

Present:-

Mr. Justice Mahmudul Hoque

Civil Rule No. 235 (Con) of 2020

Md. Bazlar Rahman and others
... Petitioners

-Versus-

Md. Nurul Islam and others
...Opposite-Parties
Mr. Bhabesh Chandra Mustafi, Advocate
...For the Petitioners
Mr. Md. Sagir Anwar with
Mr. Abdul Alim (Juwel), Advocates
...For the Opposite-Party No.1

Judgment on 12th December, 2024.

On an application under Section 5 of the Limitation Act, this Rule was issued on 12.03.2020 calling upon the opposite-party Nos. 1, 27-31 to show cause as to why the delay of 286 days in filing the Civil Revision against the impugned judgment and decree dated 29.11.2018 passed by the learned Joint District Judge, 2nd Court, Gaibandha in Other Appeal No. 178 of 2015 disallowing the appeal and thereby affirming the judgment and decree dated 18.10.2015 passed by the learned Senior Assistant Judge, Sadar, Gaibandha in Other Suit No. 117 of 2009 dismissing the suit should not be condoned and/or pass such other or further order or orders passed as to this Court may seem fit and proper.

Shorn of unnecessary details, fact of the case lies in a very narrow compus. This petitioner filed this application under

Section 115(1) of the Code of Civil Procedure at a delay of 286 days shown cause of delay in filing this revisional application stating that the petitioner No. 1, Md. Bazlar Rahman is a tadbirkar of the case, petitioner No. 2 is a woman, petitioner No. 3 is an innocent person. The petitioner No. 1 is an old man has been suffering from various diseases including asthma, consequently, he could not obtain certified copy of the judgment and decree in time. He applied for certified copy on 04.01.2019, the same was delivery on 26.08.2019 after 8 months, but due to his illness he could not collect the certified copy and collected the same on 09.01.2020 and then came to Dhaka on 15.01.2020 and handed over the documents to the learned Advocate who took 5 days time for preparing application. In this way delay of 286 days. The causes for delay as stated in Paragraph No. 2 of the application is merely a lame excuse. Application for certified copy of the judgment and collection of the same is usually done by the Advocate clerk on behalf of client.

This revisional application has been filed against the judgment of affirmance dismissing the suit as well as disallowing

the appeal by the appellate court. Both the courts below found that in Other Suit No. 87 of 1988 filed by the defendant No. 1 earlier against the present petitioners was decreed in appeal declaring title of the present defendant-opposite-parties in the suit property by the appellate court in Other Appeal No. 144 of 1991. The defendants in that suit and plaintiffs in present suit did not move before the higher court, consequently, title of the present opposite-parties has been established. Subsequently, the opposite-parties, as plaintiff, filed Other Suit No. 04 of 2001 praying for partition of the suit property, the suit was decreed ex parte on 23.11.2001. Challenging the decree passed in Other Suit No. 04 of 2001 present petitioners, as plaintiff, filed Other Suit No. 117 of 2009 in the court of Senior Assistant Judge, Sadar, Gaibandha.

The trial court after hearing held that the plaintiffs in suit have no title in the property and their title have been decided in Other Suit No. 87 of 1988, as such, by the ex parte decree under challenge there is no reason for affecting the right title of the present plaintiffs. This instant suit has been filed by the present petitioners only on the ground of not making them parties in Other

Suit No. 04 of 2001 which was for a decree of partition, a person not a co-sharer in the suit property is not a necessary party. Accordingly, because of judgment and decree passed in Other Suit No. 87 of 1988 in favour of the opposite-parties declaring their title, present petitioners are no more co-sharer in the suit property. Both the courts below rightly held that in earlier Other Suit No. 04 of 2001 present plaintiffs in suit were not necessary party as they are not co-sharers in the suit land. Usually the court took the matter of condonation of delay liberally, like the present one where the delay is only 286 days. Since this revisional application preferred against the judgment of affirmance we need to scrutinize the merit of the revision.

From perusal of both the judgment of the trial court as well as the appellate court, I find that the title in the property claimed by the petitioners by purchase from auction purchaser who purchased the land in auction in Execution Case No. 109 of 1953. The defendants claimed that said auction sale was subsequently set aside in Case No. 289 of 1956. Consequently, the status of the property revert back to the original owner from whom the

opposite-party by series of consecutive transfers purchased the property. After purchase by the plaintiffs from auction purchaser usually S.A. khatian stand recorded in their names. Thereafter, present defendant No. 1, filed Other Suit No. 87 of 1988 for a decree of declaration on the basis of purchase from original owners and challenged the S.A. khatian stand recorded in the names of the present plaintiffs. The suit was initially dismissed by the trial court then the defendant No. 1-appellant preferred Other Appeal No. 144 of 1991 which was allowed and suit was decreed by setting aside the judgment and decree of the trial court. Consequently, the right and title whatever, the plaintiffs have had become extinguished. The plaintiffs did not move before any higher court against the judgment and decree passed by the appellate court in Other Appeal No. 144 of 1991.

In this situation, I find that in the event of condoning delay and issuing Rule in the application under Section 115(1) of the Code of Civil Procedure there is no possibility of succeeding the Rule after hearing. Therefore, for a fruitless litigation it would not be just and practicable to condone the delay for mere asking of it.

In view of the above, I find no merit in the Rule issued for condoning delay.

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

The revisional application under Section 115(1) of the Code of Civil Procedure filed against the judgment and decree of the appellate court is hereby rejected summarily.

Communicate a copy of the judgment and order to the Court concerned at once.

Helal/ABO