Bench:
Mr. Justice Md. Ali Reza

Civil Revision No. 1793 of 2025
Ena properties Limited, represented by its Managing Director
.....petitioner
-Versus-
Masuda Hossain and others
.....opposite party

Mr. Purnindu Bikash Das with
Mr. Homayun Kabir Ahsan, Advocates
.....for the petitioner

Mr. Taposh Kumar Dutta with
Ms. Ferdousi Akter, Advocates
.....for the opposite party

Heard on: 04.01.2026, 05.01.2026, 06.01.2026, 15.01.2026 and 22.01.2026

Judgment on: 29.01.2026

In the instant revision Rule was issued on 22.05.2025 calling upon the opposite parties to show cause as to why the judgment and order dated 20.03.2025 passed by the District Judge, Dhaka in Execution Case No. 15 of 2024 allowing the application for attachment of immovable property under Order 21 Rule 54 of the Code of Civil Procedure attaching the property mentioned in the schedule to the application should not be set aside and/or such other of further order or orders passed as to this Court may seem fit and proper.

The present opposite parties as petitioners filed a decree Execution Case 15 of 2024 before the District Judge, Dhaka for execution of consent award dated 02.03.2022 passed by the Arbitral Tribunal, Dhaka.

The opposite parties being owners of 50 decimals of land of Central Road appertaining to Police Station Dhanmondi of District Dhaka entered into a deed of agreement on 18.10.2004 with the present petitioner who is the developer for construction of a 15 storied commercial-cum-residential building. Subsequently upon arising of certain disputes the landowners namely the opposite parties sought arbitration and filed Arbitration Miscellaneous Case 756 of 2016 for constitution of arbitral tribunal and ultimately the tribunal was constituted with 3 members namely Mr. Justice Syed Amirul Islam as Chairman and Mr. Justice Nozrul Islam Chowdhury and Mr. Md. Shofiul Alam Mahmood as arbitrators. While the arbitration was going on the land owners and the developer agreed to settle their dispute amicably and signed a compromise agreement dated 18.10.2004 and upon their joint submission the learned arbitral tribunal passed an award on compromise on 02.03.2022.

Since the developer namely the present petitioner failed to complete the project within the period stipulated in the compromise agreement the landowners filed Execution Case Number 15 of 2024 for realization of rent accrued to them in terms of the award.

In the said execution case the landowners filed an application under Order 21 Rule 54 of the Code of Civil Procedure for attachment of the portion of the developer which was allowed by the District Judge by the impugned order 5 dated 20.03.2025.

Challenging the said order the developer as petitioner filed the instant revision and obtained Rule on 22.05.2025. At the time of issuance of the Rule this Court was further pleased to stay the operation of the judgment and order dated 20.03.2025 for a period of 01(one) year from date subject to the condition that the petitioner shall pay the total arrear of rent to the opposite parties within that period and also hand over the remaining incomplete flats to them and one third of the arrear rent is to be paid within 30 days and in that respect the Court directed the petitioner to submit an affidavit-of-compliance showing payment of one third of the arrear rent as stated above.

The opposite parties appeared in the Rule on 19.06.2025 and filed an application bearing affidavit serial number 9543 dated 07.07.2025 for vacating the order of stay for non-compliance of the Court's order dated 22.05.2025 contending that the petitioner in violation of the order of the Court by affidavit dated 07.07.2025 bearing affidavit Serial Number 6843 showed payment by pay order of Tk. 14,08,800/- (fourteen lac eight thousand eight hundred) which amount is wholly inadequate and is contrary to the compromise award and the rule issuing order of this Court.

It is further contended that as per the order of the Court the developer had to pay one third of the arrear rent which was for commercial portion of 40830 square feet at the rate of taka 80 per month and for the residential 32 flats taka 30 thousand for each flat since April 2024 as contemplated in the award and thus the rent due for the commercial portion from April 2024 to April 2025 is 40830 square feet at taka 80 per square feet per month for 12 months amounting to taka 3,91,96,800/- (three crore ninety one lac ninety six thousand eight hundred) and for the residential portion for 32 flats at taka 30 thousand per flat per month for 12 months amounting to taka 1,15,20,000/- (one crore fifteen lac twenty thousand) totalling

taka 5,07,16,800/- (five crore seven lac sixteen thousand eight hundred). Therefore as per order of this Court one third of the total rent due up to April 2025 amounts to taka 5,07,16,800/- (five crore seven lac sixteen thousand eight hundred) which after divided by 3 equal to taka 1,69,05,600/- (one crore sixty nine lakh five thousand six hundred) which the petitioner was liable to pay to the opposite parties within 30 days from the date of the order. The developer however offered only taka 14,08,800/- (fourteen lac eight thousand eight hundred) in place of 1,69,05,600/- (one crore sixty nine lac five thousand six hundred) which constitutes complete non-compliance with the order of this Court.

Learned Advocate Mr. Purnindu Bikash Das along with Mr. Homayun Kabir Ahsan appearing on behalf of the petitioner submits that the Senior District Judge committed error of law resulting in an error in such order occasioning failure of justice in passing the impugned order which is apparently a non-speaking order being made without assigning any reason. He further submits that the opposite parties at their sweet will relied upon a vague schedule contrary to the consent award and compromise agreement to determine the amount allegedly due to them and the executing Court

disregarding the matter passed the impugned judgment in a slipshod manner thus committed error of law occasioning failure of justice. He points out that from reading of the application for execution it appears that the opposite parties claimed a total amount of taka 42,26,400/- (forty two lac twenty six thousand four hundred) as house rent but the executing Court directed to attach 32 residential flats and 40830 square feet of commercial space which is manifestly excessive and disproportionate to the claim thus the impugned judgment is improper and misconceived. He further submits that the opposite parties obtained the order of attachment by suppressing crucial material facts that 7 flats have already been handed over to them and 17 flats are ready for delivery but the executing Court without adverting to this aspect of the case wrongly passed the order which has been operating harshly against the petitioner. He also contends that since the award was passed upon compromise agreement no party assumes the status of decree-holder or judgment-debtor and as such the application under Order 21 Rule 54 of the Code of Civil Procedure is misconceived but the executing Court failed to appreciate this material aspect thus committed error of law occasioning failure of justice. He lastly submits that since the

application for attachment was disposed of without notice the impugned order cannot be sustained for realization of movable property by attaching immovable property.

On the other hand learned Advocate Mr. Taposh Kumar Dutta along with Ms. Ferdousi Akter appearing on behalf of the opposite parties takes me through the relevant paper of the record and refers to clause 1(c), 3 and 4 of the compromise agreement dated 23.09.2021 and submits that the execution was correctly filed in accordance with the award dated 02.03.2022 taking its effect from the date of compromise agreement dated 23.09.2021 and the application for attachment under Order 21 Rule 54 in respect of schedule-Kha property has been lawfully filed as the matter originated in 2004 and has remained unsolved to date notwithstanding that for this purpose both parties had agreed upon the compromise agreement wherein the opposite parties are legally entitled to seek their remedy under clause 3 and accordingly the executing court has rightly passed the judgment which in the present circumstances is not legally amenable to interference. He also submits that even if the impugned order is treated as a non-speaking order no legal irregularity arises therefrom because in the event of any illegal transfer of the property

under schedule-Kha the execution case would be frustrated and there being no error in passing the impugned order in furtherance of the execution proceeding the same is liable to be discharged.

Heard the learned Advocates for both sides and perused the materials on record and also gone through the impugned order passed by the courts below.

The opposite parties are the owners of the disputed property and the petitioners are the developers. For the purpose of construction of a 15 storied commercial-cum-residential building an agreement was executed between the parties on 18.10.2004. Subsequently dispute arose between the parties and the opposite parties instituted Arbitration Miscellaneous Case Number 756 of 2016. In the said proceeding a 3 member arbitral tribunal was constituted comprising Mr. Justice Syed Amirul Islam as President and Mr. Justice Nozrul Islam Chowdhury and Mr. Md. Shafiqul Alam Mohammad as arbitrators in accordance with the Arbitration Act, 2001.

During pendency of the arbitration proceedings the opposite parties and the developer agreed to amicably settle their disputes. In furtherance thereof a compromise agreement

was executed on 23.09.2021 which formed part of the original agreement dated 18.10.2004. On the basis of said compromise the arbitral tribunal passed an award on 02.03.2022 which is enforceable as a decree of the Court under Section 44 of the Arbitration Act 2001.

It is evident from the record that the petitioner failed to implement the terms and conditions of the compromise agreement within the stipulated time particularly the obligations under clause 1, 3 and 4 thereof. Failure to comply with the terms of an award renders the award holder entitled to seek execution in the manner provided under law which is settled by illustration that an arbitral award stands on the same footing as a civil decree.

Accordingly the opposite parties filed Execution Case Number 15 of 2024 on 26.11.2024 for realization of their accrued rent in terms of the award invoking Order 21 Rule 54 of the Code of Civil Procedure. Notices were duly issued upon the judgment debtors in accordance with law.

In the said execution case the opposite parties filed an application before the executing Court seeking attachment of the petitioner’s share described in the Kha schedule under Order 21 Rule 54 of the Code of Civil Procedure. Attachment

of immovable property under the said provision is a recognized mode of execution to prevent frustration of a decree by alienation.

After service of notice and upon return thereof the petitioner failed to take any effective step or to discharge their decretal liability. The executing Court by order dated 20.03.2025 allowed the application for attachment and passed the impugned judgment.

Upon perusal of the record it appears that up to April 2025 an amount of taka 5,07,16,800/- (five crore seven lac sixteen thousand eight hundred) fell due and outstanding on account of rent for the commercial and residential portions. From the rule issuing order it is evident that the petitioner was directed to deposit one third of the outstanding amount within 30 days by filing an affidavit-of-compliance before this Court. One third of the aforesaid amount comes to taka 1,69,05,600/- (one crore sixty nine lac five thousand six hundred). However from the affidavit-in-compliance dated 07.07.2025 it transpires that the petitioner deposited only taka 14,08,800/- (fourteen lac eight thousand eight hundred) by pay order before the Court. Such payment manifestly falls far short of

the amount directed by the Court and clearly demonstrates that the petitioner has willfully ignored the order of the Court.

The conduct of the petitioner further reveals an attempt to deprive the opposite parties of their lawful dues by adopting various means and methods which is wholly inconsistent with the principles of fairness and justice. Such conduct strikes at the very root of due administration of justice. In view of the above the affidavit-of-compliance filed by the petitioner cannot be held to be legally acceptable and does not amount to compliance with the order of this Court.

The petitioner has raised the contention that since no specific amount was mentioned in the execution application attachment of the entire property is not lawful. This contention is misconceived. The compromise agreement itself contains clear stipulation with regard to the outstanding liabilities and mode of realization thereof. A plain reading of Order 41 Rule 54 of the Code of Civil Procedure makes it abundantly clear that the said provision does not require prior determination or specification of the monetary value of the property sought to be attached. Attachment under the said provision is intended to restrain alienation of the property and does not amount to dispossession.

Attachment is thus a preventive measure to secure the ends of justice and to ensure that the execution proceedings are not rendered nugatory by transfer or encumbrance of the property.

Immediately prior to the delivery of judgment the learned Advocate for the petitioner filed a supplementary-affidavit and referred therein to Annexure-E which is a memorandum dated 25.11.2025 signed by the President of REHAB and addressed to all the members of REHAB. From the said memorandum it appears that REHAB communicated its own decision to its members. Relying upon the said letter the learned Advocate submitted that the present execution case is premature on the ground that the time for completion of the project has been extended upto 30.09.2026 and therefore the application under Order 21 Rule 54 of the Code of Civil Procedure has no legal basis. However he failed to advance any lawful explanation as to why the said application lacks legal foundation. Such submission appears to be devoid of merit and cannot be accepted.

In the above view of the matter this Court finds that the executing Court has rightly passed the impugned judgment and order in accordance with law and no illegality or infirmity

can be found therein. Although the impugned judgment was not delivered with detailed analysis nevertheless no failure of justice has been occasioned thereby.

On the foregoing analysis the impugned judgment does not call for interference. The petitioner has failed to substantiate his claim or to establish any legal ground warranting interference by this Court.

Accordingly the Rule being devoid of merit is discharged.

Communicate this judgment to the concerned Court at once.

Md. Ali Reza, J:

Naher-B.O