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

CIVIL RULE NO. 480 (con) OF 2021

The Government of Bangladesh, represented by the Divisional Forest Officer, Mymensingh and others
… Petitioners

-Versus-

Mark A.U. Enterprise, represented by its Director Dr. Monowar Hossain of House No.24. Road No.5, Dhanmondi R/A, Dhaka and others
… Opposite Parties

Present
Mr. Justice A.K.M. Rabiul Hassan

Mr. Sheikh Mohammad Morshed
Additional Attorney General with
Mr. Wayesh Al Haroni, Deputy Attorney General
… for the petitioners

Mr. S.M. Shamsuddin Babul, Advocate with
Mr. Sanowar Hossain, Advocate
… for the opposite party Nos.3 and 4

Date of hearing: 01.08.2023 & 08.08.2023

Date of Judgment: 09.08.2023

A.K.M. Rabiul Hassan, J:

This Rule was issued upon an application under section 5 of the Limitation Act, calling upon the opposite party Nos.1-4 to show cause as to why the delay of 690 days in filing the revisional application should not be condoned.

Facts relevant for disposal of the rule, in brief, is stated that the petitioners as plaintiffs filed an Other Class Suit No.367 of 2008 in the

Court of learned Senior Assistant Judge, Mymensingh Sadar, praying for declaration of title to the effect that the defendant opposite parties illegally and forcefully entered into the government Forest Land making their boundary wall by creating some forged documents which declared to be illegal, wrong, void, null and not binding upon the plaintiffs - petitioners. The defendants contested the suit by filing a written statement denying the material allegations made in the plaint. Subsequently, the trial court after taking evidence and conclusion of the trial dismissed the suit vide its judgment and decree dated 31.03.2013. Being aggrieved the plaintiffs as appellants filed Title Appeal No.165 of 2013 before the learned District Judge, Mymensingh who ultimately transferred the same to the learned Additional District Judge, 1st Court, Mymensingh for disposal. Thereafter, the appellate court below, after hearing both the parties disallowed the aforesaid appeal vide its judgment and decree dated 11.07.2019. Being aggrieved by the impugned judgment and order dated 11.07.2019, the plaintiffs–appellants herein as petitioners preferred this revisional application before this Court which is out of time by 690 days, along with an application under section 5 of the Limitation Act for condonation of delay and obtained the instant Rule.

Mr. Sheikh Mohammad Morshed, the learned Additional Attorney General along with Mr. Wayesh Al Haroni, Deputy Attorney General appearing on behalf of the petitioners to support the rule and

submits that in filing this revisional application there was a delay of 690 days for obtaining various opinions and decisions from the concerned departments of the Government. After the judgment and decree passed in the aforesaid suit, the whole world along with our country had fallen into the pandemic situation of Covid-19, and for that reason, the government functionaries could not function at its usual pace. Consequently, for the last three years, our country seriously affected by the Covid-19 caused this unintentional delay in filing this revisional application by the petitioners.

He further submits that the petitioners are constant litigants who engage with various government mechanisms. Given the circumstances, it was highly challenging for all relevant officials, especially during the initial aftermath of the Covid-19 outbreak, to promptly assess the gravity and implications of the judgment and decree from the aforementioned case. At that time, officials were overwhelmed due to the pandemic's impact on their duties. However, as time progressed, the country gradually returned to normalcy, allowing government officials to resume their responsibilities in a manner similar to before.

He further contended that a gazette notification published on 15.09.1951 (Gazette Notice No.9636) the Forest Department became the owner of private forest in the Mymensingh District for a period of 100 years to conserve, preserve, and maintain the same in a scientific

and controlled manner. Up to the present day, the government, through various subsequent gazette notifications such as Gazette Notification No.4852 dated 92.94.1956, the Gazette Notification dated 541 dated 30.09.2011, and Gazette Notification No.2022 dated 13.08.2011 continues to manage the forest lands listed in these notifications, including the land in question for this suit. Following the desolation of the Jamidari Protha, the then government published the said gazettes to protect the forest land throughout the country and therefore, the case at hand carries significant implications for public interest.

He further submits that both the trial court as well as lower appellate court erred in law in dismissing the suit leading to a miscarriage of justice for which this court should adjudicate the matter for the ends of justice to protect the parties' interest as well as the public interest concern. While there is a public interest involved, the court ought to have decided the matter on merit unless the case is devoid of any merit. An individual can swiftly decide whether to seek legal recourse since they directly experience the injury. In contrast, the state being an impersonal machinery operates through its officers and servants, which requires more deliberation. Government officials cannot make instantaneous decisions independently; they must seek opinions and approval from higher authorities and consult various stakeholders in time. There were no unintentional latches or negligence in filling the revisional application by the petitioners.

He further submits that the public interest should not be vitiated for only one reason that the government machinery failed to take necessary steps in time. That protection of public interest remains paramount and can be protected at any time, at any point, anywhere on any day for the greater interest of the state. He finally submits that this rule on delay should be condoned for ends of justice and allow the petitioners to move the revisional application before the Hon'ble High Court Division of the Supreme Court of Bangladesh. In support of his contention, he refers to the cases, *Government of the People's Republic of Bangladesh vs Abdur Sobhan and Others* reported in 73 DLR (AD) 1, *Government of the People's Republic of Bangladesh, represented by the Deputy Commissioner, Netrokona and Others* reported in 17 SCOB 74.

Mr. S. M. Shamsuddin Babul along with Mr. Sanowar Hossain the learned Advocates appearing for the opposite party Nos. 3 and 4 by filling a reply to the application under section 5 of the Limitation Act submits that on 01.09.2021 the General Pleader of Mymensingh applied for a certified copy of the impugned judgment and decree dated 11.07.2019, by then the time of civil revision had already expired by more than 18 months as the certified copy of the judgment passed in the Title Appeal No.165 of 2013 was ready on 23.09.2019. The petitioners failed to provide any explanation whatsoever as to why this delay of 18

months had occurred in only obtaining the certified copy of the impugned judgment and decree.

He further submits that in the present instance, the suit land is owned by the present opposite parties' predecessor through which the present opposite parties are the owners and possessors of the suit land. The petitioners have no locus standi to file the aforesaid title suit against the present opposite parties and in this contention he referred to the Private Forest Ordinance, 1959 wherein the preamble part of that Ordinance states that "it is expedient to provide for the conservation of forests and for the afforestation of wastelands in Bangladesh where such forests or lands are not the property of the Government or where the Government has no proprietary right over such forests or land" and by addressing the preamble the learned Advocate pressed to this court that the Government had enacted the aforesaid Ordinance only to manage the private forest land in the country and upon which a gazette has been prepared and published on 08.11.1951.

He further submits that public office must work with reasonable promptitude in seeking legal remedies. When the revisional application is filed after a long delay and such inordinate delay when not satisfactorily explained must not be condoned. He emphasizes that if such laches on the part of public officials are not refused a leave, then overlooking such delays would set a precedent that will give a premium for lax in public office.

He further submits that both the courts below dismissed the aforesaid title suit of the petitioners and therefore, they have no locus standi to prefer this revisional application in condoning the delay of 690 days. Although the Limitation Act does not provide for any specific period of limitation for invoking discretionary jurisdiction of the High Court Division, under Section 115 of the Code of Civil Procedure, nonetheless, long-standing practice custom suggests one has to file it without causing inordinate delay, preferably within 90 days from the date of decree or order complained of as has been prescribed for preferring an appeal. He further submits that this revisional application will hopelessly fail on merit and hence this rule on delay is liable to be discharged. In support of his contention, he refers to the cases, *Chairman, Rajdhani Unnayan Kartipakhha vs Rokeya Begum* reported in 6 MLR (AD) 295, the case of *Additional Deputy Commissioner (Revenue) and Assistant Custodian, Vested Property, Serajganj* reported in 2 BLC (AD) 11.

Heard the submissions of the learned Advocates of both sides and perused the materials on record.

Upon perusal of the record, it appears to this court that the central issue in this application is whether the aforesaid delay would be condoned by allowing the petitioners to redress their grievance from this court. That the Government Pleader of the then time at Mymensingh District Court, after obtaining the required certified copy

of the judgment and decree for filing the revisional application sent the same to the Divisional Forest Office of Mymensingh through which the same came to the office of the Solicitor of the Government of Bangladesh vide letter dated 01.09.2021. Thereafter, on 02.09.2021 the Administrative officer opened a file by the aforesaid documents being No. H.C/R-94/2021 (Sol-2) and placed the aforesaid documents along with the file to the Solicitor for proposal for filing the revisional application. After examining the certified copy and other papers the proposal was accepted by the Solicitor, who took the decision to file the revisional application before the Hon'ble High Court Division on 02.09.2021 and sent the same to the office of the learned Attorney General vide its letter dated 02.09.2021. Upon receiving those documents, on 05.09.2021 the learned Attorney General referred the matter to the learned Assistant General for preparing the draft of the civil revisional application and accordingly, this revisional application was filed with delays of 690 days.

It further appears that the circumstances and the reasons for the delay of 690 days in filing the revisional application as stated in the application under Section 5 of the Limitation Act by the petitioners cannot be disregarded and discarded simply because an individual would always be quick in deciding whether he would pursue the application for condonation of delay since he is a person legally injured. At the same time, the bureaucratic system often requires

processes to move sequentially through various departments and personnel.

Rules of Limitation are not meant to destroy or foreclose the rights of the parties. It is always fair and appropriate that matters be heard on merits rather than shutting the doors of justice at the threshold. The main purpose for which Section 5 of the Limitation Act, 1908 was enacted is to enable the Court to do substantial justice and that is the precise reason why a very flexible expression of sufficient cause is employed therein to enable the courts to apply the law in a meaningful manner to sub-serve the ends of justice. No hard and fast rule can be laid down in dealing with the applications for condonation delay.

It is now an enshrined principle in our jurisprudence that condonation of delay is a matter of discretion of the court and Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain or even a reasonable limit. Length of delay is, thus, not of significance, but what is most imperative is the acceptability of the explanation and that was the only criteria by which the cause for condonation of delay should be judged. Therefore, when substantial justice and technical consideration are pitted against each other, the cause of substantial justice has to be preferred to that of the technicalities, since, no party can ever claim a vested right when injustice is being done, all due to the delay in approaching the court by the other party.

In the recent case of *Government of the People's Republic of Bangladesh vs. Abdur Sobhan and Ors* 73 DLR (AD) 1, it has been stated that if the revisional applications brought by the Government are lost for such default no person is individually affected but what in the ultimate analysis suffers is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in justice-oriented approach rather than the technical detection of "sufficient cause" for explaining every day's delay. The factors which are unique operational nuances to and characteristic of the functioning of the governmental conditions would be cognizant to and require adoption of pragmatic approach in justice-oriented process. The Court should decide the matters on merit unless the case is hopelessly without merit.

In the recent case of *Govt. of Bangladesh & Others vs. Md. Abdul Jalil and Others* 17 SCOB (AD) 74, wherein it has been stated that the delay caused in filing the revisional application by the government was due to the exhaustion of the official formalities which was beyond its control and an inordinate one so it should have been condoned. The facts and circumstances indicate that the different officials of the government are so connected and interdependent that one cannot work without the cooperation and assistance of the other.

It further appears to this court that both the parties at the time of their submissions entered into the merits of the case for which this court thinks that there was a dispute regarding the title of the suit land,

the authenticity of the title documents along with possession or rights and, as such, the civil revisional application ought to have been disposed of on merit.

The existence of sufficient cause to the satisfaction of the court is the condition set forth that the court will exercise its discretion in the matter for condoning delay. Delays will ordinarily be excused if there is any merit in the case. The rules of limitation are not meant to destroy or foreclose the rights of the parties. It is always fair and appropriate that matters be heard on merits rather than shutting the doors of justice at the threshold. The main purpose for which Section 5 of the Limitation Act was enacted is to enable the court to do substantial justice and that is the precise reason why the very elastic expression of sufficient cause is employed therein, to sub-serve the ends of justice.

The law of limitation takes precedence over the substantive law to the point that a party's rights may be forfeited if any action is not lodged/flawed within the specified time frame for legal action. The COVID-19 pandemic presented unprecedented challenges. Given the impact of COVID-19 and the consequent lockdowns, it was unavoidable that litigants might face difficulties in approaching the court in a timely manner.

In light of the preceding discussions and the decisions referred to by the petitioners, it appears that the said delay in filing the revisional application has occurred due to the exhaustion of administrative

procedures and the unforeseen challenges of the COVID-19 situation, factors outside the petitioners' control. Moreover, there appears no deliberate negligence on the part of the petitioners in preferring the civil revisional application. Therefore, if the aforesaid delay of 690 days is not condoned, the petitioners shall contend with an irreparable loss and injury and, as such, I am inclined to hold such a view that the instant Rule has got merit to succeed.

Accordingly, the rule is made absolute.

The delay of 690 days in filing the revisional application is therefore condoned.

The petitioners are hereby directed to place the civil revisional application before any appropriate Bench as an In: re motion in accordance with the law.

However, there will be no order as to costs.

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(A.K.M. Rabiul Hassan, J)