

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

Civil Revision No. 4416 OF 2003.

IN THE MATTER OF:

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

IN THE MATTER OF

Bangladesh Represented by the Deputy Commissioner
Chapainawabgonj.

... Plaintiff-Appellant-Petitioner.

-Versus-

Alhaj Mosir Uddin Ahmed and others

... Defendants-Respondent -Opposite Parties.

Mr. Mohammad Mujibur Rahman, DAG with
Mr. Md. Jashim Uddin Khan, AAG and
Mr. Al Amin Siddiqui, AAG.

... For the petitioner.

Mrs. Shimul Sultana, Advocate for
Mrs. Shahanara Begum, Advocate

... For the opposite party Nos.1-3.

Present:

Mr. Justice Md. Hamidur Rahman

Heard on: 25.02.2025, 27.02.2025 and 02.03.2025.

Judgment on: 09.03.2025.

This Rule under Section 115(1) of the Code of Civil
Procedure was issued on 19.10.2003 in the following
terms:

“Let a Rule issue calling upon the opposite parties to show cause why the judgment and order dated 21.11.2002 by the District Judge, Chapainawabgonj in Title Appeal No. 119 of 2002 should not be set-aside and/or pass such other or further order or orders as to this Court may seem fit and proper.”

The facts necessary for disposal of the Rule in short are that the suit plot was originally belong to Zaminder Babu Brajedra Mohon Moitro under whom there was a shebait of Sree Radha Madhop Zeu Bigro Thakur. After State Acquisition and Tenancy Act the said property came under control of the Government. The property was devoted for Gods and for that reason the suit property was not given to anyone under settlement. The pro-forma defendants have been living on the bank of the ponds after getting verbal permission from the Government and enjoying property for 20-22 years and the ponds are used by the local people for their house hold needs. The defendant No.1 by misleading the Government officials was able to make the S.A. of R.S. records in the name of his wife Gulkhaton. Then the defendant No.1 on 15.03.1997 threatened the pro-forma defendants to vacate the land and hand over the possession of the suit property to the Government. The pro-forma defendant No.4 informed the matter to the local Assistant Commissioner on 1.4.1997 and the local concerned Government Office after

enquiry found that the S.A. and R.S. records of the suit plots were prepared wrongly in the name of Gulkhaton Nessa and the said Gulkhaton Nessa had no right, title and interest over the suit property and the documents in the name of Gulkhaton Nesa is forged. That the S.A. of R.S. records were prepared in the name of Gulkhaton Nesa which creates clouds over the right of the Government in respect of the suit plot and to remove the ambiguity about the title of the suit land and the plaintiff filed the suit for declaration of title over the suit land.

The defendant Nos. 1-3 contested the suit by filing written statement contending inter alia that the suit is not maintainable. The suit is bad for defects of parties. There is no cause of action and the suit is barred by limitation. The suit property was belonged to Brojendro Mohon Moitro but after State Acquisition and Tenancy Act the suit property never vested to the Government. Gulkhaton Nesa took pattan from the Zaminder in the year 1352 B.S. and has been possessed the suit land through defendant No. 1. The khatian No. 27 was prepared rightly in her name and she has paid the rents; R.S. record was also prepared in her name rightly. Gulkhaton Nesa died leaving no son and as husband of Gulkhaton Nesa defendant No.1 and as daughters, defendants No. 2-3 became owner of the suit land; That some were living there by taking permission from them and some

persons have been living there by dint of deeds executed by the defendants. The suit filed against the defendants only to harass the defendants on a false assertion and the suit is liable to be dismissed.

That the trial Court framed the issues and considering the papers available in the record was pleased to dismiss the suit vide its judgment and decree dated 30.11.1998 passed in Other Suit No. 59 of 1997.

Being aggrieved by and dissatisfied with the judgment and decree dated 30.11.1998 passed by the learned Assistant Judge, Chapainawabgonj in Other Suit No. 59 of 1997 the plaintiff preferred an appeal bearing Title Appeal No. 119 of 2002 before the learned District Judge, Chapainawabgonj with an application under section 5 of the Limitation Act for condonation of delay.

The Respondents appeared before the appellate Court and filed objection against the application for condonation of delay and opposed to admit the appeal.

The learned District Judge, Chapainawabgonj after hearing the parties and discussion pleased to reject the application filed for condonation of delay and refused to admit the appeal vide judgment and order dated 21.11.2002 passed in Title Appeal No.

119 of 2002 as against the petitioner preferred this revisional application.

Mr. Mohammad Mujibur Rahman, learned Deputy Attorney General appearing on behalf of the Government-petitioner submits that the delay in filing revisional application has been satisfactory explained in the application and also submits that the Government machineries moves or functions through so many agencies and that it is not possible to file a revisional application within the stipulate period of limitations. In this regard he refers a decision reported in 21 ALR (AD) 129, Additional Deputy Commissioner (Rev) and others vs. Most. Monowara Khatun and another wherein the Appellate Division observed that the state machinery moves or functions through so many agencies. When the machineries run by so many hands, it is not also possible by such machineries to come before the Court within the quickest possible time, although the Court is generally reluctant to consider the question of delay in favour of the Government. It is the context of thing it should not be ignored that the Government machinery runs through several hands and the delay in such circumstances cannot altogether be arrived. The Appellate Division took the same view in condoning the delay in preferring revision by the Government of

Bangladesh and others Vs. Abdus Sobhan reported in 73 DLR (AD)¹ wherein it has been observed the expression 'sufficient cause' should be considered with pragmatism in Justice oriental approach rather than the technical defection of 'sufficient cause' for explaining every day's delay. The factors which are peculiar to characteristic of the functioning of the Governmental conditions would be cognizant to require adopting of pragmatic approach in justice oriental process.

In 17 SCOB (2023) AD 74 wherein the Appellate Division held that the delay was made due to exhaustion of the official formalities which was beyond the control of the Government and it was not an inordinate delay which could not be condoned. Consequently, the Appellate Division set aside the judgment and order of the High Court Division condoned the delay made by the Government.

In the above cases, the Appellate Division stated as to how delay causes by the Government functionaries in performing a revision before the Higher Court due to some official formalities as well as dilatory tactics or negligent activities on the part of the Government officials. If the revisional application brought by the Government is lost for such default, no person would be individually affected but public interest would be affected.

Accordingly, the Apex Court took lenient view in condoning the delay in filing revisional application by the Government.

Mrs. Shimul Sultana, the learned Advocate for Mrs. Shahanara Begum, the learned lawyer appeared for the opposite party Nos.1-3 submits that the appellate Court rightly rejected the application for condonation of delay. She also submits that the under delay for 3 years five months and 21 days has not been sufficiently explained.

In the instant case, the petitioner in the application for condonation of delay before the appellate Court stated how 3 years 5 months and 21 days (1166 days delay) was caused in preferring the appeal and Government pleader did not inform the District Magistrate about result of the case and related documents being informed about the matter and perusal of the same vide its letter dated 19.09.2002 intimated Government pleader to take necessary steps about the matter and accordingly on 23.09.2002 filed the appeal with an application for condonation of delay. In view of the several decisions of our Apex Court and cause of delay has been satisfactory explained by the petitioner which should be accepted.

In that view of the matter, I find merit in this Rule.

In the result, the Rule is made absolute. The learned District Judge, Chapainawabgonj is hereby directed to dispose of the Title Appeal No. 119 of 2002 on merit expeditiously.

Communicate the judgment at once.

(Md. Hamidur Rahman; J.)