

District-Comilla

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

Present

Mr. Justice Sardar Md. Rashed Jahangir

Civil Rule No. 423 (Con) of 2015

In the matter of

Bhanu Chandra Shil and others.

..... Petitioners

-versus-

Shree Kanan Bala Sil and others.

..... Opposite Parties.

Mr. Md. Mubarak Hossain, Advocate

..... For the Petitioners

No one appears

..... For the Opposite Parties

Judgment dated: 02.07.2018

This Rule was issued calling upon the opposite party nos.1-12 to show cause as to why the delay of 204 days in filing the revisional application, challenging the judgment and decree dated 16.07.2014 passed by the Special District Judge, Comilla in Title Appeal No. 119 of 2007 reversing the judgment and decree dated

25.01.2007 passed by the Assistant Judge, Homna, Comilla in Title Suit No.115 of 1997, decreeing the suit in part, should not be condoned and or pass such other or further order or orders passed as to this Court may seem fit and proper.

The facts leading to the revisional application, in short, are that the present opposite party no.7 and the predecessor of the opposite party nos. 1 to 6 as plaintiffs instituted Title Suit No. 115 of 1997 in the Court of Assistant Judge, Homna, Comilla for partition of the suit land described in the schedule, impleading the present petitioners and other opposite parties as defendants and praying for a Shaham in respect of 22½ decimals of land. The defendant nos. 1 to 3, 5 to 8 and 9 contested the suit by filing separate sets of written statements and the learned Assistant Judge, Homna, Comilla after hearing the parties on 25.01.2007 by his judgment and decree, decreed the suit in part, on contest against the defendant nos. 1 to 3, 5 to 8 and 9, exparte against the rest, in preliminary form.

Being aggrieved by and dissatisfied with the judgment and decree dated 25.01.2017 passed in Title Suit No. 115 of 1997 of the Assistant Judge, Homan, Comilla, the defendant nos. 5 to 8 and 9(ka) to 9(gha) filed Title Appeal No. 119 of 2007 in the Court of District Judge, Comilla. The same was heard by the Special District Judge, Comilla, who by his judgment and decree dated 16.07.2014

allowed the appeal in part and thereby reversing the judgment and decree dated 25.01.2007.

Being aggrieved by the judgment and decree dated 16.07.2014 passed by the Special Judge, Comilla in Title Appeal No. 119 of 2007, The defendant Nos. 5 to 8 being petitioners preferred the instant revisional application, which is out of time by 204 days and hence the instant Rule, which is arisen out of an application made under section 5 of the Limitation Act, 1908 for condonation of delay.

Mr. Mubarak Hossain, the learned Advocate for the petitioners, appearing in support of the rule and submits that the delay is occurred due to the reasons stated in paragraph no.2 of the application for condonation of delay, where in, it has been asserted that by the judgment and decree dated 25.01.2007 passed by the Assistant Judge, Homna, Comilla, these present petitioners got shaham in respect of 6½ decimals of land against their claim of a shaham of 44 ½ decimals of land. On being aggrieved by the said judgment and decree, the present petitioners along with others preferred Title Appeal No. 119 of 2007, which was allowed in part by the judgment and decree dated 16.07.2014; that the engaged learned lawyer for the petitioners informed them that the appeal has been allowed and upon advice of the learned lawyer, the present petitioners filed an application for obtaining the certified copy of

the said judgment and decree on 12.08.2014 and the same was ready for delivery on the following day. He further submits that the petitioners are poor and illiterate villagers, they are not aware about the contents of the judgment and upon the advice of their learned Lawyer they had an impression that, they have got the entire shaham as has been prayed for. That recently on 02.05.2015 the plaintiff-opposite parties expressed that the petitioners got shaham in respect of 18 decimals of land only, out of their claim of 44½ decimals of land, the appellants are not entitled to get more than 18 decimals of land and as such they are liable to vacate the rest of the land. On coming to know about the aforesaid facts, the defendants-petitioners rushed to Dhaka on the following day and met with the learned Advocate Mr. Mubarak Hossain and accordingly handed over the brief to him for filing the instant revisional application, then the learned Advocate after observing all the formalities and preparation, made read the revisional application, which was sworn on 13.05.2015 and in the meantime a delay of 204 days has been occurred, which was unintentional and beyond the control of the petitioners. Mr. Hossain further submits that the delay of 204 days may kindly be condoned for ends of justice, otherwise the petitioners will suffer irreparable loss and injury.

No one appears to oppose the Rule.

I have heard the learned advocate for the petitioners and perused the application for condonation of delay. The only point that calls for determination in the instant case, whether the petitioners could show “sufficient cause” to consider in condoning the delay of 204 days in filing the instant revisional application, which was claimed to be unintentional, and beyond their control.

Although, the Limitation Act, 1908 does not provide any specific period of limitation for filing a revisional application, under section 115 of the Code of Civil Procedure but as per long standing practice, one has to file it within 90 days from the date of decree or order complained of, as has been prescribed for preparing an appeal. It has been observed in the case of Government of Bangladesh-Vs- Md Kobad Ali and others reported in 39 DLR(AD)205 in the following manner:

“There is a long practice being followed since the days of Dhaka High Court that a revisional application is to be filed within the period of 90 days, prescribed by law for an appeal, and that the High Court Division may in its discretion entertain an application beyond that period in a suitable case, where there is no negligence or laches on the part of the petitioner. This is a long standing practice otherwise sound and

reasonable and it does not call for any departure”

The provision of section 5 of the Limitation Act, 1908 deals with the matter of condonation of delay which is as follows:

‘Section 5- *Extension of period in certain cases-*

“Any appeal or application for a revision or a review of judgment or for leave to appeal or any other application to which this may be made applicable by or under any enactment for the time being in force may be admitted after the period of limitation prescribed thereof, when the appellant or applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation-The fact that the appellant or applicant was misled by any order, practice or judgment of the High Court Division in ascertaining or computing the prescribed period of limitation may be sufficient cause within the meaning of this section.”

From a plain reading of the provision of section 5 of the Limitation Act, it appears that the above provision empowered the Court to entertain a revisional application beyond the period of limitation, if the petitioner can satisfy the court by showing sufficient cause, that for certain facts and circumstances they could not prefer the revisional application within the prescribed period. From the numerous decisions given by this Division as well as by the Hon'ble Appellate Division, it appears that words "sufficient cause" have been liberally construed. The petitioner must satisfy the Court that they were not negligent or inactive in preferring the revisional application and the delay has been occurred unintentionally, which was beyond the control of the petitioners.

It appears from the record that the petitioners are illiterate villagers and due to wrong advise of the learned lawyer they had an impression that they succeed in the appeal and thereby got the entire shaham as prayed for, thus they could not take any initiative to file the revisional application in time. Thereafter, on coming to know the real scenario, they took initiative to file the instant revisional application without causing further delay and it also appears that right of valuable properties is involved in the instant revisional application, which should be disposed of on merit. The door of this Court should not be shut down on the ground of delay

only, occurred unintentionally in filing the revisional application, which was bonafide in nature.

In view of the above discussion, I am of the view that the cause of delay has been satisfactorily explained and which seems to be unintentional and bonafide. On consideration of the facts and circumstances, the statements and submissions made on behalf of the petitioners, it will be just and proper to exercise the discretionary power of this Court in condoning the delay, occurred in filing the revisional application.

As, I am inclined to accept the explanation and found substance in the instant Rule.

In the result, the Rule is made absolute without any order as to cost.

The delay of 204 days in filing the revisional application is hereby condoned.

The office is directed to communicate the judgment at once.