

Present:

Mr. Justice Md. Kamrul Hossain Mollah

Civil Revision No. 1689 of 2017

IN THE MATTER OF:

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

- AND -

IN THE MATTER OF:

Md. Misbaul Karim

..... Defendant-Petitioner

-Versus -

Most. Humayara Binte Saleh

..... Plaintiff-Opposite Party

No one appears

..... For the petitioner

Mr. Md. Fazlul Haque Bhuiyan, Advocate

..... For the Opposite Party

**Heard on 10.10.2023 and
Judgment on 12.10.2023**

Md. Kamrul Hossain Mollah, J:

On an application filed by the petitioner, under Section 115(1) of the Code of Civil Procedure, this Rule was issued calling upon the opposite party to show cause as to why the impugned judgment and decree dated 11.04.2017 passed by the learned Joint District Judge, 3rd Court, Sylhet in Family Appeal No. 1 of 2016 dismissing the appeal partly modifying the judgment and decree dated 29.10.2015 passed by the learned Assistant Judge, Family Court, Fenchuganj Adalat, Sylhet in Family Suit No. 3 of

2014 should not be set-aside and/or pass 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 this Court stayed the operation of the impugned judgment and decree dated 11.04.2017 passed by the learned Joint District Judge, 3rd Court, Sylhet in family Appeal No. 1 of 2016 dismissing the appeal partly modifying the judgment and decree dated 29.10.2015 passed by the learned Assistant Judge, Family Court, Fenchuganj Adalat, Sylhet in Family Suit No. 3 of 2014 for a period of 06 (six) months from the date subject to payment of Tk. 1,35,000/- for the plaintiff to the Trial Court within this period.

Facts necessary for disposal of the Rule, in short, are that plaintiff-opposite party Most. Humayara Binte Saleh filed Family Suit No. 03 of 2014 in the court of the learned Assistant Judge, Family Court, Fenchuganj, Sylhet against the defendant-appellant-petitioner for divorce, dower and maintenance. Thereafter, the defendant-appellant-petitioner submitted a written statement before the Court of learned Assistant Judge, Family Court, Fenchuganj, Sylhet denying the allegation. But the learned Court without considering the defendant- appellant petitioner decreed the suit on 29.10.2015 (decree signed on 05.11.2015) most illegally.

Being aggrieved by and dissatisfied with the judgment and decree dated 29.10.2015 (decree signed on 05.11.2015) passed by the learned Assistant Judge, Family Court, Fenchuganj, Sylhet the defendant-petitioner filed Family Appeal No. 01 of 2016 in the court of learned District Judge, Sylhet. The learned District Judge, Sylhet sent the said appeal to the

learned Joint District Judge, 3rd Court, Sylhet for disposal. The learned Joint District Judge, 3rd Court, Sylhet after hearing the parties dismissed the appeal partly and modified the judgment and decree dated 29.10.2015 (decree signed on 05.11.2015) by his judgment and decree dated 11.04.2017 (decree signed on 18.04.2017) in Family Appeal No.01 of 2016.

Being aggrieved by and dissatisfied with the judgment and decree dated 11.04.2017 (decree signed on 18.04.2017) passed by the learned Joint District Judge, 3rd Court, Sylhet in Family Appeal No. 01 of 2016 dismissing the appeal partly and modifying the judgment and decree dated 29.10.2015 (decree signed on 05.11.2015) passed by the learned Assistant Judge, Family Court, Fenchuganj Adalat, Sylhet in Family Suit No. 03 of 2014 the petitioner filed this revisional application under section 115(1) of the Code of Civil Procedure and obtained the present Rule and stay.

No one appears on behalf of the Defendant-Appellant- petitioner though the case appear in the daily cause list in several time.

Mr. Md. Fazlul Haque Bhuiyan, the learned Advocate appearing for the opposite party submits that plaintiff-opposite party Most. Humayara Binte Saleh filed Family Suit No. 03 of 2014 in the court of the learned Assistant Judge, Family Court, Fenchuganj, Sylhet against the defendant-appellant-petitioner for divorce, dower and maintenance. Thereafter, the defendant-appellant-petitioner submitted a written statement before the Court of learned Assistant Judge, Family Court, Fenchuganj, Sylhet denying the allegation. After hearing the learned Assistant Judge, Family

Court, Fenchuganj, Sylhet decreed the suit on 29.10.2015 (decree signed on 05.11.2015). Being aggrieved by and dissatisfied with the judgment and decree dated 29.10.2015 (decree signed on 05.11.2015) passed by the learned Assistant Judge, Family Court, Fenchuganj, Sylhet the defendant-petitioner filed Family Appeal No. 01 of 2016 in the court of learned District Judge, Sylhet. The learned District Judge, Sylhet sent the said appeal to the learned Joint District Judge, 3rd Court, Sylhet for disposal. The learned Joint District Judge, 3rd Court, Sylhet after hearing the parties dismissed the appeal partly and modified the judgment and decree dated 29.10.2015 (decree signed on 05.11.2015) by his judgment and decree dated 11.04.2017 (decree signed on 18.04.2017) in Family Appeal No.01 of 2016 rightly, which is maintainable in the eye of law. Therefore, he prays for discharging the Rule.

I have perused the revisional application, the impugned judgment and decree of the Courts' below, the submissions of the learned Advocate for the opposite party, the papers and documents as available on the record.

It appears from the record that plaintiff-opposite party Most. Humayara Binte Saleh filed Family Suit No. 03 of 2014 in the court of the learned Assistant Judge, Family Court, Fenchuganj, Sylhet against the defendant-appellant-petitioner for divorce dower and maintenance. Thereafter, the defendant-appellant-petitioner submitted a written statement before the Court of learned Assistant Judge, Family Court, Fenchuganj, Sylhet denying the allegation. After hearing the learned Assistant Judge, Family Court, Fenchuganj, Sylhet decreed the suit on 29.10.2015 (decree

signed on 05.11.2015). Being aggrieved by and dissatisfied with the judgment and decree dated 29.10.2015 (decree signed on 05.11.2015) passed by the learned Assistant Judge, Family Court, Fenchuganj, Sylhet the defendant-petitioner filed Family Appeal No.01 of 2016. The learned Joint District Judge, 3rd Court, Sylhet after hearing the parties dismissed the appeal partly and modified the judgment and decree dated 29.10.2015 (decree signed on 05.11.2015) by his judgment and decree dated 11.04.2017 (decree signed on 18.04.2017) in Family Appeal No.01 of 2016 rightly.

It is found from the record that marriage of the plaintiff has been solemnized with the defendant on 19.10.2007 fixing the dower at Tk. 5,25,000/- and Tk. 1,25,000/- was paid in form of ornaments. The plaintiff went to the family of the defendant and the defendant returned to his working place in Chittagong. After birth of the son the defendant demanded dowry of Tk. 10,00,000/- to the plaintiff. It is also found that the defendant divorced the plaintiff on 17.11.2013 which became effective on 18.02.2014. So their marriage has been already dissolved on 17.11.2013 by the defendant and the defendant failed to prove that he provided any maintenance from 14.10.2013 to till divorce through any documentary evidence or circumstantial evidence. So it appears that the plaintiff is entitled to get Tk. 4,00,000/- (four lac) as her unpaid dower. Considering the financial capacity of the defendant and social status of plaintiff the maintenance amount for the plaintiff is fixed at taka 3000(three thousand) per month and the maintenance amount for the minor son of the plaintiff is fixed at taka 2,500/-(two thousand an five hundred) per month. It is also

found from the record that learned Appellate Court confirmed the Judgment and decree passed learned trial Court vide dated on 29.10.2015 and in addition to that the learned Appellate Court added that the maintenance of that minor son be enhance 10% yearly.

Considering the above facts, circumstances and materials on record, it is my view that the learned Joint District Judge, 3rd Court, Sylhet rightly passed the judgment and decree dated 11.04.2017 (decree signed on 18.04.2014) in Family Appeal No.01 of 2016 is maintainable in the eye of law and I do not find any substance to interference into the said judgment and decree and I find substance in the submission of the learned Advocate for the opposite party.

Accordingly, I do not find any merit in the Rule.

In the Result, the Rule is discharged.

The judgment and decree dated 11.04.2017 (decree signed on 18.04.2014) passed by the learned Joint District Judge, 3rd Court, Sylhet in Family Appeal No.01 of 2016 dismissing the Appeal partly and modifying the judgment and decree dated 29.10.2015 (decree signed on 05.11.2015) passed by the learned Assistant Judge, Family Court, Fenchuganj Adalat, Sylhet in Family Suit No. 03 of 2014 is hereby upheld and confirmed.

The order of stay granted at the time of issuance of the Rule by this Court is hereby recalled and vacated.

Let a copy of this judgment and order with L.C.R be sent to the concerned Court below at once.