

**In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)**

Present:

Mr. Justice Md. Riaz Uddin Khan

Civil Revision No.673 of 2006

IN THE MATTER OF :

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

-And-

In the Matter of:

Director General represented by Deputy Director,
Compulsory Primary Education Implementation
observation Unit, Primary and Mass education Ministry,
Sikhsa Bhaban, Dhaka and others

.....Defendant-Appellant-Petitioners

-Versus-

Md. Mosaraf Hossain and another

.....Plaintiff-Respondent-Opposite Parties

Mr. M.D. Rezaul Karim, DAG

.....for the Defendant-Appellant-Petitioners

Mr. Md. Ashanur Rahman, Adv

.....for the Plaintiff-Respondent-Opposite Parties

Heard and Judgment on: 03.01.2022

Rule was issued calling upon the opposite parties to show cause as to why the order No. 4 dated 25.07.2005 of the District Judge, Jhenaidah in Title Appeal No. 34 of 2005 in dismissing the appeal as barred by limitation arising out of the Judgment and decree dated 29.09.2004 of the Assistant Judge, Maheshpur, In Charge of Court of Assistant Judge, Courtchandpur, Jhenaidah in Title Suit No. 41 of 2003 should not be set aside and/or such other or further order or orders passed as to this court may seem fit and proper.

At the time of issuance of Rule this court was pleased to stay operation of the Judgment and decree dated 29.09.2004 passed by the Assistant Judge, Maheshpur, in charge of Courtchandpur, Jhenaidah for a period of 06 months but that period of stay was not extended subsequently.

Succinct facts for disposal of this Rule is that the Plaintiffs are serving as the Head Masters of two different Schools with honestly and

efficiently; that as per direction of Defendant No. 3 they introduced Model Test Scholarship examination in 2002 in their schools and in pursuance of that a committee was formed in coordination with the Defendant No. 3 and more than one teacher nominated by them; that the Defendant No. 3 through the Head Master of the School of that area collected Fee at the rate of Tk. 9/- from each Examinee and Defendant No. 3 asked the Head Masters that the Fee would be enhanced to Tk. 12/- on which the Plaintiffs raised objection considering the unbearable consequence on the part of the poor students; that on 11.12.2002 the monthly coordination meeting was held in presence of Head Masters of those Schools with the Chairmanship of Defendant No. 3 and the Cubing of students was discussed but while Defendant No. 3 asked that which schools got the money of Cubing, the plaintiffs complained that even after payment of Registration Fee for Cubing they did not get Registration; then the Defendant No. 3 remarked the plaintiffs as stupid and asked them for taking seats otherwise they will be ousted from the meeting and also expressed the teachers of Courtchandpur are all stupid and at that time all teachers raised serious objection. The Defendant No. 3 then left the meeting throwing the files and lodged complaint to the Defendant No. 2 on 11.12.2002 stating that the Plaintiffs created obstacle in Cubing meeting and misbehaved with Defendant No. 3; the Defendant No. 2 on the basis of such allegation by letter dated 08.12.2003 asked the Plaintiffs to show cause as to why action to stop Government benefits will not be taken against them and directed to submit the reply within 15.01.2003; in reply of that show cause the Plaintiffs explained the actual position and facts happened on that meeting and submitted the same on 14.01.2003; then Defendant No. 1 on 23.1.2003 by the impugned letter directed the Chairman of the Managing Committee of the Schools to issue show cause notice upon the Plaintiffs for their alleged misconduct and at the same time stopped the payment of salary until further order; in pursuant of that letter the Chairman of the Managing Committee of both the Schools by letter dated 30.01.2003 and 01.02.2003 respectively asked the Plaintiff nos. 1 and 2 to show cause as to why they created obstacle in public function; the plaintiff No. 1 on 03.02.2002 and

the plaintiff No. 2 on 04.02.2003 submitted written reply to the Chairman of the Committee; then both the managing committee formed separate 2 members enquiry committee who submitted their report after holding inquiry on the allegation; on 11.02.2003 and 13.02.2003 the Chairman of the Managing Committee submitted report to the Defendant No.1 stating that the allegations are baseless and ill-motivated; that the Defendant No.2 on 15.03.2003 by a letter asked Md. Tabibar Rahman, District Education officer, Harinkudu to hold enquiry and submit report within 15.03.2003 and Tabibar Rahman issued notice on 20.03.2003 and obtained statements of plaintiffs and on 23.03.2003 submitted report but the contents of which were unknown to the plaintiffs; that only the Managing Committee of concern School is the only authority to take legal action against plaintiffs but neither Managing Committee nor any authority of Education Department started any legal proceeding against the plaintiffs but the Defendant No. 1 stopped the payment of salary of the Plaintiffs by the impugned letter dated 23.01.2003 which is illegal, without jurisdiction and not binding upon them and hence the suit.

The defendant Nos. 1-3 contested the suit by filing written statements stating that in the meeting dated 11.12.2002 discussion was held for observing Cub holiday and as per norms one should speak after closing the speech of another but the plaintiffs interrupted the meeting by shouting in the midst of the delivery of his speech and while the defendant No. 3 said regarding the decision of cub holyday the plaintiffs shouted towards him, misbehave with him and also threatened him to outs from the meeting for which the defendant No. 3 felt embarrassed and left the meeting and communicated the occurrence to his higher authority and his higher authority on 08.01.2003 issued notice upon the plaintiffs asking them to show cause to the managing committee but the managing committee did not submit any report to the defendant Nos. 1-2; that the defendants found truth in the allegation on inquiry and stopped the payment of the Government benefits to the plaintiffs; that the plaintiffs admitting the facts applied to the defendant No. 1 and as such the suit is liable to be dismissed.

The learned Judge of the trial Court after taking evidence and hearing the arguments of both the parties decreed the suit by his judgment and order dated 29.09.2004 and passed a mandatory injunction to the defendants to pay the regular salary along with arrears declaring the order dated 23.01.2003 passed by the defendant no.1 illegal, void and without any legal basis.

Against the said judgment and decree the defendants on 19.04.2005 preferred the Title Appeal No. 34 of 2005 before the learned District Judge, Jhenaidah with an application under section 5 of the Limitation Act, 1908 for condonation of delay in filing the appeal. The learned District Judge by his impugned order No. 4 dated 25.07.2005 on the day of admission of appeal dismissed the appeal on the finding that the appeal is barred by limitation as the explanation sought by the defendants was not bonafide and satisfactory.

Being aggrieved by and dissatisfied with the impugned order passed by the learned District Judge as well as the judgment and decree passed by the trial Court the defendant preferred the revisional application before this court and obtained rule and order of stay as mentioned above.

Mr. M.D. Rezaul Karim, the learned Deputy Attorney General appearing on behalf of the defendant-petitioners submits that the learned District Judge ought to have allowed that application for condonation of delay and could have heard the appeal on merit. He submits that sufficient explanation was narrated in the application filed under section 5 of the Limitation Act explaining the position of the defendants causing delay in filing the appeal but without considering that the learned District Judge dismissed the appeal on the ground of limitation. He next submits that the appellate court overlooked that the trial Court pronounced the judgment on 29.09.2004 and the defendant tried to settle the dispute amicably upon application filed by the plaintiffs but on refusal of the proposal of the defendants by the plaintiffs taking approval from the higher authority filed the appeal on 19.04.2005 after about 7 months later but the learned District Judge in dismissing the appeal on the ground of limitation committed error of law which caused ultimate failure of Justice.

Mr. Md. Ashanur Rahman, learned Advocate appearing for the plaintiff-opposite parties submits that in passing the impugned order dismissing the appeal preferred by the defendants beyond the period of limitation the learned District Judge did not commit any wrong as he opined that without filing the appeal in time the defendants engaged themselves for compromise with the plaintiffs cannot be any ground for condonation of delay. He further submits that since the defendant-petitioners have no merit in the original suit the learned District Judge considering that part of the suit was not inclined to condone the delay. He submits that the defendant-petitioners are so negligent that even the present revision has been filed after 53 days of statutory period of limitation.

The learned advocate then submits that without initiating any departmental proceedings and/or without suspending the plaintiffs from their job the defendant no.1 had no authority to stop the payment of the Government portion of salary of the plaintiffs. He next submits that the plaintiffs by producing documents and adducing witnesses before the trial court proved their case that there was no departmental proceeding against them and the allegation made against the plaintiffs was all along false and ill motivated. He further submits that on the other hand the defendants did not even cross-examine the P.Ws. 2 and 3 and failed to produce any document or adduced any witnesses before the trial Court to controvert the claim of the plaintiffs in the suit. He finally submits that in considering all this aspect the defendants afterwards withdrawing their order of stopping payment now giving the salary of the plaintiffs.

I have heard the learned Advocates of both the sides, perused the impugned order passed by the learned District Judge as well as the judgment and decree passed by the trial Court along with the documents including the application for condonation of delay in filing appeal.

It appears from the impugned order No. 4 dated 25.07.2005 the learned District Judge disallowed the appeal on the ground of limitation on the findings that without filing appeal in time the defendant engaged themselves for compromise with the plaintiffs and after failing to come

with a compromise this appeal was filed beyond the statutory limitation period and that cannot be any ground for condonation of delay.

It further appears from the judgment passed by the trial Court that the P.W-1 narrated the statements as claimed in the plaint and in support of the plaint P.Ws. 2 and 3 also gave statements corroborating P.W-1. P.W. 1 also proved exhibit- 7, the inquiry report in favour of them. On the other hand the defendants examine none and thereby did not adduce any evidence before the Court in support of their claim. It further appears that the plaintiffs were regular in attending their respective school and till hearing of the argument of the suit there was no suspension order or there was no departmental proceeding against the plaintiffs. In such circumstances the order of stopping payment had no legal basis. Since the defendants could not show any legal basis for sustaining the impugned letter dated 23.01.2003 stopping the Government portion payment of salary of the plaintiffs, I do not find any reason to interfere with the impugned order passed by the learned District Judge dismissing the appeal in limini without admission rejecting the application for condoning the delay in filing appeal and thereby affirming the judgment and decree passed by the trial Court. Moreover, the cause for delay in filing appeal as stated in the application for condoning the delay is neither satisfactory nor bonafide. Since the instant Rule has no substance I am constrained to discharge the Rule.

In the result the Rule is **discharged**. However, without any order as to cost. The judgment and decree dated 29.09.2004 (decree signed on 05.10.2004) passed by the Assistant Judge, Maheshpur, in charge of Assistant Judge, Courtchandpur, Jhenaidah in Title Suit No.41 of 2003 is hereby affirmed.

Communicate this judgment to the court concerned at once.