

LEX/BDHC/0187/2022

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION)

Civil Revision No. 930 of 2020

Decided On: 27.11.2022

Appellants: **Mohammad Abdul Wahab**
Vs.

Respondent: **Kashba Housing Private Limited and Ors.**

Hon'ble Judges/Coram:

Mahmudul Hoque and Mohi Uddin Shamim, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: Mohammed Forrukh Rahman, Advocate

JUDGMENT

Mahmudul Hoque, J.

1. In this revision Rule was issued calling upon the opposite parties to show cause as to why the impugned order dated 16.02.2020 passed by the learned District Judge, Dhaka, in Arbitration Miscellaneous Case No. 26 of 2020 rejecting the application for appointment of arbitrator under section 12 of the Arbitration Act, 2001 should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

2. Facts relevant for disposal of this rule, in short are that, the petitioner filed Arbitration Miscellaneous Case No. 26 of 2020 in the court of learned District Judge, Dhaka, under section 12 of the Arbitration Act 2001 praying for appointment of arbitrator for and on behalf of opposite party "Kashba Housing Private Limited" represented by its Managing Director. Learned District Judge registered the case as Arbitration Miscellaneous Case No. 26 of 2020 and fixed the matter on 16.02.2020 for maintainability hearing. On the date fixed the learned District Judge by the impugned judgment and order rejected the miscellaneous case summarily holding that there is no clause for arbitration in the impugned deed of agreement nor there is separate agreement for arbitration between the parties. At this juncture, the petitioner moved this Court by filing this revision application and obtained the present Rule.

3. Mr. Mohammed Forrukh Rahman, learned Advocate appearing for the petitioner submits that section 36 of "রিয়েল এস্টেট উন্নয়ন ও ব্যবস্থাপনা আইন, ২০১০" provides for settlement of dispute by arbitration, accordingly, the petitioner served notice upon the opposite parties appointing their arbitrator namely, Mr. Md. Sameer Sattar, urging upon them to appoint their arbitrator to get the dispute settled through arbitration, but the opposite parties utterly failed to response the request of the petitioner, consequently, the petitioner had no other alternative, but to file the case before the learned District Judge under section 12 of the Arbitration Act, praying for appointment of an arbitrator for the opposite party.

4. He submits that the learned District Judge misdirected himself and misconstrued the true import and meaning of law relating to Real Estate Development and Management and only finding and observing that in the agreement for sale entered in between the

petitioner and opposite party developer has no arbitration clause, therefore, the matter in dispute is not at all liable to be settled by arbitration and as such, the case is not maintainable in law.

5. No one appears for the opposite party to oppose the Rule.

6. Heard the learned Advocate for the petitioner, have gone through the application under section 12 of the Arbitration Act, along with the annexures thereto and the impugned judgment and order of the learned District Judge.

7. It appears from the record that present petitioner entered into an agreement on 07.02.2010 with the opposite party developer for purchasing an apartment being constructed and developed by the opposite party. As per terms of the contract, the opposite party did not execute the sale deed and register the same and deliver possession to the petitioner. Resultantly, a dispute between the parties in respect of purchasing and selling of the flat has arisen, for which the petitioner at the first instance served a legal notice requesting the developer to execute and register a sale deed transferring the flat in question in favour of the petitioner, but they failed. Subsequently, the petitioner on 14.10.2019 served a notice of arbitration upon the opposite parties appointing their arbitrator, one Mr. Md. Sameer Sattar and requesting the other party to appoint an arbitrator on their behalf to get the dispute settled through arbitration, but the opposite party failed to response to the notice served by the petitioner under section 36 of the “রিয়েল এস্টেট উন্নয়ন ও ব্যবস্থাপনা আইন, ২০১০”. As per section 36 of the Ain if a dispute arises between the parties either purchaser, developer or the land owner to be referred to arbitration and to that effect intention of the parties should be expressed in writing accordingly, present petitioner served notice upon the opposite party under section 36 of the Ain. Since they failed to appoint their arbitrator, the present petitioners have no other alternative but to move before the learned District Judge by filing an application under section 12 of the Arbitration Act for appointment of arbitrator on behalf of opposite party, and accordingly, the petitioners filed the application.

8. From the impugned judgment and order, it appears that the learned District Judge while rejecting the application summarily failed to notice the provision of law in section 36 of the “রিয়েল এস্টেট উন্নয়ন ও ব্যবস্থাপনা আইন, ২০১০” and wrongly observed and found that there is no arbitration clause in the agreement for sale entered in between the petitioner and the opposite party. Learned District Judge in disposing this application ought to have gone through the relevant law applicable in this particular case. Had the court below gone through the notice dated 14.10.2019, it would have found that the arbitration sought for by the petitioner not under any clause of the agreement, but it was sought under the provision of section 36 of the Ain. Accordingly, the petitioner appointed their arbitrator requesting the other party to appoint an arbitrator on their behalf. In this situation, since the opposite party failed to response with the request of the petitioner, the learned District Judge ought to have appointed an arbitrator for and on behalf of opposite party maintaining the nominated arbitrator already appointed by the petitioner, but the learned District Judge upon misconception of law as well as upon misreading and misconstruing the total scenario of the dispute arose between the parties, rejected the application summarily, and as such, it has committed an error of law, in the decision occasioning failure of justice calling interference by this Court.

9. In view of the above, we find merit in the Rule.

10. In the result, the Rule is made absolute, however, without any order as to costs.

11. The impugned judgment and order passed by the learned District Judge is hereby set aside.

12. The learned District Judge is hereby directed to dispose of the application under section 12 of the Arbitration Act on merit, in accordance with law, in the light of the observations made hereinabove within 03 (three) months from the date of receipt of the judgment positively.

13. Communicate a copy of this judgment to the court concerned at once.

Mohi Uddin Shamim, J.

14. I agree.

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