

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

Present:

Mr. Justice Md. Bashir Ullah

Civil Revision No. 4775 of 2011

In the matter of:

An application under Section 115(1) of the
Code of Civil Procedure, 1908

And

In the matter of:

Md. Mofizar Rahman

---Defendant-Appellant- Petitioner.

-Versus-

Most. Mahfuza Akhter

---Plaintiff-Respondent-Opposite party.

Mr. Md. Jahangir Alam, Advocate

----For the petitioner.

None appeared

----For the opposite party.

Heard and Judgment on 18.01.2024

At the instance of the defendant-appellant, this Rule was issued calling upon the opposite party No.1 to show cause as to why the order dated 18.04.2011 passed by the learned District Judge, Magura in Family Appeal No. 04 of 2009 dismissing the appeal summarily and thereby affirming the judgment and decree dated 04.11.2001 passed by the learned Senior Assistant Judge, Magura Sadar, Magura and Family Court in Family Suit No. 12 of 2001 decreeing the suit should not be set aside and/or pass such other order or further order or orders as to this Court may seem fit and proper.

The facts necessary for the disposal of the Rule, in short are:

The present opposite party as plaintiff instituted Family Suit No. 12 of 2001 before the Assistant Judge, Family Court, Magura against the present petitioner claiming her dower and maintenance stating inter alia that the defendant got married to her on 12.04.1985 fixing a dower money to the tune of Tk.15,000/-. Out of their wedlock, two daughters were born. Subsequently, the defendant went to South Korea for service and started ignoring her and their daughters. The plaintiff did not provide any maintenance, for herself or her minor daughters which compelled her to file the family suit, claiming dower and maintenance.

On the other hand, the defendant contested the suit by filing a written statement denying all material averments made in the plaint. It has been stated that he could not pay for dower and maintenance due to his poverty and finally he prayed for dismissal of the suit. Upon hearing the parties the family Court decreed the suit on 04.11.2001 on contest against the defendant. Thereafter the plaintiff as decree-holder filed Family Execution Case No. 10 of 2003 before the Assistant Judge and Family Court, Magura. The defendant as judgment debtor filed written objection. Upon hearing, the Executing Court rejected the objection filed by the defendant on 09.02.2009, directing the defendant-decree debtor to pay the decretal amount.

The defendant preferred Family Appeal No. 4 of 2009 before the District Judge, Magura against the Judgment and order dated 04.11.2001, passed by the Senior Assistant Judge, Magura Sadar, Magura decreeing the suit after a long delay. The District Judge,

Magura upon hearing the parties dismissed the appeal summarily on the ground that the appellant failed to put his signature in the memorandum of appeal.

Being aggrieved by the said order, the defendant as appellant-petitioner filed this Civil Revision and obtained the Rule.

Mr. Md. Jahangir Alam, learned Advocate appearing on behalf of the petitioner submits that the learned District Judge, Magura failed to appreciate the case of the appellant. The learned District Judge ought to have given an opportunity to the appellant to put his signature on the memorandum of appeal, but the learned Judge failed to consider the same committed error of law, resulting in an error that occasioned a failure of justice.

He further submits that there was no fault of the appellant because he was not aware of the legal obligation to put his signature, which was a bonafide mistake but the learned Court did not apply his judicial mind to that effect and thus committed an error of law that occasioned a failure of justice and prayed for making the rule absolute.

None appeared for the opposite party to contest the rule.

I have heard the learned Advocate for the petitioner, perused the judgments and orders of the Courts below, the revisional application and all other connected materials on record.

The record shows that the opposite party as plaintiff filed Family Case No. 12 of 2001 for dower and maintenance. It is also admitted that the marriage between the plaintiff and the defendant was solemnized on 12.04.1985, fixing the dower at Tk.15,000/-(Fifteen thousand). The marriage was consummated and out of the wedlock two daughters were born.

It is also admitted that the defendant went to South Korea for service and failed to maintain the plaintiff and his two children, which compelled the plaintiff to claim dower and maintenance for herself and her offspring.

Upon hearing the trial Court decreed the suit on 04.11.2001 and as the defendant did not come forward to pay the decretal amount, the plaintiff filed Execution Case No.10 of 2003. Against that the defendant as Judgment debtor filed a written objection. The Execution Court ultimately fixed on 09.2.2009 for hearing the written objection and upon hearing both parties, the Execution Court passed the following order:

“অদ্য আপত্তি শুনানীর জন্য ধার্য আছে। উভয় পক্ষ হাজিরা দিয়াছেন নথি আদেশের জন্য লওয়া হইল। দায়িক পক্ষের বিজ্ঞ কৌশলী শুনানী কালে দাবী করেন যে, দায়িক পক্ষ ডিক্রীকৃত টাকা আদালতে দাখিল করিতে প্রস্তুত আছেন। তিনি ডিক্রীদার পক্ষের নিকট হইতে ডিক্রীকৃত টাকার হিসাব বিবরণী প্রাপ্তির প্রার্থনা জানান।

দায়িক পক্ষ আরও দাবী করেন যে, তিনি ইতিমধ্যে ডিক্রীদার বাদীনিকে তালাক প্রদান করিয়াছেন এবং ০৭/৯/০৩ তারিখের তালাক নামা গত ইং ২৫/১১/০৮ তারিখে দাখিল করিয়াছেন। পক্ষান্তরে ডিক্রীদার পক্ষের বিজ্ঞ কৌশলী ও শুনানী কালে দাবী করেন যে, বাদীনি ডিক্রীদার তালাকের নোটিশ এবং কপি প্রাপ্ত হন নাই এবং তালাক স্বীকার করেন না। নথি পর্যালোচনায় ০৪/১১/০১ ইং তারিখের রায়ে বাদীনি ও বিবাদীর মধ্যে বিবাহ বলবৎ আছে মর্মে উল্লেখ আছে।

দায়িক পক্ষের দাবীকৃত এই ধরনের তালাক প্রমাণ সাপেক্ষে বিষয় হওয়ায় অত্র পারিবারিক জারী মামলার রায়ের পরে তালাক বিষয়ে সিদ্ধান্ত গ্রহণের সুযোগ নাই মর্মে সিদ্ধান্ত গৃহীত হইল।

ডিক্রীকৃত টাকা পরিশোধ না করিলে দায়িকের তিন মাসের বিনা শ্রম কারাদন্ড অথবা ডিক্রীকৃত টাকা পরিশোধ না হওয়া পর্যন্ত বিনা শ্রম কারাদন্ডের বিধান থাকায় এবং দায়িক পক্ষ ডিক্রীকৃত অর্থ পরিশোধে সম্মত হওয়ায় দায়িক পক্ষ আদালতে হাজির না হইলেও তাহার পক্ষে বিজ্ঞ কৌশলী টাকা প্রদান করিতে পারেন মর্মে সিদ্ধান্ত গৃহীত হইল।

রায় ও ডিক্রীর আলোকে ডিক্রীদারের পাওনা কৃত সুমদয়া পাওনার হিসাব বিবরণী আগামী ইং ১৯/০২/০৯ ইং তারিখে দাখিলের জন্য ডিক্রীদারকে নির্দেশ দেওয়া গেল।

উক্ত ধার্য্য তারিখ রায়ে ও ডিক্রীতে উল্লেখিত টাকা
আদালতে দাখিলের জন্য নির্দেশ প্রদান করা হইল।”

After a long delay, the defendant as appellant preferred Family Appeal No. 4 of 2009 before the District Judge, Magura against the Judgment and decree order dated 04.11.2001 passed by the Assistant Judge, Magura Sadar, Magura without putting his signature on the memorandum of appeal and the District Judge, Magura then dismissed the appeal summarily. The said order is as follows:

“নথি পর্যালোচনায় দেখা যায় আপিলের স্মারকে আপিলকারীর স্বাক্ষর নাই। পারিবারিক আদালত অধ্যাদেশের ১৭(৪)(ঘ) ধারায় আপিল স্মারকে আপিল্যান্টের স্বাক্ষর প্রদান বাধ্যতামূলক করা হইয়াছে। এমতাবস্থায়, আপিল স্মারকে আপিল্যান্টের স্বাক্ষর না থাকায় উক্ত ত্রুটি জনিত কারণে অত্র আপিলটি শুনানীর জন্য গ্রহণ করিতে অগ্রাহ্য করা হইল।”

Section 17 of the Family Courts Ordinance 1985 is quoted below for better understanding:

Appeal-(1) Subject to the provisions of subsection (2), an appeal shall lie from a judgment, decree or order of a Family Court to the Court of District Judge.

(2) No appeal shall lie from a decree passed by a Family Court-

(a) for dissolution of marriage, except in the case of dissolution for reasons specified in section 2(viii)(d) of the Dissolution of Muslim Marriages Act, 1939;

(b) for dower not exceeding five thousand taka.

(3) An appeal under this section shall be preferred within thirty days of the passing of the judgment, decree or order excluding the time required for obtaining copies thereof:

Provided that the Court of District Judge may, for sufficient cause, extend the said period.

(4) An appeal shall-

(a) be in writing;

(b) set out the grounds on which the appellant seeks to challenge the judgment, decree or order;

(c) contain the names, descriptions and addresses of the parties; and

(d) bear the signature of the appellant.

(emphasized)

(5) A certified copy of the judgment, decree or order of the Court from which the appeal is preferred shall be attached to the appeal.

(6) Any order passed by the Court of District Judge shall, as soon as may be, be communicated to the Family Court which shall modify or amend the judgment, decree or order accordingly and shall also make necessary entries to that effect in the appropriate column in the register of decrees.

(7) The District Judge may transfer an appeal to the Court of an Additional District Judge or a Subordinate Judge for hearing and disposal and may withdraw any such appeal from such Court.

It is a well settled principle that once marriage is solemnized between a man and a woman and consummation takes place between them, it becomes the husband's responsibility to maintain his wife and children, if there are any, under their wedlock. Thus the defendant-appellant-husband is under an obligation to pay dower money and maintenance to her wife and offspring.

It seems that the defendant-appellant-petitioner is delaying in making the payment of the decretal amount to the plaintiff-respondent-opposite parties who have been passing miserable

lives though the plaintiff is entitled to dower and maintenance so does of her two daughters in accordance with law.

In the given discussion and observation, I do not find any merit or force in the submission so advanced by the learned Advocate for the defendant-appellant-petitioner. Furthermore, there is no merit in the Rule which is liable to be discharged.

In the result, the Rule is discharged, however without any order as to cost.

Communicate the copy of the judgment to the concerned Court forthwith.

(Justice Md. Bashir Ullah)