

**Present:*****Mr. Justice Md. Kamrul Hossain Mollah*****Civil Rule No.452(Con) Of 2021****IN THE MATTER OF:**

Md. Topsher Ali and others

.....Petitioners

-Versus –

Md. Zillur Rahman and others

.....Opposite Parties

Mr. Mohammad Siddique Ullah Miah, Advocate

..... For the Petitioners

No one appears

..... For the Opposite Parties

**Heard and Judgment on 20.03.2024****Md. KamrulHossainMollah, J:**

In an application of the petitioners under Section 5 of the Limitation Act for condonation of delay of 198 days, this Rule was issued in the following terms:

Let a Rule be issued calling upon the opposite parties to show cause as to why the delay of 198 days in filing the revisional application under section 115(4) of the Code of Civil Procedure against the impugned order dated 07.01.2019 passed by the learned Additional District Judge, 2<sup>nd</sup> Court, Naogaon in Civil Revision No.44 of 2017 allowing the revision

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

Mr. Mohammad Siddique Ullah Miah, the learned Advocate appearing on behalf of the petitioners supports the Rule and submits that the petitioners along with opposite parties being plaintiffs filed Title Suit No.05 of 2017 in the Court of learned Joint District Judge, 2<sup>nd</sup> Court, Naogaon with a prayer for declaration of title in the schedule land. Thereafter, the petitioners filed an application under Order 1 Rule 10 of the Code of Civil Procedure for added as opposite party. After hearing both the parties the learned Joint District Judge, 2<sup>nd</sup> Court, Naogaon allowed the application for added as opposite party filed under Order 1 Rule 10 of the Code of Civil Procedure by the judgment and order No.5 dated 25.07.2017 in Title Suit No.05 of 2017. Being aggrieved by and dissatisfied with the judgment and order No.5 dated 25.07.2017 the plaintiffs filed Civil Revision No.44 of 2017 before the learned District Judge, Naogaon. Thereafter, it was transferred to the learned Additional District Judge, 2<sup>nd</sup> Court, Naogaon for disposal. After hearing both the parties the learned Additional District Judge, 2<sup>nd</sup> Court, Naogaon allowed the said Civil Revision by his judgment and order dated 07.01.2019. Thereafter, the

petitioners applied for the certified copy of the same on 24.07.2019 and the same was delivered to him on 31.07.2019 and the same was delivered to him on 31.07.2019. Thereafter, the Madrasha authority had to take some time to arrange the minimum expenses for filing a revisional application before the Hon'ble High Court Division of the Supreme Court of Bangladesh and after arranging the minimum expense, the petitioners came to Dhaka on 10.08.2019 to meet with their learned Advocate Mohammad Siddique Ullah Miah who upon perusal of the case records found that there has been few days delay in preferring revisional application and the learned Advocate also advised him that it is the discretion of the Hon'ble Court to condone the delay and thereafter, the petitioner handed over the brief to the learned Advocate to prepare a revisional application and the learned Advocate for the petitioner within a very reasonable time prepared this revisional application and in the meantime, the delay of 198 days has been occurred, which should be condoned.

He further submits that the delay is not intentional and it is beyond the control of the petitioners.

The learned Advocate for the petitioners finally submits that the Civil Revisional application has merit and unless the delay is condoned and

the Revisional application is heard on merit, the petitioners will suffer irreparable loss and injury. Accordingly, he prayed for making the Rule absolute.

No one appears to oppose the Rule on behalf of the opposite parties when the matter was taken up for hearing.

Heard the submissions of the learned Advocate for the petitioners, perused the application for condonation of delay. It appears that the petitioners categorically stated that the petitioners along with opposite parties being plaintiffs filed Title Suit No.05 of 2017 in the Court of learned Joint District Judge, 2<sup>nd</sup> Court, Naogaon with a prayer for declaration of title in the schedule land. Thereafter, the petitioners filed an application under Order 1 Rule 10 of the Code of Civil Procedure for added as opposite party. After hearing both the parties the learned Joint District Judge, 2<sup>nd</sup> Court, Naogaon allowed the application for added as opposite party filed under Order 1 Rule 10 of the Code of Civil Procedure by the judgment and order No.5 dated 25.07.2017 in Title Suit No.05 of 2017. Being aggrieved by and dissatisfied with the judgment and order No.5 dated 25.07.2017 the plaintiffs filed Civil Revision No.44 of 2017 before the learned District Judge, Naogaon. Thereafter, it was transferred to the

learned Additional District Judge, 2<sup>nd</sup> Court, Naogaon for disposal. After hearing both the parties the learned Additional District Judge, 2<sup>nd</sup> Court, Naogaon allowed the said Civil Revision by his judgment and order dated 07.01.2019. Thereafter, the petitioners applied for the certified copy of the same on 24.07.2019 and the same was delivered to him on 31.07.2019 and the same was delivered to him on 31.07.2019. Thereafter, the Madrasha authority had to take some time to arrange the minimum expenses for filing a revisional application before the Hon'ble High Court Division of the Supreme Court of Bangladesh and after arranging the minimum expense, the petitioners came to Dhaka on 10.08.2019 to meet with their learned Advocate Mohammad Siddique Ullah Miah who upon perusal of the case records found that there has been few days delay in preferring revisional application and the learned Advocate also advised him that it is the discretion of the Hon'ble Court to condone the delay and thereafter, the petitioner handed over the brief to the learned Advocate to prepare a revisional application and the learned Advocate for the petitioner within a very reasonable time prepared this revisional application and in the meantime, the delay of 198 days has been occurred. In the meantime, the

delay of 198 days has been occurred in filing this civil revisional application.

Now, let us examine some of the decisions regarding condonation of delay. It has been held in the case of Victory Wall Development Ltd. Vs. Islami Bank Bangladesh Ltd. reported in 1 BLC (HCD) 540 that “The petitioner has been able to explain the delay and to show sufficient cause in filing the appeal and, as such, the application under section 5 of the Limitation Act is allowed and the delay in filing the appeal is condoned.”

Further, in the case of Abul Kalam Azad Vs. Government of Bangladesh, reported in 11MLR(AD)42, by our Apex Court it has been held that-

“Section-5- Condonation of delay is discretion of the Court- High Court Division condoned delay of 201 days in filing the revision considering the circumstances explained. Condonation of delay is discretion of the Court. When such discretion is exercised properly upon considering the causes of delay explained by the petitioner, the apex court found nothing wrong warranting interference therewith. Condonation of delay is a matter of discretion of the Court. Since the High Court Division after consideration of all the facts and materials exercised its discretion, we do not find any reason to interfere with the judgment of the High Court Division.”

In the present case, the said delay of 198 days is unintentional and beyond the control of the defendant-petitioners. In my opinion, for that reasons the petitioners should not suffer.

Considering the above facts and circumstances along with the statement of the application filed under section 5 of the Limitation Act for condonation of delay, stating the cause of delay in the application, in the interest of justice it will not be fair to deprive the petitioners from the right of filing this Civil Revisional Application.

In the above discussions, I find substance in the submissions of the learned Advocate for the petitioners.

The petitioners have rightfully stated the cause of delay of filing the Civil Revisional Application which seems to be reasonable and sufficient.

Considering the aforesaid facts and circumstances of the case, I find merit in the Rule.

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

The delay of 198 days is hereby condoned.

The petitioners are hereby directed to place the Civil Revisional Application before an appropriate Bench for hearing as early as possible.

*Md. Anamul Hoque Parvej*  
*Bench Officer*