

**In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)**

Present:

Mr. Justice Md. Riaz Uddin Khan

Civil Revision No. 1739 of 2012

IN THE MATTER OF :

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

-And-

In the Matter of:

Omar Kader Chowdhury

... Petitioner

Versus

Principal Rafiqul Islam and others

... Opposite parties

Mr. Abdul Momen Chowdhury, Advocate

... For the petitioner

herein) filed Other Suit No. 168 of 1993 against the defendants (opposite parties 16-30 herein) including the present petitioner of this civil revision (defendant No.9) before the Court of Assistant Judge, Banshkhali (Satkania Chouki), Chattogram praying for declaration of title of the land of schedule No.2 of the plaint and for further declaration that the defendant Nos. 1-9 had got no title therein.

At one stage of the suit the plaintiff No.1 and defendant No.1 filed an application before the court praying for allowing them 03 months time for settling the dispute through arbitration by arbitrators as mentioned in the margin of the application. The learned Assistant Judge, Banshkhali, Satkania, Chattogram by his order No.13 dated 30.11.1996 allowed 02 (two) months time for taking steps.

Thereafter, the parties made arbitration agreements dated 07.11.1996 and 27.11.1996 for settling their dispute in respect of 99.49 decimals of land mentioned in the schedule of the plaint. Thereafter, the arbitrators make an award on 16.01.1997. Then on 27.02.1997 the plaintiffs of that suit filed an application in the Court of Assistant Judge, Banshkhali, Satkania, Chattogram (where the suit was pending) for making the arbitration award dated 16.01.1997 a rule of the Court by way of amendment of the pleadings against which the defendant No. 1 therein filed an objection and after hearing, the Assistant Judge by his order No.24 dated 15.06.1997 rejected that application against which the plaintiffs filed civil revision No. 3039 of 1997 before the High Court Division and the High Court Division initially issued

resolving the dispute through arbitration as earlier in Other Suit No. 168 of 1993 pending before the court of Senior Assistant Judge, Banshkhali, Chattogram by order No.24 dated 15.06.1997 rejected the similar application filed by the plaintiffs. Earlier on the application of the plaintiffs the learned Assistant Judge vide order dated 15.06.1997 categorically stated that the court did not give any permission to the parties or referred for arbitration and as per section 21 to 23 of the Arbitration Act, 1940 there cannot be any arbitration and hence the trial court rejected the same and the arbitrators have come before a different court having no jurisdiction for making the award a rule of the Court which is not sustainable in law and liable to be set aside. Since the dispute was pending in a suit namely Other Class Suit No. 168 of 1993 without the permission of that court there was no scope for Arbitration and the so-called arbitration having no basis in accordance with law, the Joint District Judge committed error of law in getting the so-called award and making the same a rule of the Court.

The learned advocate next submits that the arbitrators cannot substitute their own assessment of pecuniary value in complete disregard of the value already determined by parties in the suit before the Assistant Judge, Banshkhali as Tk-50,000/- and as such enhancing and re-fixing a new valuation of Tk-120,000/- by the Arbitrators is arbitrary and illegal, on the basis of which the arbitration award is liable to be set aside. The award should have been filed in the court of Assistant Judge, Banshkhali, Chottogram, where the Other Suit No. 168 of 1993 was pending between the

