

**District: Dhaka**

**In the Supreme Court of Bangladesh**

High Court Division  
(Civil Revisional Jurisdiction)

**Present**

**Mr. Justice Md. Zakir Hossain**

**Civil Revision No. 4120 of 2012**

Moulvi Mohammad Humayun and others  
.....Defendant-Appellant-Petitioners  
-Versus-

Royal Properties (Pvt) Ltd. and others  
.....Plaintiff-Respondent-Opposite Parties

None appears

..... For the petitioners

Mr. Abdul Wadud Bhuiyan, Senior Advocate, with  
Mrs. Rumi Islam, Advocate

..... For the opposite parties

**Heard on:10.08.2023 & 17.08.2023**

**Judgment on: 30.11.2023**

**Md. Zakir Hossain, J:**

The Rule was issued to examine the legality and propriety of the judgment and decree dated 14.10.2012 (decree being drawn on 21.10.2012) passed by the learned Additional District Judge, 2<sup>nd</sup> Court, Dhaka in Title Appeal No. 205 of 2011 dismissing the same and thereby affirming the judgment and decree dated 25.05.2011 (decree being drawn on 30.05.2011) passed by the learned Senior Assistant Judge, 4<sup>th</sup> Court, Dhaka in Title Suit No. 202 of 2006.

Briefly, the case of the plaintiffs is that the name of his company was 'Shreshtha Real Estate Limited' which was renamed 'Royal Properties Private Limited'. The plaintiff-company and defendants

entered into a contract for building a multi-storied building on 04/12/2002. Subsequently the defendant gave a power of attorney on 19/12/2002 to the plaintiff-company. Before this the defendant No. 1 and his wife habitually made contract with different companies named M/S Sheltek Ltd. and Navana Real Estate Ltd. and then the defendants cancelled those contracts. The main copy of the contract was lost by the plaintiff-company and for that he lodged a G.D. However there is a clause in the power of attorney that the defendants cannot cancel this power of attorney in any circumstances. According to the power of attorney, the plaintiff-company took possession of the disputed property and started the construction work and subsequently the plaintiff-company made contract with different persons for selling the flats. The defendants got a layout plan approved by RAJUK for the construction on 24/5/1999 and accordingly the plaintiff-company started the work. But suddenly RAJUK gave a letter to the plaintiff-company to stop the work on 21/5/2003 on the ground that the plan placed before RAJUK is inconsistent with work started by the plaintiff-company. Actually the plan was for 5 storied building. In the meantime, the plaintiff-company prayed for release order of KPIDC. But on 28/6/2006 one police officer came to the plaintiff-company and told him to go to thana and accordingly, he went there and came to know that on 29/6/2006 the defendants lodged a diary against the plaintiff-company. It is stated therein that the defendants cancelled that power of attorney of 19/12/2002 by a registered deed being No. 3331 dated 25-6-2006,

though it was clearly stated in the power of attorney that the defendant cannot cancel it in any circumstances. In the above back drop, the plaintiff-company was constrained to institute the aforesaid suit.

On the other hand, the defendants contested the suit by filing a written statement where they stated that this suit is not maintainable in its present form and there is no cause of action in this suit and this suit is barred by estoppels. The defendants categorically denied the allegations made against them. They stated that the defendant was owner of 32 katha land and the defendant took loan from Arab Bangladesh Bank Ltd. and for the loss of the defendants' company, the Bank filed a suit in Artha Rin Adalat and the suit was decreed on above 2 core taka. Then for the development of the land he entered into a contract with Shreshtha Real Estate Limited on 10/10/2001 and gave a power of attorney on 15/11/2001 to the company. Later on, a tripartite agreement was made between the Shreshtha Real Estate Limited, the defendants and the Bank. Shreshtha Real Estate Limited started the construction work after giving 6 lac taka to the defendants and according to the contract, Shreshtha Real Estate Limited paid 40 lac taka. But later on, Iqbal Sazzad went away from Bangladesh leaving the work. Then the defendants gave a power of attorney to the Shreshtha Real Estate Limited on 19/12/2002. But they showed negligence to the work. Even for long 3 years, they did not take any initiative to get approval of plan. For this negligence, the defendants made another deed of cancellation of power of attorney being number

3331 dated 25/6/06. Now the plaintiff-company has no right to sell the flats. For reasons stated above, the suit is liable to be dismissed.

On the pleadings, the learned Senior Assistant Judge was pleased to frame the following issues:

1. *Whether the plaintiff has title, interest and right over the flats under construction?*
2. *Whether the plaintiff had negligence to the work?*
3. *Whether a contract between the plaintiff and defendant was made in 04/12/2002?*
4. *Whether the plea of cancellation of attorney power is barred by promissory estoppel?*
5. *Whether the construction work was stopped for the negligence of plaintiff or defendant?*
6. *Whether the defendants rightly cancelled the power of attorney or not?*
7. *Whether the plaintiff has invested the money according to the power of attorney or not?*
8. *Whether the suit should be decreed or not?*

After conclusion of the trial, the learned Senior Assistant Judge was pleased to decree the suit in part and declared that the Ammokternama Cancellation Deed No. 3331 dated 25.06.2006 is illegal, void, fruitless and not binding upon the plaintiff-company. Being aggrieved by and highly dissatisfied with the judgment of the trial Court, the defendants preferred Title Appeal No. 205 of 2011 before the Court of the learned District Judge, Dhaka. After admitting the appeal, the learned District Judge was pleased to transmit the record of the appeal to

the learned Additional District Judge, Second Court, Dhaka for disposal. Upon hearing, the learned Additional District Judge was pleased to dismiss the appeal and thereby affirmed the judgment and decree of the trial Court. Challenging the chastity of the judgment and decree of the Appellate Court, the petitioners moved this Court and obtained the aforesaid Rule and stay therewith.

None appears to press the Rule.

Mr. Abdul Wadud Bhuiyan, the learned Senior Advocate along with Mrs. Rumi Islam appearing for the opposite parties submits that the learned Senior Assistant Judge after considering the facts and circumstances of the case and legal position critically involved in this case was pleased to decree the suit in part and the learned Additional District Judge after independent assessment of the materials on record rightly dismissed the appeal and therefore, there is no apparent reason to interfere with the concurrent findings of the Courts below, hence, the Rule is liable to be struck down.

Heard the submissions advanced by the learned Advocates for the opposite parties and perused the materials on record with due care and attention and seriousness as they deserve. The convoluted question of law embroiled in this case has meticulously been waded through.

The learned Senior Assistant Judge after delving into the facts and circumstances of the case and considering the evidence on record rightly held that the power of attorney cannot be cancelled by another deed. It

has to be cancelled in accordance with law. The Appellate Court by independent and dispassionate consideration of the evidence on record held that the provision of the Section 201 and 203 of the Contract Act has got no manner of application in the instant case rather the provision of the Section 202 and 204 of the Contract Act are applicable in the instant case. The trial Court found that some investments of the plaintiff-company are admitted. The defendants' contention is that the plaintiff-company did not follow the terms and conditions stipulated in the power of attorney. It also transpires from the evidence of P.W-1 and D.W-1 that the plaintiff-company paid Tk. 23,50,000/- to the defendants as rents which is received by the defendants through voucher. The D.W-1 also admitted that some construction was made in the disputed land. The trial Court rightly held that admittedly, the defendants received money from the plaintiff-company though there is dispute as to the quantum of money. Therefore, the trial Court further held that the plaintiff-company acquired some interests over the subject matter by way of its investment. The plaintiff-company also exercised its obligation not in entirety but the plaintiff-company partially performed its obligation. Hence, the defendants cannot revoke or withdraw his authority without prior notice or by another revocation deed. Therefore, the concurrent findings of the Courts below so far it relates to cancellation of the power of attorney are absolutely correct and the same do not warrant for any interference by this Court. Therefore, the impugned Rule is liable to be turned down to secure the ends of justice.

In the result, the Rule is discharged, however, without passing any order as to costs. The earlier order of stay granted by this Court thus stands recalled and vacated.

Let a copy of the judgment with LCRs be sent down to the Courts below at once.

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**Md. Zakir Hossain, J**