

Present:

MR. JUSTICE S.M. EMDADUL HOQUE

Civil Rule No. 907(con) of 2023 .

IN THE MATTER OF:

Sheikh Ansar Uddin

....Plaintiff-Petitioners.

-Versus –

Golam Rabbani Khan (Moon) and others .

....defendant-opposite parties.

Mr. Zahirul Islam, Advocate

..... for the petitioners

Heard and Judgment on: 22.01.2024.

On an application of the petitioner under section 5 of the Limitation Act, the Rule was issued calling upon the opposite party Nos.1-4 to show cause as to why the delay of 452 days in filing the revisional application under Section 115(4) of the Code of Civil Procedure against the impugned judgment and order dated 30.03.2022 passed by the Additional District Judge, 2nd Court, Faridpur in Civil Revision No.23 of 2020 should not be condoned and/or such other or further order or orders passed as to this Court may seem fit and proper.

The facts necessary for disposal of the Rule, in short, is that the opposite party No.1 and predecessor of the opposite party Nos.2-4 as plaintiffs filed title suit No.10 of 2002 partition praying for a declaration of title and further detraction that the order dated 18.12.2000 passed in Miscellaneous Appeal No.XIII-B Appeal-11/2000 of the Additional Deputy Commissioner (Revenue) is illegal and without jurisdiction

before the Joint District Judge, 1st Court, Faridpur against the defendant-petitioner and others and accordingly Title Suit No.10 of 2022 was started.

This revisional application under Section 115(4) of the Code of Civil Procedure challenging the impugned judgment and order dated 30.03.2022 passed by the Additional District Judge, 2nd Court, Faridpur in Civil Revision No.23 of 2020 affirming the judgment and order dated 12.11.2020 passed by the Joint District Judge, 1st Court, Faridpur in Title Suit No.10 of 2002 rejecting the application for recalling the preliminary decree dated 29.11.2006 the petitioner filed the revisional application under Section 115(4) of the Code of Civil Procedure.

The original suit was contested by defendant Nos.1-3 by filing written statement denying all the material assertions made in the plaint and prayed for dismissal of the suit.

The trial Court decreed the suit against which the parties moved upto the Appellate Division. Thereafter the defendant-petitioners filed an application for recalling the preliminary decree dated 29.11.2006 before in the trial Court but the learned Joint District Judge, 1st Court, Faridpur after consideration of the facts and circumstance of the case rejected the said application by its judgment and order dated 12.11.2020.

Against the said judgment and order the defendant-petitioner filed civil revision No.23 of 2020 before the learned District Judge, Faridpur.

The said revisional application was heard by the learned Additional District Judge, 2nd Court, Faridpur who after hearing the parties and considering the facts and circumstance of the case rejected the said revisional application on 30.03.2022.

Being aggrieved by and dissatisfied with the impugned judgment and order of the Courts below the petitioner filed this revisional application but in the meantime there are 452 days delay has been occurred and thus the petitioners filed this application for conditional of delay of 452 days under section 5 of the Limitation Act. Accordingly, the Rule was issued.

Mr. Zahirul Islam, the learned Advocate appearing on behalf of the petitioners submits that the cause of delay has been explained in paragraph No.2 of the application and which is unintentional and for a *bonafide* mistake and if the said delay has not been condoned the petitioners will suffer irreparable loss and injury. He prayed for making the Rule absolute.

We have heard the learned Advocate perused the application. The petitioner has explained the cause of delay in paragraph No.2 and 3 of the application. Though this revisional application against the judgment of affirmance but since the petitioner stated the reasons in

details about the cause of delay in filing the revisional application which seems to be reasonable and sufficient. Thus I am inclined to make the Rule absolute.

In the result, the Rule is made absolute. The delay of 452 days in filing the revisional application is hereby condoned.

The petitioners is directed to place the revisional application before an appropriate bench having jurisdiction for hearing the revisional application preferably within 1 (one) month from date.