

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

Present:

Mr. Justice Md. Bashir Ullah

CIVIL REVISION NO. 1559 OF 2017

IN THE MATTER OF:

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

And

IN THE MATTER OF:

Abdur Rahman being dead his heirs and successors
Mahbub Sobahan Sheikh Sazal and others
... Defendant-Appellant-Petitioners.

-Vs-

Afroza Jahan Smrite alias Smrite Jahan Nessa and
others
...Plaintiff-respondent-Opposite Parties.

Mr. Md. Humayun Kabir with
Mr. Md. Mubarak Hossain, Advocates
...For the petitioners.

Mr. Md. Mainul Islam, Advocate
... For the opposite parties.

Heard on: 06.11.2025 and 18.11.2025

Judgment on: 25.11.2025

Md. Bashir Ullah, J.

This rule was issued calling upon the opposite parties to show
cause as to why the judgment and decree dated 02.03.2017 passed by
the learned Senior District Judge, Sirajgonj in Partition Appeal No. 3
of 2017 rejecting the appeal and thereby affirming the judgment and
decree dated 05.02.2013 passed by the learned Senior Assistant Judge,

Sirajgonj Sadar, Sirajgonj in Partition Suit No. 156 of 2006 should not be set aside and/or such other or further order or orders be passed as to this Court may seem fit and proper.

At the time of issuance of the Rule, operation of the judgment and decree dated 05.02.2013 was stayed for a period of 01(one) year and on 06.05.2019, the order of stay was extended till disposal of the Rule.

On 14.01.2020, this Court directed the parties to maintain *status quo* in respect of possession and position of the suit land and further restrained them from selling or otherwise transferring the same for a period of 06(six) months, which was lastly extended on 12.06.2023 till disposal of the Rule.

The opposite party Nos. 1-3 as plaintiffs instituted Partition Suit No. 156 of 2006 in the court of Senior Assistant Judge, Shahjadpur Corut, Sirajgonj against the defendants seeking partition of the suit land.

Defendant Nos. 1-4, 6-8, 19, 27, 30 and 32 contested the suit by filing a written statement denying the material allegations.

Upon hearing the parties, the Court of Senior Assistant Judge, Sirajgonj Sadar, Sirajgonj decreed the suit in part on 05.02.2013 against defendant Nos. 1-4, 6-8, 19-30 and 32. The court allocated 3.4103 acres to the plaintiffs; 2.0691 acres to defendant Nos. 3-4 and

19-25; 0.5450 acre to defendant Nos. 27-30 and 32 by passing a preliminary decree.

Against the said judgment and decree, the heirs of defendant nos. 1 and 2 as appellants filed Partition Appeal No. 03 of 2017 before the learned District Judge, Sirajgonj along with an application for condonation of delay of 1,312 days. On 2-3-2017 the learned District Judge rejected the application for condonation of delay and refused to admit the appeal on the ground of limitation.

Being aggrieved by and dissatisfied with the judgment and decree dated 2-3-2017 passed by the learned District Judge, Sirajgonj in Partition Appeal No. 03 of 2017, the petitioners preferred this Civil Revision before this Court and obtained Rule along with an order of stay.

It is stated by the petitioners that prior to filing the appeal they had filed a Civil Revision and Miscellaneous Appeal against order which was allowed and the case record was sent to the trial Court wherein an Advocate Commissioner was appointed. Subsequently, the learned Commissioner issued a writ for delivery of shaham of the property and allegedly submitted a report illegally allocating property including homestead belonging to the appellants in favour of the plaintiffs. On 18.11.2015, the appellants filed an objection against the said report of Advocate Commissioner and the said application was heard in several times by the learned trial court which remained

pending before the trial court. It is asserted that the Advocate Commissioner did not issue any notice to the learned lawyer of the appellants. The appellants were unaware that in the meantime judgment and decree had been passed and it resulted in unintentional delay. They contended that there was no negligence or laches on their part and they prayed for condonation of delay of 1,320 days in filling the appeal for the ends of justice.

It is further stated that defendant No. 1, Abdur Rahman and defendant No. 2, Abdul Mojid acquired portions of the suit land from their siblings by way of registered sale deed and by gift from their deceased mother, Moyful Nesa but the trial court did not consider these transfers of the land and erroneously excluded the appellants from the property of Wahid Ali Sheikh, Moyful Nesa and Abdul Gafur. The appellate court also failed to admit the appeal and rejected the same summarily observing that “শুনলাম। দীর্ঘ তামাদী খন্ডন বিষয়ে আপীলকারীর দাখিলী দরখাস্ত ও বিত্ত কৌশলীদের বক্তব্য সন্তোষজনক প্রতীয়মান না হওয়ায় অত্র আপিলটি তামাদী আইনের বারিত বিধায় নকোচ করা হইল।”, without considering the factual matrix that the suit is partition suit to determine Shahan of the land in question and the pendency of the final decree proceeding, and the legal position that dismissal of an appeal on the ground of limitation without addressing merits is not sustainable as held in *Nazir Ahmed-Vs- Sekandor Ali (Civil)*, reported in 8 ALR (AD) 2016(2) 289.

It is further stated that the trial court failed to consider the prayer for shaham of the defendant nos. 1, 2, 6, 8 and 26 and observed in his judgment that " 6 and 26 নং বিবাদীগন নালিশী ভূমি হতে ছাহাম প্রার্থনা করে জবানবন্দি প্রদান না করায় তাদের দাবীর বিষয় আলোচনা করা গেল না। and the above observation passed by the trial court is erroneous and thus it committed error of law resulting occasioning failure of justice.

It is also further stated that, due to death of defendant No. 1, Abdur Rahman who was the elder son of deceased Abdul Wahed Ali Sheikh, the original owner of the aforesaid disputed land in question and who was 'tadbirker' in the suit but due to prolonged illness and physical disability he failed to provide any testimony and also could not produce necessary documents at the time of hearing and defendant No. 2 who also depended upon defendant No. 1 did not get any information of the suit in time.

Mr. Md. Mubarak Hossain, the learned Advocate for the petitioner submits that though the defendant-appellant did not detail the causes of delay in their application but they stated the causes of delay in the memorandum of appeal elaborately. However, the lower appellate Court failed to consider these grounds and rejected the application by a non-speaking order rendering the defendants-appellants non-suited.

He further submits that if the delay is not condoned the defendants-appellants-petitioners will be deprived of their right.

He submits that no fact was suppressed by the defendant-appellant in the application for condonation of delay as well as memorandum of Appeal and the appellant acted bonafide.

In support of his contention, the learned Advocate refers to the cases of *Director of Housing and Settlement Vs. Abdul Majid Howlader and others*, reported in 14 BLT(AD) 36, *Mohammad Khairullah Vs. The Additional Deputy Commissioner (Revenue), Thakurgaon and another*, reported in 10 BLT (AD)(2002)79, *Abdul Kader Mondal and others. Vs. Shamsur Rahman Chowdhury alias Shamsur Rahman Saha*, reported in 51 DLR(AD)(1999)253, *Government of the People's Republic of Bangladesh, represented by the Divisional Forest Officer, Mymensingh Forest Division Vs. Abdur Sobhan and others*, reported in 73 DLR(AD)(2021)1 and *Pachi Dashi Mondal Vs. Assistant Commissioner (Land) and others*, reported in 11BLT(HCD)(2003)187. With those submissions the learned counsel finally prays for making the Rule absolute.

Mr. Md. Mainul Islam, the learned Advocate appearing on behalf of opposite party nos. 1-3 contends that the appellant failed to explain delay satisfactorily and as such there was no reason to

condone the same in filing the appeal. In this regard learned counsel refers to the decision passed in the case of ***Government of Bangladesh represented by DC, Mymensingh Vs. Md. Abdur Rouf and others***, reported in 12 BLC (2007) 473.

He next contends that the application for condonation of delay was motivated one and made suppression of facts.

Learned counsel further contends that the defendants-appellants learned about the matter when they filed application for filing a written objection against the commission report in accordance with preliminary decree. In this way, they waived their right to challenge the preliminary decree again.

He further contends that there was apparent negligence on the face of record in filing the appeal. The application under Section 5 of the Limitation Act is for vigilant not for dormant persons. The appellant had to satisfy the court that he was not negligent and inactive but the defendants failed to satisfy the court and hence, they are not entitled to get any relief from the court.

In support of his contention, the learned Advocate referred to the cases of, ***Begum Meherunnessa Vs. Secretary, Ministry of Public Works and Urban Development, Dhaka and others***, reported in 7 BLC (2002) 662 and ***Government of Bangladesh represented by the Deputy Commissioner, Dhaka Vs. Md. Shahidullah Bhuiyan and others***, reported in 72 DLR (2020) 52.

Learned counsel finally prays for discharging the Rule.

I have heard the learned Advocates for both sides, perused the revisional application, the impugned judgment and order and materials on record.

Mr. Md. Mainul Islam for the opposite parties contends that the appellant is to explain the cause of delay for each day between 14-10-2015 and 09-01-2017 but the appellant could not offer any sufficient explanation for the delay and no reason made in their application for condonation of delay under Section 5 of the Limitation Act. In reply, Mr. Mubarak Hossain for the petitioner submits that though the defendant-appellant did not mention the causes of delay in their application under Section 5 of the Limitation Act elaborately but they mentioned the causes of delay in the memorandum of appeal in details but the lower appellate court failed to consider the same and rejected the application giving a non-speaking order by which the defendants-appellants became non suited. In this regard, in *Abdul Kader Mondal and others. Vs. Shamsur Rahman Chowdhury alias Shamsur Rahman Saha*, reported in 51 DLR (AD)(1999)253, the Apex Court observed:

“If the main application contains the entire facts or reasons for the delay; if evidence has been given both in favour and in rebuttal of the same, then there remains nothing for the Court to ask for. The door

of justice will not be shut out to the party simply because a formal application is lacking.”

Mr. Islam for the opposite parties argues that the application under Section 5 of the Limitation Act must be supported by an affidavit, specially where the witness is not examined there affidavit should be submitted. But in the application no such affidavit was submitted. On the other hand, Mr. Mubarak Hossain contends that there is no requirement of law that such application must be supported by an affidavit. I find merit in the contention advanced by Mr. Mubarak Hossain. In this connection reliance may be placed on the decision passed in the case of *Pachi Dashi Mondal Vs. Assistant Commissioner (Land) and others*, reported in 11BLT(HCD)(2003)187 wherein this court held:

“It is not mandatory that an application filed under section 5 of the limitation Act must be supported by an affidavit.”

It is well settled that the condonation of delay under Section 5 of the Limitation Act is a highly discretionary matter, so the learned District Judge could exercise such discretion to condone the delay in filing the appeal. In this regard reliance may be placed upon the decision passed in the case of *Mohammad Khairullah Vs. The Additional Deputy Commissioner (Revenue), Thakurgaon and another*, reported in 10 BLT (AD)(2002)79.

In light of settled legal proposition and given the facts and circumstances of the case, I find that the impugned order suffers from legal infirmity which is liable to be set aside to ensure substantial justice. I am of the view that the Rule succeeds on merit.

In the result, the Rule is made absolute, however, without any order as to costs.

The impugned order No. 3 dated 02.03.2017 passed by the learned Senior District Judge, Sirajgonj in Partition Appeal No. 3 of 2017 is hereby set aside. The application for condonation of delay is hereby allowed.

The orders of stay and *status quo* earlier granted by this court are hereby recalled and vacated.

The learned Senior District Judge, Sirajgonj is directed to dispose of Partition Appeal No. 3 of 2017 as expeditiously as possible preferably within a period of 06 (six) months from the date of receipt of the copy of this judgment without giving any adjournment to any of the parties except in cases of extreme necessity.

Let a copy of this Judgment along with Lower Court Record's be communicated to the concerned Court forthwith.