

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.3460 OF 2024

In the matter of:

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

And

Md. Masum Rana and others

... Petitioners

-Versus-

Begum Hosneara Ahammad and others

... Opposite parties

Mr. Md. Mubarak Hossain, Advocate

... For the petitioners.

None appears

....For the opposite parties.

Heard on 12.08.2025 and Judgment on 13.08.2025.

This Rule was issued calling upon the opposite party No.1 to show cause as to why the impugned judgment and order dated 25.0.2024 passed by the learned District Judge, Cumilla in rejecting the Title Appeal No.04 of 2024 summarily and thereby affirming the judgment and decree dated 21.05.2019 passed by the learned Assistant Judge, Burichang, Cumilla in decreeing the Title Suit No.20 of 2017 should not be set aside and/or other or further order or orders as to this Court may seem fit and proper.

Facts in short are that opposite parties as plaintiffs instituted Title Suit No.20 of 2017 for declaration of title and for further declaration that

registered deed of gift dated 03.12.1997 executed by defendant No.2 in favour of his wife defendant No.1 is not binding upon the plaintiffs. Above suit was decreed on contest on 21.05.2019 by the learned Assistant Judge, Cumilla and challenging the legality and propriety of above judgment and decree of the trial Court the heirs of deceased defendant No.1 as appellants preferred Title Appeal No.04 of 2024 to the District Judge, Dhaka which was barred by limitation by 1684 days. Above appellants submitter a separate petition for condonation of above delay stating that defendant No.1 became seriously sick and bed hidden on 12.02.2019 and after prolonged ailment she died on 28.09.2023. The learned Advocate for the petitioners further submits that the husband of deceased defendant No.1 who was defendant No.2 in above suit has also died.

The learned District Judge without applying judicial mind to the facts and circumstances of the case and analyzing the explanation and grounds and causes assigned by the appellants in the petitioner under Section 5 of the Limitation Act for above delay of 1684 days. The learned District Judge most illegally dismissed above appeal by an unspeaking order for being barred by limitation.

Mr. Md. Mubarak Hossain, learned Advocate for the petitioners submits that above appeal was filed after delay of 1684 days and for condonation of above delay the appellant filed a petition under Section 5 of the Limitation Act. In above petition a detailed explanation was

provided stating that defendant No.1 became terminally sick and bed ridden and other defendants passed very busy day for ensuring proper medical treatment of defendant No.1 who ultimately died on 28.09.2023. Defendant No.2 was husband of defendant No.1 who also died. Due to above unavoidable circumstances above delay of 1684 days occurred in preferring above appeal and the plaintiffs had no willful latches in causing above delay.

Despite service of notice opposite parties did not enter appearance in this Civil Revision to contest the claim of the petitioner. Nor any one was found available at the time of hearing of this Rule on behalf of the opposite parties.

I have considered the submissions of the learned advocate for the petitioners and carefully examined all materials on record.

As mentioned above now deceased predecessor of the petitioners namely Aleya Begum was defendant No.1 in above suit and she contested the suit which was decreed on contest and challenging the legality and propriety of above judgment and decree the heirs of above Aleya Begum as appellants preferred Civil Appeal No.04 of 2024 to the District Judge, Dhaka after delay of 1684 days and for condonation of above delay the appellants filed a petition under Section 5 of the Limitation act, 1908.

In above petition a detailed explanation has been provided for above delay of 1684 days that above Aleya Begum became terminally

sick and bed ridden since 12.02.2019 and she ultimately died on 28.09.2023 and her husband, sons and daughters were fully occupied in providing proper medical treatment and service to above Aleya Begum.

Learned Advocate for the petitioners further submits that the husband of Aleya Begum who was the defendant No.2 of above suit has also died.

The condonation of delay is discretion of the Court and the appellant or petition is required to provide a detailed and reasonable explanation of each and every day of delay. As mentioned above in their petition under Section 5 of the Limitation Act, 1908 the appellants provided a detailed explanation as to delay of 1684 days as mentioned above. In support of above claims the appellants submitted relevant medical documents and certificates.

On consideration of above facts and circumstances of the case and materials on record I hold that the learned District Judge utterly failed to apply his judicial mind and failed to realize that the appellants have provided a reasonable explanation of delay of 1684 days in preferring above appeal and most illegally dismissed above appeal on the ground of limitation by an unspeaking order which is not tenable in law.

In above view of the materials on record I find substance in this Civil Revisional application under Section 115(1) of the Code of Civil procedure and the Rule issued in this connection deserves to be made absolute.

In the result, the Rule is hereby made absolute. The delay of 1684 days in preferring Civil Appeal No.04 of 2024 is condoned and the learned District Judge is directed to proceed with above appeal in accordance with law.

However, there will be no order as to costs.

MD. MASUDUR RAHMAN
BENCH OFFICER