

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(STATUTORY ORIGINAL JURISDICTION)**

COMPANY MATTER NO. 189 OF 2017.

IN THE MATTER OF:

An application under Section 43 of the
Companies Act, 1994.

AND

IN THE MATTER OF:

Mosmmat. Morium Begum

----- Petitioner.

-VERSUS -

Marine Flour Mills (Pvt.) Ltd. and others.

----- Respondents.

Mr. Mohammad Abdullah, Advocate

----- For the Petitioner.

Mr. Mohammad Zahid Imam, Advocate

----- For the respondent No. 2.

Judgment Delivered On 21.05.2026.

Present

Md. Toufiq Inam, J.

This application under section 43 of the Companies Act, 1994 has been filed by the petitioner seeking rectification of the register of members of the respondent No. 1 company, namely Marine Flour Mills (Pvt.) Ltd., by recording her name and the name of her minor son in respect of the shares allegedly left by late Md. Nurun Nabi, the former Managing Director of the company.

Case of the Petitioner

The case of the petitioner, in short, is that Marine Flour Mills (Pvt.) Ltd. was incorporated on 20.05.2005 under the Companies Act, 1994.

At the time of incorporation, the shares of the company were distributed among the shareholders/directors in accordance with the Memorandum and Articles of Association of the company. Late Md. Nurun Nabi was appointed as the Managing Director of the company and initially held 12,000 shares and the petitioner holds 3,000 shares.

However, 5,500 shares belonging to Md. Nuruzzaman were transferred to late Md. Nurun Nabi, as a result of which he became the holder of 17,500 shares out of the total 30,000 shares of the company. The petitioner claims that she herself held 3,000 shares in the company and was also the lawful wife of late Md. Nurun Nabi. According to the petitioner, upon the death of late Md. Nurun Nabi on 19.08.2014, his shares devolved upon his legal heirs, namely his mother Meher Nigar Bibi, his wife Mrs. Morium Begum (present Petitioner), and his minor son Md. Mobashshir Hossain Mubin.

It is alleged that after the death of late Md. Nurun Nabi, respondent No. 2 Md. Nurul Islam started running the affairs of the company exclusively without recognizing the shares and interests of the heirs of the deceased Managing Director. The petitioner further alleges that neither dividend nor any financial benefit was paid to the heirs and no Annual General Meeting, Extraordinary General Meeting or Board Meeting was convened by serving notice upon them. The petitioner also claims that she submitted an application before the office of the Registrar of Joint Stock Companies and Firms requesting the authorities not to process any company-related documents until the shareholding issue was resolved, but no action was taken.

Standpoints of the respondent No. 2

Respondent No. 2 contested the proceeding by filing affidavit-in-opposition as well as a supplementary affidavit denying the material statements made in the application. The principal contention of respondent No. 2 is that the petitioner is not entitled to any share either in her own right or by way of inheritance. It has been specifically stated that the petitioner had already transferred her own 3,000 shares in favour of late Md. Nurun Nabi during his lifetime by executing the prescribed transfer documents and countersigning Form-117 in the year 2010. In support of such contention, respondent No. 2 annexed copies of Form-117 and other relevant transfer documents with the supplementary affidavit.

Respondent No. 2 further contends that the petitioner had been divorced by late Md. Nurun Nabi long before his death. According to respondent No. 2, talaq was pronounced on 30.09.2013 and the divorce was duly registered on 05.01.2014. As such, on the date of death of late Md. Nurun Nabi on 19.08.2014, the petitioner was no longer his lawful wife and consequently had no right of inheritance in his estate or shares. It has further been stated that the petitioner intentionally suppressed the material facts regarding both the transfer of her shares and the divorce while filing the instant application.

Respondent No. 2 also relied upon a Succession Certificate issued by Durgapur Pourashava showing only Meher Nigar Bibi and the minor son Md. Mobashshir Hossain Mubin as legal heirs of late Md. Nurun Nabi. It has also been stated that in Miscellaneous Case No. 166 of 2015 (Succession), pending before the learned Joint District Judge, 1st Court, Rajshahi, the learned Court by order dated 02.05.2016

observed prima facie that the marriage between the petitioner and late Md. Nurun Nabi had been dissolved through divorce. Respondent No. 2 therefore submits that the petitioner has no locus standi to maintain the instant proceeding and the same is liable to be rejected.

Submissions of the learned Advocates

Mr. Mohammad Abdullah, the learned Advocate appearing on behalf of the petitioner, submits that the petitioner herself held 3,000 shares and did never transfer her shares. On the other hand, late Md. Nurun Nabi held 17,500 shares in the respondent company and after his death the said shares devolved upon his legal heirs by operation of law. He submits that the company authorities deliberately failed to recognize the lawful heirs and thereby illegally excluded them from the affairs of the company. He further submits that under section 43 of the Companies Act, 1994 this Court has ample power to rectify the register of members where the names of persons entitled to shares are omitted without lawful cause. He further submits that even if the petitioner's personal claim is disputed, the status of the minor son as heir of late Md. Nurun Nabi is undisputed and therefore appropriate directions should at least be issued in respect of the shares inherited by the minor son.

On the other hand, Mr. Mohammad Zahid Imam, the learned Advocate appearing on behalf of respondent No. 2, submits that the instant proceeding is not maintainable inasmuch as the petitioner's entitlement itself is seriously disputed. He submits that the petitioner had already transferred her own 3,000 shares to late Md. Nurun Nabi in 2010 by executing lawful transfer documents and therefore she ceased to have any independent shareholding in the company long

before the death of late Md. Nurun Nabi. He further submits that the petitioner was divorced by late Md. Nurun Nabi prior to his death and therefore she cannot claim inheritance under Muslim law. He further submits that complicated questions regarding divorce, succession, inheritance and legal status cannot be adjudicated in a summary proceeding under section 43 of the Companies Act, 1994 and such matters are required to be determined by the competent civil court.

Points for determination

Upon hearing the learned Advocates for the parties and considering the materials on record, the following points arise for determination:

- (i) Whether the petitioner presently holds any independent shares in the respondent No. 1 company;
- (ii) Whether the petitioner has established any clear and undisputed right warranting rectification of the register of members under section 43 of the Companies Act, 1994; and
- (iii) Whether this Court should grant the reliefs sought for in the application.

Decision and reasons

Section 43 of the Companies Act, 1994 empowers the Court to rectify the register of members where the name of any person is without sufficient cause entered in or omitted from the register of members or where default or unnecessary delay has taken place in entering the fact of any person having become or ceased to be a member.

The jurisdiction under section 43 is summary in nature and is ordinarily exercised where the title of the applicant is clear, admitted, or substantially free from serious dispute. However, where determination of complicated questions relating to title, succession, inheritance, marital status, or other civil rights becomes necessary, the Company Court ordinarily declines to exercise such jurisdiction and leaves the parties to seek adjudication before the competent civil forum.

In the instant case, the petitioner initially claimed that she independently held 3,000 shares in the respondent company. However, respondent No. 2 by filing supplementary affidavit annexed Form-117 and connected transfer documents showing that the petitioner had already transferred the said 3,000 shares in favour of late Md. Nurun Nabi in the year 2010 by countersigning the relevant documents and accordingly he held (17,500+3,000) 20,500 shares. The petitioner failed to place before this Court any material to prima facie discredit the authenticity or legality of the said transfer documents. There is also no substantive challenge regarding the execution of the said transfer.

In such circumstances, this Court finds that the petitioner had already transferred her own 3,000 shares in favour of late Md. Nurun Nabi through a valid process prescribed by law and consequently ceased to have any independent shareholding in the respondent No. 1 company long before the death of late Md. Nurun Nabi. Accordingly, the petitioner cannot maintain the instant proceeding on the basis of any independent ownership of shares.

So far as the petitioner's further claim of inheritance in the shares left by late Md. Nurun Nabi is concerned, the same is seriously disputed by respondent No. 2 on the ground that the petitioner had been divorced by late Md. Nurun Nabi before his death. The respondents have produced materials relating to talaq and registration of divorce and have also referred to the observations made by the learned Joint District Judge in Miscellaneous Case No. 166 of 2015.

However, this Court is of the view that the question whether the alleged divorce was validly effected and whether the petitioner continues to retain any entitlement as successor or legal heir of late Md. Nurun Nabi are disputed questions of fact and status requiring adjudication upon evidence. Such disputed questions cannot conveniently or conclusively be decided in a summary proceeding under section 43 of the Companies Act, 1994.

Accordingly, this Court refrains from expressing any concluded view regarding the validity or legal effect of the alleged divorce or regarding the petitioner's entitlement, if any, as successor of late Md. Nurun Nabi. Such questions are left open for adjudication by the competent civil forum in the pending succession proceeding or in any other appropriate proceeding in accordance with law.

Nevertheless, it appears that the status of the minor son Md. Mobashshir Hossain Mubin as legal heir of late Md. Nurun Nabi is not substantially disputed. However, the precise extent of devolution of shares and the ultimate entitlement of the parties depend upon final adjudication of succession and inheritance by the competent forum.

In view of the above, this Court finds that the petitioner has failed to establish any clear and undisputed right warranting exercise of jurisdiction under section 43 of the Companies Act, 1994.

Result

Accordingly, the application is disposed of with the following directions:

- i) The claim of the petitioner regarding her alleged independent ownership of 3,000 shares is rejected;
- ii) This Court holds, prima facie, that the petitioner had transferred the said 3,000 shares in favour of late Md. Nurun Nabi through lawful transfer prior to his death and thereby ceased to hold any independent shares in the respondent No. 1 company;
- iii) This Court declines to make any conclusive observation regarding the validity or effect of the alleged divorce between the petitioner and late Md. Nurun Nabi or regarding the petitioner's entitlement as successor or legal heir, the same being matters for adjudication before the competent civil forum;
- iv) The parties are at liberty to pursue their respective claims before the competent civil court in accordance with law;

- v) The respondent No. 1 company is directed to preserve all statutory records, registers, transfer documents, annual returns, books of accounts and related records concerning the company and the shares previously held by late Md. Nurun Nabi until the rights of succession are finally determined by the competent court.

There will be no order as to costs.

(Justice Md. Toufiq Inam)