

20 SCOB [2025] HCD**HIGH COURT DIVISION****Present:****Justice Fatema Najib****CIVIL REVISION NO.1497 OF 2021****Kazi Abdul Bakir**..... **Petitioner****-Versus-****Nur Taj Hossain Suchona**.....**Opposite-parties**

Mr. Kanai Lal Saha, Advocate.

.....for the petitioner

Mr. Md. Shahid Ullah, Advocate

....For the opposite-parties

Date of Hearing: 27-02-2024, 24-02-2024 & 29-04-2024

Date of Judgment: 14-05-2024

Editors' Note:

In *Civil Revision No. 1497 of 2021*, the petitioner, Kazi Abdul Bakir, assailed the continuance of a family suit instituted by his wife, Nur Taj Hossain Suchona, before the Family Court at Gazipur. The petitioner had earlier filed a civil suit seeking a declaration that the marriage kabinnama dated 06.01.2017 was void, alleging suppression of the opposite party's subsisting prior marriage and consequent fraudulent inducement into the present marriage. Thereafter, the opposite party brought a family suit claiming dower of Tk. 10,00,000 and maintenance. The petitioner sought stay of the family suit pending disposal of his civil suit, which prayer was rejected by both the trial court and the appellate court.

In revision, learned counsel for the petitioner argued that the two suits raised an identical and fundamental question—namely, whether a valid marriage subsisted between the parties—and hence, in terms of section 10 of the Code of Civil Procedure, the family suit ought to be stayed to obviate inconsistent findings. Conversely, the opposite party contended that under the Family Courts Ordinance, 1985, the Family Court, as a special forum, was empowered to incidentally determine the validity of marriage where such determination was indispensable to adjudicating claims of dower and maintenance.

Upon consideration of the statutory provisions and judicial authorities, the Court held that, notwithstanding the earlier institution of the civil suit, the Family Court retained jurisdiction to pronounce upon the validity of marriage in deciding ancillary claims. Emphasising the principle that multiplicity of proceedings should be avoided and effective relief may be granted in the family suit itself, the Court found no cogent ground to stay the proceedings. Accordingly, the Rule was discharged, the order of stay vacated, and the Family Court was directed to proceed with the trial expeditiously.

Key Words:

Family court; Jurisdiction of family court to decide on the validity of Kabinnama; Validity of marriage; Section 10 of CPC; Multiplicity of suits; Stay of family court proceedings pending civil suit

In certain cases, it may not be clear as to whether the matter in dispute falls within the jurisdiction of the Family Court or a Civil Court when the validity of marriage is challenged or when solemnization of marriage is denied by one party, naturally the question is to be settled by filing a suit. When the validity of marriage is challenged or denied, the question does not fall within the five matters which are exclusively triable by Family Courts under section 5 of the Family Courts Ordinance 1985. But when the wife filed a Family suit for dower, maintenance, the husband by written statement denies the marriage or challenge the validity of the marriage, then the question may be decided in that Family suit because the question is connected with the question as to whether the wife is entitled to get any amount for dower and maintenance. It is obvious that without deciding the question as to whether there was any valid marriage no decree for dower and maintenance can be passed. In the present case husband filed a civil Suit challenging the marriage earlier. The wife filed a Family suit for dower and maintenance later on. ... (Para 21)

One of the main principles to be followed is that if relief can be given in one suit, multiplicity of suits should be avoided. In civil Suit No.23 o 2017 the court can pass a decree whether the marriage between the petitioner and opposite party is valid or not but not pass a decree for dower and maintenance which Family Court have exclusive authority to try the 5 matter as stated in section 5 of Family ordinance. But in a family suit the court can decide whether the marriage is valid or not as well decided whether the wife is entitled to get dower and maintenance. The present Revision has been arisen whether the subsequent Family Suit filed by the wife for dower and money will be stayed because of the suit filed by the husband earlier challenging the validity of kabinnama. ... (Para 22)

On perusal those decisions it is clear Family court has got every jurisdiction to decide as to whether the 'kabinnama' in question is a genuine and valid document or not. It transpires that though the matter of validity of marriage does not strictly fall within preview of section 5 of the Family Courts Ordinance such a question may be decided by a Family Court if the husband denies the marriage. Though civil suit passed earlier, Family Suit filed latter, but since in Family Suit the validity of marriage and dower and maintenance can be decided so, to avoid multiplicity of suit the subsequent Family suit cannot be stayed. ... (Para 26)

JUDGMENT**Fatema Najib, J:**

1. This Rule was issued calling upon the opposite party to show cause as to why the impugned judgment and order dated 13.01.2021 passed by the Joint District Judge, Second Court, Gazipur in Family Appeal No.13 of 2020 dismissing the appeal affirming the order dated 23.02.2020 passed by the Assistant Judge, and Family Court, Gazipur in Family Suit

No.46 of 2018 rejecting an application for staying all further proceedings in the Family Suit till disposal of First Appeal No.17 of 2021 now pending in the High Court Division should not be set aside and/or such other or further order or orders passed as to this court may seem fit and proper.

2. Pending hearing of the rule, all further proceedings in Family Suit No.46 of 2018 is stayed for a period of 06(six) months.

3. Relevant facts for disposal of the Rule are that the petitioner as plaintiff instituted Civil Suit No.23 of 2017 before the court of Joint District Judge, Additional Court, Gazipur on 04.2017 impleading the opposite party and others as defendants praying for a declaration that the Kabinnama dated 06.01.2017 is illegal, ante dated and same is not binding upon the petitioner stating inter alia that on 06.01.2017 the marriage between the plaintiff and the defendant no. 1 was duly and formally solemnized fixing dower money of Tk.10,00,000/- (Ten lac) through registered kabinnama. On the same day the petitioner took the opposite party at his residence but on the plea of sickness the bride did not stay in the bride chamber rather stayed separately and due to which the marriage was not consummated. On the next day she went to her father's house but did not return back. There after the plaintiff went to her father's house to return her back but the defendant no.1 was absent there. Subsequently, he came to know that before marriage with him the defendant no.1 on 27.12.2016 had got married with one Simanto Sikder through Notary Public and went to Simanto Sikder. Thereafter the defendant No.1 divorced him and again got married to Simanto Sikder on 31.01.2017 through registered Kabinnama. The defendant no.1 suppressing her previous marriage with Simanto Sikder and without giving divorce her earlier husband fraudulently got married to the plaintiff and as such the kabinnama dated 06.01.2017 is not binding upon him.

4. In the suit the defendant no.1 appeared and filed an application under Order VII Rule II of the Code of Civil Procedure for rejection of plaint and the same was allowed against which the plaintiff preferred First Appeal No.17 of 2021 before High Court Division and same is pending for disposal.

5. The defendant no.1 as plaintiff filed Family Suit No.46 of 2008 on 14.05.2018 against the plaintiff of Title Suit No.23 of 2017 as defendant praying for dower and maintenance before the court of Assistant Judge Additional court, Gazipur alleging inter alia that on 06.01.2017 at the time of marriage the defendant demanded Tk. 5,00,000/- as dowry but the parents of the plaintiff could not pay the said amount of money. On that day ultimately without paying the demanded dowry, marriage between the plaintiff and the defendant was solemnized fixing a dower money of Tk.10,00,000/- (Ten lac) through registered kabinnama. The defendant took the plaintiff at his house and after two days of their marriage she was sent to her father's house. Subsequently, the defendant did not take her back to his house and finally on 07.04.2017 the plaintiff refused to take her at his residence without dowry of Tk.5,00,000/- (Five lac) for which She filed C.R. Case No.211 of 2017 against him. On 04.05.2018 while the defendant went to her parents house for amicable settlement she demanded her dower money of Tk.10,00,000/- (Ten lac) and maintenance but he refused to pay the same. Hence the suit for dower and maintenance was filed.

6. The defendant appeared before the Family Court and filed a written statement stating the same statements as stated in Civil Suit No.23 of 2017, subsequently the same was re-numbered as Title Suit No.4 of 2020. Thereafter the defendant filed an application on

31.01.2029 for staying all further proceedings of the said Family suit till disposal of Civil No.23 of 2017 which was filed challenging the kabinnama. Upon hearing the matter, learned judge of the Family Court vide order dated 23.02.2020 rejected the prayer for rejection of plaint.

7. Being aggrieved by and dissatisfied with the order dated 23.02.2008 the defendant (Family Suit No.46 of 2008) as appellant preferred the Family Appeal No.13 of 2020 before District Judge, Gazipur which was subsequently transferred to the joint District Judge, Second court, Gazipur who upon hearing the said appeal dismissed the same by the impugned judgment and order dated 13.01.2021.

8. Feeling aggrieved by and dissatisfied with the aforesaid judgment and order dated 13.01.2021 passed by the appeal court below the defendant moved this court with an application under section 115(1) of the Code of Civil Procedure and obtained the present Rule and Order of stay.

9. The matter was heard by Division Bench constituted by Mr. Justice Farid Ahmed and Mr. Justice Md. Atoar Rahman. Upon hearing and perusing the evidences on record his lordship Mr. Justice Farid Ahmed made absolute the Rule. But his lordship Mr. Justice Md. Atoar Rahman on hearing the submissions advanced by learned counsels of the respective parties and on perusing the evidence on record discharged the Rule.

10. The dissenting matter was sent by Hon'ble Chief Justice of Bangladesh by order dated 02.11.2023 to be heard and disposed of by Justice Fatema Najib.

11. Mr. Samsuddin Babu, learned Senior Advocate along with Mr. Kanailal, Shaha learned Advocate appearing on behalf of the petitioner submits that since the provision of section 20 of the Family courts Ordinance 1985 shall apply to the proceedings before the Family Courts, and since the Civil Suit No.23 of 2017 and Family Suit No.46 of 2018 were instituted between the self same parties and the matter in issue in both the suits are same and the Civil Suit which was instituted earlier, as such subsequent Family Suit ought to have been stayed till disposal of Civil Suit. He further submits that both court below failed to appreciate that the facts of the cited case 54 DLR-481 and 15 MLR-100 are totally distinguishable from that of instant case and thereby came to the wrong findings and committed error of law resulting in an error in the decision occasioning failure of justice. He next submits that the petitioner filed an application for staying the proceedings of Family Suit on 31.01.2019, but learned trial court kept the application with the record fixing date of hearing on 6.3.2019 and finally disposed of on 23.02.2020 by non-speaking order. He also submits that the matter in issue in both Civil Suit and the Family suit whether there was a valid marriage between the parties, so, the subject matter in controversy between the contesting parties is same and if the proceeding of family suit which is filed latter on is not stayed in that case there is every chance of different and conflicting decisions about kabinnama which will entail multiplicity of suit and case. With these submissions he prayed to absolute the Rule.

12. Mr. Md. Khairul Islam, learned Advocate, appearing on behalf of the opposite party opposing the Rule submits that the petitioner filed written statement in the family suit alleging that during solemnization between them on 06.01.2017 the opposite party was wife of one Simanto Sikder for which the kabinnama is invalid and not binding upon the petitioner. He further submits that since the family court has jurisdiction to decide the issue. i.e. validity

of the kabinnama or/and validity of the marriage between the parties and since the family court has been established under special law for specific purpose, the family suit can not be stayed and wait for final decision of the Civil Suit. He next submits that considering this aspect and relying upon the relevant decisions made by the High Court Division in the decision reported in 54 DLR (H.D)-481 and 15 MLR (H.D)-100 both court below dismissed the application for stay rightly and committed no error of law resulting in an error in the decision occasioning failure of justice and , as such, the Rule is liable to be discharged.

13. Heard the submissions of the learned advocate of both sides. Perused the impugned judgment and order and connected papers and the record.

14. Admittedly, the marriage between the petitioner and the opposite party was solemnized as per provision of law fixing dower money of Tk. 10,00,000/-(Ten lac) and accordingly a Kabinnama was duly executed and registered . On the date of marriage the petitioner took his wife at his residence. The petitioner filed a Civil Suit being no.23 of 2017 on 18.04.2017 alleging that opposite party suppressing her provisions marriage with one Simanto Sikder and with out giving divorce her previous husband got marriage to the petitioner on 06.01.2017. On the other hand the opposite party filed Family Suit No.46/2018 on 14.05.2018 against the petitioner for dower and maintenance. In the Civil Suit the opposite party filed an application for rejection of plaint which was allowed against which First Appeal case No.17 of 2021 was filed before the High Court Division and same is pending for disposal.

15. Section 5 of the Family courts Ordinance, 1985 states that “Subject to the provision of the Muslim Family Laws Ordinance, 1961 a family court shall have exclusive jurisdiction to entertain, try and dispose of any suit relating to, or arising out of, all or any of the following matters, namely

- a. dissolution marriage
- b. restitution of conjugal rights
- c. dower,
- d. maintenance
- e. guardianship and custody of children.”

16. Section 20 of Family Courts Ordinance, 1985 states-i) Save as otherwise expressly provided by or under this Ordinance, the provisions of Evidence Act, 1872 and of the Code except sections 10 and 11 shall not apply to proceedings before the Family courts.

2).....”

17. So, it is clear that section 20 of Family courts Ordinance, 1985 provides section 10 of the same is applicable in the family Suit.

18. Now the question is whether the learned Joint District Judge, in dismissing the Family Appeal no.13 of 2020 has committed any error of law resulting in an error in her decision occasion failure of justice.

19. It is pertinent to note that in the family suit the application was filed by the petitioner as defendant for staying further proceedings of the Family Suit No. 46/2048 till disposal of the Civil Suit no.23 of 2017. In the Family suit on an application of the defendant and on hearing the matter the plaint was rejected against which the petitioner-defendant filed First Appeal No.17 of 2021 before this Division which is pending. When First Appeal will be

heard and disposed of it is uncertain. Moreso, if the petitioner succeeds in the First appeal then the suit will go to down stair and will start from the stage where it was before rejection of plaint. It is also uncertain when the same will be disposed of by the trial court. It means when the disputed matter between the parties will be solved, it is uncertain.

20. Be that as it may, it has already been stated that the petitioner as defendant filed a written statement in Family Suit raising defence plea that during subsistence of marriage with one Simanto Sikder suppressing the same the opposite party got married to the petitioner.

21. In certain cases, it may not be clear as to whether the matter in dispute falls within the jurisdiction of the Family Court or a Civil Court when the validity of marriage is challenged or when solemnization of marriage is denied by one party, naturally the question is to be settled by filing a suit. When the validity of marriage is challenged or denied, the question does not fall within the five matters which are exclusively triable by Family Courts under section 5 of the Family courts Ordinance 1985. But when the wife filed a Family suit for dower, maintenance, the husband by written statement denies the marriage or challenge the validity of the marriage, then the question may be decided in that Family suit because the question is connected with the question as to whether the wife is entitled to get any amount for dower and maintenance. It is obvious that without deciding the question as to whether there was any valid marriage no decree for dower and maintenance can be passed. In the present case husband filed a civil Suit challenging the marriage earlier. The wife filed a Family suit for dower and maintenance later on.

22. One of the main principles to be followed is that if relief can be given in one suit, multiplicity of suits should be avoided. In civil Suit No.23 o 2017 the court can pass a decree whether the marriage between the petitioner and opposite party is valid or not but not pass a decree for dower and maintenance which Family Court have exclusive authority to try the 5 matter as stated in section 5 of Family ordinance. But in a family suit the court can decide whether the marriage is valid or not as well decided whether the wife is entitled to get dower and maintenance. The present Revision has been arisen whether the subsequent Family Suit filed by the wife for dower and money will be stayed because of the suit filed by the husband earlier challenging the validity of kabinnama.

23. For proper adjudication, I need to quote section 10 of the Code of Civil Procedure which provides as follows:

“No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in Bangladesh having jurisdiction to grant the relief claimed, or in any Court beyond the limits of established or continued by the Government and having like jurisdiction, or before the Supreme Court.”

24. From a bare reading of the provisions stated above it appears i) the matter in issue in the subsequent suit is also directly or substantially in issue in the first suit ii) the parties are the same or parties under whom they or any of them claim litigating under the same title and iii) the court where the first suit is pending is competent to grant relief claimed in the subsequent suit.

25. Both the court below relying on the decision reported in 54 DLR(HCD)-481 and 15 MLR(HCD)-100 giving opinion the priority of the decision of Family Suit over Civil Suit.

Learned Advocate for the petitioner submits that in both the decisions referred by opposite party that Family suit was filed earlier, so, the facts and circumstances of the cited case are distinguishable from that of present case.

26. On perusal those decisions it is clear Family court has got every jurisdiction to decide as to whether the 'kabinnama' in question is a genuine and valid document or not. It transpires that though the matter of validity of marriage does not strictly fall within preview of section 5 of the Family Courts Ordinance such a question may be decided by a Family Court if the husband denies the marriage. Though civil suit passed earlier, Family Suit filed latter, but since in Family Suit the validity of marriage and dower and maintenance can be decided so, to avoid multiplicity of suit the subsequent Family suit can not be stayed.

27. Having regard to facts and circumstances. I am of the view that trial courts below correctly rejected the application for staying all further proceedings of the family suit till disposal of the civil suit. Learned Joint District judge in dismissing the appeal did not commit any error of law resulting in an error in her decision occasioning failure of justice.

28. As such I find no substance in the Rule.

29. In the result, the Rule is discharged without any order of cost. The impugned judgment and order dated 13.01.2021 passed in Family title Suit No. is hereby upheld. The order of stay granted at the time of issuance of the Rule is hereby vacated. Learned judge of Family court is directed to proceed the case the case in accordance of law.

30. Send down the lower Court records along with a copy of this judgment at once.