LEX/BDHC/0650/2026

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION)

First Miscellaneous Appeal No. 61 of 2024

Decided On: 01.02.2026

A.T.M. Mahbub Alam **Vs.** Infrastructure Development Company Limited

Hon'ble Judges/Coram:
Khizir Ahmed Choudhury and Md. Ziaul Haque, JJ.

Counsels:
For Appellant/Petitioner/Plaintiff: Taposh Kumar Dutto, Advocate

For Respondents/Defendant: Mohammad Farrukh Rahman, Advocate

JUDGMENT

Khizir Ahmed Choudhury, J.

1. The relevant facts leading to the filing of the present appeal are that the claimant, a Non-Bank Financial Institution (respondent herein), and the appellant entered into a Participation Agreement on 18 November 2009 to provide a refinancing facility and investment subsidy to Respondent No. 1 in accordance with the terms and conditions stipulated therein. Pursuant to the said agreement, the claimant disbursed a refinancing facility and investment subsidy amounting to Tk. 23,41,697.00 (Taka twenty-three lakh forty-one thousand six hundred ninety-seven only), which the respondents fully availed on various dates by furnishing a personal guarantee dated 24.02.2010, a letter of hypothecation creating a fixed charge dated 08.09.2011, an irrevocable general power of attorney to sell the hypothecated assets dated 08.09.2011, and a promissory note dated 08.09.2011 for Tk. 10,26,000.00.

2. The respondents also admitted, by a letter dated 10.07.2017, that they had availed a loan from IDCOL and failed to repay the same within the stipulated time. Under the terms of the Participation Agreement, the respondents were contractually obliged to repay the refinancing facility in quarterly installments; however, from the very inception, they defaulted in repayment, thereby violating the provisions of Section 8 of the Participation Agreement. Despite repeated reminders issued by the claimant, the respondents failed to regularize the loan. As a result, the outstanding loan liability of the respondents stood at Tk. 28,86,480.00 as on 31.03.2010.

3. Challenging the said award, the appellant herein filed Miscellaneous Case No. 85 of 2023 before the Court of the District Judge, Dhaka, under Sections42 and 43 of the Arbitration Act, 2001, seeking to set aside the award, contending, inter alia, that the ex parte award dated 15.11.2017 is without any legal basis. It was contended that the appellant had resigned from the post of Executive Director of BSUS on 25.11.2014; notwithstanding such resignation, he was impleaded as Respondent No. 2 in the arbitration proceedings without impleading the other members of BSUS.

4 . It was further contended that, pursuant to the Participation Agreement dated 18.11.2009, BSUS established 294 biogas plants in different parts of Bangladesh and refinanced the same by furnishing the requisite list to IDCOL, which was obliged to pay Tk. 9,000.00 as subsidy for each plant but disbursed only Tk. 8,000.00 per plant, thereby causing financial loss to BSUS. It was also alleged that IDCOL, despite receiving a substantial amount under the Carbon Emission Reduction mechanism, deprived the plant recipients of the said benefits.

5. The appellant further asserted that he did not receive any notice of arbitration dated 15.06.2015, nor any subsequent notice from the Arbitral Tribunal, and that the ex parte award was passed in Arbitration Miscellaneous Case No. 666 of 2015, which was thereafter sought to be executed in Money Execution Case No. 11 of 2017. It was also contended that although an amount of Tk. 65.00 lakh remained outstanding as loan granted under the refinancing scheme, BSUS continued repayment to IDCOL. Upon failure to continue repayment, IDCOL allegedly stopped the activities of the biogas plants; however, upon the intervention of Ujjal Kumar Chakrabarty, IDCOL demanded Tk. 3.00 lakh out of Tk. 13,90,416.00, of which the appellant paid Tk. 1.00 lakh and requested continuation of the project with an assurance to repay the outstanding dues. It was contended that IDCOL thereafter remained unresponsive, and by suppressing the aforesaid facts, obtained the impugned arbitral award.

6. The learned District Judge, by judgment and order dated 25.10.2023, disallowed the case, holding, inter alia, that the scope of interference by the Court with an arbitral award under Section 43 of the Arbitration Act, 2001 is limited, having regard to the principles embodied in the UNCITRAL Model Law and the legislative policy of minimum judicial interference in arbitral proceedings.

7. The learned District Judge, with reference to certain decisions of the superior courts, further held that the award passed by the arbitrator was in conformity with the applicable law and that no infirmity could be found therein.

8. The learned District Judge also categorically held that the delay of 1,845 days in filing the Miscellaneous Case was not condonable, as Section 5 of the Limitation Act was not applicable, and that the petitioner had failed to explain the reasons for such inordinate delay.

9. Mr. Taposh Kumar Dutto, learned Counsel appearing for the appellants, submits that the learned District Judge erroneously held that the petitioner failed to appreciate that the application under Section 43 of the Arbitration Act, 2001 was filed within time from the date of knowledge. It is contended that the petitioner had no prior knowledge of the arbitral proceedings or the ex parte award, as he came to know of the same only upon his arrest in the Money Execution Case, whereafter he obtained a certified copy of the award. It is further submitted that no copy of the award was supplied to the petitioner after the passing of the ex parte award.

10. Learned counsel next submits that the Participation Agreement did not specify the number of arbitrators, and that Section 11(2) of the Arbitration Act, 2001 provides that, in the absence of any agreement regarding the number of arbitrators, the arbitral tribunal shall consist of three members. However, the arbitral tribunal was constituted by appointing a sole arbitrator, who passed the impugned award. As such, it is contended that the award is a nullity and non est in the eye of law, however, the learned District Judge failed to consider this vital question of law, thereby occasioning a failure of justice.

11. Lastly, learned counsel submits that the arbitral tribunal passed the award beyond the scope and ambit of the agreement, rendering the award liable to be set aside.

12. Mr. Mohammad Farrukh Rahman, learned Counsel appearing for the respondents, submits that prior to filing the Miscellaneous Case before the District Judge under Section 12 of the Arbitration Act, 2001 for appointment of an arbitrator, the respondents made attempts to settle the dispute amicably, pursuant to which mediation was held and Mr. Ujjal Kumar Chakraborty acted as mediator; however, the mediation ended without success. Learned Counsel further submits that thereafter the respondents issued a notice of arbitration to the appellants, nominating their arbitrator and calling upon the appellants to appoint their arbitrator. As the appellants failed to appoint any arbitrator, the respondents were constrained to file a Miscellaneous Case before the Court of the District Judge under Section 12 of the Arbitration Act, 2001 for appointment of an arbitrator. Upon issuance of notice to the appellants and hearing the matter, the learned District Judge appointed a sole arbitrator for constituting the arbitral tribunal. Consequently, the arbitral tribunal was validly and lawfully constituted by order of the Court, and as such, the award passed by the arbitral tribunal cannot be impeached in the instant proceeding.

13. Learned Counsel further submits that the appellants were all along aware of the activities and proceedings initiated by the respondents but deliberately absented themselves from the arbitral proceedings. Thereafter, after the passing of the award, the appellants filed a Miscellaneous Case under Sections 42 and 43 of the Arbitration Act, 2001 after an inordinate delay of 1,845 days. Accordingly, the learned District Judge rightly and reasonably rejected the Miscellaneous Case on the grounds of delay and maintainability, assigning cogent reasons therefore, and as such, the instant appeal is liable to be dismissed.

14. The core submission of the learned Counsel for the appellants is that Clause 18(10) of the Participation Agreement provides that, if the dispute is not resolved amicably through mediation, the same shall be referred to arbitration under the Arbitration Act, 2001, and since the number of arbitrators was not specified therein, the arbitral tribunal ought to have consisted of three members. It is contended that in the instant case a sole arbitrator, having been appointed by the District Judge, passed an ex parte award, rendering the award a nullity in the eye of law.

15. However, upon perusal of the materials on record, it appears that after failure of mediation, the respondents, through their learned Counsel, issued a notice dated 14.06.2015 to the appellants for appointment of an arbitrator on their part, mentioning the name of the respondents' nominated arbitrator (Annexure-1). Subsequently, upon receiving no response, the respondents initiated Miscellaneous Case No. 666 of 2015 under Section 12 of the Arbitration Act, 2001 before the learned District Judge for constitution of the arbitral tribunal. The learned District Judge, by order dated 06.02.2017 allowed the Miscellaneous Case and constituted the tribunal by appointing a sole arbitrator. Therefore, the respondents cannot be held to be guilty of any laches in initiating the proceedings; rather, the learned District Judge, in exercise of his discretion under the law, appointed a sole arbitrator to adjudicate upon the dispute.

16. It is also apparent that the arbitral tribunal, having been constituted with a sole arbitrator, issued notices upon both parties before entering upon the arbitration proceedings, as evidenced in the award dated 15.11.2017. Although the respondents appeared before the tribunal, the appellants did not appear in the proceedings, and ultimately the tribunal, upon consideration of the claim and materials on record, passed the award on 15.11.2017. Since the arbitral tribunal issued proper notice to the appellants at the address furnished by them in the memo of appeal, prior to commencement of the arbitration proceedings, the notice so sent shall be deemed to be valid, and a presumption may lawfully be drawn that the notice was duly served in accordance with law.

17. The question that now falls for consideration is whether an arbitral tribunal constituted by a sole arbitrator and the award passed by him are valid in the eye of law. In this regard, reference may be made to the case of Bangladesh vs. Md. Ishaque (since deceased), represented by his heirs Lakhaxmi Bibi and others, reported in 45 DLR (AD) 223, wherein their Lordships held that where a special period of limitation is provided under a special statute, namely the Emergency Requisition and Acquisition of Property Act, the provisions of Section 5 of the Limitation Act have no manner of application. And their Lordships further held that Even assuming for the time being that the award is a nullity we cannot probe into the question of nullity unless there is an appeal before us in accordance with law. In the case of Jainal Abedin Jamal and others-Vs-Noor Afzah reported in LEX/BDHC/0061/2010 : 63 DLR 432 a division bench held that the appointment of the sole arbitrator made under Section 12 of the Act being not objected to by the appellants at any time before any authority at the earliest possible stage, such appointment/jurisdiction of the Arbitrator cannot be called in question after the award is passed. It is further held that the same cannot be ground for cancellation of the award under Section 43(1)(ka) of the Act as the appellants waved their statutory rights of such objection under Section 6 of the Act.

18. Upon going through the proceedings of Miscellaneous Case No. 85 of 2023 filed before the Court of the District Judge under Sections 42 and 43 of the Arbitration Act, 2001, it appears that the present appellant did not raise any objection regarding the constitution of the arbitral tribunal by a sole arbitrator instead of three arbitrators. Such plea has been raised for the first time in the instant appeal, which appears to be an afterthought and a calculated attempt to obtain relief by pointing out an alleged infirmity in law. The decision reported in 63 DLR is squarely applicable to the facts and circumstances of the present case.

19. In filing Miscellaneous Case No. 85 of 2023, there occurred a delay of 1,845 days, for which the petitioner filed an application under Section 5 of the Limitation Act seeking condonation of delay. The learned District Judge, upon elaborate discussion, held that since the Arbitration Act, 2001 is a special law, proceedings under Sections 42 and 43 thereof must be initiated within 60 days from the date of receipt of the arbitral award. The learned District Judge, with reference to Section 29 of the Limitation Act, further held that Section 5 of the Limitation Act is not applicable in the instant case and that there was no ground to condone such an inordinate delay of 1,845 days in filing the Miscellaneous Case.

20. Section 42 of the Arbitration Act, 2001 specifically stipulates that an application challenging an arbitral award must be filed within 60 days from the date of receipt of the award. Although the appellant asserted in the appeal that he received knowledge of the award only after being apprehended in the execution case and that, upon being enlarged on bail, he filed the Miscellaneous Case within time after obtaining a certified copy of the award, such contention is not tenable. The appellant was well aware of the arbitration proceedings, as notices were duly issued by the respondents, the arbitral tribunal, and the learned District Judge in the proceeding under Section 12 of the Arbitration Act, 2001 at the address furnished by the appellant. Moreover, as per the agreement, Mr. Ujjal Chakraborty mediated the dispute between the parties.

21. Section 55 of the Arbitration Act, 2001 provides that, subject to the provisions of the Act, the Limitation Act shall apply to arbitrations under the Act in the same manner as it applies to proceedings in court. The language of Section 55 clearly makes the applicability of the Limitation Act subject to the provisions of the Arbitration Act itself. Since the Act expressly prescribes a period of 60 days for filing a Miscellaneous Case challenging an arbitral award, the general provisions of the Limitation Act, including Section 5 thereof, cannot be invoked. Accordingly, Section 5 of the Limitation Act has no application in the facts and circumstances of the present case.

22. In the case of Motalib Hossain-Vs-Abdul Haque Limon and others reported in 21 BLC AD 74, held that "In an enactment if the procedure for filing the case and limitation is provided, the provision is taken to be a special law find the court's discretionary power to extend the period of limitation is excluded in view of section 29 of the Limitation Act. In other words, it may be said that special law is a law which deals with any special law contrary to the general law and in such law the court's power to exercise its discretion to extend the period of limitation under section 5 of the Limitation Act has been excluded. In such a case, the court is left with no discretion even it finds injustice to a party to extend the period of limitation. A special law is a law dealing with a particular subject enacted for the special cases in the special circumstances as distinguished from the general law which applies generally on the question of limitation though the Limitation Act is a general law".

23. In the case of Md. Zahirul Islam-vs-National Bank Limited and others reported in 46 DLR AD 110 held that "The Artha Rin Adalat is a special forum created by a special Law for adjudication of suits which can be filed by a Bank or a financial institution for recovery of its dues. Section 7 of the ARA Act provides for a special period of limitation of 30 days for preferring an Appeal against the judgment and decree of the ARA. The Cross-objection by Defendant No. 5, Abul Kalam Azad, filed beyond thirty days, was rightly rejected by the High Court Division as time-barred."

24. In 7 BLT AD 11 it is also held that "In view of the fact that the Administrative Tribunals Act, 1980 is a special law and the provision of section 5 of the Limitation Act has not been made applicable to an appeal before the Administrative Appellate Tribunal the learned counsel for the petitioner has hardly any ground to assail the impugned order of the Administrative Appellate Tribunal."

25. Thus, in view of the above ratio and the facts and circumstances of the present case, the learned District Judge rightly held that the proceeding initiated by the appellant, as petitioner therein, was barred by limitation.

26. Apart from this, the petitioner could have availed the opportunity under Section 14 read with Section 2 of the Arbitration Act, 2001 before the arbitral tribunal to challenge the tribunal's jurisdiction, including issues of arbitrability; however, the petitioner failed to avail such remedy.

27. It further appears that the agreement entered into between the appellant and the respondent was not repugnant to Section 73 of the Contract Act, and therefore, no ground exists for setting aside the arbitral award on that score.

28. In this connection the case of Bangladesh Power Development Board and others-Vs-M/s Arab Contractors (BD) Limited and others reported in 15 MLR 185 may be profitably be quoted:

> "Considering the aforesaid facts and the reasons of laws we are of the view that in the instant case, the provisions of Section 73 of the Contract Act do not attract. Thus the objection as raised relying upon Section 43(1)(b)(ii) has no substance in the instant case."

29. The petitioner also asserted that he had resigned from the post of Executive Director earlier, however in the memo of appeal, he continued to describe his designation as Executive Director of BSUS. Furthermore, the appellant contended that, leaving aside the other members of BSUS, only he was impleaded in the arbitral proceedings. It is, however, apparent that BSUS itself was a party to the arbitral proceedings as Respondent No. 1. Moreover, the appellant executed a personal guarantee in favour of the respondent in respect of the liability, vide the personal guarantee dated 24.02.2010. Therefore, the appellant cannot evade his liability by any stretch of imagination. It is clearly evident that BSUS was impleaded as the opposite party No. 1 in the arbitral proceedings, and accordingly, the contention of singling out the appellant as the debtor has no basis in law.

30. Bangladesh follows the principles of the UNCITRAL Model Law regarding arbitration proceedings. Although the Model Law does not prescribe a fixed time frame for the completion of the arbitration process, it envisages that the tribunal should aim to finalize the award within a reasonable period. In the instant case, the arbitral tribunal handed down the award within a reasonable time and issued proper notices to the parties.

31. In view of the facts and circumstances and the discussion herein, we find no merit in the instant appeal. Accordingly, the instant miscellaneous appeal is dismissed, without any order as to costs.

32. The order of stay granted at the time of admission of the appeal is hereby recalled and vacated. The respondent shall be at liberty to proceed with the execution case.

33. Let a copy of this judgment be sent to the concerned court forthwith.

Md. Ziaul Haque, J.

I agree.