

**District: Chandpur**

**In the Supreme Court of Bangladesh  
High Court Division  
(Civil Revisional Jurisdiction)**

**Present:-**

**Mr. Justice Md. Zakir Hossain**

**Civil Revision No. 2171 of 2021**

A. Rashid Mezi being dead his legal heirs:  
Maleka Bibi and others

..... Contesting Defendants  
Appellant-Petitioners

-Versus-

Golam Hossain Mezi being dead his legal  
heirs: Shorupa Khatun and others

.....Plaintiff-Respondent-Opposite Parties

Mr. Md. Ershad Ali Gazi, Advocate

..... For the petitioners

Mr. Abdur Razzak, Advocate

...For the opposite parties

**Heard On:11.07.2023**

**Judgment On: 08.11.2023**

**Md. Zakir Hossain, J:**

At the instance of the petitioners, the Rule was issued by this  
Court with the following terms:

*“Records need not be called for.*

*Let a Rule be issued calling upon the opposite  
party Nos. 1(ka)-1(chha)/2 to show cause as to  
why the impugned order dated 01.09.2021 passed  
by the learned District Judge, Chandpur in Title  
Appeal 20 of 2021 rejecting an application under  
Section 5 of the Limitation Act, 1908 filed by the  
petitioners for condonation of delay for 1264 days  
in filing appeal and thereby dismissing the appeal  
summarily should not be set aside and/or such*

*other or further order or orders passed as to this Court may seem fit and proper.”*

Facts leading to the issuance of the Rule are *inter alia* that the predecessor of the present opposite Nos. 1(Ka) to 1(Chha) and others constituted Title Suit No. 196 of 1986 before the Court of the learned Sub-Judge (presently Joint District Judge, First Court), Chandpur impleading the petitioners as the defendants for partition and allocation of separate saham. After conclusion of the hearing, the learned Joint District Judge was pleased to decree the suit allocating separate *saham* in favour of the plaintiff-opposite parties. Challenging the legality and propriety of the judgment and order of the learned Joint District Judge, the defendant preferred Title Appeal No. 20 of 2021 before the Court of the learned District Judge, Chandpur. There was a delay of 1264 days in preferring the appeal and after hearing the same, the learned District Judge was pleased to dismiss the appeal summarily as being barred by limitation. Impugning the judgment and order of the learned District Judge dated 01.09.2021; the petitioners moved this Court and obtained the aforesaid Rule.

Heard the submissions advanced by the learned Advocates of the parties and considered the materials on record with due care and attention and seriousness as they deserve and the convoluted question of law embroiled in this has meticulously been waded through in order to reach a just decision.

It appears from the materials on record that the learned District Judge dismissed the appeal summarily holding the view that the appellant failed to explain the cause of delay sufficiently and therefore, dismissed the appeal summarily. In this respect, the relevant portion of the judgment and order of the learned District Judge may be read as follows:

“দেখলাম। আপীলের মেমোসহ সংশ্লিষ্ট কাগজাত পর্যালোচনা করলাম। পর্যালোচনায় দেখা যায় যে, বিবাদী/আপীলেন্টপক্ষ বিজ্ঞ যুগ্ম জেলা জজ, ১ম আদালত, চাঁদপুর এর দেওয়ানী-১৯৬/১৯৮৬ মোকদ্দমার বিগত ২১/০৮/২০১৭ খ্রিঃ তারিখের রায় ও একই তারিখের ডিক্রীর অসম্মতিতে ১২৬৪ দিনের তামাদিতে অত্র দেওয়ানী আপীল মোকদ্দমাটি আনয়ন করেন। বিবাদী/আপীলেন্টপক্ষ উক্ত ১২৬৪ দিনের তামাদি মওকুফের প্রার্থনায় হলফনামাসহ তামাদি আইনের ৫ ধারার বিধানমতে দরখাস্ত দাখিল করেন। তামাদির দরখাস্ত পর্যালোচনায় দেখা যায়, বিবাদী/আপীলেন্টপক্ষ তামাদির দরখাস্তে উল্লেখ করেন, মহামারী করোনা ভাইরাস (কোভিড/১৯) এর প্রাদূর্ভাব ও বিবাদী/আপীলেন্টপক্ষে তদবীরকারক সামঞ্জস্য হক মিজি এর শারীরিক অসুস্থতাজনিত কারণে রায় ও ডিক্রীর নকল সংগ্রহ করতে ১২৬৪ দিন বিলম্ব হয়। উক্ত মোকদ্দমার রায় ডিক্রি হয় বিগত ২১/০৮/২০১৭ খ্রিঃ তারিখে। মহামারী করোনা ভাইরাসের কারণে আদালত বন্ধ হয় ২৬/০৩/২০২০ খ্রিঃ তারিখে। আপীলকারী তদবীরকারক শারীরিকভাবে অসুস্থ ছিল বিগত ১৩/০৮/২০২০ খ্রিঃ তারিখ হতে ৩১/০১/২০২১ খ্রিঃ তারিখ পর্যন্ত। রায় ও ডিক্রি প্রচারের তারিখ অর্থাৎ ২১/০৮/২০১৭ খ্রিঃ তারিখ থেকে ২৬/০৩/২০২১ খ্রিঃ তারিখ পর্যন্ত দীর্ঘ সময়ে বিলম্বের কোন ব্যাখ্যা বা প্রমানক আপীলকারী পক্ষে উপস্থাপন করা হয়নি।”

On perusal of the application, I am of the view that the petitioners under Paragraph Nos. 5-7 explained the cause of delay sufficiently and reasonably. But the learned District Judge without considering the facts and circumstances of the case and devastating effect of ‘Corona Virus’ most illegally dismissed the appeal summarily; therefore, the defendant-

petitioners failed to challenge the legality and chastity of the judgment and order of the Trial Court by way of appeal.

In the case of *Sonar Bangla Service Station v. Government of Bangladesh and others*, reported in 16 BLT(AD) (2008) 99, it was held:

*“Though the uniform view of the Courts of the subcontinent is that in the matter of condonation of delay Government does not enjoy any special privilege or will not have special latitude or that in the matter of condonation of delay Government and private party would be accorded same treatment or that as litigant the Government and the ordinary litigant stand on the same footing, yet when on the part of the Government there has been no gross negligence in prosecuting the matter or there has been "special circumstances" because of which delay occurred or that particularly the process through which decision is made by the Government for filing appeal/revision and the same is considered "appropriate circumstances", or that as the government represents the "collective cause of the community" or that the delay is not deliberate and the explanation offered reasonable or when in the decision process file does not move through stage(s) which has nothing to do in the matter of decision making, or the file was not referred to functionaries who were nobody in the decision making process or that non-hearing of the matter on the ground of limitation would unjustly benefit the party who apparently appears to have manipulated the functionaries of the Government to waste time in the decision making*

*process in bringing the matter before the Court for adjudication on merit or when the necessity or justification or reasonableness of hearing the matter on merit would outweigh the hardship to other side in case of condonation, the prayer from the said of the Government for condonation of delay has been considered with somewhat leniency, but not in the absence of reasonable or close to satisfactory explanation for the delay caused.”*

In the case of *Government of Bangladesh v. Hasrat Mohani and others*, reported in 14 BLT(AD) (2006) 123, the Government preferred appeal which was out of time by 4578 days and the Appellate Division allowed the appeal with the following observation:

*“It appears that the appellant explained the delay for filing the appeal offering sufficient reasons for the delay which were beyond control of the appellant and as such the Lower Appellate Court condoned the delay. The High Court Division on the other hand passed the impugned judgment and order without considering the cogent grounds assigned by the appellant and thus committed error in the decision. In view of the discussion made above we find substance in this appeal. The appeal is, therefore, allowed without any order as to costs.”*

Having regard to the facts and circumstances of the case, I am of the view that the Rule has got substance and it deserves to be made

absolute and the impugned judgment and order of the learned District Judge is liable to be turned down to secure the ends of justice.

In the result, the Rule is made absolute, however, without passing any order as to costs. The impugned judgment and order passed by the learned District Judge is hereby set aside and the petition for condonation of delay is allowed and accordingly, the learned District Judge is directed to admit the appeal and shall dispose of the same on merit within 06 (six) months from the date of receipt of the copy of this judgment positively. No unnecessary adjournment petition shall be entertained from either side.

Let a copy of this judgment be sent down to the Courts below at once.

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**(Md. Zakir Hossain, J)**

*Naser.*  
*P.O*