

Present:

Mr. Justice A.K.M. Asaduzzaman

Civil Revision No. 4275 of 2016

Mosammat Nilufar Yasmin and others

.....Petitioners.

-Versus-

Mohammad Lukman Ali

.....Opposite party.

Mr. M. Belayet Hossain, Advocate with

Mr. M. Mahmudul Hasan, Advocate

.....For the petitioner

No one appears.

.....For the opposite party.

With

Civil Revision No. 2850 of 2016

Mohammad Lokman Ali

.....Petitioner.

-Versus-

Mosammat Nilufar Yasmin and others

.....Opposite parties.

No one appears.

.... For the petitioner.

Mr. Md. Mahmudul Hasan, Advocate

.....For the opposite parties.

Heard and judgment on 21st April, 2024.

A.K.M.Asaduzzaman,J.

These two rules arising out of the same judgment and decree dated 19.06.2016 passed by the Additional District Judge, 1st Court, Chittagong in Family Appeal No. 15 of 2015 allowing the appeal and modifying the judgment and decree dated 23.11.2014 passed by the Senior Assistant Judge, 1st Court, Patia, Chittagong in Family Suit No. 41 of 2012 decreeing the suit should not be set aside.

Since the two rules are arisen out of the same judgment decree are heard together and disposed of by this single judgment.

Nilufar Yasmin and others as plaintiff filed Family Suit No. 41 of 2012 for dower and maintenance against the opposite party.

Plaint case in short, inter alia, is that on 29.07.1997 marriage was duly solemnized between the petitioner No.1 and the opposite party observing the rituals of sharia. Dower was fixed at Tk.1,25,000/- out of which Tk.50,000/- was paid in cash. Petitioners father donated different types of gift items worth Tk. 1,30,000/- to the opposite party. Plaintiffs Nos. 2-4 are children of the couple who were born out of their conjugal life. The conjugal life was passing well initially, but the same was affected due to the

greedy nature of the opposite party, who used to torture the petitioner frequently demanding dowry to be brought from her father's home. Because of his inhuman and repeated torture, the petitioner for the welfare of her issues requested her father to lend her husband an amount of Tk. 1,00,000/-, who paid the said amount considering her worries and fate. Moreover, the petitioner's father sent her husband abroad for earning for a better life, but he returned home whimsically. The husband again, in one even tortured her for bringing another amount of Tk.3,00,000/- from her father, but she refused to comply. Later, the opposite party started torturing her inhumanly that compelled her to leave her husband's house with her children on 02.08.2012. Since then, she with her issues have been living at her father's home. The opposite party did not look after her or their children. Neither did he maintain the spouse nor the children, hence the instant suit.

Lokman Ali as defendant contested the suit by filing written statement denying the plaint case alleging, inter alia, that on 29.07.1997 marriage was solemnized between him and petitioner No.1. The petitioners Nos. 2-4 were born out of their wedlock. After marriage, it appeared that the petitioner had not been

following parda and other mandatory rules of sharia. He tried to convince her but failed. During his staying abroad, he sent Tk. 7,00,000/- to the petitioner, but she diverted the amount to her father's home. On 24.05.2012, the petitioner taking some ornaments, valuable items and cash amount left his home went to her father's home. Thereafter, on 11.09.2012, the opposite party sent divorce notice to her, which became effective on 12.01.2013. The petitioner is not entitled to any dower or maintenance.

By the judgment and decree dated 19.06.2016 the Assistant Judge decreed the suit in part in favour of the plaintiff.

Challenging the said judgment and decree, defendant Lokman Ali preferred Family Appeal No. 15 of 2015 before the Court of District Judge, Chittagong, which was heard on transfer by the Additional District Judge, 1st Court, Chittagong, who by the impugned judgment and decree dated 26.06.2016 allowed the appeal and modified the judgment and decree dated 23.11.2014 passed by the Assistant Judge.

Challenging the said judgment and decree, plaintiff petitioner as well as defendant by filing two separate revisional applications obtained the instant rules.

Although the matter is appearing in the list with the name of the learned advocate but no one appears for the defendant Lokman Ali.

However Mr. M. Belayet Hossain along with Mr. M. Mahmudul Hasan, the learned advocate appearing for the petitioner drawing my attention to the judgment of the courts below submits that the court below concurrently found that defendants contention that plaintiff did not get any dower and maintenance because she has willingly left the house of the husband on her free will taking her children with her not believed and finally passed decree giving the undue dower money and the maintenance cost of the children as well as for the wife petitioner Nilufar Yasmin. The learned advocate further submits that although by the judgment and decree dated 23.11.2014 Trial Court decreed the suit giving the maintenance to the minor children, who were born on the wedlock during marital time of the plaintiff Nilufar Yasmin and the defendant Lokman Ali but defendant

Lokman Ali till today did not pay a single penny. Only at the time of preferring appeal as per the direction of the appellate court, he has paid some amount to the court. By showing a total cost on maintenance upon the petitioner as shown in a table shown in paragraph No.3 in the supplementary affidavit the learned advocate further submits that total due of Tk. 13,87,500/- as per the judgment and decree passed by the appellate court are there. Since the plaintiff petitioners are in a distress condition they are willing to accept the judgment and decree passed by the appellate court and finally prays that a decree may be passed in accordance with the judgment of the appellate court and a direction may be given upon the defendant to pay the money as per the direction of the appellate court of Tk. 13,87,500/- and the rule may be disposed of accordingly.

Heard the learned Advocate and perused the Lower Court Record and the impugned judgment.

It is a suit for dower and maintenance. Admittedly plaintiff Nilufar Yasmin is the wife of Lokman Ali. Although defendants claimed that she has been divorced but the other plaintiffs are the children of the defendant Lokman Ali and are entitled to get

maintenance together with the dower money, which was fixed and been settled by the court below concurrently. Since the plaintiff petitioner did not raise any objection against the decree passed by the appellate court and agreed to accept the verdict as been passed by the appellate court, I am now not like to interfere with the judgment on merits. Moreover since the defendant did not come forward to press the rule obtained in Civil Revision No. 2850 of 2016 as well as not taking objection against the rule obtained by the plaintiff Mosammat Nilufar Yasmin and others in Civil Revision No. 4275 of 2016, I find nothing to interfere the impugned judgment accordingly judgment passed by the appellate court is hereby affirmed.

However since the defendant did not pay the amount fixed by the court below on the dower and maintenance, and which are not been paid in full by the defendant, defendant is hereby directed to pay the said amount within two months next, failing which plaintiff will realize the said amount by dint of due process of law.

Accordingly both the Rules are disposed of.

In the meantime the money as has been deposited by the defendant at the time of filing the appeal of total amount of Tk. 1,22,890/- may be given to the plaintiff Nilufar Yasmin forthwithly.

The order of stay granted earlier is hereby vacated.

Send down the Lower Court Record along with the judgment at once.