District-Dhaka.

IN THE SUPREME COURT OF BANGLADESH

HIGH COURT DIVISION

(CIVIL REVISIONAL JURISDICTION)

Present:

Mr. Justice Md. Toufiq Inam

Civil Revision No. 4283 Of 2024.

Mrs. Lily Begum Ahmed and another
---------- Respondents-Petitioners.
-Versus-
Navana Real Estate Ltd. and others
---------- Claimant-Opposite Parties.

Mr. Julhas Uddin Ahmed, Senior Advocate with
Mr. Md. Nazmul Islam, Advocate
---------- For the Respondents-Petitioners.

Mr. Syed Mizanur Rahman, Advocate
---------- For the Claimant-Opposite Parties.

Heard On: 10.07.2025 and 04.08.2025.
And
Judgment Delivered On: 11.08.2025.

Md. Toufiq Inam, J.

This revisional application, at the instance of the award-holder, is directed against Order No. 3 dated 11.08.2024, passed by the learned District Judge, Dhaka, in Miscellaneous Case No. 336 of 2024, whereby the learned Court admitted an application filed under Section 42 read with Section 43 of the Arbitration Act, 2001 for setting aside an arbitral award arising out of Arbitration Miscellaneous Case No. 225 of 2023, upon condoning a delay of 116 days in filing the application, subject to payment of 10% of the award amount as cost.

Facts, in brief, are that the petitioners were successful claimants in an arbitral proceeding conducted under the Arbitration Act, 2001, culminating in an award dated 29.02.2024 passed in their favour. The opposite party admittedly received a copy of the award on the same

date, i.e., 29.02.2024. However, instead of challenging the award within the statutory period of 60 days, the respondents-opposite parties filed an application for setting aside the award after a delay of 116 days.

By the impugned order dated 11.08.2024, the learned District Judge condoned the said delay applying section 5 of the Limitation Act and admitted the application for hearing, subject to the condition that the opposite parties deposit 10% of the award money as cost.Being aggrieved, the award-holder has preferred the present revisional application, contending that the Arbitration Act, 2001 is a special statute that does not permit condonation of delay in filing an application under Section 42(1), and therefore, the impugned order is without jurisdiction and liable to be set aside.

Mr. Julhas Uddin Ahmed, learned Senior Advocate for the petitioner, submits that the Arbitration Act, 2001 is a self-contained special legislation which prescribes a strict limitation period of 60 days under Section 42(1) for filing an application to set aside an arbitral award. He contends that the Act does not contain any provision authorizing the court to condone delay, nor does it attract the applicability of Section 5 of the Limitation Act, 1908. Placing reliance on a precedent reported in 17 SCOB (HCD) 57, he argues that the impugned order passed by the learned District Judge in condoning the delay is patently illegal and without jurisdiction.

Per contra, Mr. Syed Mizanur Rahman, learned Advocate appearing for the opposite parties, submits that the delay in filing the application arose due to unavoidable and bona fide circumstances. He argues that the opposite parties were kept in the dark about the entire arbitral proceedings, and neither the court nor the arbitral tribunal served any notice upon them. He refers to the procedural history of Arbitration Miscellaneous Case No.225 of 2023 to highlight alleged irregularities.

Specifically, Mr. Rahman points out that:

i) On 31.05.2023, the learned District Judge heard and admitted an application under Section 12 of the Act for appointment of an arbitrator and fixed 07.08.2023 for return of summons.

ii) However, on an earlier date (23.07.2023), upon an application filed by the present petitioner, the court allowed substituted service by way of publication under Order V Rule 20 of the Code of Civil Procedure (CPC).

iii) Pursuant thereto, on 07.08.2023, Mr. Abdul Majid was appointed as the petitioner's arbitrator, and in the absence of the respondent-opposite parties, Mr. Masder Hossain was appointed as their arbitrator. The court thus disposed of the Miscellaneous Case.

iv) Thereafter, on 08.08.2023 and again on 04.10.2023, the petitioner filed further applications in the disposed of case seeking to change the names of the arbitrators for both parties, which were allowed.

v) The reconstituted arbitral tribunal proceeded to pass the award without issuing any notice or intimation to the opposite parties.

vi) The opposite party had no knowledge of the award.

On these grounds, Mr. Rahaman submits that fraud was perpetrated upon the opposite parties, and the arbitral proceedings were conducted behind their back. He invokes Section 18 of the Limitation Act, 1908, to argue that the limitation period stood suspended due to the alleged fraud. He also contends that no prejudice has been caused to the

petitioner by the delay and that the cost imposed sufficiently compensates for it.

He finally contends that the reconstituted arbitral tribunal, formed by the subsequently appointed arbitrators, is tainted by illegality as the tribunal had become functus officio, and therefore, the District Judge rightly admitted the delayed application to set aside the award arising therefrom.

The core question before this Court is whether the learned District Judge acted within the bounds of jurisdiction in condoning a delay of 116 days in filing an application under Section 42 read with Section 43 of the Arbitration Act, 2001, for setting aside an arbitral award.

Section 42(1) of the Arbitration Act, 2001 prescribes in unequivocal terms:

“৪২। (১) কোন পক্ষ কর্তৃক সালিসী রোয়েদাদ প্রাপ্তির ষাট দিনের মধ্যে দাখিলকৃত আবেদনের ভিত্তিতে আদালত আন্তর্জাতিক বাণিজ্যিক সালিসে প্রদত্ত রোয়োদাদ ব্যতীত এই আইনের অধীনে প্রদত্ত কোন সালিসী রোয়েদাদ বাতিল করিতে পারিবেন।” This statutory mandate is plain and peremptory: an application for setting aside an arbitral award must be filed within sixty (60) days from the date on which the applicant **receives** the award. The Act contains no saving clause, no non obstante provision, and no enabling power to condone delay beyond this rigid timeframe. By design, the Arbitration Act, 2001 is a self-contained code intended to secure expedition, finality, and minimal court interference in arbitral proceedings.The statutory language applies to “any party,” which includes both the petitioner and the opposite party. However, the limitation period runs separately for each party from the date of actual receipt or deemed receipt of the award, as recognised under law.

In the present case, the record shows that the claimant-petitioner received the award. The opposite party, however, contends that they had no knowledge of the award. While the law recognises that limitation runs from receipt, proper service of the award- whether by personal delivery, registered post, or court-authorised substituted service- is considered deemed receipt. Mere denial of receipt, without evidence that service was defective, does not prevent the limitation period from starting.

It is also relevant that the earlier newspaper publication, which was issued before the appointment of the arbitrator, cannot be treated as service of the award. The limitation under Section 42(1) begins only from actual or deemed delivery of the award. Therefore, if proper service of the award was effected on the opposite party, the 60-day period applies to them regardless of their subjective denial of knowledge.

Even assuming, arguendo, that the opposite party did not receive the award, the law is clear that the limitation period for them cannot start until actual or legally deemed receipt of award. The rigid statutory period is self-contained and does not incorporate any general provisions of the Limitation Act, including Section 18, which deals with fraud or concealment. Mere allegations of fraud or non-receipt do not, by themselves, extend or suspend the limitation period prescribed under Section 42(1).

In the present case, the learned District Judge has condoned a delay of 116 days in filing the application for setting aside the arbitral award. It is well-settled that the Arbitration Act, 2001 is a self-contained code and does not vest the Court with any power to extend the statutory period of 60 days prescribed under section 42 thereof. The provisions of the Limitation Act, including sections 5 or 18, are inapplicable to proceedings under the Arbitration Act, 2001. The scheme of the Act

2001 is to ensure finality and expeditious resolution, and the Court cannot extend the limitation period by invoking any general principles.

If the opposite party's plea is that they had no knowledge of the award due to non-receipt, then limitation had not commenced at all and no question of condonation could arise. Conversely, if limitation had already commenced, whether upon actual or deemed receipt of the award, the Court was wholly without jurisdiction to extend the statutory period. Thus, in either view of the matter, the impugned order is contrary to the express mandate of law, suffers from patent illegality, and is unsustainable in the eye of law.

Accordingly, **the Rule is made absolute.**
The impugned order dated 11.08.2024 passed by the learned District Judge, Dhaka in Miscellaneous Case No. 336 of 2024 is hereby set aside.

There will be no order as to costs.

Let the lower court's records be sent back, and this judgment be communicated to the court concerned forthwith.

(**Justice Md. Toufiq Inam)**

Ashraf /ABO.