

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

Civil Revision No. 3651 of 2017

IN THE MATTER OF

Md. Sharif Mondol

.....Defendant-Appellant-Petitioner

-Versus-

Most. Shirina Khatun

.....Plaintiff-Respondent-Opposite party

No one appears

.....For the petitioner

Ms. Fatema Sultana, Advocate

.....For opposite party No. 1

Heard on 24.01.24, 25.01.24 and judgment passed on 01.02.2024

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-

“Let the records 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 30.05.2017 passed by the learned Joint District Judge, 3rd Court, Rangpur in Family Appeal No. 46 of 2016 disallowing the same and affirming the judgment and

decree dated 27.03.2016 passed by the learned Assistant Judge and Family Court, Pirgonj, Rangpur in Family Suit No. 229 of 2008 should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.”

The present opposite party as the plaintiff filed Family Suit No. 229 of 2008 in the Court of learned Senior Assistant Judge and Family Court, Pirganj, Rangpur against the defendant-petitioner with a prayer for a decree of dower money and maintenance.

The case of the plaintiff, in short, is that there had been love affairs between the plaintiff and the defendant, out of which they entered into a marriage contract by exchanging offers and acceptance. Over time, the plaintiff became pregnant, and they went to the office of a Nikah Register on 08. 07. 2007 and registered their marriage by fixing dower money of Tk. 2,50,001/-. After giving birth to a child, the plaintiff and the defendant completed the religious rituals by a Moulavi and started conjugal life staying in the plaintiff's house. The defendant took some evasive tricks in taking the plaintiff to his house and delayed the

matter. On 21.01.2008, the plaintiff went to the house of the defendant along with her child but the defendant drove her out from his house on demand of dowry. The plaintiff claimed her dower money, and maintenance for herself and her child from the defendant but he refused to pay the same and hence, the suit.

The defendant contested the suit by filing a written statement denying the averments made in the plaint contending, inter-alia, that he was born on 15.01.1988. He was looking after a pond near the plaintiff's house and at that time she developed a love affair with him and compelled him to marry her unofficially on 12.05.2006 fixing dower money of Tk. 25,001/-. They never went to Notary Public. On 11.07.2007, the plaintiff gave birth to a child. He had no conjugal relationship with the plaintiff. But the defendant's father considering the situation advised him to accept the plaintiff as a wife. He went to the plaintiff's house to bring her into his house, but she demanded 50 decimals of land. The defendant failed to make the plaintiff understand and was constrained to divorce her on 11.10.2007 and as such, the suit is liable to be dismissed with cost.

After the conclusion of the trial, the learned Assistant Judge and Family Court, Pirganj, Rangpur by judgment and decree dated 27.03.2016 decreed the suit on contest in part.

Being aggrieved by the said impugned judgment and decree the defendant as the appellant had preferred an appeal before the learned District Judge, Rangpur, and the same was numbered as Family Appeal No. 46 of 2016 and after hearing the same the learned Joint District Judge, 3rd Court, Rangpur by his judgment and decree dated 30.05.2017 disallowed the appeal on the contest by affirming those of the Trial Court.

Being aggrieved by the said impugned judgment and decree dated 30.05.2017 the defendant as the petitioner had preferred this civil revision before this Court and obtained the instant Rule.

However, no one appeared for the petitioner before this Court when the matter was taken up for hearing.

Anyway, Ms. Fatema Sultana, the learned Advocate appearing for the plaintiff-opposite party submits that both the Courts below considering the facts and circumstances of the case and the evidence on record on concurrent findings rightly decreed the suit

of the plaintiff and thereby committed no illegality to be interfered with.

Heard the learned Advocate for the opposite party and perused the materials on record. It appears that the present opposite party as the plaintiff filed the instant suit for a decree of dower money of maintenance and after hearing the same the learned Trial Judge decreed the suit in part finding that the marital relationship between the parties had been dissolved on 12.01.2008 and the plaintiff is entitled to the unpaid dower money of Tk. 2,49,001/-. She was not entitled to get any maintenance as claimed from 21.1.2008 as she was residing at her father's house along with his child and by this time divorce had already been effected from 12.01.2008. The learned Trial Judge further held that the minor child of the plaintiff is entitled to get maintenance from the date of filing of the suit, that is on 12.03.2008 to 27.03.2016 for 08 years and 15 days at the rate of Tk. 2000/- per month, in total Tk. 1,93,000/- and directed the defendant to pay Tk. 2,000/- per month as maintenance of the child within 07 of each month. And on appeal, the learned Judge of the Appellate Court below

considering the facts and circumstances of the case and the evidence on record concurs with the findings of the Trial Judge by giving reasoning and thereby committed no illegality occasioning failure of justice. 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 or non-consideration of material facts on record or error of law is found out. In the premises, there is nothing to interfere with the impugned judgment and decree.

Given the above, I find no 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 without cost.

Stay, if any, vacated.

The impugned judgment and decree dated 30.05.2017 passed by the learned Joint District Judge, 3rd Court, Rangpur in Family Appeal No. 46 of 2016 disallowing the appeal on contest by affirming the judgment and decree dated 27.03.2016 passed by the

learned Assistant Judge and Family Court, Pirgonj, Rangpur in Family Suit No. 229 of 2008 decreeing the suit in part is hereby affirmed.

Send a copy of this judgment along with the LCR to the Court below at once.

(TUHIN BO)