

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

Civil Revision No. 3815 of 2012

In the matter of:

Alhaj Md. Sekandar Ali being dead his legal heirs;
1(a) Professor Razia Begum
...Petitioner.

-Vs-

Present
Mr. Justice Mamnoon Rahman

Soara Tammam and others.
....Opposite parties.

Mr. Binod Kumar Agarwala, Adv.
...For the petitioner.

Mr. Kamruzzaman Bhuiyan, Adv.
...For the opposite parties.

Heard & Judgment on: **The 27th February, 2025**

In an application under section 115(1) of the Code of Civil Procedure, 1908 the petitioner obtained the rule from this court on 14.11.2012 in the following terms;

“Rule was issued calling upon the opposite parties to show cause as to why the order complained of in the petition moved in court today, should not be set aside and/or pass such other or further order or orders as to this court may seem fit and proper”.

I have heard the learned Advocates for the petitioner as well as opposite parties. I have perused the impugned judgment and order passed by the court below, revisional application, ground taken thereon as well as necessary papers and documents annexed herewith.

On perusal of the same, it transpires that the present petitioner filed a miscellaneous case for preemption before the trial court impleading the present opposite parties. The trial court proceeded with

the case wherein both the parties adduced evidence both oral and documentary. It further transpires that the trial court, however, allowed the miscellaneous case in favour of the petitioner-preemptor. Thereafter, the opposite party-preemptee preferred appeal before the District Judge, Rajshahi. At the time of filing of the appeal there had been a delay of 292 days for which the opposite party-preemptee pressed an application under section 5 of the Limitation Act for condonation of delay. The court registered the appeal on 11.03.2012 and ultimately condoned the delay on 19.09.2012. The main contention as raised by the pre-emptee-opposite parties are that the appellants were minors and their father was the Tadbirkar who died and they could not prefer appeal in time. The main contention as raised by the learned counsel for the petitioner, is that, the lower appellate court without hearing the pre-emptor condoned the delay. However, appeal is a substantive right and admittedly if there is a delay as per section 5 of the Limitation Act the applicant has to satisfy the court about such delay. In the present case in hand, it transpires that the appellate court condoned the delay.

In such circumstances, I am of the view that justice would be done if a direction be given upon the lower appellate court to allow the petitioner to contest the appeal as well as to raise objection regarding the condonation of delay at the time of final disposal of the appeal. Accordingly, the lower appellate court is directed to allow the petitioner to contest the appeal as well as to raise objection regarding the condonation of delay at the time of final disposal of the appeal.

With this observation and direction the instant rule is disposed of.

The office is directed to communicate the order to the concerned court below with a copy of the judgment, at once.

(Mamnoon Rahman,J:)