

Bench:

Mr. Justice Bhishmadev Chakrabortty

Civil Revision No. 567(con) of 2022

Government of Bangladesh and others

..... petitioners

-Versus-

Ahammad Ali and others opposite parties

Ms. Rahima Khatun, Deputy Attorney General
with Mr. Ruhul Amin, Ms. Shahla Sharafat
Nazad and Ms. Farida Parvin, Assistant
Attorney Generals for the petitioners

Mr. Md. Mesbahul Islam Asif, Advocate

..... for the opposite parties

Judgment on 06.06.2024

Bhishmadev Chakrabortty, J:

This rule was issued calling upon the opposite parties to show cause as to why the delay of 3299 days in filing the revisional application against the judgment and order of the District Judge, Gazipur passed on 16.06.2011 in Title Appeal No. 85 of 2011 dismissing the appeal being barred by limitation should not be condoned and/or such other or further order or orders passed to this Court may seem fit and proper.

Facts relevant for disposal of the rule, in brief, are that opposite parties 1-5 as plaintiffs instituted Title Suit No. 121 of 1999 in the Court of Assistant Judge, Shreepur, Gazipur for declaration of title in the suit land measuring an area of 1.66 acres as described in the schedule to the plaint. In the plaint they stated that Tonai Sheikh,

Fazar Ali Sheikh and Ayub Sheikh were the recorded tenants of the suit land. Tonai died leaving his 3 sons Hasen, Hossain and Abdul. Abdul sold out .70 acres through a *kabala* dated 08.01.1955 to plaintiffs 1-3 and handed over possession thereof. Mahar Ali died leaving his father and mother as heirs. Fazar Ali died leaving his only daughter Meherjan who sold her share to Soude Ali and Sujjad Ali. Nayeb Ali died leaving behind his son Nazar Ali who got 2.61 acres as heir and .1166 acres from his son Mohar Ali, i.e., in total 2.72 acres. He died leaving behind his wife Monisa Nessa daughter Helena and plaintiffs 1-4 with 6 sons. Ahmed Ali sold out .0525 acres on 09.04.1996 to plaintiff 5. Nazar Ali during his life time sold some land to Helena and Monisa on 16.09.1989 and further gifted .28 acres to Mirza Ali and Mojibor Rahman through a *heba*. Shamsar Ali sold .07 acres through a *kabala* dated 04.01.1992 to Mojibor and the latter sold the same to plaintiff 3 on 04.10.1994 and handed over possession thereof. Mojibor further gifted .14 acres to plaintiffs 3 and 4 on 19.01.1991. Shamsar Ali sold .105 acres on 05.03.1976 to plaintiff 1 and handed over possession. Helena sold .0975 acres on 22.11.1994 to plaintiff 4. SA khatian was correctly prepared in the name of Nazar Ali. The plaintiffs are in possession of the suit land measuring 1.66 acres. They went to pay rent to the *tahshil* office on 13.10.1999 but the tahshildar refused to accept it showing reason of preparing record in the name of government. The above record of rights clouded the

title of the plaintiffs over the suit land. Hence the suit for declaration that RS record prepared in the name of government is erroneous.

Defendant 2 government contested the suit by filing written statement. They contended that the suit has been filed on false statements, it is bad for defect of parties and not maintainable in the present form. They further stated that CS record was prepared in the name of Tonai Sheikh and others and SA record was prepared in the name of Nayeb Ali and others in respect of khatians 451 and 456. The land of SA khatian 150 was recorded in RS plot 977, 987, 984, 986, 902, 911, 1999, 1022, 1012, 1017, 902 and 903 in the name of the government. The above recent record has been correctly prepared and as such the suit would be dismissed.

The trial Court framed 5 issues to adjudicate the matter in dispute. During trial the plaintiffs examined 4 witnesses and produced their documents as exhibits 1-4 while the defendants government examined 1 but produced no document in support of their claim. However the Assistant Judge, Shreepur, Gazipur by the judgment dated 28.11.2000 decreed the suit declaring plaintiffs' title in the suit land. The Court further declared that RS record prepared in the name of the government is erroneous. Being aggrieved by the aforesaid judgment and decree the defendants preferred appeal before the District Judge. Gazipur bearing Number 85 of 2011 with an application for condonation of delay of 3700 days. Learned District

Judge kept the appeal for admission hearing. Subsequently upon hearing he rejected the application for condonation of delay by the judgment and order passed on 16.06.2011 and refused to admit the appeal being barred by limitation. Being aggrieved by the defendant-appellants moved in this Court in a revisional application with an application under section 5 of the Limitation Act for condonation of delay of 3299 days upon which this Rule was issued.

Ms. Rahima Khatun, learned Deputy Attorney General takes me through the revisional application, the application for condonation of delay and the supplementary affidavit filed on 03.06.2024. She then refers to the cases of Government of the People's Republic of Bangladesh, represented by the Divisional Forest Officer, Mymensingh Forest Division vs. Abdur Sobhan and others, 73 DLR (AD) 1; Government of Bangladesh represented by the Deputy Commissioner, Rangpur vs. Hasrat Mohani and others, 2 (ADC) 715; Khairullah (Md) vs. ADC (Revenue) and another, 54 DLR (AD) 13 and Divisional Forest Officer, Village 12, Mohakhali, Dhaka and another vs. Md. Abdul Hossen @ Amir Hossen and others, 66 DLR 661 and submits that although the delay in this case is inordinate but in the application for condonation of delay and in the supplementary affidavit sufficient reason for it has been shown. The government has to move through different organs for taking opinion in filing revision and for that reason delay occurred. In the cited cases our apex Court

expressed of taking lenient view in disposing an application filed by the government for condonation of delay. In this case if the facts and circumstances narrated in the application is considered the delay may be condoned to secure the ends of justice. She takes me through the judgment passed by the trial Court and submits that the suit in the present form was not maintainable and as such no decree can be passed in it. Admittedly, the suit land has been recorded in the name of the government as *khas*. In view of the *ratio* laid in the aforesaid cases, the delay may be condoned giving a chance to the petitioners to hear the appeal on merit. The rule, therefore, would be made absolute.

Mr. Md. Mesbahul Islam Asif, learned Advocate for the opposite parties on the other hand opposes the rule by filing counter affidavit. In the counter affidavit dated 05.06.2024 he denied the facts stated in paragraph 4 of the supplementary affidavit filed by the petitioners and submits that although reason for delay has been explained in a casual way from 2017 to 2020 but there is no explanation in respect of the delay from 16.06.2011 to 2017. Since no explanation for the delay of above 6 years is given there is no scope to condone the delay as prayed for. He refers to the cases of government of the People's Republic of Bangladesh and another vs. Abdul Gafur Pramanik and others, 14 BLD (AD) 234 and the Additional Deputy Commissioner (Revenue) and Assistant Custodian Vested Property, Sirajganj vs. Md. Abdul Majid and others, 2 BLC (AD) 11 and

submits that as the petitioner did not offer any explanation for six years and for the other days the explanation is not satisfactory, the inordinate delay of 3299 days may not be condoned. The rule, therefore, having no merit would be discharged.

I have considered the submissions of both the sides, the application for condonation of delay, the supplementary affidavit, the counter affidavit, the other materials on record and the *ratio* of the cases cited by the parties.

It appears that the opposite parties to this rule instituted the original suit praying for declaration of title and for further declaration that the RS record prepared in name of the government is erroneous. The petitioners government contested the suit by filing written statement and examined a witness on their behalf. However, the trial Court decreed the suit on contest by its judgment and decree passed on 28.11.2000. After long lapse of 3700 days of the period of limitation the defendant government filed an appeal before the District Judge, Gazipur with an application under section 5 of the Limitation Act to condone the delay of 3700 days. In the application for condonation of delay the appellants had assigned reason only that when the plaintiffs filed application for correction of the record of rights then they came to learn about the judgment and decree passed by the Assistant Judge and as such the delay occurred. The District Judge found the explanation offered by the petitioners not satisfactory,

rejected the application for condonation of delay and consequently refused to admit the appeal being barred by limitation which has been challenged in the revisional application.

In this Court the Government filed the revisional application out of time by 3299 days. The petitioners filed an application under section 5 of the Limitation Act upon which this rule has been issued. On going through the application for condonation of delay I find that practically no definite explanation for delay has been assigned therein. The application has been drafted very callously. The petitioners subsequently filed a supplementary affidavit wherein some explanation about the delay is found. In the statement made therein it is found that the appointed Government Pleader (GP) did not take any initiative for getting the certified copy of the impugned appellate judgment and order. After his death a new GP was appointed on 04.09.2017 who took steps to get the certified copies. However, I do not find the explanation satisfactory for the delay from passing the order by the appellate Court on 16.06.2011 till 04.09.2017. Furthermore, it is found that the copy of relevant papers were sent to the Attorney General Office on 21.01.2019 and the concerned Assistant Attorney General was assigned the file on 29.01.2020 and no explanation was given for those days. The affidavit was sworn on 23.09.2020 and the revisional application was filed. But the application was moved in this Court on 14.08.2022. There is no

explanation about the delay from 23.09.2020 to 14.08.2022. Although the Government enjoys some sorts of premium in condoning delay in filing revision as per the *ratio* laid in the cases referred to by the learned Deputy Attorney General but here the delay is inordinate and unexplained and as such I find no scope to take any lenient view.

Learned Deputy Attorney General tried to convince me making submission on the merit of the case, i.e., the legality and propriety of the judgment and decree passed by the Assistant Judge in which the suit has been decreed. Although it is difficult for me to visit the judgment of the trial Court in a rule issued on condonation of delay but on his argument I have gone through it. On perusal of the judgment I find that the plaintiffs proved the case, moreover although the defendant government filed written statement denying the facts of the plaint but their witness DW 1 admitted title and possession of the plaintiffs in the suit land and thus the case is found to be well proved. Therefore, the submission of the learned Deputy Attorney General on that score bears no merit also.

On perusal of the application for condonation of delay filed in the lower appellate Court as well the application in this Court, I find conduct of the petitioners very shocking. They filed the appeal before the District Judge after 3700 days of limitation and here after 3299 days without proper and satisfactory explanation. I find deliberate laches on petitioners' part in presenting the appeal before the District

Judge as well as filing of revisional application in this Court. Such kind of deliberate laches of any person or of the Government cannot be encouraged by condoning the delay. Therefore, I am not inclined to exercise my discretion in this case. The *ratio* of the cases reported in 2 BLC (AD) 11 and 14 BLD (AD) 234 as referred to by Mr. Asif is found befitting here. The cases as referred to by the learned Deputy Attorney General are quite distinguishable with the present one because in all those cases the delay was explained and there was no delay in presenting the appeal before lower appellate Court. But, here the petitioners delayed in both the Courts which are inordinate and without reasonable and satisfactory explanation.

In view the discussion made hereinabove, I find no merit in this rule. Accordingly the rule is discharged. No order as to costs.

Communicate this judgment and order to the Courts concerned.