

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)**

WRIT PETITION NO. 11004 OF 2017

IN THE MATTER OF:

An application under Article 102 of the Constitution
of the People's Republic of Bangladesh

AND

IN THE MATTER OF:

Government of the People's Republic of Bangladesh,
represented by the Deputy Commissioner, Narsingdi
.....Petitioner

-VERSUS-

District Judge, performing the function of Vested
Property Restoration Appellate Tribunal, Narsingdi
and others

..... Respondents

Mr. Mohammad Rashadul Hassan, D.A.G. with

Ms. Nilufar Yesmin, A.A.G,

Mr. Md. Moshir Rahman (Rahat), A.A.G,

Mr. Md. Motasim Billah Parvez, A.A.G and

Mr. Bishwanath Karmaker, A.A.G

... For the Petitioner

Mr. Md. Shahin Ali, Advocate

.....For the Respondent Nos. 3 & 4

Present:

Mr. Justice Sashanka Shekhar Sarkar

And

Justice Urmee Rahman

Heard on 28.06.2026 and Judgment on 13.07.2026

Urmee Rahman, J:

In the instant matter a Rule Nisi was issued calling upon the respondents to show cause as to why the order No. 3 dated 07.01.2016 passed by the Arpita Shampatti Prattyarpan Appellate Tribunal, Narsingdi in Arpita Shampatti Prattyarpan Appeal No. 42 of 2015 refusing to

condone the delay of 558 days in filing the appeal thereby summarily rejecting to admit the appeal and thereby affirming the judgment and decree dated 16.02.2014 passed by the Arpita Shampatti Prattyarpan Additional Tribunal, Narsingdi Sadrar, should not be declared to have been passed without any lawful authority and as to why the learned Judge of the Appellate Tribunal should not be directed to hear the appeal on merit.

At the time of issuance of the Rule the operation of the impugned order No. 3 dated 07.01.2016 passed by the respondent No. 1 was stayed for a period of 6 (six) months from date i.e. from 13.08.2017. It was further ordered that, during pendency of the Rule the parties are directed to maintain status-quo in respect of possession and position of the property in question for a period of 6 (six) months from date.

It appears from the record that, this ad-interim order of staying operation of the impugned judgment as well as order of status-quo has never been extended by the petitioner after it was expired on 13.02.2018. Hence the ad interim order of stay and status quo no longer remain in force since the date of expiry.

Relevant facts for disposal of this instant Writ Petition, in short, are that, the respondent No. 3, as plaintiff, instituted a case under Section 10 (1) of the Arpita Shampatti Prattyarpan Ain, 2001 before the Tribunal, Narsingdi which was numbered as Arpita Shampatti Prattyarpan Case No. 42 of 2012 praying for release of the scheduled property from the 'Ka' list of the vested property and to get restoration of the same.

The petitioner, as defendant, i.e. the Deputy Commissioner, Narsingdi, contested the case by filing written statement denying all the material allegations made in the plaint.

After hearing both the parties and perusing the evidence on record the learned Judge of the Arpita Shampatti Prattyarpan Additional Tribunal, Narsingdi Sadar decreed the case by the judgment and decree dated 16.02.2014 (decree signed on 19.02.2014).

Challenging the said judgment and decree dated 16.02.2014, the present petitioner, as appellant, preferred Arpita Shampatti Prattyarpan Appeal No. 42 of 2015 before the Appellate Tribunal, Narsingdi along with an application under Section 25 of the Arpita Shampatti Prattyarpan Ain, 2001 praying for condonation of delay of 558 days in filing the appeal.

Upon hearing the appellant, the learned District Judge, Judge of the Appellate Tribunal, Narsingdi was pleased to reject the said application under Section 25 of the Act of 2001 and also summarily rejected the appeal by the order No. 3 dated 07.01.2016 thereby affirming the judgment and decree passed by the tribunal below.

Being aggrieved thereby and there having no other alternative and equally efficacious remedy available, the defendant-appellant, as petitioner, has filed the instant Writ Petition and obtained the present Rule.

Learned Deputy Attorney General Mr. Mohammad Rashadul Hassan appeared on behalf of the petitioner i.e. Deputy Commissioner, Narsingdi and submitted that, the petitioner is seriously prejudiced by the impugned order No. 3 dated 07.01.2016 passed by the learned Judge of the Arpita Shampatti Prattyarpan Appellate Tribunal i.e. the respondent No. 1 and therefore constrained to file this instant Writ Petition.

He then submitted that, the learned Judge of the Tribunal failed to understand that, the case land originally belonged to Suresh Chandra, Shukumar Chandra and Priyanath Chandra who left the country for India in the year 1965 and that is why their property was correctly recorded as enemy property and thereafter by the Vested Property Case No. 71/80 the Government leased out the said land to private persons, who are in possession of the same by paying regular rents. As such the judgment and order passed by the Appellate Tribunal refusing to condone the delay in filing the appeal is liable to be declared to have been passed without any lawful authority and is of no legal effect.

He further submitted that, the respondent Nos. 3 and 4 have no right, title and possession over the suit land and the judgment and decree passed by the learned Tribunal below in decreeing the suit did not take into consideration that, the document relied upon by the plaintiffs were all forged documents and fraudulently created by them and as such, these documents required to be challenged by the defendant in appeal. However, the respondent No. 1 did not consider that, the petitioner being the Government had to work through different agencies and the file also

moves from one to another office to get ready for filing the appeal, which caused the delay in filing the appeal. Since the case involves valuable Government properties, if the delay was condoned and the appeal was heard on merit, the contentions raised by the Government-appellant could have been disposed of. As such the impugned order passed by the respondent No. 1 is liable to be declared to have been passed without any lawful authority and is of no legal effect.

Hence learned Deputy Attorney General prayed that a direction may be given upon the respondent No. 1 i.e. is the Arpita Shampatti Prattyarpan Appellate Tribunal, Narsingdi, to get the appeal heard on merit for ends of justice.

Conversely, learned Advocate Mr. Md. Shahin Ali, entered appearance on behalf of the respondent Nos. 3 and 4 and contested the Rule by filing an affidavit in opposition.

He submitted that, despite the fact that the case property is absolutely private land of the respondent Nos. 3 and 4, it has been most illegally listed in the 'Ka Schedule' of vested property vide V.P Case No. 71/80, which is after many years since the very Ordinance which has been declared as dead law from 23.03.1974, therefore such enlistment of the land in question as vested is absolutely illegal and has been done without jurisdiction having no lawful effect.

He further submitted that, Section 18(4) of the Arpita Shampatti Prattyarpan Ain, 2001 expressly provides that an appeal against the

judgment of the Tribunal concerned has to be preferred within 45 (forty five) days from the delivery of the said judgment and Section 5 of the Limitation Act shall not be applicable for increasing the prescribed limitation period. In the instant case, after delivery of the Judgment by the Tribunal on 16.02.2014, the Petitioner-Government filed an application for collecting the certified copy of the same on 15.09.2015 and received the same on 13.10.2015 and the appeal was filed on 15.10.2015. As such there has been a delay of 558 days in filing the appeal. Therefore the appeal was rightly summarily rejected by the Appellate Tribunal as per the provision of law.

He finally submitted that, the Arpita Shampatti Prattyarpan Ain, 2001 being a special law, the prescribed limitation period for preferring an appeal is strictly construed and there is no scope for relaxation of the said provision and as such the learned Judge of the Appellate Tribunal most lawfully rejected the application for condonation of delay of 558 days filed by the Government Appellant-Petitioner. Hence the instant Rule is liable to be discharged.

We have heard the learned Deputy Attorney General for the petitioner as well as the learned Advocate for the respondent Nos. 3 and 4 and perused the writ petition, the affidavit in opposition and all the documents annexed therewith.

This Writ Petition has been filed challenging the order no. 3 dated 07.01.2016 annexed as Annexure-D to the writ petition, which was passed pursuant to an application filed by the Government-Appellant under

Section 25 of the Arpita Shampatti Prattyarpan Ain, 2001 for condonation of delay of 558 days in filing the appeal with the explanation made therein. Learned Judge of the Appellate Tribunal upon discussing the relevant provisions of law i.e. Section 25, Section 18(4) and Section 10(1) of the Act of 2001 was pleased to reject the application.

Now, it is for us to determine whether this order was passed in accordance with law as provided in the Arpita Shampatti Prattyarpan Ain, 2001. Section 18 of the Act contains provisions regarding filing of the appeal before the Appellate Tribunal. Sub section 4 of section 18 provides as follows:

“১৮(৪)উপ-ধারা (২) এ উল্লিখিত সিদ্ধান্ত বা রায় প্রদানের ৪৫ (পঁয়তাল্লিশ) দিনের মধ্যে আপীল দায়ের করিতে হইবে এবং এই সময়সীমা বৃদ্ধি করার ক্ষেত্রে *Limitation Act, 1908 (IX of 1908)* এর *Section 5* প্রযোজ্য হইবে না।”

On perusal of the record we find that, the application for condonation of delay filed by the Government was not under Section 5 of the Limitation Act rather it was filed under Section 25 of the Arpita Shampatti Prattyarpan Ain, 2001.

For better understanding the provision of Section 25 is quoted below:

“২৫। এই আইনের অধীন কোন আবেদন বা আপীল নিষ্পত্তির ব্যাপারে এই আইন বা বিধিতে পর্যাপ্ত বিধান নাই বলিয়া মনে করিলে [ট্রাইব্যুনাল বা আপীল ট্রাইব্যুনাল] বিষয়টি লিপিবদ্ধ করিয়া সংশ্লিষ্ট পরিস্থিতিতে উহার বিবেচনামত ন্যায় বিচারের জন্য সহায়ক হয় এইরূপ যথাযথ পদ্ধতি অনুসরণ ও সিদ্ধান্ত প্রদান করিতে পারিবে।”

On examination of this provision we find that, Section 25 of the Act is a residuary procedural provision. It empowers the Tribunal as well as the Appellate Tribunal to (1) fill procedural gaps where the Act is silent, (2) to adopt an appropriate procedure to ensure a fair adjudication and (3) to make an order necessary to secure ends of justice. This provision, in our view, cannot override an express provision of the Act which expressly prohibits the application of the law for condonation of delay under the Limitation Act, 1908. Therefore Section 25 cannot be expected to be used indirectly to achieve what Section 18 expressly forbids. The residuary procedural power must be subject to the express legislative mandate as has been provided under Section 18(4). Therefore, the application under Section 25 of the Arpita Shampatti Prattyarpan Ain, 2001 praying for condonation of delay cannot sustain in the eye of law.

What would have been the consequence if the application was filed under Section 5 of the Limitation Act? In this regard Section 29 (2) of the Limitation Act, 1908 provides that:

“Where any special law prescribes for any suit, appeal or application a period of limitation different from the period prescribed thereof by the first schedule, the provisions of section 3 shall apply, as if such period were prescribed therefor in that schedule, and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special law-

(a) the provisions contained in section 4, sections 9 to 18 and section 22 shall apply only insofar as, and to the extent to

which, they are not expressly excluded by such special law;

and

(b) the remaining provisions of this Act shall not apply.”

Section 3 of the Limitation Act provides that;

“ 3. Dismissal of suits, etc. instituted, etc. after period of limitation- *Subject to the provisions contained in sections 4 to 25 (inclusive), every suit instituted, appeal preferred, and application made, after the period of limitation prescribed thereof by the first schedule shall be dismissed, although limitation has not been set up as a defence.”*

In the case of ***Motaleb Hossain (Md.) Vs. Abdul Haque Limon and others***, reported in ***21 BLC (AD) (2016) 174***, Appellate Division has observed that:

“It may be said that special law is a law which deals with any special law contrary to the general law and in such law the court's power to exercise its discretion to extend the period of limitation under section 5 of the Limitation Act has been excluded. In such a case, the court is left with no discretion even it finds injustice to a party to extend the period of limitation. A special law is a law dealing with a particular subject enacted for the special cases in the special circumstances as distinguished from the general law which applies generally on the question of limitation though the Limitation Act is general law.”

On examination of the relevant provisions of law as well as the decision of the apex court, we are of the opinion that, since Arpita Shampatti Prattyarpan Ain, 2001 is a special law and Section 18(4) of the Act expressly excluded application of Section 5 of the Limitation Act in filing the appeal, there is no scope for any court of law to condone the delay in filing an appeal after the expiry of the stipulated time period. It shall automatically be barred by operation of the law.

It is to be noted that the case before the tribunal was decreed on contest by both the parties. The defendant had therefore absolute knowledge about the decree.

If we turn over to the impugned order we find that, the learned Judge of the Appellate Tribunal below rightly held the following:

“... ধারা ১৮ উপধারা ৪ এবং ধারা ১১ উপধারা ১ একত্রে পর্যালোচনা করিলে স্পষ্টত প্রতিয়মান রায় প্রদানের ৪৫ (পয়তাল্লিশ) দিনের মধ্যে আপীল দায়ের করিতে হইবে এবং এই সময় সীমার বৃদ্ধি করার ক্ষেত্রে তামাদি আইন দ্বারা তামাদি মৌকুফ করার কোন রকম আইনগত সুযোগ নাই। কাজেই আপীলকারী পক্ষের বিজ্ঞ কৌশলীর যুক্তিটি গ্রহনযোগ্য নহে।”

Therefore, we find that no illegality has been committed by the Appellate Tribunal below in summarily rejecting the appeal by the impugned order.

Hence, we find no merit in the present Rule and accordingly, the Rule is discharged.

The order of the stay of the impugned judgment and order as well as the order of status-quo passed at the time of issuance of the Rule is hereby re-called and vacated.

However, there will be no order as to costs.

Communicate a copy of the judgment to the Court concerned and send down the Lower Court Records (LCR) at once.

Justice Sashanka Shekhar Sarkar, J:

I agree.

Helal/ABO