:

I agree.