

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

Present:

Mr. Justice Zafar Ahmed

Civil Revision No. 103 of 2022

Md. Ibrahim Molla and others

...Defendant-respondent-petitioners

-Versus-

Md. Ershad Ali and others

...Plaintiff-appellant-opposite Parties

Mr. Md. Shahadat Tanveer Amin, Advocate

...For the petitioners

Mr. Subrata Kumar Kundu, Advocate

.....For the opposite parties

Heard on: 11.11.2024

Judgment on: 12.11.2024

In the instant revisional application filed under Section 115(1) of the Code of Civil Procedure (CPC) at the instance of the defendant-petitioners, this Court on 23.01.2022 issued a Rule calling upon the plaintiff-opposite parties to show cause as to why the judgment and order dated 16.09.2021 passed by the learned Additional District Judge, Natore in Miscellaneous Appeal No. 88 of 2019 allowing the same and restoring the Other Class Suit No. 136 of 2008 to its original file and number upon reversing the judgment and order dated 07.11.2019 passed by the learned Assistant Judge, Gurudaspur, Natore in Miscellaneous Case No. 09 of 2015 should not be set aside.

Plaintiffs-opposite party Nos. 1-4 have entered appearance in the Rule.

The present opposite parties as plaintiff filed suit for declaration and permanent injunction being Other Class Suit No. 136 of 2008 in the Court of Assistant Judge, Gurudashpur, Natore impleading the present petitioners as defendants. The defendants filed written statement in the suit. 04.02.2015 was fixed for pre-emptory hearing (P.H.). The plaintiffs filed an application for adjournment of the hearing on the ground that their engaged lawyer was absent in the Court due to hartal. The defendants filed hajira. When the suit was called for hearing none appeared for the plaintiffs. The trial Court rejected the plaintiffs' application for adjournment and dismissed the suit under Order IX rule 8 of the CPC on 04.02.2015. Thereafter, on 28.05.2015 the plaintiffs filed an application for restoration of the suit under Order IX rule 9 along with an application for condonation of delay of 113 days in filing the said application for restoration. The application for restoration gave rise to Miscellaneous Case No. 9 of 2015. The defendants contested the miscellaneous case by filing a written objection. Both the parties examined witnesses in support of their respective cases. The trial Court dismissed the miscellaneous case on 07.11.2019. The plaintiffs filed Miscellaneous Appeal No. 88 of 2019 which was heard and disposed of by the learned Additional District Judge, Natore, who, vide judgment and order dated

16.09.2021 allowed the miscellaneous appeal and restored the suit to its original file and number. Challenging the same, the defendants have preferred the instant revision and obtained the Rule.

While dismissing the suit for non-appearance of the plaintiff under Order IX rule 8 of the CPC the trial Court observed:

“On perusal of the record, it is also found that this miscellaneous petition seeking for setting aside the dismissal order is barred by limitation consuming 113 days. The plaintiff-petitioners had not been able to satisfy the court why such suit is barred by limitation in respect of 113 days. It is the settled principle of law, to condone delay, every day must be explained by sufficient reasons on which ground it is to be delayed. The PTW-1 merely deposed in examination-in-chief that দরখাস্ত শুনানী না করেও আদালত মামলাটি নামঞ্জুর করে। পরে আমি ০১/০৩/১৫ইং তারিখে আদালতে গমন করার সময় দুর্ঘটনায় নিপতিত হলে আমার চিকিৎসার জন্য বেড রেস্টে থাকি।

While he was crossed he said that, ০১/০৩/১৫ইং তারিখে আমি দুর্ঘটনায় পড়ি; এ সংক্রান্ত কোন ডাক্তারী সার্টিফিকেট আমি আদালতে জমা দেয়নি।

On perusal of the plaint in original suit No. 136 of 2008, it is found that there were more three plaintiffs except the petitioner No. 01, Md. Ershad Ali. They could take necessary step in lieu of plaintiff No. 01 as he fell in sick. But they didn't do so. On perusal of the record, it is also found that prior to dismissal order the plaintiff-petitioner took time for PH on 25/11/14. If we go through the

OPWs, they testified that the petitioner No. 01 never felled into sick. The OPW-02 said in his examination in chief that দরখাস্তকারী বলছিল যে, আমার আজকে মামলার ডেট ছিল। আমি যেতে পারলাম না।

The petitioner side could not find anything contradictory from the cross examination of that witness. Therefore, I am of the view that the petitioners' claim is not proved here. Moreso, it is also in my opinion that this very application is to prolong justice.

Under the discussions made above, I am of view that the petitioners are not entitled to get relief'.

The appellate Court below, on the other hand, allowed the miscellaneous appeal holding as follows:

“নথি পর্যালোচনায় দেখা যায় বিজ্ঞ বিচারিক আদালত ইং ০৪.০২.২০১৫ তারিখে দরখাস্তকারী তথা বাদীপক্ষের বিজ্ঞ কৌশলী কর্তৃক সময়ের আবেদন শুনানী না করায় উক্ত দরখাস্ত নামঞ্জুর করেছেন এবং একই সাথে বাদী আদালতে হাজির নাই মর্মে ফাইন্ডিংস প্রদান করেছেন। যদিও বাদীপক্ষে দাখিলকৃত দরখাস্তের বক্তব্যমতেই উক্ত তারিখে হরতালের কারণে যানবাহন চলাচল না করায় বাদীপক্ষে তদ্বিরকারক তথা ১নং দরখাস্তকারী মোঃ এরশাদ আলী আদালতে উপস্থিত হতে ব্যর্থ হন। সুতরাং এক্ষেত্রে সময়ের আবেদন নামঞ্জুরক্রমে সেখানে বাদীর পদক্ষেপ গ্রহণের কোন সুযোগ ছিল না। তাছাড়া বিজ্ঞ বিচারিক আদালত বাদীপক্ষে আনীত সময়ের আবেদন নামঞ্জুরকরতঃ বাদীপক্ষকে পদক্ষেপ গ্রহণের কোন নির্দেশ প্রদান করেন নাই। সুতরাং এক্ষেত্রে শুধুমাত্র নিয়োজিত কৌশলীর অবহেলার কারণে মামলাটি ক্ষতিগ্রস্ত হয়েছে সেটি মূল মামলার তর্কিত আদেশ দৃষ্টে পরিলক্ষিত হয়। তাছাড়া মিস-০৯/২০১৫ নং মামলার ১নং দরখাস্তকারী নিজ ও উক্ত পক্ষের ২নং সাক্ষীর সাক্ষ্য দ্বারা ২০১৫ ইং সনের মার্চ মাসে দুর্ঘটনায় পরে মাজায় ব্যথা পাওয়া ও শয্যাশায়ী থাকার দাবী প্রমাণে সমর্থ হওয়া সত্ত্বেও বিজ্ঞ বিচারিক আদালত

তর্কিত রায়ে মিস মামলাটি নামঞ্জুরকরতঃ আইনগত ও তথ্যগত ত্রুটি করেছেন
বিধায় তর্কিত রাও ও আদেশটি হস্তক্ষেপযোগ্য উল্লেখ্য অত্র মিস আপীলটি
মঞ্জুরযোগ্য।

বিধায় অত্র মিস আপীলটি এতদ্বারা কৃতকার্য হয়”।

The learned Advocate appearing for the defendant- petitioners submits that the trial Court categorically observed that the plaintiff No. 1 could not prove his illness preventing him from filing the miscellaneous case within the stipulated period of 30 days. The learned Advocate points out that the plaintiff No. 1 had knowledge about the date of the original suit which was fixed for pre-emptory hearing (P.H.). The learned Advocate submits that since the plaintiffs failed to satisfy that there was sufficient cause preventing them from preferring the miscellaneous case, the trial Court rightly rejected the miscellaneous case on ground of delay of 113 days in filing the miscellaneous case. In support of the argument, the learned Advocate refers to the case of *Enayet Hossain vs. Nur Islam Howlader and others*, 12 BLC (AD) 179.

The above-mentioned reported case arose out of a miscellaneous case filed under Order IX rule 13 of the CPC to set aside an *ex parte* judgment and decree. The miscellaneous case was filed after 21 years of passing of the *ex parte* decree. The case was rejected on ground of limitation which was upheld up to the apex

Court. Facts and circumstances of the reported case have no manner of application in the case in hand.

The learned Advocate appearing for the plaintiff-opposite parties, on the other hand, refers to the cases reported in 37 DLR 304, 1986 BLD Vol. VI 152, 58 DLR 277 and 16 BLT 132 and submits that the expression “sufficient cause” appearing in Order IX rule 9 of the CPC has been construed liberally which the appellate Court below has rightly followed and applied in the attending facts and circumstances of the case in hand.

I have heard the learned Advocates of both sides and perused the materials on record.

It appears from the cases cited by the learned Advocate of the plaintiff-opposite parties that “sufficient cause” mentioned in Order IX rule 9 has been consistently construed liberally by the Courts. For example, boycott by the local Bar of the Court, delay in coming to the Court due to traffic jam in the rush hour, absence of Counsel and laches and negligence of the Counsel have been held to be sufficient cause under Order IX rule 9. In my view, the trial Court took a rigid approach in the matter of delay of 113 days in filing the miscellaneous case under Order IX rule 9 of the CPC. The approach taken by the appellate Court below in the matter is consistent with the views taken by the higher Courts. Therefore, I find no reason to interfere with the

findings and decision of the appellate Court below. Therefore, the Rule fails.

In the result, the Rule is discharged. The judgment and order dated 16.09.2021 passed by the learned Additional District Judge, Natore in Miscellaneous Appeal No. 88 of 2019 is affirmed.