Present:

Mr. Justice Md. Salim

CIVIL REVISION NO.424 OF 2022

Md. Salauddin and another
..... *Defendant-Petitioners.*

-VERSUS-

Oli Mia and others.
..... Plaintiff-Opposite parties.

Mr. Prince-Al-Masud, Advocate
----- For the petitioners.
Mr. Mokarramus Shaklan, with
Mr. Jahir Uddin, Advocate
----- For the opposite parties

Heard on 13.11.2025

Judgment on 20.11.2025

By this Rule, the opposite parties were called upon to show cause as to why the impugned judgment and order dated 27.06.2021 passed by the learned District Judge, Narayanganj in Civil Revision No.19 of 2019, dismissing the same and affirming the judgment and order dated 21.05.2019 passed by the learned Senior Assistant Judge, 2nd Court, Narayanganj in Title Suit No.106 of 1993 allowed the application for addition of party filed by the plaintiffs under Order I, Rule 10 read with section 151 of the Code of Civil Procedure should not be set aside and/or pass such other or

further order or orders as to this Court may seem fit and proper.

Facts necessary for the disposal of the Rule are that the opposite parties herein as plaintiffs instituted Title Suit No.142 of 1989 subsequently, the Suit was renumbered as title suit No.106 of 1993 before the Senior Assistant Judge, 2nd Court, Narayanganj praying for a decree of partition and also declaration that the 'kha' schedule Heba-bil-ewaz deeds are illegal, inoperative, collusive, forged and therefore the same are not binding upon the plaintiff.

The petitioners herein, as defendants, contested the Suit by filing a written statement. Subsequently, the trial court below, by judgment and decree dated 25.08.1994, dismissed the Suit. Against that, the plaintiff preferred Title Appeal No. 112 of 1994 before the District Judge, Narayanganj. Eventually, the learned Subordinate Judge, Additional Court, Narayanganj, decreed the Suit, in allowing the appeal, and set aside the judgment and decree of the trial court below, which had been affirmed up to the appellate Division. During the pendency of the instant Suit for drawing up the preliminary decree into a final decree, the heirs of the sole plaintiff, Immamunnessa, on 11.02.2019, filed an

application for the addition of a party under Order I, Rule 10, read with section 151 of the Code of Civil Procedure, 1908.

Subsequently, the learned Senior Assistant Judge of the 2nd Court, Narayanganj, by the judgment and order dated 21.05.2019, allowed the application for the addition of a party.

Being aggrieved, the defendant, as the petitioner, preferred Civil Revision No. 19 of 2019 before the District Judge, Narayanganj. Eventually, the learned District Judge, Narayanganj, by the judgment and order dated 27.06.2021, rejected the Civil Revision and affirmed those passed by the trial Court.

Being aggrieved, the above defendants-petitioners filed the present Civil Revision before this Court under section 115(4) of the Code of Civil Procedure and obtained the instant Rule.

Mr. Prince-Al-Masud, the learned counsel appearing on behalf of the defendant-petitioners, submits that both the Court below failed to consider the sole plaintiff died on 03.09.2018 and heirs of the sole plaintiff as applicant filed an application for substitution by away of addition of party after abetment of the Suit and without prayer for setting aside the

abetment both the Court below, therefore, committed an error of law resulted error in the decision occasioning failure of justice. In his contention, he referred to the case of Gopal Chandra Shil and others -Vs- Bangladesh and another reported in 11 BLC (2006) 334, and the case of Bhupati Biswas and others -Vs- Niranjan Biswas and others reported in 9 BLD (1989) 355.

Mr. Mokarramus Shaklan, the learned counsel appearing on behalf of the plaintiff-opposite parties submits that the instant Suit is decreed by the appellate Court below which has been affirmed up to the appellate Division and during pendency of the Review Petition filed by the defendant this plaintiff petitioner filed an application under Order I Rule 10 of the Code of Civil Procedure for addition of party which has been allowed by the Appellate Division in the said Civil Review Petition. Therefore, it was not necessary to file any separate application for further substitution of the heirs of the plaintiff, only to save and except inform the Court in accordance with the law, and since the application for addition of party is allowed by the appellate Division in a Civil Review Case, the Suit is not abated as prayed by the defendant. He further submits that, since the instant Suit has already been decreed, there is no provision in law to pass an

order of abetment in case of the death of the plaintiff or the defendant. In his contention, he referred to the case of Akhtar Banu and others -Vs- Habibunessa and others reported in 48 DLR(AD)(1996) 164 and the case of Gol Banu -Vs- Abdul Sobhan Mia reported in 27 DLR (1975) 346 and the another case of Abdul Kader Mondal and others -Vs- Shamsur Rahman Chowdhury alias Shamsur Rahman Saha reported in 51 DLR(AD) (1999) 253.

We have anxiously considered the submission advanced by the learned advocate for both parties, perused the impugned judgment and other materials available on record. It appears that the plaintiff filed the instant Suit and obtained a decree, which has been affirmed up to the Appellate Division. Thereafter, during the pendency of the Suit for drawing up the preliminary decree into a final decree, the heirs of the sole plaintiff, Immamunnessa, on 11.02.2019, filed an application for the addition of a party under Order I, Rule 10, read with section 151 of the Code of Civil Procedure, 1908. Subsequently, the trial court below allowed the application for the addition of parties which has been affirmed by the appellate court below. We have reviewed the citation cited by the defendant-petitioner.

In Gopal Chandra Shil's case (supra), it was held that:-

> The period of limitation to file an application to set aside the abatement order begins to run from the actual date of abatement, and not from the date of passing of an order of abatement. If, on the expiry of 90 days from the date of the defendant's death, no application is made to implead his legal representatives, the suit or appeal automatically abates or dies.

In Bhupati Biswas's case (Supra), it was held that:-

> When an abatement of a suit takes place owing to non-substitution of the heirs of the deceased plaintiff, the defendants acquired a vested right not to be proceeded against in that Suit. The provisions of Order 22, Rule 9 cannot be rendered nugatory. The effect of abetment can be overcome only by fulfilling the provisions of Order 22, Rule 9(2) and (3)of the Code of Civil Procedure. The opposite party no. 1 ought to have stated in his application dated 27.2.85 the cause or causes preventing him from continuing the Suit. He ought to have prayed for setting aside the abetment. He should also have filed a separate application under Section 5 of the Limitation Act for condonation of delay in filing the application

> under sub-rule 2, or he should have stated in the application itself the cause of delay in filing the same.

We are entirely in agreement with the decisions in the above citations, but every case has its own merits. In the instant case, a preliminary decree in the Suit was passed against some of the defendants. According to Order 22, rules 3 or 4 of the Code of Civil Procedure, said provisions are not to be attracted in a case where a decree has already been passed. Moreover, while the Review Petition was pending before the Appellate Division, an application to add a party was allowed. In the application to add a party, the applicant also adequately explained the reasons for the delay. So, the submission of Mr. Prince-Al-Masud has no substance.

We have also perused the Gol Banu's case (Supra), it was held that:-

> "On an examination of the terms of Order 22, rule 3 or 4 of the Code of Civil Procedure, it would be clear that the said provisions are not to be attracted in a case where a decree has already been passed. What has been provided in the said rules is that when there is a right to sue but such a right does not survive in favor of the surviving plaintiff or plaintiffs or against the surviving

defendant or defendants, there is a question of abatement of the Suit in default of an application for substitution made within the time prescribed therefore. But if there has already been a decree determining the rights of the parties, finally, there is no question of any right to sue surviving. The right to sue has already culminated and merged into a decree of the Court, and the Suit has also come to an end to the said extent."

In Abdul Kader Mondal's case (supra), it was held that:-

"Refusal to condone delay can result in a meritorious matter being thrown out without any hearing whatsoever. As against this, when delay is condoned, and the substitution is made, the worst that can happen is that a cause is decided on merit after hearing the parties. Therefore, the principle that substantial justice shall take preponderance over technical consideration should always be kept in view in deciding whether or not there is sufficient cause for the delay in making the application. There cannot be any presumption that the delay is caused deliberately or on account of culpable negligence or on account of malafides. In the absence of any definition of

> the expression "sufficient cause" employed in this Rule, the above considerations should prevail upon a court while deciding the circumstances which form sufficient cause. This will undoubtedly differ from fact to fact, always leaning on liberal interpretation."

In Akhtar Banu's case (supra), it was held that:-

> "In the Privy Council case, what happened was that in the course of the hearing of a suit in the Court of the District Judge, Ferozpur, an application was made to the Chief Court of Punjab to revise an Order of the District Judge directing the production of certain books. During the pendency of the matter in the Chief Court, several of the parties died, and substitutions were made in the proceeding in the Chief Court on ex parte applications. Then, after the record went back from the Chief Court to the District Judge, an application was made by one of the defendants for an Order of abatement of the Suit on the ground that the heirs of the deceased parties had not been brought on the record of the Suit within time. One District Judge ordered the abatement of the Suit. A successor District Judge, however, set aside the

> order of abatement. The Chief Court set aside the latter order on the ground that a successor District Judge could not review an Order of his predecessor. The Privy Council, however, allowed the appeal and remitted the case to the original Court to proceed with the hearing of the case on merits, holding that in the circumstances no question of abatement arose. It is in this context that the Privy Council laid down the Rule, as aforesaid, which is being followed consistently in the courts of the subcontinent, including those of ours."

Considering the above-mentioned judicial precedents and facts and circumstances of the case, it is clear that Order 22 of the Code of Civil Procedure requires that, in the event of the death of a party to the Suit, the heirs and legal representative of the deceased must be brought on record within the stipulated period. If they are not brought on record within such period, the action abets either wholly or partially, depending on the facts and circumstances of each case. Sub-rule 2 of rule 9 of Order 22 of the code allows an abatement to be set aside despite a delay in making an application in time if it can be shown that the applicant was prevented by sufficient cause from continuing the action. At the same time,

section 5 of the Limitation Act has been specifically made applicable to the condonation of delay. As a logical sequel, an abetment can be set aside at any time, even beyond the period prescribed for making an application in that behalf if sufficient cause is shown to explain the delay. Moreover, an application for setting aside the abetment may be treated as a composite application for condonation of delay and setting aside the abetment. In support of the above contention, we may refer to the case of Chowdhury Saifuddin Ahmed vs. Shamsuddin and others reported in 40 (DLR) 10, wherein it was held that:-

> "It seems to us that although it is desirable that in all cases where a party who wishes to take advantage of section 5 of the Limitation Act ought to file a separate application for condation of delay under section 5 of the Limitation Act, setting out the facts and the reason for the delay, it is not absolutely essential, as in the present case, that a formal application must be filed as a matter of inflexible Rule on pain of dismissal of the main application itself.
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> If the main application contains the entire facts or reasons for the delay, if evidence has been given both in favour and in rebuttal of the same, then

there remains nothing for the Court to ask for. The door of justice will not be shut to the party simply because a formal application is lacking."

Further, when there has already been a decree determining the rights of the parties, finally, there is no question of any right to sue surviving. If the right to sue has already culminated and merged into a decree of the Court, and the Suit has also come to an end to that extent, then the terms of Order 22, rule 3 or 4 of the Code of Civil Procedure are not at all applicable.

In the instant case, we have already noted that the Suit was decreed by the appellate Court below, which was affirmed up to the Appellate Division and when the Civil Review Petition was pending before the Appellate Division the heirs of the decree holder i. e. the applicant opposite parties movend an application under Order 1 Rule 10 of the Code of Civil Procedure for the addition of a party which was subsequently allowed. Thereafter, when the case record was transmitted to the trial court below for drawing up the preliminary decree into a final decree, the heirs of the sole plaintiff, Immamunnessa i.e. applicant opposite party, filed an application for the addition of parties under Order I, Rule 10, read with section 151 of the Code of Civil Procedure, 1908, with sufficient cause shown explaining the delay, therefore,

whether the time spent in bona fide Civil Review Proceeding can be excluded in computing the limitation for the application of substitution or addition of party before the Court of trial. Moreover, the application for the addition of parties filed in the present Suit substantially contains a prayer for condonation of delay, as he explained the sufficient cause of his apprehension.

Considering the above facts and circumstances, it cannot not be denied that in consideration of the entire circumstances of the case, the learned judge of the trial court, as well as the learned District Judge, exercised their discretion to allow substitution, so discretion when exercised with ends of justice, this Court is not in a position to interfere with it in revisional jurisdiction. Thus, we do not find any merit in the Rule.

Resultantly, the Rule is discharged without any order as to cost.

The order of stay is instantly vacated.

Communicate this judgment at once.

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(Md. Salim, J).

Rakib/ABO