

**In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)**

Present:

Mr. Justice Md. Riaz Uddin Khan

Civil Revision No. 681 of 2025

IN THE MATTER OF :

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

-And-

In the Matter of:

Md. Nasir Uddin

..... Defendant-Petitioner

-Versus-

Shahab Ahsan and others

..... Plaintiff-Opposite Parties

Mr. Khandaker Aminul Haque, with

Mr. Hossain Shahid Soharawardi, Advocates

... For the petitioner

Mr. Monjur Elahi Porag, Advocate

... For the Opposite Parties

Judgment on: 02.03.2026

Md. Riaz Uddin Khan, J-

At the instance of defendant no.10 Rule was issued calling upon the opposite parties to show cause as to why the order dated 24.02.2025 passed by the Senior District Judge, Dhaka in Miscellaneous Appeal No. 42 of 2025 dismissing summarily the appeal for barred by limitation and thereby affirming the order dated 23.01.2023 passed by the learned Joint District Judge, 3rd Court, Dhaka in Other Class Suit No. 252 of 2016 allowing an application for maintaining status-quo in respect of the suit property should not be set aside and/or such other or further order or orders should not be passed as this Court may deem fit and appropriate.

The facts, in brief, for disposal of this Rule is that the predecessor of opposite party Nos. 1-3

as plaintiff filed Title Suit no.169 of 2010 (renumbered as TS no.252 of 2016) along with an application for injunction for temporary injunction and obtained an order of status-quo as to the transfer of suit property vide order dated 04.07.2011. However, on 04.01.2023 the plaintiff again filed an application for temporary injunction under Order XXIX Rule 1 & 2 read with section 151 of the Code of Civil Procedure against the defendants 4-7 and 10-11 and a copy of the same was served upon the learned advocate for the defendant no.11. However, after hearing, the trial court by order dated 23.01.2023 was pleased to direct the defendants 4-7 and 10-11 to maintain status-quo in respect of transfer of the suit property or from dispossessing the plaintiff in continuation of the earlier order passed by itself on 07.04.2011.

Against that order dated 23.01.2023 after 725 days the defendant No.10, the present petitioner, filed Miscellaneous Appeal No. 42 of 2025 before the Senior District Judge, Dhaka along with an application under section 5 of the Limitation Act for condonation of delay. The District Judge at the time of hearing the admissibility of the miscellaneous appeal by the impugned order dated 24.02.2025 was pleased to dismiss the appeal on the ground of limitation.

Being aggrieved by and dissatisfied with the aforesaid judgment and order dated 24.02.2025 passed by the District Judge, Dhaka the defendant No.10 filed the instant civil revision and obtained the instant Rule.

Mr. Khandaker Aminul Haque along with Mr. Hossain Shahid Soharawardi, the learned advocate appearing for the defendant-petitioner submits that the

impugned judgment and order passed by the learned District Judge is erroneous as he summarily dismissed the appeal on the ground of limitation though the petitioner by filing separate application under section 5 of the Limitation Act sought condonation of delay on the ground of ailment but without considering that aspect the appeal was dismissed. The learned advocate then submits that the petitioner has a very good prima-facie case against the impugned order passed by the trial court.

Per-contra Mr. Monjur Elahi Porag, the learned advocate appearing for the opposite party Nos. 1-3 submits that the defendant No.10, petitioner has totally failed to give reasonable and satisfactory explanation of delay of 725 days in filing the miscellaneous appeal before the learned District Judge who rightly dismissed the appeal.

I have heard the learned advocates for both the parties, perused the application, along with the annexures. I have carefully examined the application for condonation of delay under section 5 of the Limitation Act filed before the District Judge, Dhaka. It turns out from the application that by a single line the petitioner in a very negligent manner stated that due to illness he was hospitalized for which delay of 725 days occurred in preferring the appeal.

Regarding condoning delay under section 5 of the Limitation Act the Indian Supreme Court, AIR 1987 (SC) 1353 adopted a liberal approach on principles of condoning delay as under: 1. Ordinarily a litigant does not stand to benefit by lodging an appeal late, 2. Refusing to condone delay can result in a meritorious

matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties,

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner,

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay,

5. There is no presumption that delay is occasioned deliberately, or on account of mala-fides. A litigant does not stand to benefit by recording delay. In fact, he runs a serious risk,

6. It must be grasped that judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

I have examined the impugned order passed by the learned District Judge, Dhaka. It appears from the impugned order that the learned District Judge found that the grounds stated in the condonation petition are not at all satisfactory and convincing enough. The learned judge further found that the appellant miserably failed to explain the inordinate delay in any manner where the law demands explanation for each and every day. Apparently, the learned judge has given cogent reason for rejecting the application and dismissing the appeal on the ground of limitation. The

learned Advocate for the petitioner could not show this court any wrong committed by the learned District Judge by placing the application filed under section 5 of the Limitation Act. In the facts and circumstances of the case, the learned District Judge by refusing to condone delay of 725 days in preferring appeal against an order of status-quo, it cannot be said that a meritorious matter being thrown out at the very threshold or cause of justice has been defeated. Even applying the liberal approach adopted by the Indian Supreme Court regarding condoning delay as enantiated in the reported case, AIR 1987 (SC) 1353, the inordinate delay occurred in the present case does not deserve to be condoned. Delay of 725 days in preferring a miscellaneous appeal against an order of status-quo is obviously inordinate delay especially when the petitioner was contesting the suit before the trial court. Just mentioning illness and hospitalization without specific date of illness and hospitalization, name of the hospital/doctor and with supporting document, cannot be taken into consideration in any manner in condoning delay of long 725 days in preferring an appeal against an order of status-quo.

In the facts and circumstances of the case as discussed above and the position of law I find no merits in the instant Rule. As such, I am not inclined to interfere with the impugned order passed by the learned District Judge.

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

It appears from the order of the trial court that the suit was originally filed in the year of 2010

as Title Suit No. 169 of 2010 which has been re-numbered as Title Suit No. 252 of 2016. More than 15 years has been elapsed but still the suit is pending before the trial court. Considering that aspect, the trial court is directed to conclude the trial expeditiously as early as possible, preferably within 06(six) months from date of receipt of this judgment and order without granting any adjournment seeking by the parties unless dire necessity.

Communicate the judgment and order at once.