

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

Present:

Mr. Justice Md. Riaz Uddin Khan

Civil Revision No. 4686 of 2004

IN THE MATTER OF :

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

-And-

In the Matter of:

Bangladesh Railway

... Defendant-Petitioner

Versus

Shafiqul Islam

...plaintiff-Opposite party

None

... For the parties

Judgment on: 08.09.2026

Md. Riaz Uddin Khan, J:

At the instance of the defendant No.1, the Bangladesh Railway Rule was issued asking the opposite party-plaintiff to show cause as to why the Order No.1 dated 01.08.2004 passed by the District Judge, Lalmonirhat in Other Appeal No. 28 of 2004 should not be set aside and or such other or further order or orders should not be passed as to this Court may deem fit and proper.

At the time of issuance of the Rule this court was pleased to stay all further proceedings of Other Appeal No. 28 of 2004 and the judgment and decree dated 24.11.2003 passed by the Senior Assistant Judge, Lalmonirhat in Other Suit No. 68 of 2002 for a period of 06(six) months initially which was lastly extended on 21.05.2006 for a further period of 6 months.

Facts for disposal of this Rule in brief is that the opposite party No.1 filed Other Suit No. 68 of 2002 against the defendant Bangladesh Railway and others for declaration that the judgment and decree dated 28.09.1997 (decree signed on 05.10.1997) passed in Other Suit No. 117 of 1994 is collusive and not binding upon the plaintiff. The suit was contested by the defendant Bangladesh Railway and the trial court upon hearing both the parties was pleased to decree the suit by his judgment and decree dated 24.11.2003 (decree signed 30.11.2003).

Against that judgment and decree dated 24.11.2003 passed by the Senior Assistant Judge, Lalmonirhat in Other Suit No. 68 of 2002 the Bangladesh Railway filed Other Appeal No. 28 of 2004 before the court of District Judge, Lalmonirhat. In filing the said Other Appeal there was a delay of 168 days for which the appellant Bangladesh Railway filed a separate application for condoning the delay under section 5 of the Limitation Act. The learned District Judge by his impugned order dated 01.08.2004 rejected the application for condonation of delay of 168 days.

Being aggrieved by and dissatisfied with the said order dated 01.08.2004 passed by the District Judge, Lalmonirhat the defendant Bangladesh Railway filed the instant revision and obtained the Rule and interim order as stated at the very outset.

It may be mentioned here that this Court while issuing the Rule was pleased to call for the record of the lower courts.

No one appears to support or oppose the rule when the matter was taken up for hearing.

I have perused the revisional application. I have also examined the lower court records specially the application filed under section 5 of the Limitation Act for condoning delay of 168 days filed before the learned District Judge. I have carefully examined the impugned order.

The learned District Judge by the impugned order in a slipshod manner rejected the application for condonation of delay on the finding that the defendant-appellant received certified copy of the judgment and decree on 11.02.2004 but filed the appeal in delay of 168 days which is not properly explained.

The superior Courts of this subcontinent including ours, in dealing with the application for condoning delay under section 5 of the Limitation Act, settled some principles. In the case of Bangladesh Vs Jaheruddin [1986 BLD (AD) 180] our Supreme Court, Appellate Division observed: "In matter of condonation of delay Government does not enjoy any special privilege, but the fact remains that due to the necessity to obtain opinions of various authorities concerned before filing an appeal, some time may reasonably be expected to elapse which in the case of an individual does not happen. Some consideration in appropriate circumstances may, therefore, be extended to Government appearing as a litigant. In saying so, no rule is being laid down for not observing strictness of the proof of substantial and reasonable cause in making such delay. Standard of acceptance must, however, remain the same in case of both citizens and State." In the case of Government Vs Alauddin being dead his heirs [6 BLC (AD) 101] the apex Court observed: "As litigant

the government stands on the same footing with ordinary litigants, yet, considering the difficulties of the Government at various stages, we take sympathetic and lenient view and allow consideration of delay of Government cases in many cases.” In the case of Collector, Land Acquisition, Anantnag and others Vs Mst Katiji and others [AIR 1987 SC 1353] the Indian Supreme Court, adopted a liberal approach condoning the delay which was referred in approving note by our Supreme Court in 59 DLR (AD) 1 wherein it has been stated that-

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late,
2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties,
3. “Every day’s delay must be explained” does not mean that a pedantic approach should be made. Why not every hour’s delay, every second’s delay? The doctrine must be applied in a rational common sense pragmatic manner,
4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay,
5. There is no presumption that delay is occasioned deliberately, or on account of mala-fides. A litigant does not stand to benefit by recording delay. In fact, he runs a serious risk,
6. It must be grasped that judiciary is respected not on account of its power to legalise injustice on

technical grounds but because it is capable of removing injustice and is expected to do so.

I respectfully agree with the above principles in dealing with condoning delay and fully endorse it. In the light of above principles should the Court condone the delay occurred in the instant case in filing appeal? In the present case on perusal of the application filed under section 5 of the Limitation Act for condonation of delay of 168 days the petitioner Bangladesh Railway, a Government body, clearly stated the reasons for delay. The petitioner explained that being a statutory body there is a process in filing appeal i.e after obtaining certified copy of the judgment and decree the petitioner sought advice from their legal adviser, after obtaining the advice there was process for arranging necessary expenses and after approval of such expenses the learned advocate for the appellant-petitioner after taking instruction drafted the memorandum of appeal along with the application for condonation of delay and by that way 168 days delay was occurred. Such explanation, in my view, was satisfactory as it explained 'sufficient cause' and as such the learned District Judge should have allowed the application condoning the delay. The learned District Judge failed to consider that on account of an impersonal machinery, i.e Bangladesh Railway, no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal, and the inherited bureaucratic methodology imbued with note-making, file pushing, and passing-on-the-buck ethos, delay on its part is not difficult to understand. The petitioner (appellant) being a statutory body challenged

a substantive judgment and decree of the trial court and the appellate court should have condoned the delay with the end in view to do evenhanded justice on merits.

In such view of the matter as discussed above, the impugned order being passed not in correct appreciation of law in given facts, I find merits in this Rule to interfere with the impugned order passed by the learned District Judge.

In the result the Rule is made **absolute**. There will be no order as to cost.

The impugned order dated 01.08.2004 passed by the District Judge, Lalmonirhat in Other Appeal No.28 of 2004 is hereby set aside and the delay of 168 days in filing Other Appeal No.28 of 2004 is condoned.

The interim order passed earlier by this Court stands vacated.

The court of appeal below is directed to proceed with the appeal in accordance with law expeditiously after notifying all the parties keeping in mind that the appeal was filed in the year 2004.

Send down the lower court records along with a copy of this judgment at once.