

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

Present:

Mr. Justice Abu Taher Md. Saifur Rahman

Civil Rule No. 465(Con) of 2019

Khatibuddin being dead his heirs Most. Joynob
Bibi and others

...Defendants-appellants-petitioners

-VERSUS-

Abdul Hakim alias Budhu Mohammad

...Plaintiff-respondent –opposite party No.1

Mr. Md. Taherul Islam with

Mr. Jamilur Rahman Khan, Advocates

....for the petitioners

None appears.

.....for the opposite party No.1

Heard and Judgment on: 01.12.2021

Abu Taher Md. Saifur Rahman, J:

This Rule was issued on an application filed by the defendants-appellants-petitioners under section 5 of the Limitation Act, 1908 calling upon the plaintiff-opposite party No.1 to show cause as to why the delay of 1657 days in filing the revisional application against the judgment and decree dated 04.08.2014 (decree signed on 11.08.2014) passed in Other Class Appeal No.27 of 2009 dismissing the appeal and thereby affirming the Judgment and decree 28.01.2009 (decree signed on 11.02.2009) passed in Other Class Suit No.13 of 2005 decreeing the suit

should not be condoned and/or pass such other or further order or orders as to this Court may seem fit and proper.

For disposal of the Rule, the relevant facts may briefly be stated as follows:

That the opposite party No.1 as plaintiff filed Other Class Suit No.13 of 2005 before the learned Assistant Judge, Birol, Dinajpur, for a permanent injunction in the suit land against the defendants–petitioners and others, which was subsequently decreed vide its judgment and decree dated 28.01.2009 (decree signed on 11.02.2009). Being aggrieved, the defendants preferred Other Class Appeal No.27 of 2009 before the learned District Judge, Dinajpur. On being transferred the aforesaid matter was heard by the Joint District Judge, First Court, Dinajpur, which was subsequently dismissed vide its judgment and decree dated 04.08.2014 (decree signed on 11.08.2014) and thereby affirming the judgment and decree dated 28.01.2009 (decree signed on 11.02.2009) passed by the learned Assistant Judge, Birol, Dinajpur in Other Class Suit No.13 of 2005 decreeing the suit. Being aggrieved, the defendants–appellants–petitioners preferred this Civil Revision before this Court, which was caused by the delay of 1657 days, and as such, the petitioners filed an application under section 5 of the Limitation Act for condoning the aforesaid delay in preferring the revisional application and obtained the instant Rule.

Mr. Taherul Islam, the learned Advocate for the petitioners submits that in order to prefer a revisional application, the aforesaid delay of 1657 days was caused, which was beyond the control of the petitioners and has been properly explained in paragraph No.6 to the application filed by the petitioners. He further contended that there is a prospect of success in the instant case and, as such, the aforesaid delay is required to be condoned for proper adjudication of this matter.

None appears for the opposite party No.1 to oppose the Rule.

Heard the submissions of the learned Advocate for the petitioners and perused the instant application thoroughly.

In the instant case, the petitioners sought for condonation of delay of 1657 days in preferring the revisional application against the judgment and decree dated 04.08.2014 (decree signed on 11.08.2014) passed in Other Class Appeal No.27 of 2019 dismissing the appeal, arising out of the judgment and decree dated 28.01.2009 (decree signed on 11.02.2009) passed in Other Class Suit No.13 of 2005 decreeing the suit

Under section 5 of the Limitation Act, the petitioner is entitled to condonation of delay, if he can satisfied the Court had sufficient cause for not making the application within the period fixed by statute. The words “sufficient cause” have to be liberally constitute, so as to advance the substantial justice.

On perusal of the instant application, it transpires that the impugned judgment and decree was passed in Other Class Appeal No.27 of 2009 on 04.08.2014, and after more than five years the petitioners filed an application for obtaining the certified copy of the said judgment and decree on 17.02.2019 and obtained the same on 23.04.2019. The reasons for causing the aforesaid delay as explained by the petitioners in paragraph No.3 of this application is not satisfactory at all.

We have further noticed that this revisional application has been filed as against the judgment of affirmance. We have also observed that both the Courts below concurrently got the finding that the plaintiff – opposite party No.1 is in possession of the suit land in question. Therefore, I do not find any prospect of success in the revisional application as well.

Under the given facts and circumstances of the case, I do not find any substances of this Rule.

Accordingly, the Rule is discharged.

Communicate this judgment and order at once.