

Present:

Mr. Justice Md. Ruhul Quddus

Civil Revision No.9344 of 1991

Abdul Quayum alias Abdul Quayum Akhanjee  
...Petitioner

-Versus-

People's Republic of Bangladesh represented  
by the Deputy Commissioner, Sunamganj

...Opposite Party

No one appears for the petitioner

Mr. Md. Yousuf Mahmud Morshed, A.A.G.  
õ for the opposite party

Judgment on 6.3.2012

This Rule at the instance of the plaintiff-petitioner was issued on an application under section 115 of the Code of Civil Procedure to examine the legality of judgment and order dated 15.8.1984 passed by the Subordinate Judge (now Joint District Judge), Sunamganj in Miscellaneous Case No.44 of 1984 rejecting an application filed by the plaintiff for restoration of Title Suit No. 18 of 1983 under Order IX rule 4 of the Code on setting aside order dated 12.5.1984 dismissing the suit for default.

It appears from the order book that the Rule was issued on 30.7.1985 and initially it was numbered as Civil Revision No.130 of 1985. Subsequently it was renumbered with its present number possibly on transfer from Sylhet Bench, though the reason of such renumbering

is not recorded. The matter is called for hearing today, but no one for the petitioner appears. In view of its long pendency for nearly twenty-eight years, it is taken up for disposal even in absence of the petitioner.

Plaintiff Abdul Quayum alias Abdul Quayum Akhanjee instituted Title Suit No.265 of 1975 in the Court of Subordinate Judge, Sylhet for declaration of title over the suit land with a consequential relief. Subsequently the suit was renumbered as Title Suit No.18 of 1983. In course of proceedings, it was dismissed for default by order dated 12.5.1984 in absence of both the parties. Then the plaintiff filed an application for restoration of the suit under Order IX rule 4 of the Code on 30.7.1984. Learned Subordinate Judge heard the application and rejected the same by his order dated 15.8.1984 on the ground that the application was hopelessly barred by limitation.

Mr. Md. Yousuf Mahmud Morshed, learned Assistant Attorney General for Bangladesh, submits that there is no illegality in the impugned order and as such it does not call for any interference.

I have examined the record, gone through the orders and consulted with the laws involved. Article 163 of the Limitation Act provides 30 days limitation to be computed from the date of dismissal for default for filing an application by plaintiff for setting the dismissal aside. In filing such application, law does not provide any scope for application of section 5 of the said Act. Accepting this legal position, the plaintiff also made no prayer for condonation of delay in his application

under Order IX rule 4 of the Code nor did he file any separate application under section 5 of the Limitation Act to that effect.

It appears that the suit was dismissed for default on 12.5.1984 and the application for restoration was filed on 30.7.1984 i.e. clearly beyond the period of limitation. In such a position, the plaintiff could have instituted a fresh suit. But instead of doing so, he filed a time barred application for restoration of the suit, which the Subordinate Judge rightly rejected. I do not find any illegality in such rejection.

At the same time, justice demands that the plaintiff should get an opportunity to prosecute his case on merit and should not be turned to be non-suited. Under the facts and circumstances of the present case, still the plaintiff can institute a fresh suit and in that case, the time consumed during pendency of the instant Rule and that during pendency of the application under Order IX rule 4 of the Code before the Subordinate Judge may be excluded under section 14 of the Limitation Act.

The Rule is thus discharged with above observation.

Send down the lower Courts record.