

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)
CIVIL RULE NO. 703 (CON) OF 2021.

**Government of the People's Republic of
Bangladesh, represented by the Deputy
Commissioner, Jashore and others.**

...Petitioners.

-Versus-

Md. Abdul Karim and others

....Opposite parties.

Mr. Wayesh Al Haroni, D.A.G

... for the petitioners

Mr. Md. Tariqul Islam Khan, Advocate

... for the opposite parties

Heard on: 12.11.2023.

Judgment on: 13.11.2023.

Present:

Mr. Justice Md. Badruzzaman.

This Rule was issued calling upon the opposite party No. 01 to show cause as to why the delay of 1038 days in filing revisional application against judgment and decree dated 25.05.2016 (decree signed on 01.06.2016) passed by learned Joint District Judge, Additional Court, Jashore in Title Appeal No. 30 of 2015 dismissing the appeal and affirming judgment and decree dated 13.11.2008 (decree signed on 04.01.2009) passed by learned Assistant Judge, Chougacha, Jashore in Title Suit No. 142 of 2007 decreeing the suit should not be condoned.

Facts relevant, for the purpose of disposal of this Rule, are that the opposite party No. 01 as plaintiff instituted Title Suit No. 60 of 2001 before the Court Assistant Judge, Sadar, Jashore praying for a decree of declaration that enlistment of the suit property as

abandoned property was illegal, collusive and not binding upon the plaintiff as well as for a decree of partition of the suit property. The suit was transferred to the Court of Assistant Judge, Chougacha, Jashore and renumbered as Title Suit No. 142 of 2007. The defendant petitioners contested the suit by filing written statement. The trial Court, upon consideration of evidence and materials on record, decreed the suit by judgment and decree dated 13.11.2008.

Being aggrieved by said judgment and decree, the defendant petitioners filed Title Appeal No. 30 of 2015 before the learned District Judge, Jashore which was heard by learned Additional District Judge, Jashore who, after hearing, dismissed the appeal by judgment and decree dated 25.05.2016.

Challenging said judgment and decree dated 25.05.2016 the government, represented by the Deputy Commissioner, Jashore and others as petitioners have preferred this civil revisional application under section 115 (1) of the Code of Civil Procedure causing a delay of 1038 days with an application for condoning the delay upon which this Rule was issued.

It has been stated in paragraph 3 of the application for condonation of delay filed under section 5 of the Limitation Act that after pronouncement of impugned judgment and decree on 25.05.2016, the petitioners filed application for certified copies of the relevant documents on 29.05.2016 and certified copies were delivered on 27.01.2017 which was delivered to the petitioner by the learned Advocate on 01.08.2017 and the Deputy Commissioner, Jashore sent those certified copies to the Solicitor Office on 10.11.2017 which was received by the office of the Solicitor on 30.11.2017 but the Solicitor Office found that the depositions of the

witnesses were not available and asked to procure those papers from the trial Court but those documents could not be procured due to illness of the tadbirkar of the petitioners and after recovery from illness, the tadbirkar collected the required papers from the Court below and came to Dhaka on 20.06.2018 and handed over those to the office of the Solicitor but the voklatnama was not sent on behalf of the petitioners and the tadbirkar returned back on 16.06.2018 to Jashore for collecting necessary papers and thereafter, the tadbirkar occupied with other official works and he collected the papers on 30.10.2018 but could not send those documents due to unavoidable circumstances and thereafter, he came to Dhaka on 19.02.2019 and handed over the documents to the officer of the Solicitor on 19.02.2019 who sent the documents on 28.04.2019 to the office of the Attorney General who endorsed the file to Mr. Dipayan Shah, the learned Assistant Attorney General on 10.05.2019 for preparing revisional application and the learned Assistant Attorney General, after preparing the revisional application, sent the record to the Administrative Officer of the office of Attorney General on 10.10.2019 and then the Administrative Officer sent the case records to the Solicitor on 30.11.2019 for taking necessary steps and thereafter, the revisional application has been registered on 01.03.2020 causing delay of 1038 days.

Opposite party No. 01 has entered appearance to contest the Rule.

Mr. Wayesh Al Haroni, learned Deputy Attorney General appearing on behalf of the Government-petitioners submits that the delay of 1038 days has been satisfactorily explained in the application in that the Government machineries moves or functions

through so many agencies and that it is not always possible to file a revisional application within the statutory period of limitation and as such, the delay should be condoned.

Mr. Md. Tariqul Islam Khan, learned Advocate appearing for opposite party No. 01 opposes the Rule and submits that the delay was intentional and caused due to latches and negligence on the part of the petitioners and as such, the same should not be condoned.

I have heard the learned Advocate and perused the application for condonation of delay and the explanation given therein.

In Additional Deputy Commissioner (Rev) and others vs. Most. Monowara Khatun and another 21 ALR (AD) 129, “the Appellate Division observed, *“the State machinery moves or functions through so many agencies. When the machineries run by so many hands, it is not also possible for such machinery to come before the Court within the quickest possible time. Although the Court is generally reluctant to consider the question of delay in favour of the Government, yet in the context of thing it should not be ignored that the Government machinery runs through several hands and the delay in such circumstances cannot altogether be avoided”*. The Appellate Division took the same view in condoning the delay in preferring revision by the Government in Government of Bangladesh and others vs. Abdur Sobhan and others 73 DLR (AD) 1 wherein it has been observed, *“the expression ‘sufficient cause’ should 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 peculiar to 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.” The Appellate Division also held, “there is no gainsaying that the Government decisions are taken by officers/ agencies proverbially at a slow pace and encumbered process of pushing the files from table to table and keeping it on the table for considerable time causing delay, intentional or otherwise, is a routine. Considerable delay of procedural red tape on the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. 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.”

In the above cited cases the Appellate Division stated as to how delay causes by the Government functionaries in preferring a revisions before the higher Courts due to some official formalities as well as dilatory tactics or negligent activities on the part of the Government officials. If the revisional applications brought by the Government are lost for such default, no person would be individually affected but public interest would be affected. Accordingly, the Apex Court took a lenient view in condoning the delay in filing revisional application by the Government.

In the instant case, the petitioners in paragraph 3 of the application for condonation of delay, stated how 1038 days delay was caused in preferring this revision and I find the cause of delay has been satisfactorily explained by the petitioners which should be accepted.

In that view of the matter I find merit in this Rule.

In the result, the Rule is made absolute.

The delay of 1038 days in preferring the revision is hereby condoned.

Let the application filed under section 115 (1) of the Code of Civil Procedure be posted in the daily cause as in re: motion hearing.

(Justice Md. Badruzzaman)