

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

Present:

Mr. Justice Md. Badruzzaman.

And

Mr. Justice Sashanka Shekhar Sarkar

CIVIL REVISION No. 924 OF 2018.

Mohiuddin Ahammad Bhuiyan

...Petitioner.

-Versus-

Badrun Nahar.

...Opposite party.

None appears

... For the petitioner.

Mr. Md. Shafiqul Islam, Advocate

... For the opposite party.

Heard on: 21.01.2024.

Judgment on: 22.01.2024,

Md. Badruzzaman,J

This Rule was issued calling upon the opposite party to show cause as to why judgment and decree dated 11.02.2018 passed by learned Joint District Judge, 2nd Court, Noakhali in Family Appeal No. 10 of 2016 dismissing the appeal and affirming judgment and decree dated 30.03.2016 passed by learned Judge, Family Court, Shenbag, Noakhali in Family Suit No. 44 of 2014 decreeing the suit for an amount of Tk. 10,45,000/- as dower money and maintenance should not be set aside.

At the time of issuance of Rule this Court vide order dated 02.04.2018 stayed operation of the impugned judgment and decree till disposal of the Rule with a direction to the petitioner to deposit Tk. 2,00,000/- within 90 days from the date of receipt of the order in the trial Court in default, the Rule shall stand discharged.

Learned Advocate for the opposite party informs that said Tk. 2,00,000/- has been deposited by the petitioner before the trial Court which has been withdrawn by the opposite party from the trial Court.

Facts relevant, for the purpose of disposal of this Rule, are that the opposite party was the wife of the present petitioner who filed Family Suit No. 44 of 2014 in the Family Court, Shenbag, Noakhali for recovery of TK. 11,00,000/- as dower money and maintenance contending, *inter alia*, that marriage was solemnized under Mahmmedan Law between the plaintiff and defendant on 22.10.2012 fixing TK. 15,00,000/- as dower money out of which TK. 5,00,000/- was paid at the time of marriage and TK. 10,00,000/- was kept due and accordingly, a kabinnama was executed between the parties on that date and the marriage was consumed between the plaintiff and defendant. In the kabinnama TK. 15,000/- per month was fixed as maintenance of the plaintiff. After marriage the defendant took the plaintiff to his house but he tortured her on various pretext and at one stage the plaintiff became ill and the defendant sent her to the house of her father on 22.06.2014. Thereafter, the defendant divorced the plaintiff on 03.07.2014 through Notary Public and the plaintiff came to learn about the divorce on 09.07.2014. On 18.07.2014 a salish was held to compromise the dispute between the plaintiff and defendant and the defendant was directed to pay TK. 11,00,000/- but the defendant did not comply with the decision of the salish and hence the suit.

The present petitioner as defendant contested the suit by filing written statement denying the material averments as stated in the plaint contending, *inter alia*, that out of Tk. 10,00,000/- a sum of TK. 5,00,000/- as fixed as prompt dower and TK. 5,00,000/- as deferred dower and the defendant gave a diamond ring to the plaintiff for which the plaintiff waived the prompt dower and the rest amount of TK.

5,00,000/- was paid by the defendant to the plaintiff to invest the same in the business of the elder brother of the plaintiff. In the aforesaid way the defendant paid full dower money. It has also stated that the plaintiff was not willing to continue conjugal life with the defendant and she was involved in various chaos with his family members for which the defendant divorced the plaintiff. The plaintiff is not entitled to any maintenance except the maintenance for the period of *iddat*.

During trial, the plaintiff adduced three witnesses including herself to prove her case but the defendant did not adduce any evidence and the trial Court, after considering the evidence and materials on record, decreed the suit vide judgment and decree dated 30.03.2016 directing to pay TK. 10,00,000/- as dower money and TK. 45,000/- as maintenance for the period of *iddat*.

The petitioner challenged said judgment and decree of the trial Court by filing Family Appeal No. 10 of 2016 before the learned District Judge, Noakhali which was transferred to learned Joint District Judge, 2nd Court, Noakhali for disposal, who upon hearing the parties, dismissed the appeal by the impugned judgment and decree dated 11.02.2018 by affirming the judgment and decree of the trial Court.

This matter was fixed at the instance of the opposite party and the matter came up in the daily cause list for hearing but none appeared for the petitioner to conduct the Rule when the matter was taken up for hearing. However, we have perused the grounds as stated in the revisional application in which the petitioner stated that the impugned judgment and decree of the Court of appeal is based on misreading and non-consideration of the evidence and materials on record and that the trial Court as well as the appellate Court failed to appreciate that the plaintiff waived TK. 5,00,000/- in lieu of diamond ring and she received another amount of TK. 5,00,000/- for the business purpose of her elder

brother. It has also stated that the provision under section 13 of the Family Court Ordinance was not complied with during trial and as such, the impugned judgment and decree is liable to be set aside.

As against the above contention Mr. Md. Shafiqul Islam, learned Advocate appearing for the opposite party submits that the trial Court upon considering the evidence and materials on record came to its proper findings and decision and the Court of appeal as the last Court of facts upon evaluating the oral and documentary evidence came to its independent findings and decision and concurred with the findings and decision of the trial Court and such concurrent findings of facts cannot be reversed under revisional jurisdiction and accordingly, interference is not called for by this Court. Learned Advocate further submits that the provision under section 13 of the Family Court Ordinance has been complied with by the trial Court because of the fact that the trial Court fixed the suit for mediation of the parties in view of the provision under section 13 of the Family Court Ordinance but the parties did not come forward to resolve the dispute through mediation.

We have perused the revisional application as well as the grounds stated therein, the judgments and decrees of the Courts below, the evidence, oral and documentary, and other materials available on record.

In the suit, the trial Court framed three issues as follows:

- i. Whether the defendant paid the dower money to the plaintiff.
- ii. Whether the plaintiff is entitled to a decree for dower money.
- iii. What other relief the plaintiff is entitled to.

During trial the plaintiff deposed as P.W.1 and she produced the kabinnama which was marked as Exhibit-1. The plaintiff also adduced two P.Ws out of whom one was the witness of the marriage and another was the witness of the salish. The defendant in the written statement did

not deny the marriage and the dower money which has been fixed during the marriage. It was the case of the defendant, as stated in the written statement, that after marriage the plaintiff waived the prompt dower amounting to TK. 5,00,000/- in lieu of diamond ring and the defendant paid TK. 5,00,000/- to the plaintiff for the business purpose of her elder brother. It appears that to prove such plea the defendant did not adduce any evidence and the trial Court, after considering the evidence of the plaintiff, came to conclusion that the defendant could not prove that the plaintiff waived the prompt dower and he paid the deferred dower and accordingly, the plaintiff is entitled to TK. 10,00,000/- as the balance dower money out of TK. 15,00,000/-. It also appears that in the written statement the defendant asserted that the plaintiff is only entitled to the maintenance for the *iddat* period. Since the defendant divorced the plaintiff and he did not pay the maintenance to the plaintiff for the period of *iddat* the trial Court, upon evaluation of the evidence and materials on record, came to the conclusion that the plaintiff is entitled to TK. 45,000/- as maintenance for the period of *iddat*, i.e for the period of three months and finally decreed the suit for an amount of TK. 10,00,000/- as dower money and Tk. 45,000/- as maintenance.

On perusal of the judgment of the Court of appeal it appears that the appellate Court independently considered the evidence adduced by the plaintiff and concurred with the findings and decision of the trial Court and affirmed the findings and decision of the trial Court.

It is settled principle of law that when a finding of fact is based upon the evidence and materials on record by the Court of appeal that finding cannot be reversed by the revisional Court. Though the defendant-petitioner claimed that the provision under section 13 of the Muslim Family Law Ordinance has not been complied with during trial but from the order sheet of the trial Court it appears that the trial Court at

pretrial stage fixed date on 08.06.2015 for mediation but the parties did not come forward to resolve the dispute by mediation and thereafter, the trial Court fixed the suit for peremptory hearing and recorded the evidence of the plaintiff. In that view of the matter, the plea that the provision under section 13 of the Muslim Family Law Ordinance has not been complied with has no force at all.

It appears that the judgment of the Court of appeal does not suffer from misreading or non-consideration of any evidence or misconception of law and accordingly, the Court of appeal committed no illegality in affirming the judgment and decree of the trial Court.

It appears that at the time of issuance of Rule this Court directed the defendant to pay TK. 2,00,000/- out of the decretal amount which has been paid by him and accordingly, TK. 2,00,000/- be deducted from the decretal amount.

In view of the above we find no merit in this Rule.

In the result, the Rule is discharged however, without any order as to costs.

The judgment and decree of the Court of appeal are affirmed.

The order of stay granted earlier is hereby recalled and vacated.

Send down the L.C.R along with a copy of this judgment to the Courts below at once.

(Justice Md. Badruzzaman)

I agree.

(Mr. Justice Sashanka Shekhar Sarkar)