Bench:
Mr. Justice Md. Ali Reza

Civil Revision No. 768 of 2025
Shoili Abashan Ltd and another
.....petitioners
-Versus-
Md.Mozammel Hoque
.....opposite party

Ms. Salma Sultana, Advocate
.....for the petitioners

Mr. Subrata Saha, Senior Advocate with
Mr. Kamal Hossain,
Ms. Madhuri Saha and
Mr. Manabendra Roy, Advocates
.....for the opposite party

Heard on: 03.12.2025, 09.12.2025 and 11.12.2025

Judgment on: 14.12.2025

In the instant revision Rule was issued calling upon the opposite party 1 to show cause as to why the judgment and order dated 17.02.2025 passed by the learned District Judge, Dhaka in Miscellaneous Appeal Number 35 of 2025 disallowing the appeal thereby affirming the judgment and order dated 09.03.2023 passed by the learned Joint District Judge, 4th Court, Dhaka in Title Suit Number 17 of 2023 allowing the application for temporary injunction should not be set aside and/or such other or further order or orders be passed as to this Court may seem fit and proper.

Opposite party as plaintiff filed Title Suit 17 of 2023 on 10.01.2023 in the Court of Joint District Judge, 4th Court, Dhaka for specific performance of contract on the contention that plaintiff entered into an agreement on 20.01.2021 with the defendant who received taka 15 lac on 20.01.2021 as earnest money out of total consideration of taka 70 (seventy) lac. Subsequently defendant after receiving the entire money did not register the kabala. Finally when defendant was served with notices on 3 occasions but did not take step to register the kabala plaintiff filed the instant suit.

In the suit plaintiff filed an application for temporary injunction under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure on 18.01.2023 on the contention that defendant 1 has been threatening the plaintiff with transfer the suit flat elsewhere in view to harass the plaintiff and for illegal gain. Plaintiff-applicant has good *prima facie* case and the balance of convenience and inconvenience is in his favour and in favour of granting injunction prayed for and he will suffer irreparable loss and injury in the event of any illegal transfer made to the detriment of his interest.

Notice was issued upon the defendant to show cause within 7 days which after return was kept with the record. Subsequently on 01.03.2023 plaintiff filed another application for ad interim injunction under Section 151 of the Code of Civil Procedure till hearing of the original application. Trial Court heard the application and allowed the same by judgment and order dated 09.03.2023 on the finding that plaintiff has got *prima facie* arguable case and defendant is restrained from transferring the suit flat till disposal of the suit.

As against the same defendant preferred Miscellaneous Appeal 35 of 2025 before the District Judge, Dhaka on 10.02.2025 which was out of time of 668 days and for such reason an application for condonation of delay was also filed.

Appellate Court dismissed the appeal summarily on 17.02.2025 being barred by law of limitation on the finding that such a long delay of 668 days constitutes gross negligence and such delay was not explained to satisfaction.

As against the order dated 17.02.2025 passed by the appellate Court defendant as petitioner preferred this revision and obtained Rule on 19.03.2025.

Learned Advocate Ms. Salma Sultana appearing on behalf of the petitioners submits that the appellate Court upon

misinterpretation of law and fact of the case and without going into the merit of the case wrongfully rejected the appeal summarily on ground of delay which cannot be sustained in the eye of law and the appellate Court thus committeed error of law resulting in an error in such order occasioning failure of justice. She then submits that the appellate Court failed to appreciate that defendant is the exclusive owner in possession of the suit property and the plaintiff has got no *prima facie* arguable case thus the impugned order is bad in law and the appellate Court committed error of law occasioning failure of justice in dismissing the appeal summarily. She further submits that the appellate Court did not consider that the balance of convenience and inconvenience is in favour of defendant and the order of injunction passed by the trial Court is operating harshly against the defendant and the judgment and order passed by the appellate Court being perverse and misconceived is liable to be interfered with by this Court in revision. She points out that the appellate Court committed wrong in not considering the merit of the case and dismissal of the appeal only considering the ground of condonation of delay was not proper for which justice came undone and the defendant suffers irreparable loss and injury and the impugned

judgment being passed not in accordance with law is liable to be set aside. She introduced some documents in supplementary affidavit dated 16.03.2025 but did not adduce the application for condonation of delay filed in appeal. She refers to the case of Haji Md. Elias and another Vs. Mrs. Suraya Rahman reported in 1 BLD(AD) 147 and finally submits that in view of the *ratio* laid down in the referred case this injunction cannot be granted.

Learned Advocate Mr. Subrata Saha appearing on behalf of the opposite party submits that since defendant admitted part payment of the total consideration plaintiff has got good arguable *prima facie* case and the balance of convenience and inconvenience is in favour of the plaintiff and in the event of any transfer the opposite party shall suffer irreparable loss and injury because such transfer inevitably invites multiplicity of proceedings with untold misery and harassment. He contends that injunction was passed on 09.03.2023 and a comprehensive time was consumed in filing the appeal and the appellate Court correctly rejected the appeal on ground of limitation in that the application for condonation of delay nowhere shows any reasonable ground or explanation to satisfy the minimum legal requirement. He also submits that

the fact and circumstance of 1 BLD case do not attract the fact of the present case. He points out that the impugned order being related to condonation of delay is other than the fact of granting temporary injunction and if the explanation offered to the application for condonation of delay is not satisfactory the petitioner has no case and the Rule is liable to be discharged.

Heard the learned Advocates for both sides and perused the materials on record and also gone through the impugned judgments passed by the Courts below.

It appears that the application for condonation of delay in filing the appeal under Section 5 of the Limitation Act is neither filed in the revisional application nor with the supplementary affidavit dated 09.12.2025. During the course of hearing of revision when the application for condonation of delay filed in appeal under section 5 of the Limitation Act was called for the learned counsel representing the petitioner produced an office copy of the same before the Court. Upon careful examination of the same it transpires that the application comprises 4 paragraphs but none of those paragraphs contains any satisfactory and plausible or legally tenable explanation for the inordinate delay of 668 days. The application merely asserts that the delay was not deliberate on

the part of the petitioner and due to the petitioner's lack of communication with his councel in appeal coupled with the misleading assurances of payment allegedly given by the opposite party as well as the petitioner's limited understanding the appeal could not be filed in time.

An application devoid of any cogent and substantive or acceptable explanation for such an extraordinary lapse of time cannot be entertained in the eye of law. Furtheremore the effort made by the petitioner to set up a third case by annexing various documents through a supplementary affidavit is also devoid of legal merit and cannot be accepted.

The trial Court granted temporary injunction on 09.03.2023. Thereafter the appeal was filed on 10.02.2025 after almost 2 years of the order of injunction. During this substantial interval of nearly 2 years it appears that the petitioner had no grievance against the order otherwise such an inordinate delay in preferring the appeal would not have occurred.

At the present stage unless and until the delay is condoned the petitioner is not entitled to a hearing on the merit of the injunction matter. The question of examining the *prima facie* case and balance of convenience or irreparable loss does

not arise in favour of the petitioner until the delay stands lawfully waived.

Since no reasonable or legally sustainable grounds exist for condoning such a prolonged delay under Section 5 of the Limitation Act it is evident that the appellate Court rendered the judgment both judiciously and in conformity with law. Consequently the judgment of the appellate Court being correct and well-reasoned does not warrant any interference.

Therefore I find no merit in this Rule.

In the result the Rule is discharged.

However the trial Court is directed to dispose of the suit as expeditiously as possible preferably within 6(six) months from the receipt of this judgment.

The order of stay passed by this Court stands vacated.

Communicate this judgment to the concerned Court at once.

Md. Ali Reza, J: