

District- Gaibandha

**In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)**

Present:

Mr Justice Md Atoar Rahman

Civil Revision No. 1591 of 2018

Md. Shafiul Alam Al-Amin

... defendant-appellant-petitioner

- versus-

Mst. Marufa Akter Ratna

...plaintiff –respondent-opposite party

Mr. M.A. Latif Prodhan, Advocate

....for the defendant-appellant- petitioner

Mr. Mohammad Jahangir Alam, Advocate

... for the plaintiff-respondent-opposite party

Heard on: 10.03.2024 and

Judgment on 11.03.2024

This Rule was issued on an application under section 115(1) of the Code of Civil Procedure calling upon the opposite party to show cause as to why the impugned judgment and decree dated 08.04.2018 passed by the learned Senior District Judge, Gaibandha in Paribarik Appeal No. 52 of 2016 dismissing the appeal thereby affirming the judgment and decree dated 06.06.2016 passed by the learned Judge, Paribarik Adalat, Gaibandha in Paribarik Suit No. 108 of 2014 should not be set aside and/or passed such other or further order or orders as to this court may seem fit and proper.

During issuance of the Rule a conditional order was passed staying all further proceedings of Paribarik Case No. 108 of 2014 for a period of 6 (six) months from date subject to payment of Tk.1,50,000.00 for the plaintiff to the trial court within this period.

The petitioner was also directed to file compliance at the time of filing application for extension of stay, failing which the Rule should be stand discharged which was complied with and the order of stay was extended till disposal of the Rule.

The facts for the purpose of disposal of the Rule, in short, are that the opposite party Mst. Marufa Akter Ratna as plaintiff instituted a paribarik suit being No. 108 of 2014 before the Paribarik Adalat, Sadar, Gaibandha seeking for realization of dower money and maintenance stating *inter alia* that the defendant petitioner Md. Shafiul Alam Al-Amin got married the plaintiff opposite party on 20.09.2013 by a registered kabinnama fixing an amount of taka 4,70,000.00 as dower. During marriage taka 14,200.00 was paid as part of the dower money and rest of the amount taka 4,55,800.00 was remain unpaid. The marriage was consummated and at one stage on 18.10.2013 the defendant petitioner claiming taka 3,00,000.00 as dowry send the plaintiff opposite party to her father's house. Thereafter he did not take her at his residence and did not pay any maintenance for which the plaintiff prayed her unpaid dower money amounting taka 4,55,800.00 and maintenance of taka 6,000.00 per month.

The defendant-petitioner contested the suit by filing written statement stating *inter alia* that the plaintiff after marriage had been staying at her father's house and she was unwilling to stay with him for which on 09.08.2015 he divorced her by registered talaknama. Since the plaintiff had been residing at her father's house she is not entitled to get any maintenance.

Learned Judge of the family court having heard both the parties and considering the evidence and facts and circumstances found that divorce was acted upon and the plaintiff was entitled to get unpaid dower money at taka 4,55,800.00 and maintenance for three months as eddot period and during subsisting their marriage from 18.10.2013 to 12.11.2015 @ taka 3,000.00 per month and accordingly he decreed the suit in part for taka 5,39,500 (dower money 4,55,800.00 + maintenance 83,400.00) by his judgment and decree dated 06.06.2016.

Being aggrieved by and dissatisfied with the above judgment and decree passed by the learned Judge of the Paribarik Adalat, the defendant preferred an appeal being Paribarik Appeal No. 52 of 2016 in the Court of District Judge, Gaibandha. Learned District Judge herself heard the appeal and by judgment and decree dated 08.04.2018 dismissed the same holding that the judgment and decree passed by the Paribarik Adalat was found lawful and correct.

Being aggrieved by and dissatisfied with the above judgment and decree passed by the learned District Judge, Gaibandha the defendant

appellant moved this court with an application under section 115 (1) of the Code of Civil Procedure and obtained the present Rule and a conditional order of stay.

Mr. M.A. Latif Prodhan, the learned Advocate appearing on behalf of the defendant-appellant-petitioner has submitted that the learned Judge of the Paribarik Adalat without considering the evidence wrongly decreed the suit and learned Judge of the appellate court in dismissing the appeal committed an error of law resulting in an error in her decision occasioning failure of justice and, as such, the impugned judgment and order is liable to be set aside.

Mr. Mohammad Jahangir Alam, the learned Advocate appearing on behalf of the plaintiff-respondent-opposite party has opposed the Rule.

I have heard the submissions advanced by the learned Advocates for both the parties and perused the record along with both the judgments passed by the trial court as well as the appellate court and connected papers on record.

It is not disputed that the defendant-appellant-petitioner got married the plaintiff opposite party by a registered kabinnama fixing dower money at taka 4,70,000.00 and during solemnization of marriage only taka 14,200.00 was paid and remaining take 4,55,800.00 was unpaid. Since the marriage has been dissolved by divorce given by the

defendant-petitioner, entire dower money is payable and learned Judge of the Paribarik Adalat did not commit any wrong awarding entire unpaid dower money. On the other hand, admittedly the plaintiff opposite party has been leaving at her father's house since 18.10.13 and divorce was acted upon on 12.11.2015. Learned trial Judge as well as learned Judge of the appellate court concurrently found that the defendant petitioner could not prove that the plaintiff opposite party had been residing at his father's house willingly and, as such, during their relationship as husband-wife the defendant was bound to pay maintenance to the plaintiff.

In view of the above discussions and considering the facts and circumstances, I am of the view that the learned trial Judge rightly and perfectly decree the suit in part and learned Judge of the appellate court in dismissing the appeal did not commit any error of law resulting in an error in her decision occasioning failure of justice and, as such, the Rule does not have any merit. Accordingly, the same is liable to be discharged.

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

The impugned judgment and order dated 08.04.2018 passed by the learned District Judge, Gaibandha in the Paribarik Appeal No. 52 of 2016 is hereby affirmed and order of stay during issuance of the Rule is hereby recalled and vacated. However, as per the conditional order the

defendant-petitioner if deposited taka 1,50,000.00 or any amount in the Paribarik Adalat, the same will be adjusted with the decretal amount.

The order of stay granted at the time of issuance of the Rule is hereby recalled and vacated,

Let the lower courts' records along with a copy of this judgment be transmitted at once.