

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO. 2546 OF 2024

In the matter of:

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

And

Md. Akter Hossain (Jamal) and others
... Petitioners

-Versus-

Md. Sayad and others
... Opposite parties

Mr. Md. Hashan, Advocate
... For the petitioners.

None appears
.... For the opposite parties.

Heard and Judgment on 18.06.2026.

On an application under Section 115(1) of the Code of Civil Procedure, 1908 this Rule was issued calling upon the opposite party Nos.1-16 to show cause as to why the judgment and order dated 10.01.2024 passed by the learned Senior District Judge, Munshigonj in Miscellaneous Appeal No.65 of 2023 affirming those dated 04.07.2022 passed by the learned Senior Assistant Judge, Louhajong, Munshigonj in Miscellaneous Case No.01 of 2017 dismissed the same should not be set aside and/or such other or further or orders as to this Court may seem fit and proper.

Facts in short are that the petitioners as plaintiffs instituted Title Suit No.19 of 2011 for declaration of title for 14.25decimal land alleging that plaintiff's predecessor Aziza Khatun purchased above land by registered kabla dated 18.01.1954 from the heirs of the C. S. recorded tenants but above land was not recorded in her name in the relevant S. A. Khatian. The defendants entered appearance in above suit and contested the same by filing a written statement which was fixed for pre-empty hearing on 04.05.2016. On above date the plaintiffs were found absent and defendants were present and the learned Assistant Judge dismissed above suit for default by order dated 04.05.2016.

Being aggrieved by above judgment and order of the learned Assistant Judge above plaintiffs as petitioners filed Miscellaneous Case No.1 of 2017 under Order 9 Rule 9 of the Code of Civil Procedure, 1908 which was also dismissed on 04.07.2022 due to absence of the petitioner on the date fixed for hearing.

Being aggrieved by above judgment and order of the trial Court above petitioners as appellants preferred Miscellaneous Appeal No.65 of 2023 to the District Judge, Munshigonj which was dismissed on the ground that above appeal was barred by limitation by 482 days.

Being aggrieved by and dissatisfied with above judgment and order of the learned District Judge above appellants as petitioners

moved to this Court with this Civil Revisional application under Section 115(1) of the Code of Civil Procedure, 1908 and obtained this Rule.

Mr. Md. Hashan, learned Advocate for the petitioners submits that five petitioners and Sirajul Islam jointly as plaintiffs filed above suit for declaration of title for disputed 14.25 decimal land. Above land was purchased by plaintiffs predecessor Aziza Khatun by registered kabla deed dated 18.01.1954 but on the basis of above Kabla deed her name was not recorded in the relevant S. A. Khatian. The brother of the petitioner namely Masudul Hasan was the tadbirkarok of above suit who fell serious illness and was unable to take tadbir causing dismissal of above suit. The petitioners filed Miscellaneous Case No.1 of 2017 under Order 9 Rule 9 of the Code of Civil Procedure, 1908 which was also rejected due to absence of above Masudul Hassan due to his illness. The petitioners as appellants preferred Miscellaneous Appeal No.65 of 2023 to the District Judge and submitted a petition for condonation of delay of 482 days. In above petition under Section 5 of the Limitation Act, 1908 satisfactory explanation was provided as to above delay but the learned District Judge did not apply his judicial mind and consider above petition for condonation of delay. The respondents did not enter appearance in above appeal nor filed any

objection against above petition for condonation of delay but the learned Judge most illegally rejected above appeal on the ground of limitation which is not tenable in law.

Opposite parties did not enter appearance in this Civil revision nor anyone was found available at the time of hearing of this Rule although this Civil Revision appeared in the list for hearing for several dates.

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

It turns out from record that petitioners and Sirajul Islam jointly filed above suit for declaration of title for 14.25 decimal land alleging that the same was purchased by their predecessor Aziza Khatun by registered kabla deed dated 18.01.1954 but her name was not recorded in the relevant S. A. Khatian. Above suit was fixed for pre-emptory hearing but due to absence of the plaintiffs the same was dismissed. It has been stated by the petitioner that Masudul Hoque was the tadbirkarok of above suit who fell seriously sick which constrained him from appearing in Court on above date for hearing causing dismissal of the suit.

The petitioners as appellants preferred Miscellaneous Appeal No.65 of 2023 and submitted a petition under Section 5 of Limitation

Act, 1908 for condonation of delay of 448 days in preferring above Miscellaneous Appeal. In above petition explanation was provided for delay of 448 days in preferring above appeal. While considering a petition for condonation of delay under Section 5 of the Limitation Act, 1908 the Judge is required to take into account the explanations or the grounds shown by the appellants as cause of delay and then draw a conclusion as to whether above explanation was satisfactory or not. But it turns out from the impugned judgment and order that the learned District Judge rejected above petition for condonation of delay mechanically without application of judicial mind and taking into consideration the explanations and grounds shown by the appellants in above petition for condonation of delay. As stated above the claim of the petitioners in the disputed land is based on a registered kabla deed of 18.01.1954 but the plaintiffs did not get a full trial of the suit in accordance with law.

On consideration of above facts and circumstances of the case and materials on record I hold that the ends of justice will be met if above order of dismissal is set aside on condition of payment of cost of Taka 5,000/- and the learned Judge of the trial Court is directed to conclude the trial of the suit expeditiously.

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, 1908 and the Rule issued in this connection deserves to be made absolute.

In the result, the Rule is hereby made absolute.

The impugned judgment and order dated 10.01.2024 passed by the learned Senior District Judge, Munshigonj in Miscellaneous Appeal No.65 of 2023 affirming the order dated 04.07.2022 passed by the learned Senior Assistant Judge, Louhajong, Munshigonj in Miscellaneous Case No.01 of 2017 is set aside and Miscellaneous Case No.1 of 2017 is allowed and the order of dismissal dated 04.05.2016 passed in Title Suit No.19 of 2011 by the learned Assistant Judge is set aside and above suit is restored to its file and number on condition of payment of cost of Taka 5,000/- to the opposite parties within 30(thirty) days from the date of receipt of this order, in default, this order shall stand vacated.

However, there will be no order as to cost.