IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Civil Revisional Jurisdiction)

Present:
Mr. Justice Md. Khairul Alam

Civil Revision No. 2245 of 2025.

Badrul Ahsan Chwdhury.
….. Petitioner.
-Versus-
Fojunnessa @ Joyjunnessa Awal and others.
….. Opposite parties.
Mr. Tushar Kanti Das, Advocate.
…… For the petitioner.
Mr. Sougata Guha, along with
Mr. Muhammad Khurran Shah Murad, Advocates
..... For the opposite parties.

Heard on: 07.08.2025, 18.08.2025 and
Judgment on: 25.08.2025.

This Rule was issued calling upon the opposite parties No. 1-7 to show cause as to why the impugned judgment and order dated 05.03.2025 passed by the learned Additional District Judge, 4th Court, Gazipur in Miscellaneous Case No. 01 of 2025, filed under Order XLI Rule 19 of the Code of Civil Procedure, 1908, and thereby setting aside the judgment and order dated 07.06.2015 passed by the learned Additional District Judge, 2nd Court, Gazipur in Title Appeal No. 70 of 2009 dismissing the appeal for default and re-admitting the appeal to its original file and number should not set aside and/or pass such other or further order or orders as to this court may seem fit and proper.

Facts leading to filing of this Civil Revision, in brief, are that the opposite party No. 1 herein instituted Title Suit No. 62 of 2005 in the 3rd Court of Assistant Judge, Gazipur, praying for a declaration that the three deeds as described in schedule “ka” to the plaint are forged

and not binding upon the plaintiff. The suit was dismissed on contest. Against the same, the opposite party No. 1 as appellant preferred Title Appeal No. 70 of 2009 in the Court of District Judge, Gazipur which was ultimately transferred to the Court of Additional District Judge, 2nd Court, Gazipur. On 07.06.2015, when the appeal was called on for hearing no one appeared on behalf of the appellant and, as such, the same was dismissed for default. Subsequently, on 28.08.2023, the petitioner filed Miscellaneous Case No. 01 of 2025 under Order XLI, rule 19 of the Code of Civil Procedure (hereinafter referred to as the Code) for re-admission of the appeal. The learned Additional District Judge, 4th Court, Gazipur upon hearing the parties and on perusal of the application allowed the said miscellaneous case and set aside the order of dismissal of the appeal for default and re-admitted the same to its original file and number by the impugned judgment and order dated 05.03.2025.

Being aggrieved thereby the petitioner moved before this Court and obtained the Rule and an order of stay of the impugned order.

Mr. Tushar Kanti Das, the learned Advocate appearing on behalf of the petitioner submits that the court below erred in law in re-admitting the appeal under Order XLI, rule 19A of the Code in the facts and circumstances that the application was filed beyond the statutory period of 30 days limitation. He next submits that the appeal was dismissed for default on 07.06.2015 and the application for re-admission of the same was filed on 28.08.2023 without any sufficient cause for non-appearance when the appeal was called on for hearing as well as the explanation of each day delay in filing the application for re-admission, but the Court below without considering the same

passed the impugned order and the same is liable to be set aside and the rule is liable to be made absolute.

Mr. Sougata Guha, the learned Advocate appearing on behalf of the opposite parties submits that the appeal was dismissed for default and the application for re-admission of the appeal was filed with sufficient cause for non-appearance as well the delay in filing the application, and the court below after considering the facts that the appeal was dismissed for default, for no fault of the appellant, allowed the miscellaneous case. He further submits that the petitioner filed the application under Order XLI rule 19 of the Code, but in the impugned order the same was mistakenly written as under Order XLI rule 19A of the Code which is nothing but a clerical mistake. He lastly submits that wrong quoting of a provision in the judgment or order does not ipso facto render the same invalid.

Heard the learned Advocates for the contending parties, perused the revisional application and other materials on record.

It appears that the opposite party No.1 filed the suit for declaring the suit deeds as forged and not binding upon the opposite party No.1. The suit was dismissed on contest. Against the same, the opposite party No. 1 preferred the appeal. On 07.06.2015, the appeal was dismissed for default. Subsequently, on 28.08.2023, the petitioner filed an application under Order XLI, rule 19 of the Code for re-admission of the appeal. The application was allowed by the impugned judgment and order and thereby the order of dismissal of the appeal for default was set aside and the appeal was re-admitted to its original file and number, but in the said judgment and order, the provision was written as Order XLI rule 19A of the Code.

The petitioner contends that the court below erred in law in re-admitting the appeal under Order XLI, rule 19A of the Code in the facts and circumstances that the application was filed beyond the statutory period of 30 days limitation. Per contra, the opposite party contends that the application was filed under Order XLI Rule 19 of the Code, but in the impugned order the same was mistakenly written as under Order XLI rule 19A of the Code which is nothing but a clerical mistake.

For proper adjudication of the issue, the provisions of rules 19 and 19A of Order XLI of the Code are to be looked into.

Order XLI Rule 19 of the Code reads as follows:

> *"R. 19. Re-admission of appeal dismissed for default (1) where an appeal is dismissed under rule 11, sub-rule (2), or rule 15A or rule 17 or rule 18, the appellant may apply to the Appellate Court for the re-admission of the appeal; and, where it is proved that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing or from depositing the sum so required, the Court shall re-admit the appeal on such terms as to costs or otherwise as it thinks fit.*
>
> *(2) Provisions of section 5 of the Limitation Act, 1908 shall apply to applications under sub-rule (1)."*
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> Rule 19A reads as follows:
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> *"R. 19A. Direct re-admission of appeal.-(1) Notwithstanding anything contained in rule 19 or any other law, the Court may, in order to avoid delay and expedite disposal, directly re-admit without requiring the appellant to adduce evidence to satisfy it about sufficient causes as required under rule 19:*
>
> *Provided that the appeal under this rule shall not be re-admitted unless an application, supported by affidavit, praying for such re-admission is made to the Court within thirty days of the date on which the appeal is dismissed for default:*

Provided further that no appeal shall be re-admitted more than once under this rule.

(2) As soon as an order under sub-rule (1) is made to re-admit an appeal, the Court shall cause notice thereof to be served at the cost of the appellant upon the respondent who appeared in the appeal."

By an amendment, rule 19A has been inserted after rule 19 of Order XLI of the Code to avoid delay in disposal of the matter and to expedite disposal empowering the appellate court to directly re-admit the appeal without requiring the appellant to adduce evidence to satisfy it about sufficient cause as required under rule 19. To take advantage of the amended rule 19A, the application for such re-admission is to be filed within 30 days of the date of dismissal of the appeal for default and the application is to be supported by an affidavit. If these two requirements, as provided in the first proviso are met, only then will rule 19A of the Code be applied. Comparing the two provisions side by side, it also appears that the provisions of section 5 of the Limitation Act, 1908 shall not apply to an application under the amended rule 19A.

In the present case, the application for re-admission of the appeal was filed long after 30 days therefore, the application could not be under Order XLI rule 19A. From the application, it appears that in the application, the provision was rightly written as Order XLI rule 19 of the Code. Therefore, I find substance in the submission of the learned Advocate for the opposite parties that Order XLI rule 19A of the Code was written in the impugned order mistakenly which is nothing but a clerical mistake.

It is the consistent view of our apex Court that misquoting of a provision does not vitiate the judgment or order, if the Court had the jurisdiction to pass such a judgment or order. Admittedly, the Court had the power to pass the impugned judgment and order under the provision of rule 19 of Order XLI of the Code. But before passing the impugned judgment and order, the Court had to satisfy that there was sufficient cause for non-appearance when the appeal was called on for hearing and that the delay of each day in filing the application was explained properly.

In the application for re-admission, it has been stated that at that relevant time the appellant had been staying abroad due to the illness of her husband, but she remained in communication with her learned Counsel and paid him the fees regularly. Despite that the learned Counsel did not represent her when the appeal was called on for hearing. The husband of the appellant died subsequently. After completing the funeral, while the appellant returned to the country, she came to know about the facts of dismissal of the appeal for default, and without any further delay, she filed the application.

In the case of Lajpat Rai v. Punjab, AIR 1981 SC 1400 the Indian Supreme Court held that a party, who as per the present adversary legal system, has selected his advocates, briefed him and paid his fees can remain supremely confident that his lawyer will look after his interest and such an innocent party who has done everything in his power and expected of him, should not suffer the inaction, deliberate omission or misdemeanor of his counsel.

As observed earlier that section 5 of the Limitation Act, 1908 has made applicable for the provision of rule 19 of Order XLI of the Code.

Section 5 of the Limitation Act, 1908 has empowered the Court to allow an application beyond the period of limitation if the applicant can satisfy the Court that he had sufficient cause for not making the application within the period of limitation. By several judicial pronouncements, one rule is firmly established that it should be due to circumstances beyond the control of the party. Therefore, the cases where there is no negligence or latches on the part of the parties are deemed to be "sufficient cause". In the present case, due to staying abroad because of the illness of the husband, the applicant could not file the application in time which is a circumstance beyond the control of the party.

Considering the above facts and circumstances the Court below found "sufficient cause" for non-appearance when the appeal was called on for hearing and for the delay in filing the application and thereby allowed the application.

The learned Advocate for the petitioner failed to show that the court below committed any error of an important question of law resulting in an erroneous decision occasioning failure of justice in passing the impugned order, therefore, I do not find any reason to interfere with the same.

Accordingly, the Rule is discharged.

However, there is no 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.