

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

Present:

Mr. Justice Md. Badruzzaman.

And

Mr. Justice Sashanka Shekhar Sarkar

CIVIL RULE NO. 338(Con) OF 2020.

(Arising out of F.A.T. No. 268 of 2020)

**Government of the Peoples' Republic of
Bangladesh**

...Petitioner.

-Versus-

Capital Assets Production Ltd. and others

...Opposite Parties.

Mr. Md. Tassadder Raihan Khan, Advocate

... For the Petitioner

Mr. Mizanur Rahman, Advocate

...For Opposite Party No. 1

Heard on: 04.02.2024.

Judgment on: 13.02.2024,

Md. Badruzzaman, J:

This Rule was issued calling upon the opposite parties to show cause as to why delay of 322 days in filing the appeal against judgment and decree dated 31.01.2019 (decree signed on 04.02.2019) passed by learned Joint District Judge, 3rd Court, Dhaka in Title Suit No. 301 of 2017 should not be condoned.

Facts relevant, for the purpose of disposal of this Rule, are that respondent No. 1 as plaintiff instituted Title Suit No. 301 of 2017 in 3rd Court of Joint District Judge, Dhaka for a decree of declaration of title in the suit and another declaration that Dhaka City Jarip Khatian in respect of the suit land was wrongly prepared and published in the name of the defendant-appellant. This appellant contested the suit

by filing written statement denying the material averments as stated in the plaint and claiming title to the suit land. Both parties led evidence and the trial Court, vide judgment and decree dated 31.1.2019, decreed the suit as prayed for by the plaintiff.

Being aggrieved and dissatisfied with said judgment and decree defendant No. 1, Governemnt has preferred this first appeal causing delay of 322 days upon which this Rule was issued.

In the application for condoning the delay supported by a supplementary affidavit, the appellant-petitioner contended that though the judgment was pronounced on 31.01.2019 but the concerned lawyer did not inform the result of the suit to the appellant in time and he informed the matter on 25.06.2019 and after receiving the information and observing official formalities, the appellant applied for certified copy of the impugned judgment on 20.08.2019 and obtained the same on 02.09.2019 through the learned Advocate and the same was received by the Office of the petitioner on 04.11.2019 and after official formalities, the concerned record was communicated to the learned lawyer of High Court Division on 20.03.2020 who, after preparing the memorandum of appeal, filed the same on 23.03.2020. in such way delay of 322 days has caused.

It has been also stated in the application that the delay was unintentional and caused due to official formalities of the Government functionaries and there was no latches or negligence on the part of the appellant in filing this appeal in time.

Though respondent No. 1 has entered appearance but did not file any counter affidavit opposing the Rule.

Mr. Tassadder Raihan Khan, learned Advocate for the petitioner submits that the suit property is Government property and the delay was caused due to official formalities of the appellant without any laches or negligence and as such, the delay should be condoned.

Mr Mizanur Rahman learned Advocate appearing for opposite party No. 1 opposes the Rule and submits that delay of each day has not been satisfactory explained and as such, the Rule has no merit and liable to be discharged.

I have heard the learned Advocates and perused the application and other relevant documents.

On perusal of the application for condoning the delay it appears that the cause of delay has explained stating that the appellant-petitioner is a Government functionary and due to official formalities it could not file the appeal in time.

In Additional Deputy Commissioner (Rev) and others vs. Most. Monowara Khatun and another 21 ALR (AD) 129, the Appellate Division observed, *“the State machinery moves or functions through so many agencies. When the machineries run by so many hands, it is not also possible for such machinery to come before the Court within the quickest possible time. Although the Court is generally reluctant to consider the question of delay in favour of the Government, yet in the context of thing it should not be ignored that the Government machinery runs through several hands and the delay in such circumstances cannot altogether be avoided”*. The Appellate Division took the same view in condoning the delay in preferring revision by the Government in Government of Bangladesh and others vs. Abdur Sobhan and others 73 DLR (AD) 1 wherein it has been observed, *“the*

expression 'sufficient cause' should be considered with pragmatism in justice-oriented approach rather than the technical detection of 'sufficient cause' for explaining every day's delay. The factors which are peculiar to characteristic of the functioning of the governmental conditions would be cognizant to and require adoption of pragmatic approach in justice-oriented process. The Court should decide the matters on merit unless the case is hopelessly without merit." The Appellate Division also held, "there is no gainsaying that the Government decisions are taken by officers/ agencies proverbially at a slow pace and encumbered process of pushing the files from table to table and keeping it on the table for considerable time causing delay, intentional or otherwise, is a routine. Considerable delay of procedural red tape on the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the revisional applications brought by the Government are lost for such default no person is individually affected but what in the ultimate analysis suffers is public interest."

In the above cited cases the Appellate Division stated as to how delay causes by the Government functionaries in preferring revisions before the higher Courts due to some official formalities as well as dilatory tactics or negligent activities on the part of the Government officials. If the revisional applications brought by the Government are lost for such default, no person would be individually affected but public interest would be affected. Accordingly, the Apex Court took a lenient view in condoning the delay in filing revisional application by the Government.

The above principles settled by the Apex Court in Additional Deputy Commissioner (Rev) and others vs. Most. Monowara Khatun

and another 21 ALR (AD) 129 and Government of Bangladesh and others vs. Abdur Sobhan and others 73 DLR (AD) 1 are equally applicable in condoning the delay in preferring an appeal by the Government. In the instant Rule, the cause of delay has been satisfactorily explained which should be condoned.

Accordingly, we find merit in this Rule.

In the result, the Rule is made absolute. The delay of 322 days in filing the appeal is condoned.

The office is directed to register the appeal in accordance with law.

(Justice Md. Badruzzaman)

I agree.

(Mr. Justice Sashanka Shekhar Sarkar)