

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.1843 of 2022.

In the matter of:

An application under section
115(1) of the Code of Civil
Procedure.

And

Hashem Ali

...Petitioner

-Versus-

Sukur Ali

...opposite party No.1

No one appears

...For the petitioner

Mr. Provash Chandra Tontri,
Advocate

...For the opposite party No.1.

Heard & Judgment on: 13.11.2024.

This Rule was issued calling upon the opposite party No.1 to show cause as to why the order No.06 dated 07.04.2022 passed by the learned District Judge, Manikganj in Title Appeal No.118 of 2021 dismissing the appeal summarily and thereby affirming the judgment and decree dated 13.07.2011 (decree signed on 17.07.2011) passed by the learned Senior Assistant Judge, Singair Upazilla, Manikganj in Title Suit No.269 of 2011 decreeing the suit in preliminary form 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 in short are that the opposite party as plaintiff instituted above suit for partition which was decreed on contest in preliminary form on 13.07.2011 and the plaintiff was granted separate saham for 95.34 decimal land and defendant No1.was granted separate saham for 51.50 decimal land. No appeal having preferred against above judgment and decree of the trial court above preliminary decree was made final on 21.06.2018.

On 27.04.2022 defendant No.1 submitted a petition to the trial court for amendment of above judgment and the preliminary and final decree which was rejected by the trial court.

Being aggrieved by above judgment and decree above defendant as appellant preferred Title Appeal No.118 of 2021 to the District Judge, Manikganj and submitted a petition under section 5 of the of the Limitation Act for condonation of delay of 3699 days.

On consideration of submissions of the learned Advocates for respective parties and materials on record learned District Judge rejected above petition for condonation of delay

and dismissed above appeal for being barred by limitation by 3699 days.

Being aggrieved by and dissatisfied with above judgment and decree dated 07.04.2022 of the learned District Judge above appellant as petitioner moved to this court and obtained this rule.

No one appears on behalf of the petitioner at the time of hearing of this civil revision although the matter appeared in the list for hearing on several dates.

Mr. Provash Chandra Tontri learned advocate for the opposite party submits that the plaintiff and defendant of above partition suit are full brothers and above suit was decreed on contest with defendant No.1 on consideration of evidence on record. The learned Judge of the trial court rightly granted separate saham for the plaintiff for 95.34 decimal land and defendant No.1 was granted separate saham for 51.50 decimal land. The defendant did not prefer for any appeal against above judgment and decree although he contested the suit. As such the plaintiff made above preliminary decree final in accordance with law on 18.02.2018. The defendant preferred above appeal after a long delay of 3699 days and the

petitioner could not provide any reasonable and satisfactory explanation as to above delay.

On consideration of above materials on record the learned District Judge rightly rejected the petition filed by the petitioner under section 5 of the Limitation Act and dismissed above appeal on the ground of limitation Act which calls for no interference.

I have considered the submissions of the learned Advocate for the opposite party and carefully examined all materials on record.

It is admitted that the plaintiff and defendant No.1 are full brothers and defendant No.1 contested above suit and the impugned judgment and decree of the trial court was passed on contest against defendant No.1 on 13.07.2011.

In the impugned judgment on consideration of oral or documentary evidence adduced by both the parties the learned Assistant Judge observes as follows:

নালিশা ক ও খ তফসীলের আন্দরে বাদী পিতা ও মাতার ওয়ারিশসূত্রে এবং পিতার দানসূত্রে মোট (৯১.৫৫+৩.৭৯)=৯৫.৩৪ শতক ভূমি এবং ১নং বিবাদী পিতা ও মাতার ওয়ারিশসূত্রে এবং ফুফুদের নিকট হতে হস্তান্তরসূত্রে মোট (২৬.৫৫+২১.১৬+৩.৭৯)=৫১.৫০ শতক ভূমি বাবদে পৃথক ছাহাম প্রাপ্ত হবেন।”

Since above judgment and decree was passed on contest it is to be presumed that the defendant was fully aware as to above judgment and decree. It is admitted that the defendant did not prefer any appeal against above preliminary decree within the statutory period of limitation. Above preliminary decree was made final by the trial court on 18.02.2018. After a long delay of 3699 days the defendant preferred Above Civil Appeal No.118 of 2021 challenging the legality and propriety of above preliminary and final decree and for condonation of above delay submitted a petition under section 5 of the Limitation Act. The relevant part of above petition under Section 5 of The Limitation Act is reproduced below.

“ইতিমধ্যে এই বিবাদী আপীলকারী হেপাটাইটিস বি ভাইরাসে আক্রান্ত হইয়া বিছানায় পতিত হইয়া পড়ে। ফলে ১নং বিবাদী আপীলকারী স্ট্রোক করিলে শরীরের অর্ধেক অংশ প্যারালাইসড হইয়া বিছানায় পড়িয়া থাকে।”

The appellant did not make any specific mention in above petition for condonation of delay as to when he fell sick due to infection of hepatitis B virus and on which date he suffered stroke and became bed ridden and when he recovered from above ailments. In support of above ailments the appellant did not produce any documentary evidence.

Since the defendant contested the suit and the impugned judgment and decree was passed in his presence and on contest he should have provided explanation of each day of delay in preferring above appeal. The defendant did not give day to day explanation as to above inordinate and huge delay of 3699 days in his petition under section 5 of the Limitation Act nor submitted any document in support of his claim of sickness as mentioned above.

On consideration of above facts and circumstances of the case and materials on record I am unable to find any illegality and infirmity in the impugned judgment and order passed by the learned District Judge nor I find any substance in this petition under section 115(1) of the Code of Civil Procedure. As such the rule issued in this connection is liable to be discharged.

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

Let the lower Court's record along with a copy of this judgment be transmitted down to the Court concerned at once.