

Present:

MR. JUSTICE S.M. EMDADUL HOQUE

Civil Rule No. 1065(con) of 2023.

IN THE MATTER OF:

Md. Abu Sayeed

...Defendant-Appellant-Petitioner.

-Versus –

Mosmmat Beauty Khatun.

...Plaintiff-Respondent-opposite party.

Mr. Md. Helal Uddin Mollah, Advocate

..... for the petitioner

Heard and Judgment on: 29.04.2024.

Let the supplementary-affidavit filed by the petitioner do from party of the original application.

On an application of the petitioner under section 5 of the Limitation Act, the Rule was issued calling upon the opposite party to show cause as to why the delay of 1131 days in filing the revisional application under Section 115(1) of the Code of Civil Procedure against the impugned judgment and decree dated 11.11.2020 (decree signed on 17.11.2020) passed by the Joint District Judge, 1st Court, Bogura in Family Appeal No.55 of 2019 should not be condoned and/or such other or further order or orders passed as to this Court may seem fit and proper.

Facts necessary for disposal of the Rule in short, is that, the petitioner filed this revisional application against the impugned

judgment and decree dated 11.11.2020 (decree signed on 17.11.2020) passed by the Joint District Judge, 1st Court, Bogura in Family Appeal No.55 of 2019 dismissing the appeal and thereby affirming the judgment and decree dated 30.04.2019 (decree signed on 07.05.2019) passed by the Bogura Sadar Upazila, Family Court and Senior Assistant Judge, 1st Court, Bogura in Family suit No.265 of 2016 Paribarik (Sadar) decreeing the suit.

The learned Advocate submits that after obtaining decree on an application of the plaintiff opposite party the petitioner was sent to the jail custody and while he was in jail the plaintiff has withdrawn the amounts of Tk.2,92,020/- from the "Sonchoy Potro" opened by the petitioner and the decretal amounts is only Tk.3,27,000/-. The learned Advocate further submits that the petitioner was hopeful that the plaintiff did not take any further step but subsequently the plaintiff filed consecutive four applications before the Family Court and accordingly the petitioner was sent to the jail and served the sentence for more than twelve months thus the petitioner is constrained to file this revisional application challenging the impugned judgment and as such there are 1131 days delay has been occurred which is unintentional delay. He prays for making the Rule absolute.

I have heard the learned Advocate and perused the application. It appears that the plaintiff opposite party obtaining decree of Tk.3,27,000/- in Family Suit and which was also upheld by the Family

Appeal Court. Subsequently on an application of the plaintiff he was sent to the jail custody and at that time on the order of the Court the plaintiff receipt the amounts of Tk.2,92,020/- from the “Paribarik Sonchoy Potro” being No.224 dated 12.04.2022 opened by the petitioner. It also appears from statement in the application that after receiving the said amounts the plaintiff again filed applications and accordingly the petitioner was sent to the jail custody for four times and served the sentence for more than twelve months. Thus the petitioner is constrained to file this revisional application challenging the impugned judgment and decree. But in the meantime there are 1131 days delay has been occurred which is unintentional and the petitioner has sufficiently been explained the cause of delay in the application as well as the supplementary-affidavit which seems to be reasonable and sufficient. Thus I am inclined to make the Rule absolute.

In the result, the Rule is made absolute. The delay of 1131 days in filing the revisional application is hereby condoned.

The petitioners is directed to place the revisional application before an appropriate bench having jurisdiction for hearing the revisional application preferably within 1 (one) month from date.

The office is directed to do the needful.

BO. Obayedur