

District-Lakshmipur.

In the Supreme Court of Bangladesh

High Court Division

(Civil Revisional Jurisdiction)

Present:

Mr. Justice Md. Toufiq Inam

Civil Revision No. 6551 of 2024.

Sumon Howlader and others.

----- Defendant-Appellant-Petitioners.

-Versus-

Md. Dalim Hossain and others.

----- Plaintiff-Respondent-Opposite-Parties.

Mr. Md. Ozi Ullah, Senior Advocate with

Mr. Azimuddin Patwary, Advocate.

----- For the Defendant-Appellant-Petitioner.

Mr. S.M. Jahangir Alam, Advocate.

----- For the Plaintiff-Respondent-Opposite-Parties.

Heard on 14.07.2025 and Judgment Delivered On:

20.07.2025.

Md. Toufiq Inam, J.

This Rule was issued calling upon the opposite parties to show cause as to why the judgment and order dated 08.11.2023 passed by the learned District Judge, Lakshmipur in Miscellaneous Appeal No. 13 of 2023, dismissing the appeal and thereby affirming the judgment and order dated 02.02.2023 passed by the learned Joint District Judge, Court No.1, Lakshmipur rejecting Miscellaneous Case No. 21 of 2022 filed under Order IX Rule 13 of the Code of Civil Procedure for

setting aside the ex parte judgment and decree dated 14.10.2019 (decree drawn on 16.10.2019) passed in Title Suit No. 02 of 2017, should not be set aside and/or such other or further order or orders be passed as to this Court may seem fit and proper.

The petitioners were the defendants in Title Suit No. 02 of 2017, which was decreed ex parte on 14.10.2019 (decree drawn on 16.10.2019). After a delay of more than two years and six months, the defendants filed Miscellaneous Case No. 21 of 2022 under Order IX Rule 13 of the Code of Civil Procedure seeking to set aside the ex parte decree. The case was admitted for hearing and was fixed for successive dates on 21.11.2022, 08.01.2023, and 25.01.2023, during which the defendant-petitioners repeatedly sought adjournments. On the fourth occasion, adjournment was granted with a compensatory cost of Tk. 500/-, fixing 02.02.2023 for hearing. On that date, the petitioners neither appeared nor took any steps. Consequently, the trial court rejected the application for non-appearance.

Aggrieved thereby, the defendants preferred Miscellaneous Appeal No. 13 of 2023 before the learned District Judge, Lakshmipur, who by the impugned judgment and order dated 08.11.2023 dismissed the appeal and affirmed the order of the trial court.

Being aggrieved by the concurrent findings of the courts below, the petitioners moved this Court under section 115 of the Code of Civil Procedure by filing the instant revisional application with a delay of 253 days. At the time of issuance of the Rule, this Court provisionally condoned the said delay.

Mr. Md. Ozi Ullah, learned Senior Advocate appearing with Mr. Azimuddin Patwary, Advocate for the petitioners, submits that although the application under Order IX Rule 13 was rejected for default, it was not rejected on merit. He further submits that the courts below adopted a hyper-technical approach and failed to adjudicate the dispute on merit. He contends that although the appellate court observed that the miscellaneous appeal was barred by limitation, in fact, there was no such delay in filing the appeal, which demonstrates non-application of judicial mind.

Mr. Ullah argues that the petitioners should be given an opportunity to contest the original suit on merit and urges this Court to exercise its revisional jurisdiction to interfere with the concurrent findings. In support of his contention, he refers to the case reported in 42 DLR (HCD) 497.

Per contra, Mr. S.M. Jahangir Alam, learned Advocate appearing for the opposite parties, raises a preliminary objection regarding the

maintainability of the revision petition due to the unexplained delay. He draws attention to paragraph 2(a) of the petition under section 5 of the Limitation Act, and submits that although the impugned appellate judgment was passed on 08.11.2023, the petitioners applied for a certified copy only on 15.02.2024, well beyond the statutory period of 90 days, and ultimately filed the revisional application on 03.12.2024, without offering any satisfactory explanation for the delay. Mr. Alam contends that this shows deliberate negligence on the part of the petitioners.

He further argues that each day's delay must be explained and refers to the earlier delay of over two and a half years in filing the application under Order IX Rule 13. In support, he relies on the case reported in 17 BLD (AD) 57, where it was observed that although section 115 CPC does not prescribe a limitation period, longstanding judicial practice requires revisions to be filed within 90 days, subject to reasonable explanation.

Upon hearing the learned Advocates for both parties and on perusal of the materials on record, it appears that the ex parte decree was passed on 14.10.2019. The petitioners filed the application under Order IX Rule 13 on 15.11.2022, after an inordinate delay of over two and a half years, without offering any satisfactory explanation. During hearing, the petitioners were granted three successive adjournments.

On the fourth occasion, the matter was adjourned with cost, fixing 02.02.2023 for final hearing. However, the petitioners again defaulted, neither appearing nor taking steps, resulting in dismissal of the miscellaneous case for default.

Although the appeal from that order was filed in time, the appellate court heard the matter on contest and dismissed the appeal by judgment dated 08.11.2023. Thereafter, the petitioners filed this revisional application on 03.12.2024 with a delay of 253 days, which was only provisionally condoned at the time of issuance of the Rule. The explanation offered in the application is vague and unsatisfactory.

The overall conduct of the petitioners, both in prosecuting the application under Order IX Rule 13 and in pursuing this revision, demonstrates gross negligence. The courts below rightly exercised their discretion in rejecting the prayer for setting aside the ex parte decree. Our apex Court in 62 DLR (HCD) 449 has held that gross negligence of a defendant disentitles him to the relief under Order IX Rule 13 CPC. The revisional jurisdiction of this Court cannot be invoked to compensate for the indolence of a party who has shown no diligence or bona fide intention to contest the suit at the proper time.

Although this Court provisionally condoned the delay of 253 days at the time of issuing the Rule, upon scrutiny of the record and the

explanation offered, it is evident that such delay was neither reasonably nor credibly explained. The petitioners conduct throughout reflects gross negligence and a lack of bona-fide intent to pursue the remedy in accordance with law. Hence, this Court is disinclined to exercise its discretion in favour of the petitioners.

It is a cardinal principle of civil jurisprudence that a party seeking discretionary relief must approach the court with clean hands and demonstrate bona fide intent and due diligence. In the present case, the petitioners not only failed to contest the original suit, resulting in an ex parte decree, but also failed to diligently pursue the remedy under Order IX Rule 13 CPC. Their conduct throughout reveals a pattern of delay, inaction, and disregard for procedural discipline. The revisional jurisdiction under section 115 CPC is supervisory in nature and not intended to reopen matters where a party's own negligence caused the default. Granting relief in such circumstances would defeat the purpose of finality in litigation and send a wrong signal that delay and negligence may be condoned without proper justification. Therefore, the Rule deserves to be discharged to uphold procedural fairness and judicial discipline.

In view of the above, this Court finds no merit in the Rule. Accordingly, the Rule is discharged. The order of provisional condonation of the delay is hereby recalled and stands vacated.

However, there will be no order as to costs.

Let the judgment be communicated to the court concerned together with LC Records at once.

(Justice Md. Toufiq Inam)

Sayed. B.O.