

District-Dhaka.

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)**

Present:

Mr. Justice Md. Toufiq Inam

Civil Revision No. 4801 of 2022.

Multiplan Limited.

----- Developer-Opposite Party- Petitioner.

-Versus-

Monjoor-E-Matin and others.

----- Petitioners-Opposite Party Nos.1-3.

Mr. Md. Quamruddin, Advocate

---- For the Developer-Opposite Party- Petitioner.

Mr. Md. Shahidul Islam, Advocate with

Mr. Shahriar Shahid Shad, Advocate

---- For the Petitioners-Opposite Party Nos.1-3.

Heard On: 17.08.2025.

And

Judgment delivered On: 19.08.2025.

Md. Toufiq Inam, J:

This Rule was issued calling upon the opposite party Nos. 1, 2 and 3 to show cause as to why the order dated 08.08.2022 passed by the learned Senior District Judge, Dhaka in Arbitration Miscellaneous Case No. 61 of 2021, whereby a new arbitrator was appointed on behalf of respondent No. 1, should not be set aside and/or such other or further order or orders should not be passed as to this Court may deem fit and proper.

The facts in brief are that the opposite party Nos. 1–3 along with late Begum Jannatul Ferdous instituted Arbitration Miscellaneous Case No. 491 of 2017 under Section 12 of the Arbitration Act, 2001 before the learned District Judge, Dhaka, seeking appointment of arbitrators for constitution of an arbitral tribunal. The case relates to a leasehold property measuring about 2 Bighas, 2 Kathas and 3 Chattaks situated at Dhanmondi, Dhaka, originally allotted to one Mohammad Abdul Matin, the predecessor of the opposite parties, by way of registered lease deed dated 13.02.1958 for 99 years. After his death on 19.01.1995, the heirs, namely his widow, five sons, and two daughters, inherited the estate under Muslim law and jointly held and possessed the property, including a three-storied building constructed during his lifetime.

The learned District Judge, upon hearing the parties, allowed the application and appointed arbitrators on behalf of the claimants and the respondents respectively, who in turn appointed the chairman of the tribunal. The arbitral proceedings commenced accordingly. On 05.12.2020, the claimants filed an application under Section 14 of the Act alleging that one arbitrator, Mr. Tapas Kumar Dey, was disqualified due to his position as director and head of legal affairs of respondent No. 1 company, which gave rise to reasonable doubts as to his independence and impartiality.

The arbitral tribunal, by majority decision dated 03.01.2021 (Order No. 16), upheld the objection, found merit in the allegation, and directed the parties to take steps for appointment of a substitute arbitrator. Thereafter, the claimants instituted Arbitration Miscellaneous Case No. 61 of 2021. Upon contested hearing, the learned District Judge appointed Mr. Alhaj Md. Borhanuddin as a new arbitrator on behalf of the respondent company by the impugned order dated 08.08.2022. Aggrieved thereby, the respondent-petitioner moved this Court and obtained the present Rule.

Mr. Md. Quamruddin, learned Advocate appearing for the petitioner, contends that the claimants wrongly approached the arbitral tribunal under Section 14, instead of the District Judge under Section 15, to challenge the independence and impartiality of an arbitrator. He argues that the subsequent appointment of a new arbitrator by the District Judge is illegal, as the process initiated by the claimants was contrary to law.

Per contra, Mr. Shahidul Islam, learned Advocate for the opposite parties, submits that the petitioner's contention is misconceived. He argues that Section 13 read with Section 14(3) of the Arbitration Act clearly provides that any challenge to the independence or impartiality of an arbitrator must first be raised before the arbitral tribunal itself. Only when such challenge fails, the party may then approach the court

under Section 15. In the present case, the objection was properly raised before the arbitral tribunal, which upon majority decision accepted the objection, and thereafter the District Judge was approached only for appointment of a substitute arbitrator. Thus, the process strictly complied with the statutory scheme, and the impugned order suffers from no illegality.

Having heard the learned Advocates and perused the materials on record, this Court finds substance in the submission advanced by the learned Advocate for the opposite parties.

The statutory framework of the Arbitration Act, 2001 is clear and sequential. Under Section 13, a party may challenge the appointment of an arbitrator on grounds of lack of independence, impartiality, or qualification. Section 14(3) mandates that such objection must be raised before the arbitral tribunal itself, which shall decide the matter. Only if the arbitral tribunal rejects the objection, the party may then approach the District Judge under Section 15. In the present case, the arbitral tribunal itself, by majority decision, found the allegation of bias against Mr. Tapas Kumar Dey to be well-founded and directed appointment of a substitute arbitrator. The claimants then approached the learned District Judge, not to re-agitate the challenge, but simply to complete the process of appointment of a substitute arbitrator as contemplated under Section 12 read with Section 15.

Therefore, the contention of the petitioner that the claimants ought to have gone directly to the District Judge without first approaching the tribunal is wholly misplaced. On the contrary, the claimants correctly followed the statutory path. The learned District Judge, by appointing a new arbitrator, merely ensured the continuation of the arbitral proceedings and the effective constitution of the tribunal.

Impartiality of arbitrators is the foundation of arbitration and that challenges must be processed within the statutory mechanism to ensure fairness without disrupting efficiency. Once the arbitral tribunal has accepted a challenge to an arbitrator, the process of appointing a substitute is a procedural matter, not open to collateral attack.

It further appears that the newly appointed arbitrator has already participated in the proceedings and the arbitral tribunal has resumed its functions. The impugned order has thus been acted upon. Interference at this stage would not only be contrary to the statutory framework but would also frustrate the arbitral process, which the Arbitration Act seeks to protect and expedite.

Accordingly, this Court holds that where an objection to an arbitrator's impartiality is raised under Section 13, the proper forum in the first instance is the arbitral tribunal itself as mandated by Section

14(3). If the tribunal upholds the objection, the District Judge has jurisdiction under Sections 12 and 15 to appoint a substitute arbitrator. A party cannot bypass this statutory sequence. The arbitral tribunal's acceptance of a challenge and the court's subsequent appointment of a substitute arbitrator is a valid and lawful exercise of jurisdiction. Judicial interference under Section 115 CPC will not lie against such procedural orders, unless shown to be patently without jurisdiction.

Accordingly, the Rule is found to be without merit and is hereby discharged.

The order of stay granted at the time of issuance of the Rule is hereby recalled and vacated.

Let the order be communicated at once.

(Justice Md. Toufiq Inam)

Ashraf/ABO.