

Present:

Mr. Justice Md. Ruhul Quddus

Civil Revision No. 3996 of 1996

Md. Raushan Alam

...Petitioner

-Versus-

Mst. Zahura Khatun

...Opposite Party

No one appears for either of the parties

Judgment on 1.11.2012

This Rule at the instance of the plaintiff-petitioner was issued on an application under section 115(1) of the Code of Civil Procedure calling in question the legality of judgment and order dated 18.8.1996 passed by the Senior Assistant Judge, Gaibandha Sadar allowing an application under Order IX rule 13 of the Code on setting aside the *ex parte* decree passed in Other Class Suit No. 152 of 1994.

The matter has been appearing at the top of list for last three days with the name of learned Advocate for the petitioner. Today it is called on for hearing, but no one appears. It is an old matter pending for nearly 17 years and proceedings of a suit has been stayed, in view of which the matter is taken up for disposal even in absence of the parties.

Facts relevant for disposal of the Rule as it appears from the record, in brief, are that the petitioner instituted Other Class Suit No.152 of 1994 in the Court of Senior Assistant Judge, Gaibandha against the

opposite party for declaration that *kabinnama* dated 8.2.1993 registering their marriage was illegal, ineffective, null and void.

The opposite party being defendant was contesting the suit by filing a written statement denying the material allegations of the plaint.

The suit was fixed for peremptory hearing on 9.9.1995, when the plaintiff was present, but defendant was absent on an application for adjournment. Learned Senior Assistant Judge rejected the application and fixed it for hearing *ex parte* on 16.9.1995 and on that day decreed the suit *ex parte*.

The defendant-opposite party filed an application being Miscellaneous Case No.94 of 1995 under Order IX rule 13 of the Code for setting aside the said *ex parte* decree stating, *inter alia*, that she had instituted Family Suit No.59 of 1993 in the Family Court, Gaibandha against the petitioner for dower and maintenance. The petitioner being defendant was contesting the family suit by filing a written statement. At the stage of peremptory hearing of the family suit, the petitioner had instituted the present suit i.e Other Class Suit No.152 of 1994 and filed an application for stay of the family suit till disposal of the other class suit. The said application was rejected, in which event he filed Miscellaneous Case No.24 of 1994 for analogous hearing of the two suits.

That on 9.9.1995 she had filed an application for staying Other Class Suit No.152 of 1994 till disposal of Miscellaneous Case No.24 of 1994. On the next date i.e 16.9.1995 she herself appeared before the

Court and filed another application for staying all further proceedings in Other Class Suit No.152 of 1994 till disposal of the miscellaneous case, but suddenly she fell in illness and left the Court premises. Thereafter, she was under treatment up to 16.10.1995. After recovery she went to Court on 28.10.1995 and came to learn about the *ex parte* decree. Then she filed the present application for setting aside the *ex parte* decree under Order IX rule 13 of the Code.

The plaintiff-petitioner contested the miscellaneous case by filing a written objection denying the facts stated therein and contending, *inter alia*, that the application was barred by limitation and that she was fully aware of the date.

Learned Senior Assistant Judge heard Miscellaneous Case No.94 of 1995 and allowed the same by order dated 18.8.1996, challenging which the plaintiff moved in this Court with the present civil revision and obtained the Rule with an interim order staying all further proceedings in the suit.

I have gone through the record including the impugned order and the application under Order IX rule 13 of the Code (annex-A to the revisional application). It appears that the defendant-opposite party could show sufficient cause for not appearing before the trial Court when the suit was called on for hearing. She was fighting for dower and maintenance by instituting a prior family suit against her husband, who is plaintiff in the present suit. She appears to be diligent in pursuing the matter. On the other hand, the plaintiff-petitioner who allegedly got

married for the second time without consent of his first wife (herein defendant-opposite party) was trying to drag the matter.

The Senior Assistant Judge though found some latches and defect on the part of the defendant-opposite party because of not examining the doctor who issued medical certificate in support of her illness, allowed the miscellaneous case with cost of Taka 1500/= (fifteen hundred) only.

This Court by order dated 19.11.2009 directed the learned Advocate for the plaintiff-petitioner to furnish information about the last position of Family Suit No.59 of 1993, which he did not comply with.

Under the facts and circumstances, I am of the view that the learned Senior Assistant Judge did not cause any failure of justice in allowing the miscellaneous case on setting aside the *ex parte* decree. The plaintiff-petitioner will get ample opportunity to prove his contention in course of trail of the suit.

In view of the above, I do not find any substance in the Rule. Accordingly, the Rule is discharged, however, without any order as to cost. The interim order of stay granted earlier is vacated. The trial Court is directed to dispose of the suit expeditiously.

Communicate a copy of the judgment.