

Present:-***Mr. Justice Mahmudul Hoque*****Civil Revision No.2025 of 2025**

The Divisional Forest Officer, Dhaka
 Forest Division, Forest Bhaban Gulshan
 Road, Mahakhali, Dhaka-1212.

... Petitioner

-Versus-

Dainuddin Munshi being dead his legal
 heirs; 1(a) Md. Fazlur Rahman and others

... Opposite- parties

Ms. Rashida Alim Oeshi, DAG with
 Mr. Abdur Rahim, AAG

...For the petitioner

Mr. Md. Iqbal Hossain, Advocate

...For the opposite-party Nos.1(a)-28.

Judgment on 13th August, 2025.

On an application under Section 115(1) of the Code of Civil Procedure, this Rule was issued calling upon the opposite party Nos.1(a)-1(k) to show cause as to why the impugned judgment and order dated 14.01.2020 passed by the learned District Judge, Gazipur in Title Appeal No.60 of 2019 rejecting the appeal being time barred and thereby maintaining the judgment and decree dated 30.09.1986 passed by the learned Additional Munsif, Gazipur in Title Suit No.38 of 1986 decreeing the suit should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

Facts relevant for disposal of this Rule, in short, are that the predecessor of opposite party No.1 named Dainuddin Munshi as plaintiff, filed Title Suit No.38 of 1986 in the Court of 2nd Munsif (now Assistant Judge), Dhaka for declaration of title in the suit property against one Mojibur Rahman and 3 others, as defendants. Defendant No.4, the Chief Conservator of Forest, Dhaka appeared in suit and contested by filing written statement. The trial court after hearing by judgment and decree dated 30.09.1986 decreed the suit. Thereafter, contesting defendant No.4 did not prefer appeal within time and remained silent for about 33 years. All of a sudden the petitioner wake up and wrote a letter on 11.11.2019 addressing the government lawyer for filing appeal against the judgment and decree passed in Title Suit No.38 of 1986. Government lawyer after receipt of request obtaining certified copy of the judgment and decree and after preparing appeal filed Title Appeal No.60 of 2019 before the learned District Judge, Gazipur at a delay of 12059 days with an application praying for condonation of such delay. The appellate court fixed for hearing condonation of delay matter. After hearing by the impugned judgment and order dated 14.01.2020 rejected the

application for condonation of delay finding no explanation for such delay with sufficient cause and rejected the appeal summarily, being hopelessly barred by limitation. Thereafter, the petitioner moved this Court by filing this revision again at a delay of 1650 days. This Court issued Rule on the matter of delay in Civil Rule No.01(Con) of 2025 in which Rule was made absolute condoning such delay. Therefore, this Rule has been issued on 20.05.2025.

Ms. Rashida Alim Oeshi, learned Deputy Attorney General with Mr. Abdur Rahim, learned Assistant Attorney General, appearing for the petitioner submit that from perusal of application under Section 5 of the Limitation Act it can be easily construed that is was not happily drafted giving explanation of such delay, but fact remains that the petitioner is forest department having interest in the property. Learned Assistant Attorney General candidly submits that it is not understandable why the forest department after passing decree by the trial court remained silent about the decree and did not file appeal before the appellate court. When the matter referred to the Attorney General Office after perusal of judgment and decree, it appears that the plaintiffs in suit though could not prove his case by filing any

document or adducing evidence, the trial court for the reason best known to him decreed the suit finding good case in favour of the plaintiff. He submits that the judgment of the trial court clearly show that the plaintiff utterly failed to prove his case entitling him to get a decree as prayed for. How in the absence of proving the case of the plaintiff, the trial court could decree the suit without any basis. He submits that the plaintiffs also did not file any cross appeal against the findings and observations of the trial court regarding failure of the plaintiffs to prove his title in the suit property. In this situation, the appellate court ought to have admitted the appeal for hearing condoning delay as prayed for. Because of rejection of the application for condonation of delay a good case of the parties could not be heard and disposed of on merit causing injustice to both the parties.

He candidly argued that the delay in filing appeal is a gross negligence on the part of the appellant. Since the appellant is a government department for negligence of officers of the forest department, the appellant cannot be made liable and as such, the Rule is liable to be made absolute directing the appellate court to admit the

appeal and dispose of the same on merit, so, that the appellant will get an opportunity to place their case before the court below.

Mr. Iqbal Hossain, learned Advocate appearing for the opposite parties submits that to get condonation of delay the applicant ought to have satisfied the court giving explanation of each day of delay with sufficient reason, but explanation about such delay from 1986 to 2019 are totally absent. In the absence of sufficient cause and explanation of such delay the appellate court had no other alternative but to reject the application, accordingly, rejected the same and as such, the Rule is liable to be discharged.

Heard the learned Assistant Attorney General and learned Advocate for both the sides, have gone through the revisional application under Section 115(1) of the Code of Civil Procedure, judgment and decree of the trial court and the impugned judgment and order of the court below.

It is fact that the suit was filed in the year 1986 and the suit was decreed on contest on 30.09.1986 against the defendant No.4, appellant. The appellant did not come forward to prefer appeal within

time, but filed the appeal at a delay of 12059 days without giving any explanation for such delay. The delay is highly unprecedented and ordinarily not at all deserves consideration as per provisions of law.

To appreciate the fact, I have gone through the judgment passed by the trial court. It appears that the trial court in the impugned judgment clearly found and observed that the plaintiff could not produce any evidence both oral and documentary in support of his claim and title. He cited only one witness in respect of possession who claimed himself to be cultivator, other than oral evidence could not establish his title by any valid document. Some rent receipts showing payment of rents submitted before the trial court, but those are not relating to the suit property. Because of such observations and in the absence of title of the plaintiff, the suit is not at all liable to be decreed. Moreover, the plaintiff himself did not prefer appeal against the observation of the trial court, regarding absence of his title in the suit property.

In this situation, I think that the appeal is required to be heard by the appellate court on merit though preferred at a very very delayed time for long 33 years to secure ends of justice. The appellate court

could have condoned the such delay for the purpose of scrutinizing the matter in dispute. In the event of admitting appeal for hearing, I think that the respondent will not be prejudiced, rather, it would be helpful for the plaintiff in suit also to file cross appeal and to adduce additional evidence if they desire. Therefore, I find merit in the Rule as well as in the submissions of the learned Assistant Attorney General for the petitioner.

In the result, the Rule is made absolute, however, without any order as to costs.

The impugned judgment and decree of the appellate court is hereby set aside.

The application for condonation of delay is hereby allowed. The delay of 12059 days is hereby condoned for ends of justice and to examine the judgment passed by the trial court.

The appellate court is hereby directed to admit the appeal and heard and dispose of the same within shortest possible time preferably within 6(six) months from the date of receipt of this judgment and order without fail.

Communicate a copy of the judgment to the Court concerned at once.

Helal/ABO