IN THE SUPREME COURT OF BANGLADESH

HIGH COURT DIVISION

(CIVIL REVISIONAL JURISDICTION)

Single Bench:

Mr Justice Abdur Rahman

Civil Rule No. 825 (Con) of 2022

In the matter of:

Deputy Commissioner, Gazipur

...... petitioner

-Versus-

Harun Or Rashid Sarkar and others

.....Opposite parties.

Mr Md. Zahirul Islam, D.A.G with

Mr Md. Ferdous Sarkar, A.A.G.

........For the petitioner

Ms Ishrat Hasan, Advocate, with

Ms Tanzila Rahman Jui, with

Ms Ifat Hasan Shammi, Advocates

...for the opposite parties

Date of Hearing: 15.7.2026 and 29.7.2026 A.D.

Date of Judgment: 03.08.2026 A.D.

[সোমবার, ১৯ শ্রাবণ, ১৪৩৩ বঙ্গব্দ]

JUDGMENT

Abdur Rahman, J:

This Civil Rule was issued at the instance of the petitioner under section 115(1) of the Code of Civil Procedure, 1908, calling upon the opposite parties to show cause as to why the delay of **2009 days** in preferring the revisional application should not be condoned and/or such other or further order or orders should not be passed as to this Court may seem fit and proper.

Alongside issuance of the Rule, this Court was pleased to call for the records of the Courts below so as to examine the legality and propriety of the impugned order in the light of the materials available on record.

Facts and Procedural History**:**

The material facts, briefly stated, are that the petitioner instituted the instant revisional application calling in question the judgment and order dated **22.06.2016** passed by the learned District Judge, Gazipur, in Civil Appeal No.110 of 2016, whereby the learned

District Judge rejected the application filed under section 5 of the Limitation Act, 1908 for condonation of delay and, consequently, refused to admit the appeal preferred against the judgment and decree dated **20.10.2014**, the decree having been drawn up and signed on **27.10.2014**, passed by the learned Assistant Judge, 1st Court, Gazipur in Civil Suit No.172 of 2011.

However, the petitioner further contended that, after the passing of the judgment and order dated 22.06.2016 by the learned District Judge, an application for obtaining certified copies was made on 01.11.2016, and the certified copies were obtained on **14.11.2016**. Thereafter, according to the petitioner, the certified copies and other relevant papers were transmitted to the concerned Ministry for obtaining necessary approval for preferring the revisional application. Upon receipt of the approval, the Wokalatnama and certified copies were forwarded to the concerned Government law officer, who thereafter prepared the revisional application and filed the same. In the process, according to the petitioner, a delay of **2009 days** occurred.

The petitioner subsequently filed a supplementary affidavit elaborating the circumstances which allegedly occasioned the delay. It has been stated therein that, after passing of the impugned judgment and order, the relevant case record was forwarded to the Deputy Commissioner, Gazipur, who thereafter transmitted the same to the Solicitor Wing, Civil Section, Ministry of Law, Justice and Parliamentary Affairs, vide Nothi No. **HC/R-344/2017**.

It has further been stated that the Deputy Solicitor (Civil) thereafter forwarded the matter to the learned Attorney-General for taking necessary steps to prefer a Civil Revision before this Court on **08.11.2017**. Subsequently, on **30.11.2017**, the learned Attorney-General assigned the matter to Mr Mafiz Uddin, learned Assistant Attorney-General, for taking appropriate steps. The learned Assistant Attorney-General, in turn, submitted the relevant petition before the concerned office on **03.01.2018**.

Thereafter, the office of the Solicitor recommended, on **07.02.2018**, release of the requisite amount of Tk.713/- for filing the Civil Revision together with an application for condonation of delay. It is stated that the requisition was ultimately approved by the office of the Solicitor on **12.05.2022**, whereafter the instant Civil Revision, together with the application for condonation of the enormous delay, was filed. Thus, the petitioner seeks to attribute the delay to the movement of the file through various Government offices and functionaries and contends that such delay was neither deliberate nor intentional.

The opposite parties entered appearance by filing vokalatnama to contest the Rule, but no counter-affidavit was filed on their behalf.

Submissions on behalf of the Petitioner**:**

Mr Md. Zahirul Islam, Learned Deputy Attorney General, assisted by Mr Md. Ferdous Sarkar, learned Assistant Attorney General, appearing for the petitioner, submitted that the petitioner has been deprived of an adjudication on the merits because the learned District

Judge rejected the appeal solely on the ground of limitation.

Learned Deputy Attorney General submitted that a litigant should not ordinarily be denied substantial justice merely because of delay, particularly when the delay is capable of being satisfactorily explained. He contends that, in the facts and circumstances of the present case, the petitioner had no efficacious alternative remedy except to invoke the discretionary jurisdiction of the Court under section 5 of the Limitation Act, 1908.

He further submitted that, where the Government is a litigant, the movement of a case through several administrative and legal channels inevitably consumes some time and that the Government cannot function in precisely the same manner as a private litigant. According to him, the machinery of the State operates through several departments and functionaries and, therefore, some administrative delay is inherent in the process of taking a decision to institute litigation.

Learned Deputy Attorney General further contends that the petitioner has a reasonable prospect of success on the merits and that refusal to condone the delay would result in shutting out the petitioner from having the controversy examined on the merits. He argues that procedural rules of limitation are intended to regulate the remedy and not to defeat substantial rights.

He finally submitted that the supplementary affidavit sufficiently explains the movement of the file and the steps taken by the concerned Government authorities and that the delay, though considerable, was not occasioned by any mala fide intention or deliberate attempt to prolong the litigation.

In support of his submissions, learned Deputy Attorney General relies upon the decisions reported in **14 BLT (AD) 123**, wherein a delay of 4578 days was condoned in the circumstances of that case; **54 DLR (AD) 13**, concerning exercise of discretionary jurisdiction under section 5 of the Limitation Act; **58 DLR (AD) 425**, relating to diligence and explanation of delay in filing a revisional application; **21 ALR (AD) 129**, concerning a delay of 910 days in a matter relating to acquisition of land; and **60 DLR (2008) 357**, concerning condonation of delay upon satisfactory explanation. On those authorities, he prays that the Rule be made absolute.

Submissions on behalf of the Opposite Parties**:**

Ms Ishrat Hasan, learned Counsel appearing for the opposite parties, submitted that the explanation furnished by the petitioner could not constitute a legally sufficient explanation of the extraordinary delay of 2009 days.

She submitted that the record revealed that the learned Trial Court, after contested hearing and upon consideration of the evidence on record, decreed the suit by judgment and decree dated 20.10.2014. Against the said judgment and decree, the petitioner preferred an appeal after a long delay of **559 days** and sought condonation thereof under section 5 of the Limitation Act. The learned District Judge, upon considering the explanation offered, rejected the application for condonation of delay, finding no satisfactory explanation or diligence on the part of the appellant. Consequently, the appeal was not admitted, being barred by limitation.

Learned Counsel further submitted that the explanation now offered before this Court cannot be treated as sufficient cause, particularly when the petitioner had already exhibited considerable negligence at the appellate stage by allowing 559 days to elapse without taking effective steps.

It is further submitted that the Government has no compelling or exceptional ground for claiming indulgence under Section 5 of the Limitation Act, 1908. According to learned Counsel, the plaintiff's title was founded upon the ownership of the C.S. tenant Shombunath, who had transferred 109 decimals of land to the predecessor-in-interest of the plaintiff, namely, Abdul Khalek Sarkar and others, by registered deed No.6226 dated **21.04.1994**, and the suit property was thereafter recorded and published in S.A. Khatian No.286. It is contended that during the R.S. operation the suit property was subsequently recorded in the name of the Government without any lawful basis.

Learned Counsel finally posited that the revisional application has been filed after an inordinate and unexplained delay and that permitting such stale litigation to be revived would cause serious prejudice to the opposite parties and would frustrate the very object of the law of limitation.

In support of her contention, learned Counsel refers to the decision reported in **25 DLR (HCD) 254**, wherein it was held, in substance, that the Government cannot claim any unusual or special concession in the matter of limitation merely because the machinery of Government requires some time to process litigation.

<u>Determination</u>**:**

Upon hearing the learned Counsels for the respective parties, perusing the revisional application, the application under section 5 of the Limitation Act, the supplementary affidavit, the impugned judgment and order, the judgments and decrees of the Subordinate Courts and the other materials available on record, the principal question that falls for determination is:

> **Whether the petitioner has succeeded in establishing "sufficient cause" within the meaning of section 5 of the Limitation Act, 1908 so as to justify condonation of the extraordinary delay of 2009 days in preferring the instant revisional application?**

<u>Discussion and Observations</u>**:**

At the outset, it is necessary to bear in mind that limitation is not a mere technicality, nor is section 5 an automatic dispensation from the statutory period of limitation. The power conferred under section 5 is undoubtedly discretionary, but the discretion is a judicial discretion which must be exercised upon consideration of the facts and circumstances of each individual case.

However, the record determines that the instant petitioner, as appellant, filed an appeal before the learned District Judge, Gazipur, with an application for condonation of delay of 559 days, and after hearing the said application the learned District Judge, Gazipur, was pleased to reject the application filed under Section 5 of the Limitation Act, 1908; consequently, the appeal was barred by limitation. In the said order, the learned District Judge specifically mentioned that:

> "অত্র আপীল মামলা দায়ের করার ক্ষেত্রে তামাদির দরখাস্তে আপীলকারী পক্ষের অবহেলা দৃষ্টিগোচর হয় যাহার কোন সন্তোষজনক ব্যাখ্যা বিশ্লেষণ বা তৎপরতা আদালতে উপস্থিত হয় নাই। 'এমৃতাবস্হায় উপরোক্ত আলোচনার আলোকে বিলম্ব মওকুফের দরখাস্তে ৫৫৯ দিনের বিলম্বের ব্যাখ্যা সন্তোষজনক না হওয়ায় তামাদির দরখাস্ত নামঞ্জুর করা হইল এবং অত্র দেওয়ানী আপীলটি তামাদিতে বারিত হওয়ায় গ্রহন করা হইল না।"

However, the pivotal underlying principle of the expression **"sufficient cause"** has deliberately not been defined by the legislature in precise terms. This is so because the circumstances capable of constituting sufficient cause cannot be placed within a rigid or exhaustive formula. Nevertheless, the absence of a statutory definition does not mean that every explanation, however vague, inadequate or negligent, must be accepted by the Court. The explanation must be such as would satisfy a prudent judicial mind that the applicant was prevented by circumstances beyond his reasonable control from approaching the Court within the prescribed period.

In other words, **section 5 confers a power to condone delay; it does not confer an intrinsic right to condonation**.

The Court, while exercising such discretion, is required to strike a balance between two competing considerations. On the one hand, substantial justice should not ordinarily be sacrificed at the altar of procedural technicality; on the other hand, the opposite party is equally entitled to repose, certainty and finality in litigation. The law of limitation is founded upon a public policy that litigation must eventually come to an end.

In the instant case, the delay is not a short or marginal delay. It is a delay of **2009 days**, extending over several years. Such an extraordinary delay places a correspondingly heavier burden upon the applicant to furnish a cogent, continuous and convincing explanation covering the material period. The chronology placed before this Court is itself significant.

It is noteworthy that the learned trial Court decreed the suit on 20.10.2014. The petitioner thereafter allowed **559 days** to pass before preferring the appeal. The learned District Judge considered the explanation offered and expressly found that the appellant's negligence was apparent, but no satisfactory explanation or sufficient diligence had been demonstrated. The application under section 5 was accordingly rejected, and the appeal was not admitted.

Thereafter, the impugned appellate order was passed on 22.06.2016. The petitioner claims to have applied for certified copies on 01.11.2016, i.e., after the limitation period expired, and to have received the same on 14.11.2016. Even thereafter, however, the matter did not progress with the degree of diligence expected from a litigant seeking to challenge a judicial order.

The supplementary affidavit discloses several stages of movement of the file through different Government offices. It states that the matter was forwarded to the Deputy Commissioner, thereafter to the Solicitor Wing, subsequently to the Deputy Solicitor, then to the learned Attorney-General, thereafter to the learned Assistant Attorney-General, and ultimately through the concerned administrative office for sanction of the requisite amount.

These facts, to a limited extent, explain where the file travelled; but they do not satisfactorily explain why the legal remedy was not pursued with reasonable promptitude.

However, a litigant seeking condonation of a long delay is not required merely to furnish a chronology of administrative movement. What section 5 requires is an explanation showing a reasonable nexus between the circumstances relied upon and the applicant's inability to approach the Court within the prescribed period.

In the present case, even assuming that some time was legitimately consumed in obtaining administrative instructions and approvals, the petitioner has failed to satisfactorily account for the prolonged periods of inactivity and, more importantly, for the absence of effective steps after the matter had already been placed before the competent legal authorities.

The record further reveals that the matter was ultimately placed for motion hearing on **13.12.2022**, when the Rule was obtained. Yet, even thereafter, the petitioner did not take effective steps for hearing of the Rule until 06.07.2026, when the learned Advocate for the opposite parties fixed the matter for hearing.

Thus, the delay cannot be viewed as a single isolated period attributable to one administrative difficulty. Rather, the record discloses successive periods of inaction at different stages.

<u>Government Litigation and the Question of Special Concession</u>**:**

Learned Deputy Attorney General has rightly drawn the attention of this Court to the practical difficulties involved in Government litigation. It cannot be denied that the State functions through a complex administrative structure and a government case may require movement through several departments and legal authorities before a decision is taken.

The principle expressed in **21 ALR (AD) 129**, to which reference has been made, recognizes that the State machinery functions through several agencies and some degree of administrative delay may, in appropriate circumstances, be unavoidable.

However, that principle cannot be transformed into an **unqualified immunity from limitation**.

The fact that an applicant is the Government may constitute a relevant circumstance; it cannot, by itself, constitute sufficient cause.

The Government, like every other litigant, is subject to the law of limitation. Public authorities are expected to maintain appropriate administrative mechanisms for monitoring litigation, obtaining legal advice and taking timely decisions. Administrative complexity may explain a reasonable period of delay; it cannot indefinitely excuse unexplained inactivity.

The observation made in **25 DLR (HCD) 254**, as relied upon by learned Counsel for the opposite parties, is apposite in this context: the Government cannot claim an unusual concession merely on the ground that its machinery requires time to process a case. The existence of multiple Government offices may explain some delay, but it cannot convert negligence into sufficient cause as a matter of course.

Thus, the correct principle may be stated as follows:

Sufficient cause" under section 5 of the Limitation Act requires a reasonable and bona fide explanation of delay; governmental status may be a relevant circumstance, but is neither a privilege nor an automatic ground for condonation. Where the delay is satisfactorily explained, the Court may, in the interest of substantial justice, exercise its discretion to condone the same.

The Authorities Cited by the Petitioner**:**

The authorities relied upon by the learned Deputy Attorney General undoubtedly establish that the power under section 5 should be exercised with a liberal and justice-oriented approach where the applicant has furnished a satisfactory explanation and where the delay was caused by circumstances beyond his control.

In **14 BLT (AD) 123**, the delay of 4578 days was considered in the peculiar circumstances of that case and was condoned where sufficient reasons beyond the control of the appellant were found.

Similarly, in **54 DLR (AD) 13**, a delay of 1302 days was condoned upon the High Court Division being satisfied with the explanation offered, and the Appellate Division found no illegality in the exercise of such discretion.

Likewise, the decision reported in **21 ALR (AD) 129** recognizes the practical difficulties associated with the movement of Government files. The decisions reported in **58 DLR (HC) 425** and **60 DLR (HC) 357** also demonstrate that substantial delays may, in an appropriate case, be condoned where the Court is satisfied that the applicant acted with reasonable diligence and furnished a satisfactory explanation.

But these authorities do not lay down an inflexible proposition that **lengthy delay by itself is irrelevant in every case**, nor do they dispense with the statutory requirement of establishing sufficient cause.

The ratio emerging from those authorities is that **the length of delay is not decisive; the quality and credibility of the explanation are to be justified**.

Each case must therefore stand upon its own facts.

The Principle in N. Balakrishnan:

In this connection, the principle enunciated by the Supreme Court of India in **N. Balakrishnan v. M. Krishnamurthy, (1998) 7 SCC 123**, is instructive. The Court observed, in substance, that the length of delay is not by itself determinative and that the acceptability of the explanation is the governing consideration. The Court also recognized that limitation rules are founded upon public policy and are intended to prevent dilatory tactics while ensuring that genuine litigants are not deprived of adjudication merely because of an excusable lapse.

The said principle undoubtedly embodies a salutary approach. Nevertheless, it does not mean that a litigant may remain inactive for years and thereafter invoke the broad concept of substantial justice without satisfactorily accounting for the period of default.

Indeed, the same principle also recognizes that the Court must consider the position of the opposite party. While deciding an application for condonation, the Court cannot look exclusively at the applicant's interest. The opposite party, too, has a legitimate expectation that litigation, once concluded or allowed to attain a degree of finality, should not be revived after an unexplained and extraordinary lapse of time.

Thus, the governing consideration is not simply whether refusing condonation may deprive the applicant of an adjudication on the merits. The Court must also consider whether allowing condonation would undermine the statutory discipline of limitation and prejudice the legitimate rights and expectations of the opposite party.

Application of the Principles to the Present Case:

Tested against the aforesaid principles, the explanation furnished by the petitioner does not inspire sufficient confidence to constitute "sufficient cause".

First, there was already an unexplained or inadequately explained delay of **559 days** at the appellate stage. The learned District Judge, upon consideration of the explanation then available, specifically found negligence and absence of satisfactory explanation.

Second, after the impugned order dated **22.06.2016**, although the petitioner obtained certified copies on 14.11.2016, the revisional remedy was not promptly pursued.

Third, the supplementary affidavit mainly narrates the movement of the file between different Government offices. Such narration, by itself, does not explain each material period of inactivity.

Fourth, the matter was apparently placed before the competent legal authority and even assigned to the learned Assistant Attorney-General in **2017**, and the relevant petition was submitted before the concerned office on **03.01.2018**. Yet the final step of instituting the revisional application was not taken until **2022**.

Fifth, even after the Rule was obtained on **13.12.2022**, no effective step was taken for nearly four years to have the Rule heard, and the matter was ultimately fixed for hearing on **06.07.2026** at the instance of the learned Advocate for the opposite parties.

Therefore, the explanation does not reveal one unavoidable obstacle continuously preventing the petitioner from approaching this Court. Rather, it reveals a series of administrative and procedural inactions extending over several years.

This Court is conscious that **the Court should lean in favour of adjudication on the merits where the applicant demonstrates *bona fide* conduct and sufficient cause**. However, sympathy cannot replace proof, and substantial justice cannot be invoked as a formula to neutralise every consequence of negligence.

The expression ***sufficient cause*** necessarily carries within it the concept of **reasonable diligence**. A litigant who seeks the equitable indulgence of the Court must demonstrate that, despite exercising reasonable diligence, circumstances beyond his control prevented him from acting within time.

In the present case, such diligence is conspicuously absent.

Laches and Bona Fides**:**

There is another aspect which cannot be overlooked. In considering an application for condonation of an extraordinary delay, the Court must examine not merely whether the applicant has offered an explanation, but whether the explanation is **continuous, credible and bona fide**.

A bona fide explanation should ordinarily demonstrate a consistent course of conduct showing that the applicant intended to pursue the remedy but was prevented from doing so by circumstances beyond his control.

Here, however, the record discloses repeated intervals during which no effective legal step was taken. The petitioner has not satisfactorily explained why, after the matter had reached the legal authorities and after an Assistant Attorney-General had been assigned to take necessary steps, the proceeding was not brought before the competent Bench within a reasonable time.

The Court cannot overlook such prolonged inactivity merely because the applicant happens to be a government authority.

The expression **"sufficient cause" cannot be equated with "administrative convenience."**

Nor can the Court permit a litigant to take advantage of its own prolonged inaction and thereafter seek restoration of a remedy which had already become barred by limitation.

Prejudice and Finality of Litigation:

There is also a broader consideration of public policy. The law of limitation proceeds on the principle that although every person having a legal grievance should ordinarily have an opportunity to seek judicial redress, that opportunity must be exercised within the period prescribed by law. The object is not merely to punish an indolent litigant; it is to ensure certainty, repose and finality in legal affairs.

The maxim ***interest reipublicae ut sit finis litium***, that it is in the interest of the State that litigation should have an end, remains a fundamental consideration in the law of limitation.

If a party is permitted to revive a stale remedy after several years without establishing sufficient cause, the opposite party is exposed to renewed uncertainty, additional litigation expenses and the possibility of reopening matters which he may reasonably have regarded as concluded.

This consideration becomes particularly significant where, as in the present case, the litigation concerns title to immovable property. Rights relating to land cannot reasonably be kept in a state of perpetual uncertainty merely because one party has failed to pursue the statutory remedy with reasonable diligence.

Merit of the Underlying Case

Learned Deputy Attorney General has also sought to persuade this Court that the petitioner has a fair prospect of success on the merits and that the matter should therefore be allowed to be examined substantively.

There is some force in the general proposition that, where a litigant demonstrates sufficient cause, the Court may lean towards adjudication on merits rather than non-suiting him on limitation.

But **merit cannot, by itself, constitute sufficient cause under section 5**.

The Court, at the stage of considering an application for condonation of delay, is not ordinarily required to conduct a full-scale examination of the merits of the substantive dispute. At most, the apparent strength or weakness of the underlying case may constitute one of the surrounding circumstances in exercising discretion. It cannot, however, substitute the statutory requirement of sufficient cause.

In the present case, the opposite parties have also pointed out that the learned Trial Court decreed the suit after contesting hearing and consideration of the evidence, and that the petitioner thereafter failed to pursue the appellate remedy within time and subsequently failed to challenge the rejection of the condonation application with due promptitude.

The procedural history therefore does not disclose a litigant who has consistently pursued his legal remedy but has been thwarted by circumstances beyond his control.

Conclusion:

Upon an overall assessment of the entire matter, this Court finds that the petitioner has failed to establish any compelling circumstance which prevented it from preferring the instant revisional application within the prescribed period.

The delay of **2009 days** is extraordinary. More importantly, the explanation offered is not sufficiently continuous, cogent or convincing. The movement of the file through different Government offices may explain some administrative delay, but it does not satisfactorily account for the entire period of default. The prolonged intervals of inactivity, both before and after the filing of the revisional application, demonstrate a degree of negligence and want of diligence inconsistent with the requirement of bona fide conduct.

The Court is also unable to accept the proposition that Government litigation should automatically be treated with a more lenient standard. The Government is undoubtedly a litigant of a different administrative character, but it is nonetheless bound by the law. **There can be no Governmental exception to limitation in the absence of sufficient cause.**

However, I am constrained to hold that the aforesaid lenient views are not applicable to the case in hand, which corresponds to the delay of 2009 days, as the authorities were very negligent and inactive in any way at all, and there is no reason, the applicant was incapable of coming to the Hon'ble High Court due to financial hardships, which may be treated as "sufficient cause''. This Court would count it softly, if the authority could show any example that any of the negligent connecting officers has been penalized or censured due to this case; that would be counted as *bona fide* of the authority and sufficient cause to condone the limitation.

The authorities relied upon by the petitioner are distinguishable on the facts, concomitant to the quantum of delay. In those cases, the Courts were satisfied that the delays were sufficiently explained and that the applicants had acted with reasonable diligence. The principle emerging from those decisions is not that every long delay should be condoned, but that even a long delay may be condoned where the explanation is satisfactory and the applicant's conduct is bona fide.

The present case falls on the other side of that line.

I am, therefore, constrained to hold that the petitioner has failed to satisfy the statutory requirement of **"sufficient cause"** under section 5 of the Limitation Act, 1908. To condone the delay in the circumstances of the present case would not amount to advancing substantial justice; rather, it would amount to overlooking prolonged and successive lapses without a legally sufficient explanation and would effectively dilute the discipline imposed by the law of limitation.

Accordingly, the discretion under section 5 cannot be exercised in favour of the petitioner.

The Rule, therefore, **fails**.

Order:

Accordingly, the Civil Rule (Con) is discharged without any order as to costs.

The office is directed to place the revisional application under section 115(1) of the Code of Civil Procedure, 1908, supported by an affidavit sworn by the petitioner, before an appropriate Bench for passing necessary consequential order or orders in accordance with law, within **45 (forty-five) days**, as contemplated under Rule 5 of Chapter IV A of the Supreme Court of Bangladesh (High Court Division) Rules, 1973, as amended in 2012.

Let a copy of this judgment be communicated to the learned Court concerned forthwith.

[Abdur Rahman, J]