

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

*Present:*

*Mr. Justice S M Kuddus Zaman*

**CIVIL REVISION NO3999 OF 2016**

In the matter of:

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

And

Md. Asaduzzaman Mintu

... Petitioner

-Versus-

Mossamammat Sharmin Sultana and another

.... Opposite parties

Mr. Sk. Abu Musa Muhammad Arif, Advocate

....For the petitioner.

Mr. Hassan Shaheed Quamruzzaman, Advocate

.... For the opposite party No.1.

**Heard on 26.01.2025 and Judgment on 13.02.2025.**

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 08.06.2016 passed by the learned Joint District Judge, 2<sup>nd</sup> Court, Jashore in Title Appeal No.26 of 2015 dismissing the appeal and upheld order dated 18.08.2015 passed by the learned Family Court, Sadar, Jashore in Family Execution Case No.22 of 2014 arising out of Family Suit No.140 of 2010, now pending in the Family Court, Sadar, Jashore should not be set aside and or/pass such other or further order or orders as to this Court may seem fit and proper.

Facts in short are that opposite party as plaintiff instituted Family Suit No.140 of 2010 for recovery of dower and maintenance for herself and maintenance for her minor daughter plaintiff No.2 and above suit was decreed ex-parte on 08.02.2012 for Taka 1,00,001/- for unpaid dower and plaintiff Nos.1-2 were granted maintenance at the rate of Taka 15,00/- and 1,000/- per month respectively effective from 04.07.2013.

Defendant filed Miscellaneous Case No.05 of 2013 for setting aside above ex-parte judgment and decree and above Miscellaneous Case was allowed with condition of payment of cost of Taka 500/- within seven working days in default above order shall stand vacated.

The defendant did not comply with above order of the Family Court and pay cost of Taka 500/ and the Family Court set aside above order passed in Miscellaneous Case No.5 of 2013 and restored above ex-parte judgment and decree passed in Family Suit No.140 of 2010 on 26.06.2013. The decree holder plaintiffs filed Family Execution Case No.22 of 2014 and the judgment debtor defendant filed a petition for outright rejection of above execution case on the ground that the same was barred by limitation since above case was not filed within one year from the date of passing of above ex-parte judgment and decree on 08.02.2012. The learned Judge of the Family Court rejected above petition vide the impugned judgment and order dated 18.08.2015.

Being aggrieved by above judgment and decree above judgment debtor petitioner as appellant preferred Family Appeal No.26 of 2015 to

the District Judge, Jashore which was heard by the learned Joint District Judge, 2<sup>nd</sup> Court who dismissed above appeal and affirmed the judgment and order of the executing Court.

Being aggrieved by and dissatisfied with above judgment and decree of the Court of Appeal below above appellant as petitioner moved to this Court with this revisional application under Section 115(1) of the Code of Civil Procedure and obtained the Rule.

Mr. Sk. Abu Musa Muhammad Arif, learned Advocate for the petitioner submits that the learned Judge of the Court of Appeal below on a detailed analysis of the date of restoration of ex-parte judgment and decree by the trial Court on 26.06.2013 and filing of the Execution Case on 13.04.2014 rightly held that the execution case was filed within the statutory period of limitation. The petitioner is ready who pay maintenance to plaintiff No.2 and unpaid dower of plaintiff No.1. But since the defendant had divorced plaintiff No.1 in 2008 she is not entitled to get any maintenance.

On the other hand Mr. Hassan Shaheed Quamruzzaman, learned Advocate for the opposite party No.1 submits that the plaintiff did not receive any notice of alleged talak given by the defendant in 2008 nor she received any notice from the arbitration council or the Chairman of the concerned Union Parishad. The plaintiff claims that her marriage with the defendant is valid and lawful. On consideration of materials on record the learned Judge of the Court of Appeal below rightly held that the Execution Case was filed within the statutory period and

accordingly dismissed the appeal and affirmed the impugned judgment and order of the Family Court which calls for no interference.

I have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on records.

It is admitted that the plaintiffs the wife and daughter respectively of the defendant filed above Family Suit for recovery of unpaid dower of plaintiff No.1 and maintenance of both the plaintiffs and above suit was decreed ex-parte on 08.02.2012 and for setting aside above judgment and decree defendant filed Miscellaneous Case No.5 of 2013 which was allowed with condition of payment of cost of Taka 500/- in default the order shall stand vacated and the defendant did not pay above cost and the Family Court restored above ex-parte judgment and decree by order dated 26.06.2013 and the plaintiff filed this Family Execution Case No.22 of 2014 on 13.04.2014.

The defendant alleged that Family Execution Case No.22 of 2024 was liable to be dismissed outright for being barred by limitation since the same was not filed within one year. But the learned Judges of both the Courts below on correction appreciation of the facts rightly held that above ex-parte judgment and decree was restored finally by the Family Court on 26.06.2013 and within one

year from the date of above restoration plaintiff filed this Execution Case on 13.04.2014 and accordingly rejected above petition and dismissed the appeal respectively.

The learned Advocate for the petitioner frankly concedes that above Family Execution Case No.22 of 2014 was lawfully filed within the statutory period of time. As far as the submission of the learned Advocate for the petitioner that the defendant had divorced the plaintiff in 2008 and plaintiff No.1 was not entitled to get maintenance are concerned those submissions are beyond the pleadings and outside of the pherypery of the petition under Section 115 of the Code of Civil Procedure.

It is well settled that an executing Court can not go beyond the decree and the learned Judge of the executing Court has no legal authority to take into account above submission of the learned Advocate for the petitioner.

In above view of the materials on record I am unable to find any illegality or irregularity in the impugned judgment and order passed by the learned Joint District Judge nor I find any substance in this revisional application under Section 115 of the Code of Civil Procedure and the Rule issued in this connection is liable to discharged with cost of Taka 5,000/-.

In the result, the Rule is hereby discharged with cost of Taka 5,000/- and the order of stay granted at the time of issuance of the Rule is vacated.

The cost will be paid by the petitioner to the opposite parties.

Send down the lower Court's record immediately.

*MD. MASUDUR RAHMAN*  
*BENCH OFFICER*