

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

Civil Rule No. 115(Con) (F) of 2024

In the matter of:

An application under Section 5 of the limitation Act for
condonation of delay.

AND

In the matter of:

Leads Corporation Limited

.... Petitioner

-Versus-

Mr. Khan Akhter Alam and others

....Opposite-parties

Ms. Nazmus Saliheen, Advocate

... For the petitioner

Mr. Imtaiz Moinul Islam, Advocate

....For the opposite party no.1

Heard and Judgment on 14.05.2024

Present:

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

Md. Mozibur Rahman Miah, J:

At the instance of the defendant no. 3 of Title Suit No. 476 of 1981
and that of the respondent no. 3 in Title Appeal No. 81 and 87, this rule
was issued calling upon the opposite parties to show cause as to why the
delay of 4865 days in preferring the appeal against the judgment and final

decree dated 08.08.2010 passed by the learned Joint District Judge, 3rd Court, Dhaka in the said Title Suit should not be condoned and/or pass such other or further order or orders passed as to this court may seem fit and proper.

The short facts leading to issuance of the instant rule are:

The present opposite party as plaintiff originally filed the afore said suit for account and the said suit was ultimately dismissed on 22.12.1986. Challenging the said judgment the plaintiff as appellant preferred an appeal being First Appeal No. 81 of 1987 before this court and ultimately the said appeal was allowed and the suit was decreed in preliminary form on 22.05.2009 and the judgment and decree of dismissal dated 22.11.1986 was set aside and the said preliminary decree was made final on 12.08.2010. In the application for condonation of delay it has been asserted that, the present petitioner was not at all aware of the final decree passed on 12.08.2010 and it on 25.11.2013 for the first time came to learn about the final decree as well as filing of the title execution case no. 07 of 2013 and then it initiated a Miscellaneous case on 20.07,2014 being Miscellaneous Case No. 27 of 2014 under Order 9 Rule 13 of the Code of Civil Procedure but ultimately the said Miscellaneous case was dismissed for default on 11.05.2016 and then it filed an application for restoration of that Miscellaneous case and the said application for restoration was allowed against which the plaintiff of the suit filed a Civil Revision being no. 2262 of 2017 before this court and ultimately the said revision was allowed and rule was made absolute on 12.08.2018. But since the order dated 11.05.2016 passed in Miscellaneous Case No. 27 of 2014 was an

appealable order for which the appellant-petitioner filed First Miscellaneous Appeal no. 222 of 2021 and ultimately this court vide judgment and order dated 27.02.2023 dismissed the said appeal initiated by the present petitioner. Against that very dismissal order, the petitioner then preferred an appeal before the Appellate Division being Civil Petitions for Leave to Appeal Nos. 851 and 985 of 2023 and those appeals were also dismissed vide judgment and order dated 30.05.2003. Then the petitioner again filed a Civil Review being Civil Review No. 219 and 234 of 2023 which was also dismissed on 19.10.2023. It has been submitted by the learned counsel for the petitioner by taking us to the explanation so offered in the application for condonation of delay that, since the petitioner had no knowledge about the preliminary and final decree of the suit filed by the present opposite party as plaintiff so the petitioner did not get any opportunity to challenge the original decree in the form of appeal rather by filing Miscellaneous case and thereby delay of 4865 days has been caused which may kindly be condoned.

The learned counsel further contends that, the petitioner has no latches in filing the appeal since it got to know about the final decree only on 25.11.2013 and then filed this appeal on 11.03.2024 which caused the aforesaid delay.

On the contrary, Mr. Imtaiz Moinul Islam, the learned counsel appearing for the opposite party no. 1 by filing an application for discharging the rule summarily by taking us to the various documents appended therewith at the very outset submits that, since this Hon'ble court in the judgment passed in First Miscellaneous Appeal No. 222 of 2021 has

vividly found that, the petitioner has got every knowledge about the judgment and decree passed in the suit as well as the appeal so there has been no occasion for the petitioner to know about the judgment and decree of the Title Suit only on 25.11.2023. The learned counsel by taking us to the judgment and order passed by the Hon'ble Appellate Division both in the Civil Petition for Leave to Appeal as well as the Civil Review also contends that, since the findings of this Hon'ble court has been affirmed by the Hon'ble Appellate Division so there has been no scope to go beyond the said judgment and decree as in the First Miscellaneous Appeal No. 222 of 2021 which was dismissed by this Hon'ble court, similar date of knowledge was taken by the petitioner that is on 25.11.2012 in the Miscellaneous Case No. 27 of 2014 having no scope to go beyond the judgment which was disbelieved even by the Appellate Division.

We have considered the submission so advanced by the learned counsel for the petitioner and that of the learned counsel for the opposite party and very meticulously gone through the explanation so offered in the application for condonation of delay in particular, in paragraph nos. 3-9. On going through the application for discharging the rule so filed by the opposite party we find that, during pendency of the appeal being First Appeal No. 81 of 1987 so brought by the present opposite party as appellant, this petitioner was made party as respondent no. 3 and summons was duly served upon the said respondent and the respondent entered appearance by filing power to contest the appeal and that very material fact supported by record has not been controverted up to the Appellate Division. Furthermore, on going through the explanation so offered in

paragraph no. 5 we also find that, the petitioner also asserted it came to learn about the decree for the first time from the demand notice issued by the respondent no. 1 when in paragraph no. 3 it asserted that it came to learn about the final decree on 25.11.2013 which sounds absurd. Furthermore, this court while passing the judgment in the First Miscellaneous Appeal being no. 222 of 2001 brought by the present petitioner as appellant also made following observation:

*“Only question remains whether the learned judge is wrong in passing the impugned order. on going through the documents so appended with the counter-affidavit filed by the respondent-opposite-party no. 1 and that of the application for stay filed by the present appellant, we find that, this appellant was well aware of the decree both drawn in preliminary and final from passed in First Appeal No. 81 of 1987 as this court added the present appellant as respondent no. 3 in the said appeal. But knowing everything the appellant reverted back and challenged the order dismissing the Miscellaneous Case No. 27 of 2014 for default passes far back on 11.05.2010 which bears no substantive effect at that time following the judgment of First Appeal No. 81 of 1987 passed **within the full knowledge of the appellant**”.*

That very observation since has not been reversed by the Hon’ble Appellate Division both in the Civil Petition for Leave to Appeal as well as in the Civil Review so, we are of the considered view that, the explanation

so offered is totally untrue rather in order to harass the opposite party to frustrate his claim, the petitioner kept on filing cases one after another.

Regard being had to the above facts and circumstances we don't find any shred of merit in the rule.

Accordingly, the rule is discharged however without any order as to costs.

Let a copy of this order be communicated to the court concerned forthwith.

Md. Bashir Ullah, J:

I agree.

Kawsar /A.B.O