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

CIVIL REVISION NO. 1850 OF 2023

In the matter of:
An application under Section 115(1) of the Code of Civil Procedure.

AND

In the matter of:

Complete Education for alternative development (CEFAD) foundation.

.... Petitioner

-Versus-

International leasing and financial services limited and others

....Opposite-parties

Mr. S.M. Miniruzzaman, Advocate
... For the petitioner

Mr. Debashish Chakraborty, Advocate
....For the opposite party no. 1

Heard on 28.04.2025
and Judgment on 29.04.2025

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. 146 of 2022 initiated under section 12 of the Arbitration Act, 2001, this rule was issued calling upon the opposite-party no. 1 to show cause as to why the judgment and order no.09 dated 15.02.2023 passed by the learned

senior District Judge, Dhaka in Arbitration Miscellaneous Case No. 146 of 2022 dismissing the Case should not be set aside set aside and/or such other or further order or orders be passed as to this court may seem fit and proper.

The salient facts leading to issuance of the instant rule are:

The present petitioner who is also the petitioner in the said Arbitration Miscellaneous case, as a first party and borrower purchaser entered into a tripartite agreement on 22.09.2005 with the opposite party no. 1, a leasing company, a third party as well as opposite party no. 2, a second party, a developer company for constructing a six-storey commercial building namely "Aga Delta Square" in plot no. 756/D, Satmosjid Road, Dhanmondi, Dhaka and as a borrower purchaser the petitioner then approached to the opposite party no. 1 for providing lease finance and the opposite party no. 1 agreed to provide loan facility and accordingly the said agreement was furnished among the parties and it was agreed that, the opposite party no. 1 will lend an amount of taka 11,00,000,00/- out of total outlay of taka 14,90,00,000/- to the petitioner to complete the said commercial building. It has also been stated that, though the opposite party No. 1 was supposed to disburse an amount of taka 11,00,000,00/- but ultimately lent taka 6,00,000,00/- in several installments in favour of the petitioner and then failed to disburse the rest amount of taka 5,00,000,00/-. Though the petitioner on several occasions requested the opposite party no. 1 to disburse the rest amount but the opposite party no. 1 did not release the said amount. The petitioner then on 06.03.2020 served a 'notice of Arbitration' to the opposite party no. 1 asking it to appoint an arbitrator on their behalf to settle the dispute. It has further been

stated that before issuing that notice of arbitration, the petitioner also took endeavour to settle the dispute amicably with the opposite party no. 1.

However, as the opposite party no. 1 did not respond the said notice nor it appoint any arbitrator, the petitioner then compelled to file the said Miscellaneous Case, under section 12 of the Arbitration Act.

In the said Miscellaneous Case, the present opposite party no. 1 entered appearance and filled a written objection stating *inter alia* that, since apart from the disbursed amount, the opposite party no. 1 on 23.07.2007 also sanctioned a term loan of taka 9,80,000,00/- and since the petitioner did not repay any amount, the outstanding dues against the petitioner then stood at taka 35,86,06,873.94 and then it filed an Artha Rin Suit being Artha Rin Suit No. 294 of 2022 against the petitioner for realizing the said outstanding dues. It has further been stated that, in section 3 of the Artha Rin Adalat Ain, 2003 there remains a non-obstante clause and thus no arbitration proceedings can be initiated to settle any monetary dispute under section 12 of the Arbitration Act. It has also been asserted that, under the provision of section 5(1) of the Artha Rin Adalat Ain, 2003 only the Artha Rin Adalat is empowered to realize the outstanding loan amount from a defaulter borrower through Artha Rin Adalat having no scope to invoke section 12 of Arbitration Act to initiate and continue a parallel proceedings to settle any financial dispute among the parties.

It is worthwhile to mention here that, during the proceedings of the Arbitration Miscellaneous Case, the petitioner also filed an application under section 7ka of the Arbitration Act, praying for an injunction restraining the opposite party no. 1 from taking any step in transferring the

property so have been described as schedule ‘uma’ and ‘cha’ to the application filed under section 7ka of the Act. However, after considering the materials on record and the submission made by the learned counsel for the petitioner, the learned District Judge vide order dated 12.04.2022 stayed all further action to transfer schedule ‘cha’ property through auction till 05.09.2022. The said restrained order was subsequently extended from time to time. Eventually, the miscellaneous case filed under section 12 of the Act was taken up for hearing by the learned District Judge, Dhaka and vide impugned judgment and order dated 15.02.2023 dismissed the same holding that the opposite party no. 1 has already filed an Artha Rin Suit for realizing a huge amount of outstanding dues from the petitioner and the tripartite agreement furnished among the parties is not related to any loan liabilities among them rather dispute arose with regard to the transaction of the properties (সম্পত্তির ক্রয় বিক্রয় সংক্রান্ত বিরোধ) and therefore the Arbitration Case is barred under Artha Rin Adalat Ain, 2003.

It is at that stage, the petitioner of the said Miscellaneous Case as also petitioner filed this revisional application and obtained the instant rule.

Mr. A.S.M. Moniruzzaman, the learned counsel appearing for the petitioner upon taking us to the impugned judgment and order and all other document appended therewith,at the very outset submits that, the learned District Judge has committed a grave illegality in not taking into consideration of the provision of section 12 of the Arbitration Act which speaks for appointing an arbitrator only if any of the party to an agreement ever failes to appoint his/her own arbitrator even upon receiving notice of arbitration.

The learned counsel further contends that, since section 12 of the Act does not deal with the recovery of the outstanding dues rather appointment of an arbitrator, so the learned District arrived at a wrong finding holding that since the opposite party no. 1 has already initiated an Artha Rin suit to realize the dues so the Arbitration proceedings cannot be sustained which is totally misconceived one, as there has been nothing in section 12 of the Ain as to what kind of dispute should be settled by Arbitratral tribunal rather simply appointing Arbitrator.

The learned counsel further contends that, even in the agreement, there have been certain stipulations with regard to transaction of loan by the opposite party no. 1 to the petitioner, so if any dispute is arisen among the parties with regard to financial transaction, that dispute can also be resolved through an arbitratral tribunal to be constituted following appointment of an arbitrator by the court having no reason not to appoint arbitrator by the court under section 12 of the Arbitration Act.

The learned counsel lastly contends that, it is a condition precedent that before filing a Miscellaneous Case, under section 12 of the Act a party to the agreement should issue a 'notice of arbitration' upon its adversary asking it to appoint its arbitrator within 30 days of receiving such notice failing which the notice giver has to file an application under section 12 of the Arbitration Act before the District Judge which has admittedly been done by the petitioner having no reason not to appoint arbitrator and the learned District Judge has clearly misappreciated such legal compulsion and thereby committed a grave error of law in dismissing the case and finally prays for making the rule absolute.

On the contrary, Mr. Debasish Chakraborty, the learned counsel appearing for the opposite party no. 1 by filing a counter-affidavit vehemently opposes the contention taken by the learned counsel for the petitioner and at the very outset submits that, the learned District Judge has committed no illegality in passing the impugned judgment and order on dismissing the Miscellaneous Case finding this opposite party already filed Artha Rin Suit for realization of huge outstanding dues from the petitioner having no scope to initiate a parallel proceedings through appointing arbitrator to frustrate the proceedings of the Artha Rin Suit and therefore the impugned judgment is liable to be sustained.

The learned counsel next contends that, under the provision of section 3 of the Artha Rin Ain, 2003 where there has been an overwriting provision giving preference of the provision of Artha Rin Ain over any other law and as the dispute is now pending before the Artha Ain Adalat so the learned District Jdge has rightly passed the impugned order

The learned counsel by giving reference to the provision of section 5(1) of the Artha Rin Adalat Ain also contends that, in respect of recovery of money of the financial institutions, the suit has to be filed before the Artha Rin Adalat so the opposite party no. 1 has thus rightly taken resort to the said provision of the Artha Rin Adalat Ain and filed the Artha Rin Suit having no reason to appoint arbitrator to resolve the dispute.

The learned counsel lastly contends that, the dispute arose among the parties are with regard to develop the property not any financial transaction and such dispute can not be resolved through appointing arbitrator under Arbitration Act and therefore the appointment of arbitrator sought by the

petitioner under section 12 of the Arbitration Act cannot be sustained in law and finally prays for discharging the rule.

We have considered the exhaustive submission so placed by the learned counsels for the parties, perused the revisional application, counter affidavit, the notice of arbitration so issued by the present petitioner (photocopy of the same supplied to us by the learned counsel for the petitioner at the time of hearing) and other materials on record. There has been no gainsaying the fact that under section 12 of the Arbitration Act, it is the bounden duty of the learned District Judge to appoint an arbitrator, if he or she ever finds there has been an agreement/ contract among the parties and an Arbitration clause is in place. On going through the supplementary-affidavit, so filed by the petitioner, we find that, a tripartite agreement was signed by the present petitioner, opposite party nos. 1 and opposite party no. 2 through which the opposite party no. 1 was obligated to disbursed an amount of taka 11,00,000,00/- as of lease finance to the petitioner to build a 6-storey commercial building in the schedule property by the developer, company herein the opposite party no. 3. It is not denied by the parties that, out of taka 11,00,000,00/-, the opposite party no. 1 disbursed an amount of taka 6,00,000,00/- to the present petitioner and as the opposite party no. 1 has failed to disburse the rest amount to the petitioner vis-à-vis to the said developer, the construction of the building has been halted for which dispute arose among the present petitioner and the opposite party no. 1. And as the amicable settlement failed, the petitioner was then compelled to serve a ‘notice of arbitration’ on 06.03.2020 to the opposite party no. 1 requesting it to appoint arbitrator. So we find that the precondition to initiate an arbitration proceeding has

clearly been fulfilled by the petitioner within the meaning of section 12(4)(ka) of the Arbitration Act, 2001. So, the learned District Judge had then no other option but to appoint arbitrator for the opposite party no. 1 under section 12 (4)(ga) of the said Act. Now question remains, whether the financial dispute can be resolved through appointing an arbitrator or not which has been robustly canvassed by the learned counsel for the opposite party no. 1. To address the said argument, we have also very meticulously gone through the entire agreement and we find from Article 2 of the said agreement, that out of taka 14,90,00000/- the opposite party no. 1 agreed to disburse an amount of taka 11,00,000,00/- to the petitioner. Since it is an admitted position that the opposite party no. 1 has ultimately failed to disburse the said amount the dispute then arose among them. So it can not be said that the said agreement only speaks about the development of the property by the developer. So it has aptly been proved that the dispute with regard to financial transaction among the parties can also be resolved by an arbitral tribunal as per Article 8 of the agreement. Fact remains, section 12 of the Act solely deals with appointment of an arbitrator and nothing else. So since there has been a condition in Article no. 8 to the agreement authorizing to appoint arbitrator and it has not been denied by the opposite party no. 1 as well, so there has been no scope for the learned District Judge not to appoint an arbitrator for the opposite party no. 1 but going beyond his remit, he has invited some extraneous facts which have no manner of application in disposing of the Miscellaneous Case .

Resultantly, we don't find any iota of substance in the impugned judgment and order which is liable to be set aside.

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

The impugned judgment and order dated 15.02.2023 passed by the learned senior District Judge, Dhaka in Arbitration Miscellaneous Case No. 146 of 2022 is set aside.

The learned District Judge, Dhaka is thus directed to appoint an arbitrator for the opposite party no. 1 within a period of 30(thirty) days from the date of receipt of the copy of this order.

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

Md. Bashir Ullah, J:

I agree.