

Present:

Mr. Justice Md. Ruhul Quddus

Civil Revision No.3632 of 2003

Majar Ali and others

... Petitioners

-Versus-

Government of Bangladesh and others

... Opposite Parties

Subhas Chandra Saha, Advocate

... for the petitioners

Ms. Nowazish Ara Begum, A.A.G

...for Opposite Party Nos.1-2

Judgment on 29.3.2011

This Rule at the instance of plaintiff-appellants, was issued on an application under section 115 (1) of the Code of Civil Procedure to examine the legality of judgment and order dated 8.5.2003 passed by the District Judge, Sunamganj in Miscellaneous Appeal No.4 of 2002 summarily dismissing the appeal on rejection of an application for condonation of delay in filing the miscellaneous appeal.

Facts relevant for disposal of the Rule, in brief, are that the petitioners instituted Title Suit No.35 of 1996 before the Assistant Judge, Sunamganj for declaration of title over the suit land on the averments *inter alia*, that their predecessor-in-interest, Habibulla was a tenant in the suit land under the landlord. Subsequently the landlord instituted Title Suit No.388 of 1937 for declaration of title and arrear rents against the plaintiffs. Ultimately the suit was decreed on compromise in terms of a 'solenama' and the plaintiffs became the

tenants under the land lord. The plaintiffs paid rents to the landlord and possessed the suit land for more than the statutory period and ultimately acquired title over the same. The S. A. record in respect of the suit land was wrongly published in name of the Government. Hence the plaintiffs were constrained to institute the suit.

Defendant Nos.1 and 2 (herein opposite party Nos.1-2) were contesting the suit by filing a written statement denying the material allegations of the plaint and contending *inter alia*, that the suit land was correctly recorded in the name of the Government. The plaintiffs had no title and possession in the suit land.

The suit was dismissed for default on 16.5.2000 as the plaintiffs failed to take any step. Thereafter, the plaintiffs filed Miscellaneous Case No.23 of 2000 for restoration of the suit on 14.6.2000. The said miscellaneous case was also dismissed for default on 22.3.2001. Against the said order dated 22.3.2001, the plaintiff-petitioners preferred Miscellaneous Appeal No.4 of 2002 before the District Judge, Sunamganj. The said appeal was delayed by 275 days, for which they filed a separate application for condonation of delay. The learned District Judge heard the said application and rejected the same and thereby summarily dismissed the appeal by his order dated 8.5.2003, which has been impugned in the present civil revision.

Mr. Subash Chandra Saha, learned Advocate appearing for the petitioners, submits that the petitioners' tadbirker, Md. Ershad Ali had suddenly left the Country without any information to them. Subsequently plaintiff No.3, Idris Ali was assigned to take care of the miscellaneous case, but he died and as a result the petitioners were

not aware of the date of hearing of the miscellaneous case, or the dismissal order. They did not receive any notice whatsoever from the trial Court, as mentioned in the impugned order. Their learned Advocate also did not communicate them about the dismissal order, for which they were in dark about the fate of the miscellaneous case, and the delay had been caused in filing the miscellaneous appeal. Mr. Saha further submits that the petitioners have a very good case on merit, and if the appeal is not admitted and they do not get a chance to press the appeal on merit, they will suffer irreparable loss and injury.

On the other hand, Ms. Nowazish Ara Begum, learned Assistant Attorney General appearing for the opposite parties, although did not file any counter affidavit, submits that the petitioners failed to give any explanation for delay of every day, and therefore, the learned District Judge rightly rejected their application and dismissed the miscellaneous appeal.

I have perused the revisional application, the memo of appeal and application for condonation of delay annexed therewith, and also gone through the impugned order. This is correct that the petitioners did not explain the delay of every day in their application. But the Court should also consider that a dismissal order passed under Order IX rule 8 of the Code of Civil Procedure precludes the plaintiffs' right from bringing a fresh suit on the same cause of action. Therefore, in determining the 'sufficient cause' while dealing with an application for restoration of a suit dismissed under the above quoted law, the Court should take lenient view and condone some negligence of the plaintiff(s). In the present case, the miscellaneous appeal arises out of an order of dismissal for default under Order IX rule 8 of the Code, and

for the same reason section 5 of the Limitation Act should be liberally construed in the interest of justice. More so, the sufficient cause shown and explanation given by the plaintiff-petitioners in the present revisional application appears to be reasonable and satisfactory. The Government-Opposite Parties will also get ample opportunity to oppose the miscellaneous appeal, if it is heard on merit. Considering the facts and circumstances of the present case, I am inclined to condone the delay in filing the miscellaneous appeal in the interest of justice.

In the result, the Rule is made absolute. The impugned order dated 8.5.2003 passed by the District Judge, Sunamganj in Miscellaneous Appeal No.4 of 2002 is hereby set aside. Delay of 275 days in filing Miscellaneous Appeal No.4 of 2002 before the District Judge, Sunamganj is condoned. The learned District Judge, Sunamganj is directed to hear the miscellaneous appeal on merit, and dispose of the same in accordance with law.

Communicate a copy of the judgment.