

Present:

MR. JUSTICE S.M. EMDADUL HOQUE

CIVIL REVISION NO. 837 OF 2017.

IN THE MATTER OF:

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

- AND -

IN THE MATTER OF:

Mrs. Bibiana Costa and others
..... Petitioners

- Versus -

Md. Motiur Rahman being died his legal heirs:
1(a) Most. Nasima Begum and others
..... Opposite parties.

Mr. Foyas Ahmed, Advocate
..... For the petitioner.

Heard on: 18.01.2024 and
Judgment on: 21.01.2024.

On an application of the petitioner Mrs. Bibiana Costa and others under section 115(1) of the Code of Civil Procedure the Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and order dated 10.11.2016 passed by the learned District Judge, Natore in Miscellaneous Appeal No.16 of 2016 allowing the appeal and thereby setting aside the order dated 25.02.2016 passed by the Assistant Judge, Boraigram, Natore in Miscellaneous Case No.5 of 2016 arising out of Other Suit No.124 of 2002 rejecting the Miscellaneous Case

on the ground of limitation should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

Facts necessary for disposal of the Rule, in short, is that the opposite party Nos.1 and 2 as plaintiffs instituted other Class Suit No.124 of 2002 for declaration of title of the schedule land and further declaration that the S.A and R.S record in respect of 'ka' schedule land is illegal and which were wrongly prepared in the name of the defendants.

The defendants contested the suit by filing joint written statement denying all the material assertion made in the plaint.

Thereafter, the case was fixed for pre-emptory hearing on 09.11.2015 and the defendant side appeared and produce three witnesses for examination but the plaintiff side did not appear or take any step thus the trial Court by its order No.103 dated 09.11.2015 dismissed the suit provided under Order IX rule 8 of the Code of Civil Procedure.

Against the said order of the trial Court dated 09.11.2015 the plaintiff opposite party filed an application under Order IX rule 9 of the Code of Civil Procedure and accordingly the Miscellaneous Case No.5 of 2016 was started. Since in filing the application there were of 78 days delay was occurred and thus the plaintiff side filed an application for condonation of delay under Section 5 of the limitation Act.

The Assistant Judge, Boraigram, Natore after hearing the parties and considering the facts and circumstance of the case rejected the said application and dismissed the Miscellaneous Case No.5 of 2016 by its

judgment and order dated 25.02.2016 stating that cause of delay has not been properly explained.

Against the said order of the trial Court the plaintiff side filed Miscellaneous Appeal No.16 of 2016 before the learned District Judge, Natore who after hearing the parties and considering the facts and circumstance of the case allowed the appeal subject to payment of Tk.5,000/- (five thousand) within 30 days failing which the order should be recalled by its judgment and order dated 10.11.2016.

Being aggrieved by and dissatisfied with the impugned order the defendant petitioners filed this revisional application under Section 115 (1) of the Code of Civil Procedure and obtained the Rule.

No one appears on behalf of the opposite parties.

Mr. Foyas Ahmed, the learned Advocate appearing on behalf of the petitioners submits that the appellate Court without considering the facts and circumstance of the case and the provision of law passed the impugned order which he committed error in law resulting in an error in the decision occasioning failure of justice. He further submits that the appellate Court without considering the facts that the cause of delay in filing the miscellaneous case has not sufficiently been explained erroneously passed the impugned order. He prayed for making the Rule absolute.

I have heard the learned Advocate of the petitioner it appears that the opposite parties filed other Class Suit No.124 of 2002 for declaration

of title and for correction of the record. But at the date of pre-emptory hearing the plaintiff side did not take any step whereas the defendant side produced three witnesses for examination thus the trial Court dismissed the suit provided under Order IX rule 8 of the Code of Civil Procedure.

Thereafter, the plaintiff side filed an application under Order IX rule 9 of the Code of Civil Procedure with a prayer for condonation of delay of 78 days. But the trial Court rejected the said miscellaneous case taking view that the cause of delay has not sufficiently been explained. Against which the plaintiff side preferred Miscellaneous Appeal No.16 of 2016 before the learned District Judge, Natore who after hearing the parties by its judgment and order dated 10.11.2016 allowed the miscellaneous appeal subject to payment of Tk.5,000/- (five thousand) within 30 days failing which the order should be recalled.

I have considered the entire material facts and the judgment of the Courts below and the application for condonation of delay filed under Section 5 of the limitation Act. In the application the plaintiff opposite parties stated that the concerned Advocate clerk did not inform them the date of hearing and thus they could not take any step but the trial Court did not consider the said facts and rejected the miscellaneous case taking view that the plaintiff did not sufficiently explain the cause of delay. The appellate Court after considering the facts and circumstance of the case and considering the provision under Order IX rule 9 of the Code of Civil

Procedure allowed the said appeal subject to payment of Tk.5,000/- (five thousand) within 30 days in default to recall the order.

The plaintiffs filed the suit for declaration of title and for correction of the record thus it is better to dispose of the suit on merit giving the parties opportunity to prove their respective cases. It is not proper to dismiss the suit on technical ground. Even it is found that the plaintiff opposite party stated that the clerk of the concerned Advocate did not properly informed them the next date of hearing of the suit.

Considering the aforesaid facts and circumstance of the case I am of the view that the appellate Court rightly passed the impugned judgment.

Having considered the facts and circumstance of the case and the discussions as made above, I find no merit in the Rule.

In the result, the Rule is discharged without any order as to cost. The impugned judgment and order dated 10.11.2016 passed by the learned District Judge, Natore in Miscellaneous Appeal No.16 of 2016 allowing the appeal and thereby setting aside order dated 25.02.2016 passed by the Assistant Judge, Boraigram, Natore in Miscellaneous Case No.5 of 2016 arising out of Other Class Suit No.124 of 2002 is hereby upheld.

However, since this is a long pending case the trial Court is directed to dispose of the suit as early as possible preferably within 06 (six) months from the date of receipt of this order in accordance with law.

The order of stay granted earlier by this Court is hereby recalled and vacated. The parties are directed to maintain status-quo in respect of possession of the suit land till disposal of the suit.

Send down the lower Court records at once.