

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

Present:

Mr. Justice Md. Khairul Alam

Civil Revision No. 3393 of 2007.

Khurshid Ara Begum

.....Petitioner.

-Vs-

Fozal Hoque being dead his heirs, Mahmudul
Hoque and others

.....Opposite Parties

Mr. Kazi Rezaul Karim with

Mr. Shah Mohammad Niamat Ullah, Advocates

...For the petitioner.

Mr. A.K. M. Amin Uddin, Advocate

... For the opposite parties.

Heard on: 17.07.2025, 23.07.2025 and

Judgment on: 21.08.2025

This rule was issued calling upon the opposite party Nos.1-4 to show cause as to why the judgment and order dated 26.04.2007 passed by the learned Joint District Judge, 2nd Court, Noakhali in Miscellaneous Appeal No. 106 of 1974 allowing the appeal and reversing the order dated 24.06.1972 passed by the learned Munsif of 2nd Court, Sadar, Noakhali in Miscellaneous Case No. 61 of 1968 dismissing the case for default should not be set aside.

Relevant facts for disposal of the Rule are that on 07.06.1961, the petitioner obtained a compromise decree in Money Suit No. 13 of 1959 for Taka 500/-. Amongst the said decretal amount, the judgment debtor paid taka 350/-, but taka 150 remained unpaid. Accordingly, for non-compliance with the decree, the petitioner filed Execution Case No. 12 of 1964. The judgment-debtor did not

contest the execution case. In the said execution case, 1.73 acres of mortgaged property was put to auction and Khorshedeernessa, wife of one of the decree holders, namely Siddique Ullah purchased the land at Taka 210.00. Subsequently, The judgment-debtor filed Miscellaneous Case No. 61 of 1968 under Order XXI rule 90 of the Code of Civil Procedure (shortly, the Code) in the Court of the then 2nd Munsif Sadar, Noakhali for setting aside the sale contending, inter alia, no notice for the said execution case was served upon him and that 1.72 acres mortgaged property of about Taka 6,000/- was sold in auction at Taka 210.00 which is shockingly low. Khorshedeernessa, wife of one of the decree holders, namely Siddique Ullah purchased the land by practicing fraud. The miscellaneous case was dismissed for default on 24.06.1972. Thereafter, on 27.06.1972, the judgment debtor filed an application under Order IX rule 9 of the Code which was subsequently converted to an application under Order XLVII, rule 1 read with section 151 of the Code which was withdrawn on 21.07.1973 due to wrong forum. Subsequently, the judgment debtor filed an application under Order XLVII, rule 1 of the Code which was registered as Miscellaneous Case No. 120 of 1973. The learned Munsif, however, dismissed the miscellaneous case by the judgment and order dated 23.03.1974 mainly on the ground of limitation. Against the said judgment and order the petitioner filed Civil Revision No. 686 of 1974 before this Division. The rule issued in the said Civil Revision was discharged, holding inter alia, that the only remedy against the order of dismissal for default of the Miscellaneous Case filed under

order XXI rule 90 of the Code was by preferring an appeal. Then the petitioner filed Miscellaneous Appeal No. 106 of 1994 before the Court of District Judge, Noakhali. The learned District Judge, Noakhali after hearing the parties by the judgment and order dated 26.04.2007 allowed the same and thereby restored the Miscellaneous Case No. 61 of 1968 to its original file and number after setting aside the order dated 24.06.2072, dismissing the miscellaneous case for default.

Being aggrieved thereby the petitioner moved before this Hon'ble Court and obtained the rule and an order of stay.

Heard Mr. Kazi Rezaul Karim, the learned Advocate appearing for the petitioner and Mr. A.K. M. Amin Uddin, the learned Advocate appearing for the opposite party No.1. I have gone through the revisional application and other materials on record.

The learned Advocate for the petitioner mainly contended that the court of appeal below acted illegally and with material irregularity in condoning such an inordinate delay without a satisfactory explanation. In elaborating his submission, the learned Advocate also contends that mere pursuit of wrong forums does not constitute sufficient cause under section 5 of the Limitation Act. Pursuit of the wrong forums with due diligence and good faith may constitute a sufficient cause to exclude the period so spent. In support of the submission, he refers to the case of Sakina Khatoon and others vs. Ibrahim Ahmed Khan and others reported in 2 MLR(AD)1997, 330.

Per contra, the learned Advocate for the opposite party submits that the appellate court rightly exercised its discretion in

condoning the delay in the interest of justice, as the appellant had not gained any advantage by the delay but had been diligently pursuing remedies elsewhere.

The law is well-settled that to attract section 5 of the Limitation Act, in an appeal, the appellant must show “sufficient cause” for not preferring the appeal within time. Pursuit of remedy in wrong forums, if bona fide, constitutes sufficient cause.

In the instant case, though the delay was condoned earlier, despite that the appellate court in the impugned order elaborately discussed that the appellant had been moving from one forum to another in good faith and that the delay was not deliberate. The appellate court thus exercised its discretion in condoning the delay. Discretion exercised by a court of competent jurisdiction in condoning delay should not ordinarily be interfered with in revision, unless it is shown that the court acted arbitrarily or without considering the settled principles of law.

The next question to be adjudicated is whether the appellate court was justified in allowing the appeal and restoring the Miscellaneous Case to its original file and number after setting aside the order of dismissal for default.

It appears from the record that the Miscellaneous Case under Order XXI Rule 90 was filed within time and was maintainable. The dismissal was not on merit, but for default. The appellate court upon considering the materials found sufficient cause for the non-appearance of the applicant and accordingly allowed the appeal.

The principle settled in the case of Sakina Khatoon and others vs. Ibrahim Ahmed Khan and others, reported in 2 MLR(AD)1997, 330, is not applicable in the facts and circumstances of this case.

This Court finds no illegality or material irregularity in the impugned judgment and order of the appellate court to call for interference in this revisional jurisdiction.

Accordingly, the Rule is discharged without any order as to costs.

The order of stay granted earlier by this court is hereby recalled and vacated.

Let a copy of this judgment and order be communicated at once.

Kashem, B.O