IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Civil Revisional Jurisdiction)

Present
Madam Justice Kashefa Hussain

Civil Revision No. 3812 of 2017

with

Civil Revision No. 3811 of 2017

Md. Sabuz Miah @ Md. Mohsin Hossain
.....petitioner
-Versus-
Most. Rahela Akter
------- Opposite party
Mr. Md. Azim Uddin with
Mr. Nurul Haque, Advocates
------ For the petitioner
Mr. Md. Rasheduzzaman, Advocate
------- For the Opposite Party
Heard on: 14.02.2019, 18.02.2019 and
Judgment on 20.02.2019

Supplementary Affidavit filed by the petitioner do from part of the main petition.

These two civil revisions arising out of the same judgment and therefore they have been heard analogously and are now being disposed of simultaneously by a single Judgment.

Rule was issued calling upon the opposite party to show cause as to why the impugned Judgment and decree dated 01.08.2017 passed by learned Joint District Judge, 2nd Court, Manikganj in Family Appeal No. 33 of 2016 disallowing the appeal and thereby affirming the judgment and decree dated

13.06.2016 passed by the learned Family Court, Saturia, Manikganj in Family Suit No. 83 of 2014 should not be set aside and or pass such other or further order or orders as to this court may seem fit and proper and Rule was issued calling upon the opposite party to show cause as to why the impugned Judgment and decree dated 27.07.2017 passed by learned Joint District Judge, 2nd Court, Manikganj in Family Appeal No. 28 of 2016 allowing the appeal and reversing the judgment and decree dated 13.06.2016 passed by the learned Family Court, Saturia, Manikganj in Family Suit No. 83 of 2014 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 plaintiff opposite party instituted Family Suit No. 83 of 2014 before the court of Assistant Judge, Saturia, Manikganj praying inter alia for dower and maintenance impleading the present petitioner husband as defendant. The trial court upon hearing both sides decreed the suit in part by its judgment and decree dated 13.06.2016.

Being aggrieved by the part decree dated 13.06.2016 the plaintiff wife preferred a Family Appeal being Family Appeal No. 28 of 2016 while the defendant husband also being aggrieved by the part decree preferred Family Appeal No. 33 of 2016.

The appellate court after hearing both sides allowed the Family Appeal No. 28 of 2016 filed by the wife by its judgment and decree dated 27.07.2017 and allowed the appeal upon modification of the judgment and decree of the trial court where as the appellate court disallowed Family Appeal No. 33 of 2016 filed by the husband by its judgment and decree dated 01.08.2017. The substantive contents of both the judgments in the two Family Appeals are similar. Being dissatisfied by both the judgments of the appellate court the husband as petitioner filed the two civil revisional applications being Civil Revision No. 3812 of 2017 and Civil Revision No. 3811 of 2017 which are being heard analogously and being disposed of by a single judgment for the sake of convenience.

The plaint case in the original suit inter alia is that on 19.03.2010 the plaintiff got married to the defendant in accordance with Muslim sharia law and Moharana was fixed at an amount of Tk. 5,00,000/- (five lacs) and the guardian of the plaintiff had given golden ornaments and valuable articles as gift at the time of marriage ceremony. After marriage plaintiff and defendant had been passing their days as husband and wife. After some days the defendant started to torture the plaintiff physically and mentally by demanding dowry of Tk. 1,00,000/- (one lac). Thereafter, on 20.07.2014 plaintiff invited the defendant to her father’s residence for demanding maintenance and dower from

the defendant but the defendant refused to pay the same. Hence, the plaintiff was constrained to file a suit before the Family court, Saturia, Manikganj.

The defendant in the Family Suit, husband (petitioner here) appeared and contested the suit upon filing written statement denying the material allegations set out in the plaint. The defendant alleged that the plaintiff had fallen in love with his senior brother student Rafiq of Manikganj Debenadra University College. Subsequently Rafiq upon conspiracy with concerned Nikah Registrar created a Nikahnama taking the signature of the defendants as witness, where his nicknama was used as Sabuz Miah and no Nikah Registrar or Hujur or Moulana was present there and no kalema was uttered between the plaintiff and the defendant in the presence of the witnesses of the marriage. After 2 days later the defendant came to know that a marriage had been registered by him between the plaintiff and the defendant. Finding no other way the defendant divorced the plaintiff on 21.03.2010 by a divorce letter through the office of Notary public and on 22.10.2010 the divorced was registered by the Nikah Registrar and the marriage was not consummated and no conjugal life was ever established between them. On 21.03.2010 the defendant by swearing affidavit divorced the plaintiff through a divorce letter by Notary public and then on 20.10.2010 the divorced was registered by the Nikah Registrar.

Learned Advocate Mr. Md. Azim Uddin along with Mr. Md. Nurul Haque appears on behalf of the petitioner while the Opposite Party is represented by Mr. Md. Rasheduzzaman Bosunia.

Learned Advocate Mr. Md. Azim Uddin for the petitioner submits that both courts below upon non consideration of the evidences of records and misappreciation of the deposition of the witness and the trial court upon non consideration of evidence decreed the suit in part and the appellate court also upon absolute non consideration of the record and misappreciation of the evidences further modified the judgment of the trial court and allowed the appeal by granting decree to the plaintiff wife in full causing serious injustice to the petitioner. He submits that both courts failed to appreciate that the defendant actually gave his signature as a witness in the kabinnama and he was not aware that he was giving his signature as the groom in the marriage. He further submits that both courts failed to appreciate that the signature was taken upon practicing deceit/deception upon the defendant given that he never had any intention to marry the plaintiff. He argues that the appellate court did not even appreciate that the marriage was never consummated nor did it appreciate that the signature in the kabinnama was give unknowingly and the defendant petitioner issued a divorce notice soon after to the plaintiff opposite party through notary public.

He takes me to the judgment of the appellate court and points out that the appellate court in its judgment referred to the deposition of the DW-1 the father of the defendant and points out that the appellate court stated that the DW-1 deposed that the defendant had divorced the plaintiff on 22.10.2010 through the Kaji Office. He also argues that the appellate court stated that the DW-1 also deposed that previously a criminal case was filed by the plaintiff under the Dowry Prohibition Act of 1980 and in that case the volume book from the Kaji was brought along with the kaji office as witness and further in that case the defendant was acquitted under section 241 of The Dowry Prohibition Act 1980. He also takes me to the supplementary affidavit filed by the petitioner and drawing attesting to attention F, F1 he submits that these documents are evidences that pursuant to the divorce notice the petitioner again sent the divorce notice on 28.08.2018 and the receipt of which is manifest from Annexure- F, F1 of the supplementary affidavit. He next draws my attention to Annexure-G of the supplementary affidavit which is the divorce notice dated 28.10.2010 under the provision of the Muslim Family Laws Ordinance 1961. He submits that however the courts below particularly the appellate court upon ignoring the facts on record and upon ignoring circumstantial evidence and deposition of the DW-1 father of the defendant the trial court most unjudiciously decreed the suit in part and the appellate court further unjudiciously modified the part decree of the trial

court and most unreasonably without taking the evidences into consideration allowed the appeal causing serious injustice to the petitioner and therefore both the judgments, that is the part decree of the trial court and the judgment and decree of the appellate court ought to be set aside and the rule bears no merit and be made absolute for ends of justice in both Civil Revision.

On the other hand learned Advocate for the plaintiff-opposite party submits that the trial court upon wrong assumption to the effect that the marriage was never consummated gave a part decree only, but that the appellate court upon correct appraisal of the facts and evidences before it allowed the appeal and modified the part decree of the trial court and allowed the judgment. He agitated that the appellate court correctly observed that the defendant is a student of a university and therefore a literate person and it is improbable and not believable that he put his signature in the kabinnama upon ignorance and mistake. He continues that the defendant in full knowledge of the circumstances put his signature in the groom's column and further submits that being a literate person there is no scope for him to make such a mistake given that in the kabinnama the witness column and the groom claim are separate and the title stated. He argues that it is manifest from the records that the defendant petitioner divorced the plaintiff opposite party through notary public. In this context he submits that a divorce to

a notary public is not a valid divorce and further contends that a divorce under the Muslim Family Laws is only valid if it is given upon compliance with the provisions of section 7 of the Muslim Family Laws Ordinance 1961. He points out that the appellate court in particular categorically stated that the divorce not being given following the provisions of section 7 of the Muslim Family Laws Ordinance 1961 therefore a divorce notice through notary public is an invalid divorce in the eye of law. He further controverts the submission of the petitioner and argues that no case under the Dowry Prohibition Act 1980 has any applicability in a Family Suit given that a case under section 4 of the Dower Prohibition Act falls within the ambit of the criminal laws and such a case being of criminal nature therefore reference of a case of criminal nature has no applicability in a family suit which is essentially civil in nature. He further submits that the Annexure-F, F1 and Annexure –G which has been filed by the petitioner by way of supplementary affidavit bears no legal footing and stands no chance to be taken into consideration since they were not placed before any of the courts below. He concludes his submission upon assertion that the judgment of the trial court partly decreed ought to be set aside and the judgment of the appellate court modifying the decree of the trial court being correctly given ought to be affirmed by this court and neither of the Rules bears any merits and ought to be discharged in both civil revisions for ends of justice.

Heard the learned Advocates from both sides, perused the application and the materials on record including the judgments of the courts below. It transpires that in both civil revisions the petitioner made submission to the effect that the marriage was not a regular marriage and therefore not valid since he put his signature in the groom's column upon ignorance and mistake and not with the intention to marry the plaintiff. But it is admitted from his own statement and submission that he issued a 'divorce' notice to the plaintiff. In my considered opinion such statements are self contradictory statements made by the petitioner and are totally inconsistent and indicate that the petitioner did not come in clean hands. This view of mine stems from the fact given that in one tune he claims that the marriage was not a regular marriage whereas in another tune he claims that he issued a "divorce Notice". It is necessary to note that the defendant cannot deny a marriage since 'divorce' notice can be given only if a valid marriage has taken place. By admitting to a 'divorce' notice the petitioner virtually admits to a valid marriage.

It is also in the records that the defendant petitioner is a student of a university. I am a full agreement with the finding of the appellate court to the effect that:

> "বিবাদীর স্বীকৃত মতেই বিবাদী মানিকগঞ্জ দেবেন্দ্র বিশ্ব বিদ্যালয় কলেজের ছাত্র কাবিননামা একটি ছাপানো ফর্ম যাতে বরের স্বাক্ষরের কলাম এবং সাক্ষীর স্বাক্ষরের কলাম পৃথক করা আছে। একটি বিশ্ববিদ্যালয় কলেজের অধ্যায়নরত

ছাত্রের পক্ষে এই দুইটি কলামের পার্থক্য না বুঝতে পারার যুক্তিসংগত কোন কারন নাই। ”

The appellate court correctly found on this point that the plaintiff opposite party wife proved the marriage by producing the kabinnama the certified copy of which was produced as Exhibit-1 in the trial. Moreover the defendant could not however deny his signature therein. I am of the considered view that the defendant being a literate person in full knowledge of the circumstances put his signature in the said kabinnama and therefore the kabinnama is a valid kabinnama and the marriage is a valid marriage in the eye of law.

The DW-1 is the father of the defendant and it may not be unreasonable or improbable to assume that under the circumstances being the father of the defendant he is not an independent witness. Moreover no other witnesses were brought by the defendant to support his case or corroborate the deposition of DW-1 father of the defendant. The DW-1 in his deposition referred to a case under the Dowry Prohibition Act 1980 filed by the plaintiff against the defendant and in which he claimed that the defendant was ultimately acquitted. In this context I find force in the argument of the opposite party given that a decision or a finding in a case under The Dowry Prohibition Act 1980 falling within the ambit of the criminal laws cannot be

considered here in this case in a Family Suit which is essentially of civil nature in accordance with settled principles of law.

I am an agreement with the observation of the courts below that a divorce notice before a notary public is not a valid divorce under the Muslim Family Laws. The petitioner by way of a supplementary affidavit in Civil Revision No. 3812 of 2017 annexed postal receipt of the divorce notice claimed to be sent again on 28.08.2018 and also annexed a copy of the divorce notice dated 22.10.2010 those being marked as Annexure F, F1 and Annexure-G respectively. I have gone through the records of the case and it is revealed that these documents being Annexure F, F1 and G respectively by way of the supplementary affidavit by the petitioner were not placed before any of the courts neither during trial not during appeal. Therefore since those documents were not placed before the trial court and the appellate court both being courts of facts and law therefore such documents cannot be considered here in sitting Civil Revision.

Be that as it may I am of the considered opinion that the plaintiff could prove by the kabinnama Exhibit 1 that the marriage was a valid marriage and the defendant could not prove by circumstances evidence whatsoever or any other evidence that he put his signature only as a witness and not as a groom. It is also my considered finding that neither during trial not during appeal could the defendant prove that the divorce notice was

issued lawfully following the provisions of section 7 of the Muslim Family Laws Ordinance 1961 given that a divorce notice under section 7 of the Ordinance is mandatory for a valid divorce in the eye of law. The trial court was wrong in its finding that the marriage was not consummated. In the absence of contrary credible proof evidence and proof it is to be presumed and assumed that following a valid marriage the marriage shall have been consummated.

Therefore from the foregoing discussions made above and from the facts and circumstances I find no reason to interfere with the judgment and decree of the appellate court modifying the earlier judgment and decree of the trial court and I do not find any merit in either of the Civil Revisions, being Civil Revision No. 3812 of 2017 and Civil Revision No. 3811 of 2017 respectively.

In the result, the Rule in both Civil Revisions, being Civil Revision No. 3812 of 2017 and Civil Revision No. 3811 of 2017 are hereby discharged without any order as to costs.

Order of stays granted earlier by this court in both Rules are hereby recalled and vacated.

Send down the Lower Court's Records immediately.

Communicate the order at once.

Shokat (A.B.O)