

In the Supreme Court of Bangladesh

High Court Division
(Civil Revision Jurisdiction)

Present:

Mr. Justice Jahangir Hossain

Civil Rule No. 792[con] of 2014

In the matter of :

An application under section 5 of the Limitation Act, 1908 for condonation of delay of 220 days in filing the revision application against the judgment and decree.

And

In the matter of :

Md. Ferdous Alom

.....petitioner

-Versus-

Mosammat Akhinoor Begum

.....Opposite Party

No one appears

.....for the petitioner

Judgment on 17.11.2020

By order dated 09.09.2014 this Court issued a Rule calling upon the opposite party to show cause as to why the delay of 220 days in filing the Civil Revision application as stated in the application filed under section 5 of the Limitation Act should not be condoned and/or such other or further order or orders passed as to this Court may seem fit and proper.

The petitioner preferred a revision application to move this Court against the judgment and decree dated 25.09.2013 [decree signed on 01.01.2013] passed by the learned Additional District Judge, Barguna in

Family Appeal No. 15 of 2010 dismissing the appeal by affirming the judgment and decree dated 27.10.2010 [decree signed on 02.11.2010] passed by the Assistant Judge, Amtali in Family Suit No. 18 of 2008 decreeing the suit.

At the time of issuance of the Rule, the petitioner/applicant obtained an order of stay of the proceedings of Family Execution Case No. 09 of 2010 for a period of 06[six] months on condition that the petitioner shall pay Tk. 1,26,400/- within six months from date and the first installment of Tk. 40,000/- will have to be paid within 30 days from the date of this order in the Family Court and the rest amounting to Tk. 86,400/- shall be paid by the defendant-petitioner in the trial court by three equal monthly installments within five months next to 1st installment of Tk. 40,000/- which will have to be paid within 10[ten] days of the current month. The plaintiff will be allowed to withdraw the same from the trial court. In default of the petitioner in depositing the aforesaid money as directed by this Court, the trial court shall be at liberty to proceed with the Family Execution case accordingly.

From the office note dated 17.09.2019 it appears that the notice was served upon the opposite party No. 01 in time. Neither the petitioner nor the opposite party appears to support or oppose the Rule issued by this Court for condonation of delay of 220 days.

It is stated in the application for condonation of delay that the father of the petitioner is tadbirkar, who is an old man, aged about 60[sixty] years. While he was coming to Dhaka for filing the Civil Revision in the

month of February, 2014 he became sick and was hospitalized for a long time. After recovery he came in Dhaka in order to file the civil revision. But due to sudden illness he could not file the civil revision before this Court within the stipulated time and as such the delay of 220 days has taken place in filing the revision application.

According to the said statement made in paragraph No. 02 of the application for delay there is no date when the tadbirkar of this case became sick. Even then the petitioner did not state when and where his father, the tadbirkar, again became sick in Dhaka. It appears further that the statements made in the application seem to be illusive and improper. Furthermore, it is not found in the record whether the petitioner deposited the amount of money in the trial court as directed by this Court at the time of issuance of the Rule. Therefore, this Court finds no cogent ground for making the Rule absolute in order to condone the delay.

Hence, the Rule is, hereby, discharged without any order as to costs.

The order of stay of the Family Execution Case No. 09 of 2010 granted earlier by this Court, shall stand vacated.

However, the court below is directed to proceed with the said Family Execution Case in accordance with law, if required.

Let a copy of this judgment and order be communicated to the trial court at once.

[Jahangir Hossain,J]