

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

Civil Rule No. 377 (con)/2023

IN THE MATTER OF

Md. Mohar Ali

.....Defendant-Appellant-Petitioner

-Versus-

1. Md. Nuruzzaman Khan and another

.....Plaintiffs-Respondents-Opposite parties

2. Md. Ebad Ullah and others

.....Pro-forma defendants-Respondents
Opposite parties

No one appears

....For the petitioner

Mr. Shofiul Alam Mahmood with

Mr. Mohammad Kaiser Zahid Bhuiyan, Advocates

.....For opposite party Nos. 1-2

Heard on 17.10.23, 18.10.23 and judgment passed on 19.10.2023

Present:

Mr. Justice Kazi Md. Ejarul Haque Akondo

Kazi Md. Ejarul Haque Akondo, J.

This Rule, upon an application under section 5 of the Limitation Act, 1908, at the instance of the petitioner, was issued calling upon opposite party Nos. 1 and 2 to show cause as to why the delay of 1077 days in filing the revisional application under section 115(1) of the Code of Civil procedure against the order dated

02.02.2020 passed by the learned District Judge, Dhaka in Title Appeal No. 367 of 2019 rejecting the appeal on the ground of limitation and thereby affirmed the judgment and decree dated 01.01.2018 passed by the learned Senior Assistant Judge, 9th Court, Savar, Dhaka in Title Suit No. 73 of 2009 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.

The present petitioner filed the instant application for condonation of delay along with a civil revision before this Court against the order dated 02.02.2020 passed by the learned District Judge, Dhaka in Title Appeal No. 367 of 2019 rejecting the petition for condonation of delay and thereby disallowed the appeal by affirming the judgment and decree dated 01.01.2018 passed by the learned Senior Assistant Judge, 9th Court, Savar, Dhaka in Title Suit No. 73 of 2009 decreeing the suit.

It has been stated that the learned District Judge, Dhaka passed the impugned order on 02.02.2010 in Title Appeal No. 367 of 2018 but the petitioner could not understand the consequence of the said order and was not properly advised by his engaged

Advocate or any other person about taking steps against the said order. Moreover, the petitioner due to financial hardship could not take any steps in due time. Thereafter, the petitioner somehow managed to collect some money from well-wishers and relatives and was preparing to file a civil revision but then due to COVID-19 Courts were not functioning normally which continued till 2022. Subsequently, the petitioners managed some money on 03.04.2023 and applied for certified copies of the relevant papers on 03.04.2023 and got the same on 06.04.2023 and handed over those papers to his learned Advocate, who thereafter prepared the civil revision and thereby caused a delay of 1077 days without any willful laches on the part of the petitioner for which he begs apology and prayed for condonation of the delay, otherwise; the petitioner will be prejudiced and will suffer irreparable loss and injury.

But at the time of hearing of the Rule, the learned Advocate for the petitioner did not appear before the Court to press the Rule.

Conversely, Mr. Shofiul Alam Mahmood, the learned Advocate appearing with Mr. Mhammad Kaiser Zahid Bhuiyan, Advocate on behalf of plaintiffs-opposite party Nos. 1 and 2 by filing a counter

affidavit submits that the petitioner by suppressing the facts filed the instant civil revision before this Court along with an application for condonation of delay. The petitioner before filing the instant revisional application earlier filed Civil Revision No. 1889 of 2020 before this Court against the self-same order dated 02.02.2020 passed by the learned District Judge, Dhaka in Title Appeal No. 367 of 2019, and obtained a Rule thereon but did not submit requisite for service of notice upon the opposite parties, and as such, on 10.06.2021, the office concerned gave a note to that effect. Thereafter, on 01.12.2021 this Court allowed 08(eight) weeks to comply with the office note dated 10.06.2021, failing which the Rule shall stand discharged. However, the petitioner did not comply with the said order of this Court as a result Civil Revision No. 1889 of 2020 was dismissed for default vide office note dated 30.08.2022.

Heard the learned Advocate for the opposite parties and perused the materials on record. It appears that the present petitioner before filing the instant civil revision filed another Civil Revision No. 1889 of 2020 before this Court against the self-same order dated 02.02.2022 which was discharged for default vide office

note dated 30.08.2022 according to the order of this Court dated 01.12.2021. But the petitioner suppressing those facts filed the instant civil revision along with the application for condonation of delay and thereby committed fraud upon the Court.

Given the above, I find substance in the submissions made by the learned Advocate for the opposite parties, while I do not find any merit in the Rule and accordingly, the Rule fails.

As a result, the Rule is discharged without cost.

Communicate the judgment at once.

(TUHIN BO)