

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL APPELLATE JURISDICTION)
Present
Mr. Justice Md. Riaz Uddin Khan

First Miscellaneous Appeal No. 145 of 1991 (Dhaka)
(arising out of FMA No.09 of 1989 (Chittagong)
With
Civil Rule No. 146 (FM) of 1992

IN THE MATTER OF:

Kad Banu

... Appellant

-Versus-

Amir Hossain and others

... Respondents

None

...For the parties

Judgment on: 14.05.2026

Md. Riaz Uddin Khan, J:

This first miscellaneous appeal is directed against the order no.43 dated 24.11.1988 rejecting an application for condonation of delay and thereby dismissing the Miscellaneous Case No.24 of 1988 filed for re-admission of Miscellaneous Appeal No.67 of 1983 which was dismissed for default.

It appears from record that the learned advocate for the appellant Mr. Shahabuddin Faiz died long ago for which this Court by order dated 04.06.2001 issued notice in the form of N-10 upon the appellant. Then by another order dated 03.02.2002 this Court re-issued N-10 notice but none appears for the appellant.

Facts for disposal of this Miscellaneous Appeal is that the appellant filed a pre-emption case against the opposite party No.1 being Miscellaneous Case No.272 of 1976 and got an ex parte decree. Thereafter the opposite party No.1 and predecessor of opposite party no.2 to 11 filed an application under Order-IX, Rule-13

of the Code of Civil Procedure and that was allowed and thereafter the pre-emption case was heard on merit and dismissed on contest. Against that judgment and order the present appellant filed Misc. Appeal No. 67 of 1983 before the District Judge, Cox's Bazar which was ultimately heard by the Sub-ordinate Judge, Cox's Bazar. When the Misc. Appeal was taken up for hearing the learned Advocate for the appellant was not present for which the same was dismissed for default by order dated 19.03.1987. Against which the present appellant on 21.06.1988 filed Miscellaneous Case No.24 of 1988 for re-admission of the Miscellaneous Appeal No.67 of 1983 under Order XLI, Rule 19 of the Code of Civil Procedure along with an application under section 5 of the Limitation Act for condonation of delay. After hearing, the learned Sub-ordinate Judge was pleased to reject that application for condonation of delay and thereby dismissed the miscellaneous case no.24 of 1988 by his impugned order no.43 dated 24.11.1988.

Being aggrieved by and dissatisfied with the impugned order dated 24.11.1988 this First Miscellaneous Appeal has been filed before this Court and this Court by order dated 20.08.1989 was pleased to admit this appeal. It appears that the impugned order dismissing an application for condonation of delay was passed on 24.11.1988 and meanwhile more than 37 years has been elapsed.

Be that as it may, I have perused the memorandum of appeal and also gone through the impugned order. It appears that the learned judge rejected the application for condoning the delay on the finding that the appellant filed the application after more than 1 (one)

year and claimed that she was ill when the matter was taken up for hearing but failed to produce any medical certificate or any evidence to prove that contention. The learned judge passed the order giving reasons that the appellant has failed to produce any documents regarding her illness which prevented her from appearing before the court when the appeal was taken up for hearing.

I find no merits in this appeal for interference of the impugned order passed by the court below, hence the appeal is liable to be dismissed. The connected Rule being No. 146(FM) of 1992 has already been disposed of by this Court vide order dated 26.05.1993 directing the parties to maintain status-quo in respect of possession of the suit land till disposal of this appeal.

In such view of the matter, the First Miscellaneous Appeal is **dismissed**. However, there will be no order as to cost. The order directing the parties to maintain **status-quo stands vacated**.

Communicate this judgment at once.