

Present:
Mr. Justice Md. Salim

CIVIL RULE NO.719(Con) OF 2022.

Halima

..... *Petitioner.*

-VERSUS-

Mrs. Aleya Begum being dead, her heirs:
Md. Masud Rana and others.

..... *Opposite parties.*

Mr. H.M Borhan, Advocate with
Mr. Ahmed Nowshed Jamil, Advocate

..... *For the Petitioner.*

Mr. Md. Habibur Rahman, Advocate

----For the Opposite Party Nos.1(a)-1(f).

Heard and Judgment on 14.11.2024.

By this Rule, the opposite parties were called upon to show cause as to why the delay of 1490 days in filing the Civil Revisional under section 115(1) of the Code of Civil Procedure against the judgment and order dated 17.05.2018 passed by the Additional District Judge, 4th Court, Khulna in Miscellaneous Appeal No. 82 of 2015 allowing the appeal and reversing the judgment and order dated 07.07.2015 passed by the Senior Assistant Judge, Daulatpur, Khulna in Miscellaneous Case No. 04 of 2009 dismissing the case should not be condoned and or pass such other or further orders as to this court may deem fit and appropriate.

Facts in a nutshell, for disposal of the Rule, are that the opposite party no. 1, as pre-emptor, filed Miscellaneous Case No. 04 of 2009 before the Senior Assistant Judge, Daulatpur, Khulna for pre-emption under section 96 of the State Acquisition and Tenancy Act.

The pre-emptee-purchaser-petitioner contested the suit by filing a written statement denying the material allegations.

Subsequently, the learned Senior Assistant Judge, Khulna dismissed the case in ex parte by the judgment and order dated 07.07.2015.

Being aggrieved by and dissatisfied with the above judgment and order, the pre-emptor preferred Miscellaneous Appeal No. 82 of 2015 before District Judge Khulna. Eventually, the learned Additional District Judge, 4th Court, Khulna, allowed the Miscellaneous appeal by the ex-parte judgment and order dated 17.05.2018 and set aside the judgment and order dated 07.07.2015 passed by the learned Senior Assistant Judge, Khulna and restored the case.

Being aggrieved by and dissatisfied with the above judgment and order, the pre-emptee-purchaser as petitioner filed an application under section 115(1) of the Code of Civil Procedure before this court with an application under section 5 of the Limitation Act for condoning the delay of 1490 days in filing the Civil Revision. This court issued the instant Rule by an order dated 24.10.2022.

Mr. H.M Borhan, the learned counsel appearing on behalf of the petitioner, referred to paragraph no. 2 of the application submitted that after the pronouncement of the trial court's judgment, the pre-emptor assured the pre-emptee purchaser that she would not file any appeal against the judgment and order dated 07.07.2015. So the pre-emptee purchaser remained silent, being so assured. On 23.08.2022, the pre-emptor and her men came to the case land and demanded the land after showing the judgment and order dated 17.05.2018 passed in Miscellaneous Appeal No. 82 of 2015. Then, the pre-emptee purchaser petitioner became astonished and went to the Judge Court, Khulna, the following day to get information. After going through the record, the petitioner knew that the summons of Miscellaneous Appeal was served upon her fraudulently. She did not receive any summon of miscellaneous appeal No. 82 of 2015 at any point in time. The pre-emptee purchaser apprehends that the pre-emptor-appellant managed the service of summon upon the pre-emptee purchaser in collusion with the process server. The pre-emptee purchaser then applied for a certified copy of the impugned judgment on 24.08.2022 and received the same on 30.08.2022. The pre-emptee purchaser sent her Tadbirkar to Dhaka on 31.08.22 to file a civil revision, who handed over the brief to the learned advocate on 01.09.2022. The learned advocate took about two weeks to prepare the revision application, and 1490 days have elapsed after the

stipulated time of limitation, for which the petitioner has no intentional laches.

On the contrary, Mr. Md. Habibur Rahman, the learned counsel appearing on behalf of the opposite party by filing a counter affidavit, submitted that this petitioner has complete knowledge about the impugned judgment from the date of pronouncement of the judgment because she regularly looks after Miscellaneous Appeal. Then he referred to order no.04 dated 03.01.2016 of the appellate court below, stating that the summons was duly served upon the pre-emptive purchaser-respondent-petitioner. Thus, he prays to discharge the Rule.

I have anxiously considered the submission of the learned advocate for both parties and perused the application and other material on the record. In order to appreciate the submission advanced by the Bar, the relevant law may be quoted below:-

“5. Extension of period in certain cases-Any appeal or application for a revision or a review of judgment or for leave to appeal or any other application to which this may be made applicable by or under any enactment for the time being in force may be admitted after the period of limitation prescribed thereof, when the appellant or applicant satisfies the Court that he

had sufficient cause for not preferring the appeal or making the application within such period.”

Explanation- The fact that the appellant or applicant was misled by any order, practice or judgment of the High Court Division in ascertaining or computing the prescribed period of limitation may be sufficient cause within the meaning of this section.

It manifests that in a case of this nature for condonation of delay, the reasons adduced must be pleaded appropriately, convincing, and acceptable, and the explanation should be offered for condonation of the delay. Unless a proper explanation is offered, the court cannot exercise discretion in the proper perspective to advance substantial justice. In this context, the case of Amir Hossain vs. Messers Kasim and Ismail Ltd reported in VIII D L R (HCD) 167, it was held that:-

“Under section 5 of the Limitation Act, the petitioner is entitled to condonation of delay if he can satisfy the court that he had sufficient cause for not making the application within the period fixed by the Statute. The words “sufficient cause” have of course been liberally construed, but the point for decision is whether the petitioner has succeeded in satisfying the court

whether he had such cause within the meaning of the law. It must be seen whether the petitioner has acted with reasonable diligence in presenting his application. The petitioner must satisfy the court that he was not negligent and inactive. It must be considered that when the time for appeal has passed, a valuable right has accrued to the successful litigant, and the court must be fully satisfied of the justice of the grounds on which it is sought to obtain an extension of time for attacking the decision, thereby depriving the successful litigant of the advantages he has obtained. Of course, the right accrued to the opposite party is not an absolute right, and it is subject to a judicial discretion as contemplated by section 5 of the Limitation Act.”

Moreover, on a conspectus reading of the above principles set out in the various judgments, it is well settled that a liberal approach should be extended while considering the application for condonation of delay. Sufficient caution has been exhibited to note that wherever there is a lack of bona fides or attempt of hood-wink the court by the party concerned who has come forward with an application for condonation of delay, in such cases, no indulgence should be shown by condoning the delay applied for. It is also clear to the effect that it is not the number of days of delays that

matters, but the attitude of the party which caused the delay. In other words, when the court finds that the party who failed to approach the court within the time stipulated comes forward with an explanation for condoning the delay, the court if satisfied that the delay occasioned not due to the deliberate conduct of the party, but due to any other reason, then by sufficiently compensating the prejudice caused to the other side monetarily, the condonation of delay can be favourably ordered.

In the instant case, the petitioner tried to show us that since no summons of the appeal was served upon the petitioner, the petitioner did not know about the appellate court's judgment, so there was a delay of 1490 days in filing the Civil Revision. I have anxiously examined the record of the appellate court below. It manifests from order dated 10.09.2015 that a summons was duly served upon the petitioner.

In the above circumstances, I am of the view that the petitioner has not been able to satisfy this court that he had sufficient cause to condone the delay of 1490 days rather, there was negligence in filing the Civil Revisional under section 115(1) of the Code of Civil Procedure before this court.

Considering the above facts and circumstances of the case, I do not find any merit in this Rule.

The application for condonation of delay for 1490 days is rejected.

Resultantly, the Rule is discharged without any Order as to costs.

Communicate this judgment.

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(Md. Salim, J)

Rakib(Abo)