

**Present:**

**Justice Fatema Najib**

**Civil Revision No. 466 of 2021**

Md. Asaduzzaman and others

.....petitioners

-Versus-

Md. Kamruzzaman and others

.....Opposite Parties

Mr. Pronay Kanti Roy, Advocate

..... For the petitioners

Mr. Sanjoy Mondal, Advocate

.....For the opposite parties

**Heard on 16.01.2024**

**Judgment on: 28.01.2024**

This Rule was issued calling upon the opposite party Nos. 1-13 to show cause as to why the impugned judgment and order dated 20.11.2020 passed by the learned Joint District Judge, 1<sup>st</sup> Court, Pirojpur in Chani Case No. 18 of 2020 arising out of Title Appeal No. 24 of 2018 allowing the application under Order XLI Rule 19 of the Code of Civil Procedure should not be set aside and/ or such other or further order or orders passed as to this court may seem fit and proper.

Pending hearing of the Rule, the operation of the impugned judgment and order dated 20.11.2020 passed by the learned Joint District Judge, 1<sup>st</sup> Court, Pirojpur in Chani Case No. 18 of 2020 arising out of Title Appeal No. 24 of 2018 allowing the application under Order 41 Rule 19 of the Code of Civil Procedure was stayed for a period of 06(six) months from date.

The petitioners as plaintiffs instituted Title Suit No. 41 of 2010 in the Court of learned Assistant Judge, Nesarabad, Pirojpur impleading the opposite parties as defendants for declaration and for confirmation that the plaintiffs had been performing their function in their respective post of Kobi Kazi Nazrul Islam Business Management College, Rajbari, Nesarabad, Pirojpur.

The defendant Nos. 1-4, 6 and 7 contested the suit by filing written statement.

Learned Assistant Judge, Nesarabad, Pirojpur on perusing the documents and oral evidences decreed the suit on 08.02.2018. As against the said decree the defendants as appellants preferred Title Appeal No. 24 of 2018 before the Court of District Judge, Pirojpur. Subsequently, the same was transferred to the learned Joint District Judge, Pirojpur who fixed the date on 02.02.2020 for appeal hearing, but both the parties were absent on the said date. As a result, learned Joint District Judge, Pirojpur dismissed the appeal by judgment and order dated 02.02.2020.

Felling aggrieved the appellants as petitioners filed an application under Order XLI Rule 19 of the Code of Civil Procedure before the Court of Joint District Judge, Pirojpur on 18.09.2020 along with condonation petition filed under section 5 of Limitation Act, stating inter alia that the appellant No. 7 was the Tadbirkar of the said appeal but due to of his illness he is unable to appear in Court on date fixed and as a result, the appeal was dismissed. Thereafter he went to Advocate's Clark on 17.06.2020 and came to know that the appeal was dismissed on 02.02.2020 due to non appearance of the appellants. Hence, the instant

application under Order XLI Rule 19 of the Code of Civil Procedure for restoration and for readmission of the said appeal was filed.

Mr. Pronay Kanti Roy, learned Advocate appearing on behalf of the petitioners submits that after dismissing the appeal this application for readmission the appeal has been filed without condonation of delay. He further submits that the application for readmission has been filed after 4(four) months from the date of dismissal of appeal without any explanation. So, the application for readmission can not be considered.

Mr. Sanjoy Mondal, learned Advocate appearing on behalf of the opposite parties submits that the application for readmission was filed with application of condonation of delay under section 5 of the Limitation Act on the same date. He further submits that the Tadbirkar of the appellant was ill and due to illness he did not appear at the time of hearing of appeal due to which the appeal was dismissed for default. He next submits that the disputed between the 2(two) groups who claimed themselves they were performing their function of Kobi Kazi Nazrul Islam Business Management College, Rajbari, Nesarabad, Pirojpur. So, in this circumstance the appeal should be heard on merit.

I have heard the learned Advocates for both the parties. Perused the impugned order and materials on record.

I have gone through the record, it appears that the petitioners filed an application for delay under section 5 of Limitation Act in support by an Affidavit with the application for readmission of appeal which was dismissed for default on 02.02.2020. It also appears that the petitioners have explained the reason behind such delay in the application for condonation of delay. It has been stated that the appellant No. 7 who was

Tadbirkar of the said appeal was suffering from Jondis since 20.01.2020 and on advise of doctor he took rest for 6(six) months. But no one had controverted the said assertion made on oath by the petitioners in writing.

The application for condonation of delay shows the delay had been occurred by the appellant No. 7 who was Tadbirkar of the appeal. It also appears from the record the other side was also absent at the time of pronouncement of order in question.

However, considering the application for delay and the surrounding evidence suggest that the delay was unintentional and beyond the control of the petitioners and the allegation made by the opposite parties against the petitioners which need to be heard on merit.

Considering this aspects, I find no substance in this revision.

In the result, the Rule is discharged without any order of cost.

The impugned judgment and order dated 20.11.2020 passed by the learned Joint District Judge, 1<sup>st</sup> Court, Pirojpur in Chani Case No. 18 of 2020 arising out of Title Appeal No. 24 of 2018 is hereby affirmed.

The order of stay granted earlier by this Court is hereby vacated.

The appeal Court below is directed to admit the appeal and dispose of within 06(six) months from the date of receipt of a copy of this judgment.

Send down the lower Court records along with a copy of this judgment at once.