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

Present:
Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.2138 of 2022
In the matter of:
An application under Section 115(1) of the Code of Civil Procedure.
And
Md. Mohiuddin Selim
.... Petitioner
-Versus-
Md. Kamal Hossain and others
.... Opposite parties
None appears
.... For the petitioner.
Mr. Mohammad Ruhul Quddus Patwary, Advocate
.... For the opposite party Noa.1-5.
Heard and Judgment on 20.08.2024

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued calling upon the opposite parties to show cause as to why the impugned order No.4 dated 10.03.2022 passed by the learned District Judge, Cumilla in Money Appeal No.01 of 2022 dismissing the appeal summarily on the ground of limitation and affirming the order and decree dated 11.07. 2006 passed by the learned Joint District Judge, 1st Court, Cumilla in Money Suit No.2 of 2015 decreeing the suit should not be set aside and/or pass such other or further order or as to this Court may seem fit and proper.

Facts in short are that the opposite party as plaintiff filed Money Suit No.02 of 2015 on 09.08.2015 against petitioner and others for recovery of Taka 16,00,000/ alleging that the defendant received above money to transfer a piece of land but due to deficiency in their title and possession in above land the plaintiff did not purchase the same. But the defendant denied to return above money.

Above suit was decreed ex-parte against the defendant on 11.07.2016 and above defendants as appellants preferred Money Appeal No.1 of 2022 after a delay of 1999 days. The defendants submitted a petition under Section 5 of the Limitation Act, 1908 for condonation of above delay of 1999 days. The learned District Judge rejected above petition under Section 5 of the Limitation Act, 1908 for condonation of delay vide impugned judgment and order dated 10.03.2022 and dismissed the appeal.

Being aggrieved by and dissatisfied with above judgment and order of the learned District Judge respondent No.2 as petitioner moved to this Court and obtained the Rule.

No one appears on behalf of the petitioner when the Rule was taken up for hearing.

Mr. Md. Ruhul Quddus Patwary, learned Advocate for the opposite party Nos.1-5 submits that the petitioner as appellant filed

above money appeal after an inordinate delay of 1999 days without providing any satisfactory explanation for above delay. On consideration of above facts and circumstances of the case and materials on record the learned District Judge has rightly rejected above petition for condonation of delay which calls for interference.

I have considered the submissions made by the learned Advocate for the opposite party Nos.1-5 and carefully examined all materials on record.

At the very outset it must be mentioned that the impugned order of the learned District Judge rejecting a petition under Section 5 of the Limitation Act, 1908 for condonation of delay is a non speaking order. The learned District Judge did not take into account the causes or reasons as stated by the appellant in his petition under Section 5 of the Limitation Act explaining above delay in preferring of the appeal while rejecting the petition above petition for condonation of delay. While refusing condonation of delay and there by shutting the door of justice to an appellant the learned District Judge should have carefully in scrutinize the alleged causes and grounds as set out by the appellant in the petition for condonation of delay. On a detailed analysis of the causes or reasons for condonation of the delay if those appear to be unsatisfactory only then such a petition could be rejected.

As mentioned above the impugned judgment and decree dated 11.07.2016 was passed ex-parte. There is nothing in the impugned order to show that the defendants received the summon of the suit or the appellant had serious latches in not appearing in the trial Court and contesting the suit or the appeal is lack of any merit. The appeal was filed on 10.03.2022 after more than five years. The learned District Judge did not make any mention as to whether any execution case was filed for realization of above decreetal money.

In above view of the facts and circumstances of the case and materials on record I hold the learned District Judge committed an error in passing the impugned order in rejecting the petition of the appellant under Section 5 of the Limitation Act, 1908 for condonation of delay of 1999 days and not providing an opportunity to the appellants to hear their appeal on merit in accordance with law.

As such I find merit in this Rule which deserves to be made absolute.

In the result, the Rule is hereby made absolute.

The impugned order No.4 dated 10.03.2022 passed by the learned District Judge, Cumilla in Money Appeal No.01 of 2022 is set aside.

Delay of 1999 days in preferring above appeal is condoned.

The learned District judge, Cumilla is directed to admit above appeal and proceed with the expeditious disposal of the same on merit in accordance with law.

In the result, this Rule is hereby made absolute.

MD. MASUDUR RAHMAN
BENCH OFFICER