

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

Present:

Mr. Justice K.M. Hafizul Alam

Civil Revision No. 4436 OF 2016

Mahafuzur Rahman

.... Defendant-Appellant-Petitioner

-VERSUS-

Mayeshya Farzana Shupti

.... Plaintiff-Respondent-Opposite party

Mr. S.M. Kamal Hossain, Advocate

.... For the Petitioner

Mr. Md. Uzzal Hossain, Advocate

.... For the Opposite party

Heard on 01.09.2024 and 02.09.2024

Judgment on 03.09.2024

K.M. Hafizul Alam, J.

On an application under Section 115(1) of the Code of Civil Procedure, 1908 (CPC), this Rule was issued on 04.12.2016, calling upon the opposite party to show cause as to why the impugned judgment and decree dated 30.06.2016, passed by the learned Joint District Judge, 1st Court, Jashore in Family Appeal No. 24 of 2015, disallowing the appeal and affirming the judgment and decree dated 21.05.2015, passed by the learned Senior Assistant Judge, Sador Court and Paribarik Adalat,

Jashore in Family Suit No. 177 of 2013, decreeing the suit, should not be set aside and/or pass such other or further order or orders as to this court may seem fit and proper.

At the time of the issuance of the Rule, by an ad-interim order, the operation of the above-mentioned judgment and decree dated 30.06.2016 was stayed for a period of 4 (four) months on condition that the petitioner shall pay Tk. 1,00,000 (one) lakh in the Family Court within 4 (four) months, failing which the Rule would stand discharged. The petitioner was directed to submit compliance within 4 (four) months. The opposite party may withdraw the amount as ordered to be deposited.

Facts, relevant for the disposal of the Rule, in short, are that the opposite party, as the plaintiff, instituted Family Suit No. 177 of 2013 on 24.07.2013, impleading the petitioner as the defendant before the Court of Paribarik Judge and Assistant Judge, Sadar, Jashore. The plaintiff contended, inter alia, that she married the defendant on 14.12.2012 according to Islamic *Sharia*, with Tk. 3,00,000/- fixed as dower money. After the marriage, they started their conjugal life. Subsequently, the defendant demanded Tk.10,00,000/-(Ten lakh) as dowry

and tortured her physically and mentally, eventually sent the plaintiff to her father's house on 21.04.2013. Thereafter, upon request, the defendant went to the plaintiff's father's house on 18.07.2013. Despite repeated requests, the defendant refused to take her back unless the dowry money was paid. At that time, on 18.07.2013, the plaintiff demanded Tk. 3,00,000 (Three lakh) as her dower, which had been fixed at the time of marriage, and Tk. 3,000 (Three thousand) per month as maintenance. However, the defendant refused to pay. Hence, the plaintiff filed this case.

The defendant contested the case by filing a written statement denying all material allegations made in the plaint. The defendant's case, in short, is that he married the plaintiff on 14.12.2012 and had already paid her full dower on 07.01.2013. A few days later, he learned that the plaintiff had been married to more than one person previously. When questioned, she denied her previous marriages. The plaintiff could not give any satisfactory explanation for why she had hidden her earlier marriages and declared herself unmarried. Subsequently, the plaintiff left the defendant's house on 20.04.2013, taking all her ornaments and other necessary items, and went to

her father's house. Having no alternative, the defendant verbally divorced the plaintiff on 21.06.2013, and in support of the divorce, he swore an affidavit on 01.07.2013 before the Notary Public. He also sent a copy of the *talaknama* to the plaintiff and the Mayor of Jashore Municipality. Therefore, they have had no marital relationship since 21.06.2013. The plaintiff is not entitled to receive any dower money, as she willingly went to her parents' house without his permission. Accordingly, the suit is liable to be dismissed.

At the time of trial, the plaintiff adduced and examined two witnesses, but the defendant did not examine any witnesses. After considering the materials on record and hearing the parties, the learned Senior Assistant Judge and Family Court decreed the suit vide judgment and decree dated 21.05.2015, holding that a marital relationship still exists between the plaintiff and the defendant, and that the plaintiff is entitled to receive Tk. 3,00,000 (Three lakh) as dower money and Tk. 1,200 (One thousand two hundred) as monthly maintenance.

The defendant, being aggrieved by and dissatisfied with the impugned judgment and decree dated 21.05.2015 (decree signed on 28.05.2015), preferred an appeal, being

Family Appeal No. 24 of 2015, before the learned District Judge, Jashore. The learned District Judge subsequently transferred the appeal to the learned Joint District Judge, 1st Court, Jashore, for hearing. After hearing both parties, the learned Joint District Judge disallowed the appeal vide judgment decree dated 30.06.2016 (decree signed on 13.07.2016), holding that although the Mayor of Jashore Municipality received the notice of *talaq*, the *talaq* had not been acted upon as per the Rules. Therefore, the trial court rightly passed the impugned judgment, and the plaintiff is entitled to receive Tk.3,00,000 (Three lakh) as dower money and Tk.1,200 (One thousand two hundred) as monthly maintenance.

Being aggrieved by and dissatisfied with the aforesaid judgment and decree dated 30.06.2016, passed by the learned Joint District Judge, 1st Court, Jashore, the defendant-appellant, as petitioner, preferred this revisional application before this Court under Section 115(1) of the CPC and obtained the instant Rule along with an ad-interim order on 04.12.2016. Pursuant to the issuance of the order at the time of the Rule, the petitioner filed an affidavit in compliance, annexing the money deposit receipt for an amount of Tk. 1,00,000 (One lakh).

At the time of the Rule hearing, Mr. S.M. Kamal Hossain, the learned Advocate appearing for the petitioner, submits that the defendant verbally divorced the plaintiff on 21.06.2013, and in support of the divorce, he swore an affidavit on 01.07.2013 before the Notary Public.

Mr. Hossain next submits that the defendant duly sent a copy of the *talaknama* (exhibited as Ka) to the plaintiff and to the Mayor of Jashore Municipality (postal acknowledgment receipts exhibited as Kha series). Therefore, they have not had any marital relationship since 21.06.2013, and accordingly, the plaintiff is not entitled to any dower money, as she willingly went to her parents' house without his permission.

Mr. Hossain further submits that during the pendency of the appeal, the defendant was examined as DW-1, and the Assistant Inspector (Cash) of Jashore Post Office was examined as DW-2. They exhibited a copy of the affidavit regarding the *talaq* (exhibited as Ka) and the acknowledgment receipts of the notice of *talaq*, signed by the plaintiff and the mayor (Exhibit-Kha series). However, the learned appellate court below erroneously held that the *talaq* had not been acted upon.

On the other hand, Mr. Md. Uzzal Hossain, the learned Advocate appearing on behalf of the opposite party, submits that the learned appellate court rightly affirmed the judgment and decree of the trial court, and that there is no infirmity in the judgment of the appellate court. Accordingly, the Rule is liable to be discharged.

I have perused the application along with the annexures attached thereto and the materials on record. I have also heard the learned advocates and considered their submissions and the relevant laws.

Upon perusal of the records, it appears that admittedly the plaintiff was married to the defendant on 14.12.2012, and the dower money was fixed at Tk. 3,00,000/-. The defendant refused to pay maintenance and dower to the plaintiff on 18.07.2023. The kabinnama was exhibited before the court below as Exhibit-1. Both courts below concurrently found that the dower money has not been paid to the plaintiff, and considering the status of the defendant, the plaintiff is entitled to receive Tk.1,200 (One thousand two hundred) as monthly maintenance. At the appellate stage, the defendant was examined as DW-1, and the Assistant Inspector (Cash) of the Jashore Post Office was examined as DW-2. They

exhibited a copy of the affidavit regarding the talaq (Exhibit-Ka) and the postal acknowledgment receipts of the notice of talaq signed by the plaintiff and the mayor (Exhibit-Kha series).

From Exhibit-Ka, it is evident that the defendant, in support of the verbal divorce dated 21.06.2013, also swore an affidavit on 01.07.2013 before a Notary Public. The appellate court found that Exhibit-Kha series comprises postal acknowledgment receipts of the talaq, which were received and signed by both the plaintiff and the mayor. However, the learned appellate court held that the talaq had not been acted upon according to the relevant rules, as the Mayor of Jashore Municipality did not serve a notice to the parties for reconciliation therefore; the marital relationship between the parties still exists.

The only question now is whether the *talaq* has been acted upon pursuant to exhibits Ka and Kha series, given that the Mayor of the Municipality has not served any notices to the parties for reconciliation.

In order to resolve this question, the relevant provision of Section 7 of the Muslim Family Law Ordinance, 1961 is reproduced below:

7. (1) Any man who wishes to divorce his wife shall, as soon as may be after the pronouncement of talaq in any form

whatsoever, give the Chairman notice in writing of his having done so, and shall supply a copy thereof to the wife.

(2) Whoever contravenes the provisions of sub-section (1) shall be punishable with simple imprisonment for term which may extend to one year or with fine which may extend to ten thousand taka or with both.

(3) Save as provided in sub-section (5), a talaq unless revoked earlier, expressly or otherwise, shall not be effective until the expiration of ninety days from the day on which notice under sub-section (1) is delivered to the Chairman.

(4) Within thirty days of the receipt of notice under sub-section (1), the Chairman shall constitute an Arbitration Council for the purpose of bringing about reconciliation between the parties, and the Arbitration Council Shall take all steps necessary to bring about such reconciliation.

(5) If the wife be pregnant at the time talaq is pronounced, talaq shall not be effective until the period mentioned in sub-section (3) or the pregnancy, whichever be later, ends.

(6) Nothing shall debar a wife whose marriage has been terminated by talaq effective under this section from remarrying the same husband, without an intervening marriage with a third-person, unless such termination is for the third time so effective.

Upon a plain reading of Section 7 of the Muslim Family Law Ordinance, 1961, it appears that *talaq* will take effect after the expiry of 90 days from the date of receipt of the notice under sub-section (1) by the Chairman. The *talaq* will not be suspended or delayed due to the Chairman's inaction in serving notices to the parties, nor by his failure to take steps for reconciliation. Rather, the sole determining factor for the *talaq* to take effect is the elapse of 90 days from the date the notice is received by the Chairman.

In the case at hand, I have already found that the plaintiff and the Mayor of Jashore Municipality received the notice of *talaq* on 26.09.2013 (Exhibits Ka and Kha series), and 90 days expired from the date of receipt of the notice by the Mayor of Jashore Municipality on 25.12.2013. Therefore, the marital relationship between the plaintiff and the defendant ceased to exist on 25.12.2013, and the *talaq* took effect on the same date.

Accordingly, the impugned judgment and decree of the appellate court dated 30.06.2016, and the judgment and decree of the Family Court dated 21.05.2015, are partially modified regarding monthly maintenance and the effectiveness of the *talaq*. The plaintiff is entitled to receive maintenance from 18.07.2013, the day on which the defendant refused to pay until 25.12.2013, and subsequently for 3 months as the *iddat* period, at the rate of Tk. 1,200 (one thousand two hundred) per month. The plaintiff-opposite party is also entitled to receive her dower money as per the *Kabinnama* (Exhibit-1), as concurrently found by both the courts below. The money already paid by the defendant towards maintenance and dower, pursuant to the order of the High Court Division dated 04.12.2016, shall be deducted from the total amount payable to the plaintiff

In view of the above, I find merit in the Rule.
Accordingly, the Rule is made absolute in part,
with the aforesaid observations and modifications
regarding the findings on the effectiveness of the *talaq* and
the period of entitlement to maintenance.

Send the lower court's record, along with a copy of this
judgment and order, to the court below immediately.