

17 SCOB [2023] AD 74

APPELLATE DIVISION

PRESENT:

Mr. Justice Md. Nuruzzaman

Mr. Justice Borhanuddin

Mr. Justice Md. Abu Zafor Siddique

CIVIL PETITION FOR LEAVE TO APPEAL NO.210 OF 2019

(From the judgment and order dated 10.04.2017 passed by the High Court Division in Civil Rule No.84 (CON) / 2015).

**Government of the People's Republic of
Bangladesh represented by the Deputy
Commissioner, Netrokona and others**

... Petitioners

= Versus=

Md. Abdul Jalil and others

... Respondents

For the Petitioners

Mr. Md. Zahangir Alam, Deputy Attorney
General instructed by Mr. Haridas Paul,
Advocate-on-Record

For the Respondents

Mr. Md. Moinul Islam, Advocate instructed
by Mr. Mohammad Ali Azam, Advocate-on-
Record

Date of hearing & judgment

The 8th day of January, 2023

Editors' Note

In this case the Government made a delay of 403 days in filing a revisional application before the High Court Division against the judgment and decree of the Appellate Court in which a bil (water body) recorded in Khas Khatian was decreed in favour of the respondents. The High Court Division, however, refused to condone the delay and discharged the Rule. The Government preferred this petition against the judgment and order of the High Court Division. Appellate Division held that the delay was made due to exhaustion of the official formalities which was beyond the control of the Government and it was not an inordinate delay which could not be condoned. Consequently, the Appellate Division set aside the judgment and order of the High Court Division and condoned the delay made by the Government.

Key Words:

Section 5 of Limitation Act, 1908; Condonation of delay; delay made by the government; Section 115(1) of the Code of Civil Procedure

Section 5 of Limitation Act, 1908;

The delay caused in filing the revisional application by the Government was due to the exhaustion of the official formalities which was beyond its control and it was not an inordinate one, so it should have been condoned;

The facts and circumstances clearly indicate that the different offices of the Government are so connected that one cannot work without co-operation and assistance

from the other. In the instant case, it appears that the office of the Deputy Commissioner, Netrokona, initiated the proposal to file a revisional application before the High Court Division but it could not do so without obtaining the necessary papers and the opinion of the Government pleader and concerned authority. However, it appears that the record was sent to the office of the Solicitor and thereafter, the record was sent to the office of the learned Attorney General and then an Assistant Attorney General was entrusted to take all necessary steps regarding filing of the same in the High Court Division under section 115(1) of the Code of Civil Procedure. In these circumstances, the reasons for delay of 403 days in filing the revisional application as stated in the application under section 5 of the Limitation Act by the defendant-petitioners cannot be disregarded and discarded simply because the individual would always be quick in taking the decision whether he would pursue the application for condonation of delay since he is a person legally injured. Whereas, the state being impersonal machinery has to work through different offices or servants and from one table to another table in different offices. In view of the facts and circumstances of the case it appears that the delay caused in filing the revisional application was due to the exhaustion of the official formalities and as such, the same is beyond the control of the defendant petitioners and moreover, the aforesaid delay of 403 days is not an inordinate one and as such, if the same is not condoned the defendant leave petitioners shall be led to irreparable loss and injury. (Para 16, 17, 18)

JUDGMENT

Md. Abu Zafor Siddique, J:

1. Delay of 12 days in filing the civil petition for leave to appeal is hereby condoned.
2. This civil petition for leave to appeal is directed against the judgment and order dated 10.04.2017 passed by the High Court Division in Civil Rule No.84(CON)/2015) thereby making the Civil Rule discharged.
3. Facts of the case, in brief, are that the respondents as plaintiffs, instituted Other Class Suit No.92 of 2007 in the Court of Senior Assistant Judge, Sadar, Netrokona which on transfer was renumbered as Other Class Suit No.120 of 2010 against the petitioners as defendants for mandatory injunction stating, *inter alia*, that one Abdul Motaleb and others instituted the Title Suit No.5 of 1983 in the Court of Sub-ordinate Judge, Netrokona, for declaration of the title of the suit property along with declaration that the R.O.R in the name of the Government is wrong and erroneous and ultimately got decree. Against which the Government preferred Other Class Appeal No.100 of 1985, which was dismissed on contest. Present respondent No.3, Siraj Ali, one of the plaintiffs, on 05.06.1995 sold 1.32 acres land to plaintiff No.1, Abdul Jalil. On 31.08.1996 Abdul Motaleb sold 12½ decimals land to plaintiff No.3 by registered deed, Suruz Ali sold 40 decimals land to plaintiff No.1 on 18.07.2001 and on 20.02.2003 one Abdul Kadir sold 1.60 acres land to plaintiff Nos.1 and 2 by registered deed and on 27.05.2003 Jamal Uddin sold his land to plaintiff No.1. In this way, plaintiff No.1 possessed 3.84½ acres scheduled land and went to pay rent but the defendants refused to accept the same on the plea that a case is pending in the High Court Division regarding the claim of the land and as such, the plaintiffs instituted the instant suit.
4. Defendant Nos.1-4 filed written statements denying all the material allegations made in the plaint contending, *inter alia*, that the suit is not maintainable as framed; there is no cause

of action in the suit; the plaintiffs have no title, possession in the suit land and the suit is barred by limitation. They stated that the land was correctly recorded in the name of Government khas khatian in 1962 as bill category, and one Abdul Motaleb did not take any step to get the record amended and rather he filed Other Class Suit No.53 of 1983 in the Court of Sub-ordinate Judge and illegally and fancy fully got decree of the suit. Local people have been using the water of the suit property from long time and the plaintiffs filed this suit on false statement with intent to grab the Government properties and as such, the suit is liable to be dismissed.

5. After hearing the parties and considering the materials on record, the Assistant Judge, Netrokona, by the judgment and decree dated 31.01.2011 dismissed the suit. Being aggrieved, the plaintiffs preferred Other Appeal No.99 of 2011 before the District Judge, Netrokona, which was heard by the Additional District Judge, Netrokona, who by his judgment and decree dated 18.06.2013 allowed the appeal, setting aside the judgment and decree passed by the trial Court.

6. Being aggrieved by and dissatisfied with the aforesaid judgment and decree of the appellate Court, the defendants as petitioners moved the High Court Division under section 115(1) of the Code of Civil Procedure causing a delay of 403 days and obtained Rule on delay, which upon hearing the parties was discharged. Hence, the defendants are now before us having filed the instant civil petition for leave to appeal for redress.

7. Mr. Md. Zahangir Alam, learned Deputy Attorney General appeared on behalf of the leave-petitioners submitted that the defendant-petitioners being the Government machinery it had to move different offices for necessary opinion and directions for filing a revisional application/appeal before the appropriate Court, and for such reasons delay in filing the revisional application has been caused which is *bona fide* and unintentional but the High Court Division without considering this aspect discharged the Rule by the judgment which is liable to be set aside. He submitted that the land in question had been recorded in the khas khatian in 1962 as bill category and the water of the bill is being used by local people in general and the plaintiffs filed the suit only to grab the Government khas land and the trial Court rightly dismissed the suit but the appellate Court reversed the same without considering the case of the defendants Government which is not maintainable in law, and as such, the High Court Division without considering the merit of the case discharged the Rule without condoning the delay. He submitted that even in the absence of any application for condonation of delay, the Court has the inherent power to condone the delay in an appropriate case for proper administration of justice and as such, he prays for the sake of justice in condoning the delay by setting aside the judgment and order impugned in this civil petition.

8. Mr. Md. Moinul Islam, learned Advocate appeared on behalf of the respondents made submissions in support of the impugned judgment and order passed by the High Court Division.

9. We have considered the submissions of the learned Deputy Attorney General for the leave-petitioners and the learned Advocate for the respondents, perused the impugned judgment and order along with other connected papers on record.

10. It appears that the scheduled land of the suit was recorded in khas khatian in the name of the Government in 1962. The present respondents instituted Other Class Suit No.92 of 2007 in the Court of Senior Assistant Judge, Sadar, Netrokona for mandatory injunction on

the suit land as described in schedules 1 and 2 of the plaint. Subsequently, the suit was transferred to the Assistant Judge, Khaliajuri, Netrokona and renumbered as Other Class Suit No.120 of 2010. Present leave petitioners as defendant Nos.1 to 4 filed written statements denying all the material allegations made in the plaint contending, *inter alia*, that the suit land has been recorded in khas khatian No.1 since 1962. Subsequently, S.A. and R.O.R records were prepared in the name of the Government as bill category and as such, the local people are using the water from the said bill for cultivating crops in the adjacent lands. However, the defendants prayed for dismissal of the suit.

11. After hearing the parties and on perusal of the materials on record, the learned Assistant Judge, Khaliajuri, Netrokona, by the judgment and decree dated 31.01.2011 dismissed the suit. Thereafter, the plaintiffs (respondents herein) preferred Other Class Appeal No.99 of 2011 before the learned District Judge, Netrokona, which was ultimately heard and allowed by the learned Additional District Judge, Netrokona, by the judgment and decree dated 18.06.2013 upon reversing the judgment and decree so passed by the learned Assistant Judge and thereby decreeing the suit.

12. Being aggrieved by and dissatisfied with the judgment and decree of the appellate Court, the leave petitioners moved to the High Court Division under section 115(1) of the Code of Civil Procedure but in filing the same, there had been a delay of 403 days and as such, an application under section 5 of the Limitation Act was filed along with the said revisional application.

13. It appears from the application under section 5 of the Limitation Act that on the day of passing the judgment and decree on 18.06.2013 the defendant petitioners applied for certified copies of the judgment and thereafter, they were notified for requisite on 21.08.2013. The defendant petitioners obtained the same on 22.08.2013.

14. Thereafter, the Additional Deputy Commissioner (Revenue), Netrokona, transmitted the file to the office of the Solicitor on 29.08.2013 and the learned Solicitor, after following the necessary formalities, sent the same to the office of the learned Attorney General on 25.09.2013. Thereafter, an Assistant Attorney General was entrusted with the file for drafting, who after exhausting the necessary formalities and preparing the draft, sworn in the affidavit on 30.11.2014 and, as such, in the meantime, delay of 403 days had occurred.

15. But the High Court Division upon hearing the learned Advocate dismissed the Rule without considering the explanation offered by the defendant petitioners in the application under section 5 of the Limitation Act and thereby, the High Court Division erred in law in not appreciating the cause for making the delay. Hence, the civil petition for leave to appeal has been filed for redress.

16. The facts and circumstances clearly indicate that the different offices of the

Government are so connected that one cannot work without co-operation and assistance from the other. In the instant case, it appears that the office of the Deputy Commissioner, Netrokona, initiated the proposal to file a revisional application before the High Court Division but it could not do so without obtaining the necessary papers and the opinion of the Government pleader and concerned authority.

17. However, it appears that the record was sent to the office of the Solicitor and thereafter, the record was sent to the office of the learned Attorney General and then an Assistant Attorney General was entrusted to take all necessary steps regarding filing of the same in the High Court Division under section 115(1) of the Code of Civil Procedure. In these circumstances, the reasons for delay of 403 days in filing the revisional application as stated in the application under section 5 of the Limitation Act by the defendant-petitioners cannot be disregarded and discarded simply because the individual would always be quick in taking the decision whether he would pursue the application for condonation of delay since he is a person legally injured. Whereas, the state being impersonal machinery has to work through different offices or servants and from one table to another table in different offices.

18. In view of the facts and circumstances of the case it appears that the delay caused in filing the revisional application was due to the exhaustion of the official formalities and as such, the same is beyond the control of the defendant petitioners and moreover, the aforesaid delay of 403 days is not an inordinate one and as such, if the same is not condoned the defendant leave petitioners shall be led to irreparable loss and injury.

19. Having gone through the application under section 5 of the Limitation Act, it appears that the petitioners have properly explained the reasons for which they could not prefer the instant revisional application before the High Court Division in time. And as such, we are of the view that there is no laches or negligence on the part of the petitioners and they have been able to explain the cause of delay in filing revisional application which in our view, fulfills the requirement as spelled out under section 5 of the Limitation Act upto the satisfaction of the Court and as such, we are inclined to condone the delay.

20. In such view of the matter, the High Court Division erred in not condoning the delay and as such, the impugned judgment is liable to be set aside disposing of the civil petition for leave to appeal.

21. Accordingly, the impugned judgment and order of the High Court Division is set aside. The delay of 403 days in filing the revisional application before the High Court Division is condoned. The High Court Division is directed to hear the substantive revisional application under section 115 (1) of the Code as In Re motion in accordance with law.

22. With the aforesaid directions, this civil petition for leave to appeal is disposed of. However, there will be no order as to costs.