

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(CIVIL APPELLATE JURISDICTION)

**F.M.A. NO. 173 OF 2021**  
**(F.M.A.T. NO. 1076 of 2019)**

**IN THE MATTER OF**  
Md. Siddik Mollah and others

..... Petitioners-Appellants

-Versus-

1. The Government of Bangladesh and others  
..... Opposite parties-Respondents

2. Sherajul Islam and others  
.....Pro-forma respondents

Mr. Md. Saidul Alam Khan, Advocate  
..... For the appellants

Mr. Prahlad Debnath, A.A.G with  
Mr. Md. Asaduzzaman, A.A. G. and  
Mr. Kazi Elias-Ur-Rahman, A. A.G  
.....For the respondents

**Heard on 30.04.23, 17.05.23, 18.05.23 and judgment passed on  
24.05.2023**

**Present:**

*Mr. Justice Kazi Md. Ejarul Haque Akondo*

**Kazi Md. Ejarul Haque Akondo, J:**

This appeal is directed against the judgment and order No. 17 dated 19.08.2019 passed by the learned District Judge, Barishal rejected the Miscellaneous Case No. 32 of 2019 filed for readmission of Title Appeal No. 173 of 2017 which was dismissed for default.

The present appellants and others as the plaintiffs filed Title Suit No. 76 of 2005 in the Court of Learned Assistant Judge, Mehendigonj, Barishal against the present respondents as the defendants for a declaration of title concerning the 'Ka' schedule land of the plaint. After hearing the parties the learned Trial Judge by his judgment and decree dated 31.07.2017 dismissed the suit against which the present appellants preferred an appeal before the learned District Judge, Barishal, and the same was numbered as Title Appeal No. 173 of 2017 which was dismissed for default due to absence of the learned Advocate of the appellants on 13.03.2019. Thereafter, the appellants filed an application under Order 41 Rule 19(A) read with section 151 of the Code of Civil Procedure along with an application under section 5 of the Limitation Act for readmission of the appeal to its original file and number. After hearing the same the learned Judge of the Appellate Court below by his judgment and order dated 27.06.2019 rejected the application. Thereafter, the appellants further filed Miscellaneous Case No. 32/2019 under Order 41 Rule 19 along with an application for condonation of delay praying for readmission of Title Appeal No.

173 of 2017. After hearing the same the learned District Judge, by his order dated 19.08.2019 rejected the miscellaneous case by refusing to condone the delay of 108 days. Being aggrieved by and dissatisfied with the said impugned judgment and order dated 19.08.2019 the appellants preferred the instant 1<sup>st</sup> Miscellaneous Appeal before this Court which is before us for consideration.

Mr. Md. Saidul Alam Khan, the learned Advocate appearing for the appellants submits that the initial application for readmission of the appeal was filed under Order 41 Rule 19A in the original court of appeal, which was not proper. The learned lawyer of the appellants ought to have preferred an application under Order 41 Rule 19 under the heading of a miscellaneous case, as it was filed beyond the prescribed limitation period. The delay caused in filing the subsequent appropriate Misc. Case No. 32 of 2019 was attributed to choosing the wrong forum and spending time therein, for which the appellant has had nothing to do; rather it was the fault of the lawyer of the appellants. The appellants were all thorough and diligent in conducting the case. But the appellate court below without considering the cardinal principle of law that computing the period

of limitation prescribed for any application, the time the applicant has been prosecuting with due diligence in another wrong forum, whether in a court of first instances or a court of appeal, the time shall be excluded computing the period of limitation. (5 BLD (AD)-317)

He also submits that the learned lawyer of the appellants ought to have preferred a miscellaneous case against the dismissal order dated 13.03.2019 passed in Title Appeal No. 173 of 2017 under Order 41 Rule 19 instead of preferring application under Order 41 Rule 19A, the provisions of Order 41 Rule 19A is applicable if it was filed within a period of 30 days. The wrong provision and the wrong forum as chosen by the lawyer of the appellants were not within the control of the appellants, hence considering the long line ratio in this regard, it is submitted that any wrongs done by the lawyer will not be caused to suffer the appellants. (58 DLR 277).

Conversely, Mr. Prahlad Debnath, the learned Assistant Attorney General appearing for respondent No. 1 submits that the learned Judge of the Appellate Court below considering the facts and circumstances of the case rightly rejected the application filed by the

appellants under Order 41 Rule 19 of the Code of Civil Procedure, 1908 and thereby committed no illegality to be interfered with, and the reasons as stated in the application for condonation of delay was not satisfactory at all.

Heard the learned Advocates of the contending parties and have perused the materials on record. In view of the above submissions, it appears that the learned Judge of the Appellate Court below passed the impugned order rejecting the application of the appellants on an erroneous view which is liable to be set aside.

Given the above, I find substance in the submissions made by the learned Advocate for the appellants.

Accordingly, the appeal is allowed.

The impugned order No. 17 dated 19.08.2019 passed by the learned District Judge, Barishal rejecting the Miscellaneous Case No. 32 of 2019 is hereby set aside, and Title Appeal No. 173 of 2017 is restored to its original file and number.