

LEX/BDHC/0006/2023

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION)

Civil Revision No. 3668 of 2022

Decided On: 13.02.2023

Appellants: **Metro Homes Limited**

Vs.

Respondent: **Umee Kulsum and Ors.**

Hon'ble Judges/Coram:

Md. Mozibur Rahman Miah and Mohi Uddin Shamim, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: Saqub Mahbub, Advocate

For Respondents/Defendant: Mohammad Forrukh Rahman, Advocate

JUDGMENT

Md. Mozibur Rahman Miah, J.

1. At the instance of the applicant/claimant in Arbitration Miscellaneous Case No. 59 of 2021, this rule was issued calling upon the opposite-parties to show cause as to why the order dated 10.04.2022 passed by the learned District Judge, Dhaka in the said case rejecting the application filed under Section 15(2) of the Arbitration Act, 2001 read with section 151 of the Code of Civil Procedure should not be set aside and/or such other or further order or orders be passed as to this court may seem fit and proper.

2. The salient facts leading to issuance of the rule are:

3. The present petitioner as a claimant filed an application under section 15(2) of the Arbitration Act, 2001 read with section 151 of the Code of Civil Procedure seeking following reliefs:

Wherefore it is humbly prayed that your honour would graciously be pleased to pass an order removing the Chairman of the Arbitral Tribunal under section 15(2) of the Arbitration Act, 2001, for disposal of the Arbitration proceedings.

And for this act of kindness, the plaintiff as in duty bound shall every pray.

4. In that Arbitration Miscellaneous case opposite party no. 7 entered appearance and filed written objection and finally prayed for rejecting the application filed for removal of the chairman of the Arbitration Tribunal. The opposite party nos. 1-6 also jointly contested the said Arbitration Miscellaneous Case by filing written objection also prayed for rejecting the application of the petitioner. In view of the claim of the petitioner and the written objection filed there against, the learned District Judge heard the parties to the case and vide impugned order dated 10.04.2022 dismissed the Miscellaneous Case holding that, since the Case was at the stage of passing award so there has been no reason to remove the chairman of the Arbitration Tribunal. It is at that stage the claimant/applicant of the said Arbitration Miscellaneous Case filed this revisional application and obtained the instant rule.

5. Mr. Saqeb Mahbub, the learned counsel appearing for the petitioner referring in the provision of section 15(2)(ka) of the Arbitration Act, 2001 mainly contends that, that very provision has given ample power to the District judge to appoint a chairman of the Arbitration Tribunal if the chairman already nominated fails to perform his/her duties but without taking into consideration of that very express provision of law, the learned judge dismissed the Miscellaneous case which does not conform with the said provision of law and thereby the same cannot be sustained.

6. The learned counsel by referring to the order made in the Arbitration Tribunal which has been annexed as of Annexure-'E' to the revisional application also contends that, though the said Arbitration Tribunal Case was started in the year 2016 but since 2017 no sitting of the Arbitration Tribunal was held and afterwards due to outbreak of Covid-19, hearing of the matter was just virtually held for passing two orders being order no. 25 and 26 dated 17.04.2019 as well as 03.10.2020 respectively and since then no sitting of the Arbitration Tribunal was held on account of illness of the chairman of the Tribunal which has been reflected in the order sheets of that very proceedings before the Arbitration Tribunal and in such a compelling circumstances, a new chairman to the tribunal is required to be appointed to accomplish the proceeding in the said Arbitration Tribunal, else both the parties to the Arbitration Tribunal will be highly prejudiced and then prays for making the rule absolute.

7. On the contrary, Mr. Mohammad Forrukh Rahman, the learned counsel appearing for the opposite party nos. 2-6 entered appearance by filing counter-affidavit and chiefly submits that, since the proceedings of the Arbitration Tribunal reached at the fag end of its completion so there has been no necessity to appoint any chairman afresh to the tribunal which will cause huge losses for both the parties.

8. The learned counsel by substantiating the impugned judgment also contends that, the learned District Judge has rightly passed the order by not removing the chairman and to appoint a new chairman thereof considering the complexities to be encountered by the parties to the case which is liable to be sustained.

9. The learned counsel next contends that, for the long pendency of the Arbitration Tribunal the present opposite party also incurred heavy losses and if a new chairman is appointed that losses will further be compounded and therefore at that stage there is no necessity to appoint any chairman in line with the provision of section 15(2) of the Arbitration Act, 2001 and finally prays for discharging the rule.

10. We have considered the submission so advanced by the learned counsel for the petitioner and that of the learned counsel for the opposite party nos. 1-7 and perused the revisional application, the document appended thereto at well as the counter-affidavit so filed at the instance of the opposite party nos. 2-6. There has been no gainsaying the facts that, on the back of termination of the agreement by the first party to the agreement, the present petitioner who is a real estate company resorted to the provision of Arbitration as per clause 21 of the "deed of joint venture agreement." And by virtue of that very Arbitration clause both the parties to the agreement appointed their respective arbitrator and on concurrence a chairman was also appointed but the difficulties started when the chairman became unable to hold the proceedings for his illness and it has been dragging since 2016. The learned counsel appearing for the opposite party no. 2-6 does not dispute the said facts yet he is not in agreement with the petitioner to appoint a new chairman though in the hearing, he could not give any cogent reason in support of his such assertion. On going through the order sheet of the said Arbitration Tribunal we find that, both the parties led their respective evidence

before the tribunal and even the opposite party nos. 2-6 also submitted their written argument to the tribunal and from the order being order no. 25 it also shows that, the petitioner was given two week time for submitting its written argument and it has been ordered, as soon as the written argument will be submitted, the petitioner would be given an opportunity for short hearing of its case. So from the above, we find that, the proceeding of the Arbitration tribunal has reached its final stage. On the other Hand from Order 26 of the said Arbitration Tribunal it also shows that, on the heels of taking possession of the disputed property by the opposite parties a virtual sitting was held on 03.10.2020 and upon hearing the panics to the Arbitration Tribunal an order of status quo was passed directing the parties to maintain status quo in the dispute land. But after that no order is found to have been passed by the tribunal. So it is clear for the last two and a half years no sitting of the Arbitration Tribunal was held. But the learned District Judge has failed to comprehend the urgency of disposing of the proceedings of the Arbitration Tribunal while dismissing the Miscellaneous Case. Though the learned counsel appearing for the opposite party nos. 2-6 does not dispute the power given to the learned District Judge in appointing a new chairman of an Arbitration Tribunal under the provision of clause (ka) of section 15(2) of the Act. However, at last the learned counsel for the petitioner and those of the opposite parties arrived at a consensus and made a common submission to the effect that, if a chairman is appointed replacing the incumbent one, then a time frame be given to the chairman to be nominated on the concurrence of the parties, so that the arbitration proceedings can be started from the stage where it had finally been ended. In that regard the learned counsel for the opposite party nos. 2-6 has referred the provision of section 16 of the said Act, 2001. In view of the said provision we don't find that the impugned order can ever be sustained.

11. Accordingly, the rule is made absolute however without any order as to cost.

12. The order dated 10.04.2022 passed by the learned District Judge, Dhaka in Arbitration Miscellaneous Case No. 59 of 2021 is thus set-aside.

13. Both the arbitrator nominated by the petitioner and opposite party nos. 2-6 are hereby directed to assign a chairman on an amicable arrangement within a period of 30(thirty) days from date. The chairman to be appointed is also directed to proceed with the proceeding of the Arbitration Tribunal within a period of 3(three) months from date as well upon receiving written argument supposed to be submitted by the petitioner giving it and the opposite party nos. 1-7 opportunity to make argument on their behalf and then to pass award.

14. Let a copy of this order be communicated to the learned District Judge, Dhaka forthwith.

Mohi Uddin Shamim, J.

15. I agree.

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