

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

CIVIL REVISION NO. 793 OF 2024

In the matter of:

An application under Section 115(1) of the Code of Civil Procedure, 1908.

AND

In the matter of:

Gas Transmission Company Limited represented by its Managing Director of GTCL Bhaban, Plot No. F-18/A, Sher-E-Bangla Nagar Administrative Area, Agargaon, Dhaka-1207.

.... Petitioner

-Versus-

Businessking Limited represented by its Managing Director of 144, Shantinagar Road, Dhaka-1217 and another

....Opposite-parties

Mr. Ashfaqur Rahman with
Mr. Sumit Kumar Sarker, Advocates

... For the petitioner

Mr. Imtiaz Mahmood with
Ms. Mehreen Hassan,
Ms. Sumaiya Ifrit Binte Ahmed and
Mr. Shafayet Ahmed, Advocates

....For the opposite-party no. 1

Heard on 13.03.2024 and 19.03.2024.

Judgment on 21.03.2024.

Present:

Mr. Justice Md. Mozibur Rahman Miah
And
Mr. Justice Md. Bashir Ullah

Md. Mozibur Rahman Miah, J:

At the instance of the petitioner in Arbitration Miscellaneous Case No. 270 of 2022, this rule was issued calling upon the opposite-party no. 1 to show cause as to why the order no. 11 dated 29.01.2024 passed by the learned District Judge, Dhaka in the said Miscellaneous Case recalling the judgment and order dated 14.01.2024 passed in the said Arbitration Miscellaneous Case without informing the concerned parties/lawyers about the availability of the case record or intimating as regards to the next date 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.

The precise facts so have been figured in the instant revision are:

The present petitioner as applicant participated in the proceeding of an Arbitral Tribunal to settle the dispute arose between the petitioner and the opposite-parties and the said Arbitral Tribunal ultimately passed an award in favour of the opposite-parties. The petitioner then invoked the provision of section 42 read with section 43 of the Arbitration Act, 2001 and filed the said Miscellaneous Case for setting aside the said award. In the said Miscellaneous Case, the present opposite-party no. 1 entered appearance to contest the case. During the proceeding of the said Miscellaneous Case, the petitioner filed an application for calling for the records of Arbitral Tribunal and the learned District Judge vide order dated 16.05.2023 allowed the said application and called for the records fixing 27.07.2023 for hearing of the case on arriving the record of the Arbitral Tribunal. Subsequent thereto, the said learned District Judge vide order dated 23.11.2023 fixed the matter for passing the judgment fixing it

on 14.01.2024 without the record of the Arbitral Tribunal. The petitioner being aggrieved with the said order dated 23.01.2023 filed Civil Revision being No. 15 of 2024 and this court vide order dated 10.01.2024 issued rule and stayed all further proceeding of the said Miscellaneous Case for a period of 1(one) month. On the date earlier fixed for passing the judgment by the District Judge dated 14.01.2024, the petitioner filed an application for adjournment accompanied by a lawyer's certificate stating that, the further proceeding of the Miscellaneous Case has been stayed but without taking into consideration of that application for adjournment, the learned District Judge went on and passed the judgment in the said Arbitration Miscellaneous Case compelling this court to issue a suo motu violation rule for violating the order of this court dated 10.01.2024 and that very suo motu rule was subsequently disposed of by exonerating the learned District Judge on accepting his unconditional apology tendered by him yet the learned District Judge vide impugned order dated 29.01.2024 set aside the judgment and order passed in the Miscellaneous Case on 14.01.2024.

Being aggrieved by and dissatisfied with the said order dated 29.01.2024, the petitioner of the Miscellaneous Case filed the instant revision.

Mr. Ashfaqr Rahman, the learned counsel appearing for the petitioner upon taking us to the impugned order at the very outset submits that, from the contents of the impugned order, it construes that, the learned District Judge shifted the burden upon the petitioner for not filing and pressing the application during the court hour when the judgment was

passed on 14.01.2024 for which he could not gather knowledge about the order passed by this court dated 10.01.2024 in Civil Revision No. 15 of 2024.

To controvert the assertion of the learned Judge, the learned counsel then adds that, the learned District Judge once averred that the adjournment application had been filed in the first half of the court hour on 14.01.2024 and on the second breath, he also asserted that, though the adjournment application was filed in the second part of the day but the same was not moved till the office time of the court that is, up to 04.30 p.m. which itself is self-contradictory stand taken by the learned District Judge though he endorsed in the adjournment application that, “নথিতে আদেশ হবে” but fact remains, no order was passed on that application and even then, the learned Judge recalled the judgment passed on 14.01.2024.

In that respect, the learned counsel for the petitioner submits that, since rule in Violation Miscellaneous Case being Civil Rule No. 01(Vio) (R) of 2024 dated 24.01.2024 was served upon the learned District Judge on the following day that is, on 25.01.2024 so the learned District Judge on that very day could have recalled the judgment dated 14.01.2024 but he recalled the judgment after 3(three) working days which clearly demonstrates that, the impugned order was passed as an afterthought manner and since the judgment was passed on 14.01.2024 on merit and on contest, there has been no scope to recall the said order after long time when the learned District Judge himself became *functus officio*.

The learned counsel on his second leg of submission also contends that, since this Hon'ble court will only consider the validity of the

impugned order so there has been no scope to take into account of the judgment and order passed on 14.01.2024 because if by the judgment dated 14.01.2024, the opposite-party feels aggrieved, he has got alternative forum by preferring appeal under section 48 of the Arbitration Act, 2001. On those legal counts, the learned counsel finally prays for making the rule absolute by setting aside the impugned judgment and order.

On the flipside, Mr. Imtiaz Mahmood, the learned counsel appearing for the opposite-party no. 1 opposes the said contention taken by the learned counsel for the petitioner and contends that, moment the order of stay of the further proceeding of the Miscellaneous Case is passed, the learned District Judge has got no authority to pass the judgment dated 14.01.2024 even if he had no knowledge about the order passed by this Hon'ble court dated 10.01.2024 in Civil Revision No. 15 of 2024 and it will be deemed the further proceedings of the said Miscellaneous Case has been stayed.

The learned counsel by referring to the impugned order of this revision also contends that, the learned Judge has got every authority to rectify his/her mistake in exercise of the power conferred upon him/her under section 151 of the Code of Civil Procedure even no application is filed by either parties to the case and in the instant case, the learned Judge rightly did so having no scope to interfere with the impugned order which is liable to be sustained resulting in the judgment passed on 14.01.2024 will stand set aside/recalled.

In support of his submission, the learned counsel has placed several decisions but we feel it expedient to confine our discussion and observation within the ambit of the impugned order.

We have considered the submission put forth by the learned counsel for the parties and perused the impugned order. On going through the impugned order, we find that, the learned District Judge in the first part of the impugned order asserted that, the petitioner had not filed the adjournment application dated 14.01.2024 in the first half of the said date compelling the learned Judge to pass the judgment in the Miscellaneous Case but on the second breath, he asserted that, the said adjournment application was filed in the second part of the day which construe that before concluding the office hour of the court that very application was filed else, the learned District Judge could not have made endorsement on the said application as “নথিতে আদেশ হবে”. Further, the notice of the rule of violation miscellaneous case was served upon the learned District Judge on 25th of January, 2024 which was also a working day so what compelled him to recall the judgment dated 14.01.2024 after four days of receiving the said notice on 24.01.2024 is totally incomprehensible to us which led us to conclude that, the learned Judge in an afterthought manner passed the impugned order.

Furthermore, he also admitted his fault in the impugned order stating that, though he made an endorsement in the application for adjournment stating “নথিতে আদেশ হবে” but he mistakenly could not pass any order on that application which alternatively proves that, the learned Judge has got every knowledge about the adjournment petition dated

14.01.2024 when he passed the judgment in Miscellaneous Case No. 270 of 2022. All those factums lead us to find that, the learned District Judge has very mischievously passed the impugned order and subsequently, tried to skirt off his responsibility of misdeed done in passing the judgment dated 14.01.2024. Since we are not considering the validity of the judgment dated 14.01.2024 rather the impugned order dated 29.01.2024 so we are of the considered view that, if the opposite-party no. 1 has got any grievance with regard to the judgment dated 14.01.2024, they have got the remedy to challenge its propriety in a appropriate forum but so far in regard to the impugned order, we don't find any iota of substance and under no circumstances, that order can stand.

Moreover, since the judgment dated 14.01.2024 was recalled 15 (fifteen) days of passing the same so invariably at that point of time, the learned District Judge became *functus officio* having no scope to recall the judgment be it on the basis of filing an application by any party or the learned Judge himself.

In view of the above observation and discussion, we don't find any iota of substance in the impugned judgment and order which cannot be sustained in law.

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

The impugned judgment and order dated 29.01.2024 passed by the learned District Judge, Dhaka in Arbitration Miscellaneous Case No. 270 of 2022 is thus set aside.

Let a copy of the judgment be communicated to the court concerned forthwith.

Md. Bashir Ullah, J:

I agree.