

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Civil Revisional Jurisdiction)

Present

Madam Justice Kashefa Hussain

Civil Revision No. 3288 of 2022

Md. Alamgir Hossain

.....petitioner

-Versus-

Most. Rani Begum and another

----- Opposite parties

Mr. Md. Mezanur Rahman, Advocate

----- For the petitioner

Mr. Md. Zobaidur Rahman, Advocate

----- For the Opposite Parties

Heard on: 30.05.2023, 13.06.2023,
09.07.2023 and

Judgment on 18.07.2023

Rule was issued calling upon the opposite parties to show cause as to why the Judgment and order dated 21.07.2022 passed by the learned District Judge, Thakurgaon in Review Miscellaneous Case No. 03 of 2022 rejected the case filed under order XLVII Rule 1 of the Code of Civil Procedure for reviewing the order dated 24.05.2022 passed in Family Appeal No. 08 of 2022 dismissing the appeal on the ground of limitation and affirming the judgment and decree dated 28.02.2022 (decree being drawn up on 07.03.2022) passed by the learned Judge, in charge, in Family Court, Sadar Thakurgaon, in Family Suit No. 29 of 2013 decreeing the suit should not be set aside and or pass such other or further order or orders as to this court may seem fit and proper.

The instant opposite parties as plaintiff No. 1 and 2 filed Family Suit No. 29 of 2013 in Family Court, Sadar Thakurgaon for dower and maintenance impleading the instant petitioner husband as defendant in the suit. The trial court upon hearing the parties, taking depositions, adducing evidences and framing issues etc. allowed the suit by its judgment and decree dated 28.02.2022. Being aggrieved by the judgment and decree of the trial court the defendant husband filed Family Appeal No. 08 of 2022 along with an application for condonation of delay of 44 days in filing the appeal which was heard by the learned District Judge, Thakurgaon. Upon hearing the appeal the Appellate Court by its judgment and order dated 24.05.2022 dismissed the appeal summarily on the ground of limitation. Therefore the defendant appellant husband filed an application under Order 47 Rule 1 of the Code of Civil Procedure for reviewing the order dated 24.05.2022 and which review petition was registered as Review Miscellaneous Case No. 03 of 2022. The appellate court however rejected the Review Miscellaneous case No. 3 of 2022 which was filed under Order 47 Rule 1 of the Code of Civil Procedure by the defendant husband petitioner here.

Being aggrieved by the judgment and order of the appellate court the defendant appellant husband as petitioner filed a civil revisional application which is instantly before this bench for disposal.

Learned Advocate Mr. Md. Mezanur Rahman appeared for the petitioner husband while learned Advocate Mr. Md. Zobaidur Rahman represented the plaintiffs opposite parties wife and minor son.

Learned advocate for the petitioner submits that both courts below upon both factual and legal issues unjustly allowed the suit and ultimately the appellate court unjustly and most unlawfully dismissed the appeal summarily and moreover also unlawfully dismissed the Review Miscellaneous Case filed by the petitioner. On the factual issues he argues that although the petitioner paid the dowry and which is clear by way of the affidavit but however the courts below upon wrong misappraisal of facts and upon wrong findings caused serious injustice to the petitioner. He next submits that the appellate court most unjustly dismissed the appeal summarily on ground of limitation of only 44 days. He submits that the delay in filing the appeal of 44 days was not due to any deliberate latches but due to inadvertence and other unavoidable circumstances. He submits that it is clear from the records that pursuant to the summary dismissal of appeal the petitioner also filed a review petition which was dismissed unjustly. He submits that therefore the courts below caused serious injustice to the interest of the petitioner and those judgments ought to be set aside and the Rule bears merit and ought to be made absolute for ends of justice.

On the other hand learned advocate Mr. Md. Zobaidur Rahman vehemently opposes the Rule. On the factual issues he submits that the courts below upon proper appraisal came upon correct finding since the petitioner did not pay any dower or maintenance to the wife. He argues that although the petitioner claims that he granted that divorce notice was issued to the wife but however the courts below correctly found upon examining the notary public and also correctly found from the evidences that the divorce was ultimately revoked. He next controverts on the issue of the appellate court rejecting the appeal summarily including rejecting the review miscellaneous case. He submits that the appellate court correctly rejected the appeal summarily on ground of delay since the provisions of Limitation Act does not allow filing of any appeal or suit whatsoever beyond the prescribed time. On the issue of the review miscellaneous case he submits that the ground of delay is a legal ground and no new matter may be opened in a review miscellaneous case. He submits that Order 47 Rule 1 of the Code of Civil Procedure is very specific regarding the grounds on which review petition may be entertained. He submits that Section 5 of the Limitation Act clearly cannot be opened and heard in a review case. He concludes his submission upon assertion that therefore the judgment of the courts below were correctly given and the Rule bears no merit and ought to be discharged for ends of justice.

I have heard the learned Advocates from both sides and perused the application and materials on record. Upon perusal it appears that in this matter the appellate court rejected the appeal summarily on grounds of delay and also ultimately rejected the review miscellaneous case filed against the earlier order of the appellate court. I am of the considered view that for purpose of proper adjudication of this matter I ought to address the judgment and order of the appellate court passed in Family Appeal No. 08 of 2022 dismissing the appeal on the ground of limitation and also the judgment and order dated 21.07.2022 passed by the said appellate court in Review Miscellaneous Case No. 3 of 2022 filed under Order 47 Rule 1 of the Code of Civil Procedure.

I have perused the review petition and I have also examined the impugned Order No. 6 dated 21.07.2022 in the Review Miscellaneous Case. Truly enough an appeal rejected summarily on the ground of condonation of delay under section 5 of the Limitation Act cannot be a cogent ground for filing a Review Miscellaneous case under Order 47 Rule 1 of the Code of Civil Procedure, 1908 since it does not comprise of the ingredients of Order 47 Rule 1 of the Code of Civil Procedure in which the ground on which review application may be made are limited to certain circumstances.

There was a query from this bench to the learned advocate for the petitioner as to why the petitioner did not file the civil revision against the appellate court's judgment dated 24.05.2022 dismissing the appeal on ground of limitation. He submits that it is only due to the inadvertent mistake of the lawyer. He argues that due to the lawyer's mistake resorting to a wrong forum the petitioner ought not to suffer and for ends of justice and such inadvertent resorting to wrong forum may be overlooked. He submits that since there are some factual issues involved in the case therefore for ends of justice the case ought to be heard by the appellate court on its merits.

I am of the considered view that although there is a technical flaw of the petitioner given that the petitioner filed a review miscellaneous case under Order 47 Rule 1 of the Code of Civil Procedure and it is settled principle that while taking a ground in filing a review miscellaneous case, the review applicant cannot travel beyond the ambit of the ingredients of Order 47 Rule 1 of the Code of Civil Procedure. A review challenging a judgment summarily rejecting an appeal on the ground of limitation cannot be a ground for filing a review miscellaneous case under any circumstances. Truly enough review is not the proper forum against the judgment and order passed in Family Appeal No. 8 of 2022 initially on the ground of limitation.

Nevertheless, I am of the considered view that for ends of justice and equity the case ought to be heard on the merits and the case ought not to fail due to mistake or wrong advice of the concerned lawyer.

Therefore under the foregoing discussions made above I am of the considered view that the appellate court ought to condone the delay of 44 days and hear the matter on the merits of the case.

In the result, the Rule is disposed of with directions. The appellate court is hereby directed to hear the case on the factual and legal merits of the case. The appellate court is further directed to dispose of the matter as expeditiously as possible preferably within sixty days of receiving the copy of the judgment and order.

The order of stay granted earlier by this court is hereby recalled and vacated.

Send down the Lower Court Record at once.

Communicate the order at once.

Shokat (B.O)