

**Present:**

**Mr. Justice Md. Salim**

**FIRST MISCELLANEOUS APPEAL NO.291 OF 2019**  
**(F.M.A.T. NO.856 of 2019)**

Abdul Haque being dead his legal heir:  
Md. Abdul Hannan  
..... *Defendant-Appellant.*

**-VERSUS-**

Abdur Rouf and others  
.....*Plaintiff-Respondents.*

No one appears  
----- For the appellant.  
Mr. Md. Shahidul Islam  
..... *For the Respondents.*

**Heard on 04.09.2025 and 23.10.2025**

**Judgment on 02.11.2025.**

This Miscellaneous Appeal is directed against the Judgment and order dated 08.07.2019 passed by the learned Joint District Judge, Additional Court, Sylhet in Title Appeal No.314 of 2016, rejecting an application under Order XLI Rule 19 read with Section 151 of the Code of Civil Procedure for restoration of the appeal.

Facts, in a nutshell, for disposal of the appeal are that the respondent Nos. 1-6 herein as plaintiffs instituted Title Suit No.18 of 2007 before the Assistant Judge, Zakiganj, Sylhet, for partition of the suit land and for getting a saham

to the extent of 4 anas of the suit land as their separate share.

The predecessor of the appellant and the predecessors of the pro-forma respondents Nos. 7-27 as defendants contested the suit by filing a joint written statement.

Subsequently, the learned Assistant Judge of Zakiganj, Sylhet, by the Judgment and decree dated 27.06.2016, decreed the suit.

Being aggrieved, the defendant, as appellant, preferred Title Appeal No.314 of 2016 before the District Judge, Sylhet. Eventually, the learned Joint District Judge of the Additional Court, Sylhet, by the Judgment and order dated 23.05.2018, dismissed the appeal for default.

Thereafter, the appellant filed an application under Order XLI, Rule 19, read with Section 151 of the Code of Civil Procedure, for the restoration of the appeal to its original file and number, along with an application for condonation of the delay of 403 days, before the learned District Judge, Sylhet. Subsequently, the learned Joint District Judge, Additional Court, Sylhet, by the Judgment and order dated 08.07.2019, rejected the application for restoration of the appeal.

Being aggrieved, the defendant-appellant preferred this Miscellaneous Appeal before this Court, which was admitted on 12 November 2019.

We have considered the submission of the learned Advocate, perused the impugned Judgment, and reviewed the other materials on record. It appears that the instant suit was filed against the defendant-appellant-petitioner. Subsequently, the suit was decreed on 27.06.2016, and against that Judgment and decree, the defendant-appellant-petitioner preferred Title Appeal No. 314 of 2016, with a delay of 104 days, before the District Judge, Sylhet. After the filing of the appeal, it was in the stage of hearing since 19.09.2017, but the appellant did not take the initiative for the hearing of the appeal. Consequently, it was dismissed for default. Thereafter, the defendant-appellant filed an application under Order XLI, Rule 19, read with Section 151 of the Code of Civil Procedure, for the restoration of the appeal.

Order XLI Rule 19 of the Code of Civil Procedure gives the requisite power to the appellate Court to re-admit an appeal dismissed for default, " where it is proved that he ( the appellant) was prevented by sufficient cause from appearing when the appeal was called on for hearing", as to when is or not sufficient cause for the purposes of the rule must

necessarily depend upon the facts and circumstances of each case and each case must be judge upon its merits and its peculiar circumstances. Moreover, the previous conduct of the appellant may be reprehensible, but the matter cannot be decided on the ground of mere previous conduct.

In the instant case, the appellant attempted to demonstrate that on the date fixed for the hearing of the appeal, his engaged lawyer, though filed an adjournment petition before the Court but could not attend before the court due to the illness of the constituted attorney of the appellant, who failed to supply some crucial documents to him which were necessary for preparing for the hearing of the appeal but suddenly, he became serious ill, thus when the appeal was called on for hearing he could not attend before the Court which was nor intentional relatively the same was beyond his control. Therefore, the learned lawyer also could not step into the hearing of the appeal.

It further appears from the impugned order dated 08.07.2019 that the learned Joint District Judge, Additional Court, Sylhet, did not provide any lawful or cogent reason for his dissatisfaction. Moreover, we have anxiously considered the application under section 5 of the Limitation Act. The

explanation asserted by the appellant-petitioner appears to be satisfactory and sound.

In the above facts and circumstances, we are of the firm view that the explanation given in the application for restoration of the appeal appears to be satisfactory and bona fide. The appellant was prevented by sufficient cause from appearing when the appeal was called on for hearing. However, the Court of Appeal below has given no consideration to the appellant's grounds and made no finding as to whether there was any sufficient cause that prevented the appellant from appearing before the Court when the appeal was called for hearing. The appellate Court below had virtually deprived the litigant defendant of the right to have his case heard on the merits by the Court without making any finding on the requirement of law under Rule 19 of Order 41 of the Code of Civil Procedure.

Considering the above facts and circumstances we find merit in the appeal.

Resultantly, the appeal is allowed without any order as to costs.

The impugned Judgment and order dated 08.07.2019, passed by the learned Joint District Judge, Additional Court,

Sylhet, in Title Appeal No.314 of 2016, rejecting the application under Order 41 Rule 19 read with section 151 of the Code of Civil Procedure for restoration of the appeal is hereby set aside and the Title Appeal No.314 of 2016 is restored to its original file and number.

Communicate this Judgment at once.

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**(Md. Salim, J).**

Kabir/BO