

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

Civil Revision No. 1704 of 2016

IN THE MATTER OF

Md. Khorshed Alam

.....Defendant-Appellant-Petitioner

-Versus-

Jannatul Kawsar Jothsana

.....Plaintiff-Respondent-Opposite party

No one appears

.....For the petitioner

Mr. Md. Khalilur Rahman with

Mr. Mohammad Masum Billah, Advocates

.....For the opposite party

**Heard on 05.04.2023, 06.04.2023
and judgment passed on 30.04.2023**

Present:

Mr. Justice Kazi Md. Ejarul Haque Akondo

Kazi Md. Ejarul Haque Akondo, J.

This Rule, under section 115(1) of the Code of Civil Procedure,
1908, was issued in the following term-

*“Record be called for and a Rule be issued calling upon the
opposite party to show cause as to why the impugned judgment
and decree dated 03.03.2016 passed by the learned Additional
District Judge, 5th Court, Dhaka in Family Appeal No. 124 of*

2012 disallowing the appeal and thereby affirming the judgment and decree dated 15.10.2012 passed by the learned Senior Assistant Judge and Family Court, Additional Court No. 3, Dhaka in Family Suit No. 27 of 2011 decreeing the suit in part should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.”

At the time of issuance of the Rule, this Court stayed the operation of the impugned judgment and decree dated 03.03.2016 for 6 (six) months from the date on condition and lastly, it was extended on 01.04.2019 for 1(one) year from the date of expiry.

The present opposite party as the plaintiff filed Family Suit No. 27 of 2011 imp leading the present petitioner as the defendant for a decree of dower money and maintenance for her along with her 03 children.

The case of the plaintiff, in short, is that the defendant married her on 26.08.1996 with dower money of tk.1,00,001/- and started conjugal life at his father's residence. They were blessed with 02 daughters and 01 son, who were aged about 13 years, 12 months, and 10 years respectively. On 01.11.2009, the defendant demanded tk. 5 lakh from the plaintiff as dowry, assaulted her, and drove her away from the house

along with the children, who are now residing in her father's house. The defendant did not take care and gave them any maintenance for their livelihood. The defendant did not pay dower money to the plaintiff, hence the suit.

The defendant contested the suit by filing a written statement denying the averments made in the plaint contending, inter alia, that the plaintiff was arrogant-minded and was not willing to stay with his other family members; rather she used to stay at her father's house voluntarily. The story of demanding dowry and assaulting the plaintiff is not correct. He did not divorce her considering their children's future and as such, the plaintiff is not entitled to get any dower money and maintenance.

After the conclusion of the trial, the learned Senior Assistant Judge and Paribarik Adalat, 3rd Additional Court, Dhaka by judgment and decree dated 15.10.2012 decreed the suit in part on contest.

Being aggrieved by the said impugned judgment and decree dated 15.10.2012 the defendant as the appellant preferred an appeal before the learned District Judge, Dhaka, and the same was numbered Family Appeal No. 124 of 2012. Thereafter, the appeal was transferred to the Court of learned Additional District Judge, 5th Court, Dhaka for hearing

and after hearing the same the learned Judge by his judgment and decree dated 03.03.2016 disallowed the appeal by affirming those of the Trial Court.

Being aggrieved by and dissatisfied with the said impugned judgment and decree dated 03.03.2016 the defendant as the petitioner had preferred this civil revision before this Court and obtained the instant Rule which is before us for consideration.

No one appears for the petitioner to press the Rule at the point of time when the matter was taken up for hearing.

Anyway, Mr. Md. Khalilur Rahman, the learned Advocate appearing with Mr. Mohammad Masum Billah, Advocate on behalf of the plaintiff-opposite party submits that both the Courts below concurrently found that the defendant-petitioner is the husband of the plaintiff and he did not pay any dower money as well as maintenance since 01.11.2009 to the plaintiff and her 03 children, as such, the learned Trial Judge rightly decreed the suit and on appeal, the learned Judge of the Appellate Court below rightly affirmed the judgment and decree of the Trial Court.

He next submits that D.W-1 admitted in his cross-examination that “বর্তমানে আমি আমার ভাড়া বাসায় থাকি। ২০০৮ সাল থেকে আমি ভাড়া বাসায় থাকি। আমার ভাড়া বাসায় আমার স্ত্রীও থাকত। ০১/১১/২০০৯ তারিখ পর্যন্ত বাদী আমার সঙ্গে আমার বাসায় ছিল। ০১/১১/২০০৯ তারিখ হইতে বাদী তার বাবার বাড়ীতে থাকে।” as such, both the Courts below rightly decreed the suit.

He also submits that the learned Trial Judge rightly held that “বাদী ও বিবাদী তাদের আরজি ও জবাবে বিবাহ বলবৎ আছে মর্মে উল্লেখ করেছেন। কিন্তু বিবাদী তার জবানবন্দীতে বলেছেন যে, তিনি বাদীকে তালাক প্রদান করেছেন। কিন্তু বিবাদী পক্ষ তার এই বক্তব্যের সমর্থনে উপযুক্ত কোন সাক্ষ্য কিংবা কাগজাদি আদালতে উপস্থাপন করেন নি। এমতাবস্থায় বাদী ও বিবাদীর মধ্যে বৈবাহিক সম্পর্ক বিদ্যমান আছে বলিয়া প্রতীয়মান হয়।” But at the Appellate stage, the defendant submitted an antedated notice of divorce, as such, the learned Judge of the Appellate Court below rightly gave a finding holding that “বিবাদী আপীলকারী মূল মামলাতে এই রশিদগুলি দাখিলের চেষ্টা করেছিলেন মর্মে কোন কিছু মামলার আদেশ পত্র পর্যালোচনা করে পাওয়া যায় না। কাজেই বিবাদী-আপীলকারীর দাখিলকৃত এই রশিদগুলিতে তালাকনামাটি উল্লেখিত সময়ের নয়, এগুলি বিবাদী আপীলকারী পরবর্তীতে মামলায় সুবিধা প্রাপ্তির আশায় সৃষ্টি করেছেন মর্মে প্রমাণিত হয়।”

He lastly submits that at the time of issuance of the Rule, this Court was pleased to pass a mandatory conditional order to deposit tk. 10,000/- per month for maintenance of the children but the petitioner did

not fully comply with that direction, as such, the rule has automatically been discharged.

Heard the learned Advocate for the plaintiff-opposite party and perused the materials on record. The present opposite party as the plaintiff filed the instant suit before the Paribarik Adalat, 3rd Additional Court, Dhaka praying for dower money, and maintenance for her as well as her 03 children. On perusal of the evidence on record, it appears that the plaintiff and the defendant married on 26.08.1996 with dower money of tk.1,00,001/- which remained unpaid, and their marital tie was in force and as such, the plaintiff was entitled to get her half dower (Muwajjal) money. The plaintiff was staying in her father's house along with her 02 children since 01.11.2009, and during staying there she gave birth to her 3rd child on 08.12.2009, since the defendant did not look after them and pay them any maintenance they are entitled to get maintenance from the aforesaid dates. As such, the learned Trial Judge rightly decreed the suit in part against which the defendant preferred an appeal before the learned District Judge, Dhaka, and after hearing the same the learned Additional District Judge, 5th Court, Dhaka on concurrent finding rightly affirmed the judgment and decree of the Trial

Court and thereby committed no illegality. I have also gone through the impugned judgment and decree and the materials on record but I did not find any misreading or non-consideration of the material facts or error of law to have been committed in passing the impugned judgment and decree. However, it is the settled proposition of law that concurrent findings of the Courts below cannot be interfered with unless there is misreading or non-consideration of the material facts on record or error of law but in the case, in hand; there is no such misreading and non-consideration of material facts on record or error of law is found out. In that view of the matter, there is nothing to interfere with the concurrent findings of the Courts below.

Given the above, I do not find any merit in the Rule; rather I find substance in the submissions made by the learned Advocate for the plaintiff-opposite party. Accordingly, the Rule fails.

As a result, the Rule is discharged.

Stay, if any, vacated.

The impugned judgment and decree dated 03.03.2016 passed by the learned Additional District Judge, 5th Court, Dhaka in Family Appeal No. 124 of 2012 disallowing the appeal by affirming the judgment and

decree dated 15.10.2012 passed by the learned Senior Assistant Judge and Family Court, Additional Court No. 3, Dhaka in Family Suit No. 27 of 2011 decreeing the suit in part is hereby upheld.

Let a copy of this judgment along with the Lower Court Records be sent to the Court below at once.

(TUHIN BO)