

In the Supreme Court of Bangladesh

High Court Division

(Civil Revision Jurisdiction)

Present:

Mr. Justice Jahangir Hossain

Civil Revision No. 837 of 2005

In the matter of :

An application under section 115 of the Code
of Civil Procedure

And

In the matter of :

Md. Mahmudul Haque Bhuiyan

.....Petitioner

-Versus-

Jesmin Akther Beauty

.....for the opposite party

Mr. A. M Mahbubuddin, Advocate

.....for the petitioner

No one appears

.....for the opposite party

Judgment on 11.11.2020

By order dated 19.03.2005 this Rule was issued calling upon the plaintiff-respondent-opposite party to show cause as to why the impugned judgment and order dated 18.10.2004 passed in Family Appeal No. 32 of 2004 by the District Judge, Noakhali affirming the order dated 01.09.2004 and 15.09.2004 passed by the Judge of the Family Court, Begumganj, Noakhali in Family Suit No. 02 of 2002 should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

At the time of issuance of the Rule, the operation of the aforesaid judgment and order dated 18.10.2004 was stayed for a period of 06[six] months from date and the petitioner was directed to pay a sum of Tk. 15,000/-[fifteen thousand] out of the decretal amount to the opposite party namely Jesmin Akhter Beauty and henceforth pay a sum of Tk. 1,000/-[one thousand] every month failing which the rule stands discharged and the stay stands vacated. The petitioner was further directed to submit receipts at the time of extension of stay to show the compliance of the order passed by this Court.

In support of the Rule, Mr. A.M. Mahbub Uddin, learned Advocate contends that the petitioner after obtaining the Rule with an order of stay deposited Tk. 21,000/-[twenty one thousand] to the trial court in the name of plaintiff-respondent-opposite party and he has no personal knowledge regarding rest money or any installment to be paid by the petitioner in the name of the aforesaid opposite party. Learned Advocate finally submits that the Rule should be disposed of with a direction to the petitioner, if unpaid.

It appears from documents on record that the defendant-appellant-petitioner as plaintiff filed a Family Suit against the opposite party being Family Suit No. 119 of 2001 before the Family Judge, Begumganj, Noakhali for restoration of conjugal life. The opposite party as plaintiff also instituted Family Suit No. 02 of 2002 before the same court demanding an amount of Tk. 104800/- as dower money and Tk. 1500/- per month as maintenance. Both the cases were analogously heard on 25.03.2003. The

trial court delivered judgment and decree on 25.03.2003 directing the petitioner to pay a sum of Tk. 1,09,500/- as dower money in favour of the defendant-respondent-opposite party and a sum of Tk. 1000/- per month as maintenance for their child Khoka [minor].

The petitioner being aggrieved by and dissatisfied with the aforesaid judgment and decree dated 25.03.2003 filed two separate appeals being Family Appeal No. 11 of 2003 and 12 of 2003 before the learned District Judge, Noakhali. Ultimately both the appeals were heard analogously by Additional District Judge, 2nd Court, Noakhali.

Modifying the judgment of the trial court the learned Additional District Judge by his judgment and order dated 28.10.2003 directed the petitioner to pay a sum of Tk. 95500/- in favour of the opposite party and Tk. 500/- for maintenance of the child per month. Thereafter, the petitioner filed an application on 30.06.2004 before the Family Court, Begumganj, Noakhali to allow him to pay the dower money by way of installment @ Tk. 1000/- per month and on 14.07.2004 the Family Court, Begumganj, Noakhali was pleased to reject the said petition and directed the petitioner to pay 50% of dower money to the plaintiff-respondent-opposite party within 11.08.2004. The petitioner again filed an application before the same court for a direction to pay Tk. 10,000/- at a time and the rest of the dower money @ Tk. 1000/- every month but the same was not considered. On 25.08.2004 the petitioner again filed an application before the Family Court for a direction as stated in the earlier application. On 01.09.2004 the Family Court, Begumganj, Noakhali after hearing the

parties was pleased to reject the said application and on 15.09.2004 issued warrant of arrest against the petitioner.

Being aggrieved by and dissatisfied with the orders dated 01.09.2004 and 15.09.2004 passed by the learned Family Court, Begumganj, Noakhali, the appellant-petitioner preferred an appeal being Family Appeal No. 32 of 2004 in the Court of District Judge, Noakhali. The aforesaid appeal was summarily rejected by the learned District Judge. Thereafter, the petitioner filed an application before this Court under section 115 of the Code of Civil Procedure and obtained the instant Rule with an order of stay as mentioned above.

It appears from record that at the time of issuance of the Rule this Court directed the petitioner to pay a sum of Tk. 15000/- out of the decretal amount to opposite party Jesmin Akter Beauty and henceforth pay a sum of Tk. 1000/- every month failing which the Rule shall stand discharged and stay shall stand vacated. On 14.09.2005 the petitioner submitted an affidavit of compliance which was kept with the record wherefrom it transpires that the petitioner deposited Tk. 15000/- to the trial court at a time in the name of the opposite party and he also deposited Tk. 6000/- by six installments for maintenance of the child which means he has total paid Tk. 21000/-. There is no document at this stage whether he has further paid money to the opposite party. Even than the learned Advocate for the petitioner has no personal knowledge about anymore payment thereafter by the petitioner. It appears that the petitioner obtained the Rule from this Court on 19.03.2005. In the meantime around 15 years

have elapsed but there is no document or compliance regarding rest decretal amount of money to be paid to the opposite party by the petitioner.

Therefore, the petitioner is directed to pay rest decretal amount within 03[three] months from the date of receipt of this judgment and order, failing which the trial court is directed to do needful in accordance with law.

With the aforesaid observation the Rule is disposed of.

Let a copy of this judgment and order be communicated to the concerned court below at once.

[Jahangir Hossain,J]