

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

Present:
Mr. Justice Md. Moinul Islam Chowdhury

CIVIL REVISION NO. 3593 OF 2017

IN THE MATTER OF:

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

(Against Decree)

-And-

IN THE MATTER OF:

Md. Imam Hossain

--- Defendant-Appellant-Petitioner.

-Versus-

Nusrat Jahan Rina and another

--- Plaintiff-Respondent-Opposite Parties.

No one appears

---For the defendant-Appellant-Petitioner.

Mr. Uzzal Kumar Bhowmick with

Mr. A.Z.M. Morshed Al Mamun, Advocates

--- For the Plaintiff-Respondent-O. P. No. 1.

Heard on: 19.02.2024, 20.02.2024,
28.02.2024 and 03.03.2024.

Judgment on: 03.03.2024.

At the instance of the present defendant-appellant-petitioner, Md. Imam Hossain, this Rule was issued upon a revisional application filed under section 115(1) of the Code of Civil Procedure calling upon the opposite party No. 1 to show cause as to why the impugned judgment and decree dated 30.07.2017 passed by the learned Joint District Judge, Additional Court, Comilla in the Family Appeal No. 06 of 2016 disallowed

the appeal thereby affirming the judgment and decree dated 30.03.2016 passed by the learned Assistant Judge and Family Court, Burichong, Comilla in the Family Suit No. 23 of 2015 should not be *set aside*.

The relevant facts for disposal of this Rule, *inter-alia*, are that the present opposite party as the plaintiff filed the Family Suit No. 23 of 2015 contending that the plaintiff- Nusrat Jahan Rina and the defendant-petitioner got married on 08.07.2011 under the Muslim Shariyah Law by fixing dower money at Tk. 3,00,000/- (three lac). During their wedlock a female child, namely, Mst. Israt Imam Isha (minor) was born who is opposite party No. 2. The defendant-petitioner runs CNG Auto Rickshaw, therefore, obtained a loan from her father and he also claimed dowry of Tk. 2,50,000/- (two lac and fifty thousand) which was refused by the plaintiff No. 1. On 12.10.2014 the female child, Israt Imam (Isha), died by drowning in a nearby pond. The plaint further contains that the plaintiff was forced to leave from her matrimonial home. The present petitioner as the defendant contested the suit by filing a written statement denying the claim of the plaintiff. The defendant further contended that the dower money was fixed at Tk. 3,00,000/- (three lac). The divorce

proceeding was concluded by mutual discussion on 18.01.2014 before the Union Parishad Chairman.

After receiving the said family suit the learned Assistant Judge and Family Court, Burichong, Comilla heard the matter and obtained evidence from both the parties, the learned Assistant Judge and Family Court, Burichong, Comilla decreed the suit by ordering the defendant-petitioner to pay an amount of Tk. 3,23,000/- (three lac twenty-three thousand) to the plaintiff No. 1 as dower money and also maintenance within 30 (thirty) days from the date of the receipt of the judgment. Being aggrieved the present petitioner as the husband preferred the Family Appeal No. 06 of 2016 in the court of the learned District Judge, Comilla which was thereafter transferred to the learned Joint District Judge, Additional Court, Comilla who after hearing the parties concluded the hearing of the appeal and the learned appellate court below dismissed the appeal by affirming the judgment of the learned trial court.

Being aggrieved the present defendant-appellant-petitioner filed this revisional application under section 115(1) of the Code of Civil Procedure challenging the legality of the impugned

judgment of the learned appellate court below and this Rule was issued thereupon.

This matter has been pending for a long period of time for disposal but no one appears to support the Rule. However, the present petitioner has provided his case by examining a lot of documents which were exhibited as “Ka”, “Kha”, “Ga”, “Gha” & “Uma” and DW-1 as a Saliskar stated that the plaintiff received all consideration money in presence of him but both the courts disbelieved this vital witness and decreed the suit which is wrong in the decision occasioning failure of justice.

The present plaintiff-opposite party No. 1 opposes the Rule.

Mr. Uzzal Kumar Bhowmick, the learned Advocate, along with the learned Advocate, Mr. A.Z.M. Morshed Al Mamun, submits that admittedly the plaintiff and the defendant were married and a female child was born within their wedlock. Admittedly, a Kabinnama, with the dower money was fixed at Tk. 3,00,000/- (three lac). Admittedly, Tk. 40,000/- (forty thousand) was paid out of Tk. 3,00,000/- (three lac) which has been exhibited as Exhibit-1, the Nikahnama which to be deducted.

The petitioner was under an obligation to pay the remaining amount of dower money, as such, the learned trial court as well as the learned appellate court below passed the judgments concurrently by finding that an amount of Tk. 3,23,000/- (three lac twenty-three thousand) to be given by the petitioner to the present opposite party No. 1 as the dower money along with the maintenance of the plaintiff-opposite party No. 1, as such, the Rule is liable to be discharged.

The learned Advocate further submits that at the time of issuance of the Rule the petitioner as the husband paid Tk. 1,15,000/- (one lac and fifteen thousand), as such, the remaining amount is to be paid at Tk. 2,08,000/- (two lac and eight thousand) but the present petitioner failed to pay this amount of money but obtained this Rule by misleading the court which is liable to be discharged.

Considering the above submissions of the learned Advocates appearing for the opposite party No. 1 and also considering the revisional application filed under section 115(1) of the Code of Civil Procedure along with the annexures therein, in particular, the impugned judgment and decree and also perusing the materials available in the lower court records, it

appears to this court that the present petitioner and the present opposite party No. 1 was married to each other by executing a Nikahnama (নিকাহনামা) which has been exhibited as Exhibit-1 by fixing at Tk. 3,00,000/- (three lac) as dowry but the dower money for the wife and a minor child and the child died on 12.10.2014 by drawing a nearby pond but the learned trial court awarded Tk. 3,23,000/- (three lac and twenty-three thousand) in favour of the present plaintiff-opposite party Nos. 1 and 2 which is to be paid including dower money to the plaintiff No. 1 within 30 (thirty) days from the date of the order passed by the learned trial court, otherwise, the plaintiff No. 1 can take a step in accordance with the law.

I have gone to the judgments of the learned courts below thoroughly and examined the same and I found that the learned courts below committed no error of law by awarding the total amount of Tk. 3,23,000/- (three lac and twenty-three thousand) in favour of the present opposite party No. 1 and the opposite party No. 2 is now dead. A question may arise why at Tk. 3,23,000/- (three lac and twenty-three thousand) was passed by the learned courts below to give opposite party No. 1. I consider that, admittedly, the dower money was fixed at Tk. 3,00,000/-

(three lac) and out of Tk. 3,00,000/- (three lac) Tk. 40,000/- (forty thousand) was already paid as a prompt dower. As per the court's Order, the defendant-petitioner had paid Tk. 1,15,000/- (one lac and fifteen thousand). Accordingly, Tk. 1,15,000 + 40,000 = 1,55,000/- (one lac and fifty-five thousand) has already been paid but the defendant-petitioner as the husband did not pay the rest amount of the money to the opposite party No. 1 and the female child as opposite party No. 2, who is now deceased.

Accordingly, the learned trial court decreed the suit on the basis of the following finding that Tk. 2,60,000 + 30,000 + 18,000 + 15,000 = 3,23,000/- (total taka three lac and twenty-three thousand) as the money for dower and maintenance.

I do not find that the learned trial court committed any error of law by passing the order and decreeing the said amount as well as the learned appellate court below concurrently found the same decretal amount of Tk. 3,23,000/- (three lac and twenty-three thousand).

It also appears that the petitioner as the husband already paid Tk. 1,15,000/- (one lac fifteen thousand) as per the order passed by this court at the time of issuance of the Rule. Accordingly, the said amount is to be deducted from the total

amount, therefore, the remaining amount of Tk. 2,08,000/- (two lac and eight thousand) is to be paid.

Accordingly, the defendant-petitioner as the husband is hereby directed to pay Tk. 2,08,000/- (two lac and eight thousand) within 3 (three) months from the receipt of this judgment and order.

According to the above discussions, I do not find merit in the Rule.

In the result, the Rule is hereby discharged.

The impugned judgment and decree dated 30.07.2017 passed by the learned Joint District Judge, Additional Court, Comilla in the Family Appeal No. 06 of 2016 dismissing the appeal and thereby affirming the judgment and decree dated 30.03.2016 passed by the learned Assistant Judge and Family Court, Burichong, Comilla in the Family Suit No. 23 of 2015 is hereby upheld and confirmed. The present petitioner is hereby directed to pay total Tk. 2,08,000/-, on document, to the present opposite party in three installments within 3 (three) months as above.

The interim order passed by this court at the time of issuance of the Rule staying the proceeding of the Family

Execution Case No. 2 of 2017 now pending before the learned Senior Assistant Judge and Family Court, Burichong, Comilla until 10.12.2017 and the same was extended time to time are hereby recalled and vacated.

The concerned section of this court is hereby directed to send down the lower court records along with a copy of this judgment and order to the learned courts below at once.