

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.2477 OF 2018

In the matter of:

An application under Section 115(1) of the Code of Civil Procedure.

And

Md. Rezowan Hossain Morol

... Petitioner

-Versus-

Most Nadia Khatun and another

.... Opposite parties

None appears

....For the petitioner.

Mr. Taijul Islam Miajee, Advocate

.... For the opposite party No.1.

Heard on 10.02.2025 and Judgment on 11.02.2025.

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 18.04.2018 passed by the learned Additional District Judge, 2nd Court, Khulna in Family Appeal No.15 of 2016 and affirming the judgment and decree dated 31.01.2016 passed by the learned Assistant Judge and Family Court, (Rupsha), Khulna in Family Case No.139 of 2007 decreeing the case should not be set aside and or/pass such other or further order or orders as to this Court may seem fit and proper.

Facts in short are that the opposite party as plaintiff instituted above suit for recovery of her dower and maintenance both for herself

and her minor daughter plaintiff No.2 alleging that the defendant married the plaintiff No.1 on 04.04.2005 by a registered kabinnama fixing her dower at Taka 95,000/- and no money was paid. Plaintiff No.2 was born out of above wedlock on 13.08.2007. Due to refusal of plaintiff No.1 to pay dowry the defendant subjected her to physical abuse and she along with plaintiff No.2 took refuge in the house of her father but the defendant did not pay them maintenance.

Defendant contested above suit by filing a written statement alleging that he married plaintiff No.1 on 08.04.2005 and dower of plaintiff No.1 was fixed at Taka 65,000/- out of which Taka 40,000/- was paid. It was alleged that defendant has divorced plaintiff No.1 on 09.10.2007 and notice of above talak was sent to plaintiff No.1 and the Chairman of Shahosh Union Parishad received above notice on 10.10.2007.

At trial plaintiffs examined three witnesses and document of the plaintiff were marked as Exhibit No.1 series and 2. On the other hand defendant examined four witnesses and documents of the defendant were marked as Exhibit Nos."Ka" - "Ja".

On consideration of facts and circumstances of the case and evidence on record the learned Judge of the Family Court decreed above suit for Taka 65,000/- for unpaid dower of plaintiff No.1 and maintenance for plaintiff No.1 at the rate of Taka 2,000/- per month and Taka 1,000/- per month for plaintiff No.2 amounting to total Taka

3,62,000/- . It was further declared that the marriage of plaintiff No.1 with the defendant still exists.

Being aggrieved by above judgment and decree of the Family Court above defendant as appellant preferred Family Appeal No.15 of 2016 to the District Judge, Khulna which was heard by the learned Additional District Judge, 2nd Court who modified above judgment and decree of the trial Court and reduced the unpaid dower of the plaintiff to Taka 25,000/- .

Being aggrieved by and dissatisfied with above judgment and decree of the Court of Appeal below above appellant as petitioner moved to this court with this Civil Revision under Section 115(1) of the Code of Civil Procedure and obtained this Rule.

No one appears on behalf of the petitioner at the time of hearing of this Rule although the Rule appeared in the list for hearing on several dates.

Mr. Tajul Islam Miajee, learned Advocate for opposite party No.1 submits that the learned Judge of the Court of Appeal below on consideration of documentary and oral evidence rightly held that the dower of plaintiff No.1 was Taka 65,000/- out of which Taka 40,000/- was paid and accordingly the learned Judge modified the amount of unpaid dower to tk.25,000/- . As far as the maintenance of plaintiff Nos.1 and 2 are concerned the learned Judge of the Court of Appeal below rightly upheld the fixation of above maintenance at Taka2,000/- and 1,000/- per month for plaintiff Nos.1 and 2 respectively from

17.10.2007 which calls for no interference. The learned Judges of both the Courts below on consideration of facts and circumstances of the case and evidence on record concurrently held that the marital tie between plaintiff No.1 and defendant still exists and above findings of the Courts below being based on evidence on record this Court should not in its revisional jurisdiction interfere with above concurrent findings and facts.

I have considered the submissions of the learned Advocate for the opposite party No.1 and carefully examined all materials on records .

It is admitted that the defendant married plaintiff No.1 by a registered kabinama on 09.04.2005 and out of above wedlock plaintiff No.2 was born on 08.11.2005 and plaintiffs are residing in the house of the father of plaintiff No.1 since 13.08.2007.

As far as the dower of plaintiff No.1 is concerned it was alleged by the plaintiff that her dower was fixed at Taka 95,000/- and no part of above dower was paid. But on consideration of oral and documentary evidence in this regard the learned Judge of the Court of Appeal below held that the dower of the plaintiff was fixed at Taka 65,000/- out of which Taka 40,000/- was paid and accordingly the learned Judge modified the judgment and decree of the trial Court and awarded Taka 25,000/- for unpaid dower of the plaintiff No.1.

The plaintiff did not challenge the legality and propriety of above judgment of the Court of Appeal below by preferring a Civil Revision to the High Court Division and the learned Advocate for the opposite

party concedes that the plaintiff has accepted above modified amount of unpaid dower.

While giving evidence as DW1 defendant did not dispute the rate of maintenance being Taka 2,000/- and 1,000/- per month for plaintiff Nos.1 and 2 respectively. DW1 did not deny the claim of the plaintiff No.1 that she along with plaintiff No.2 were residing in the house of her father since 13.08.2007 and since above date defendant did not pay any maintenance to the plaintiffs. In support of above claim plaintiff No.1 gave evidence as PW1 stating that the defendant did not pay any maintenance to the plaintiffs since 13.08.2007.

In view of above materials on record I hold that the concurrent findings of the Courts below as to the amount of monthly maintenance of plaintiff Nos.1 and 2 at the rate of Taka 2,000/- and 1,000/- respectively effective from 17.10.2007 are based on materials on record and in the absence of any allegation of non consideration or misreading of evidence on record this court cannot in its revisional jurisdiction interfere with above concurrent findings of facts.

It has been alleged by the defendant that he has divorced plaintiff No.1 on 09.10.2007 by talak which was registered and the notice of above talak was sent to the plaintiff No.1 and Chairman of Shahosh Union Parishad on 10.07.2007. The plaintiff has denied that the notice of above talak was sent to Chairman of the above Union Parishad and to the plaintiff and claimed that above talak was not effective due to non

compliance of the provision of Section 7(3) of the Muslim Family Ordinance, 1961.

While giving evidence as DW1 the defendant has produced a copy of notice of above talak, the receipt of registered postal service and a certificate issued by above chairman as to receipt of above notice of talak which were marked Exhibit Nos."Gha", "Uma" series and "Cha" respectively. Exhibit No."Cha" shows that the Chairman of above Shahosh Union Parishad, Domuria has stated that the copy of talak issued by the defendant was received in above Union Parishad on 10.10.2007. But above document was not proved in accordance with the rule of evidence at trial. Neither the executant of above certificate nor any officer of his office who is acquainted with the seal and signature of above Chairman was examined by the plaintiff to prove true execution of above certificate. In his evidence DW1 stated that notice of above talak was sent to plaintiff No.1 and the Chairman of Shahosh Union Parishad on 09.10.2007. The defendant did not say that he himself sent above notice nor he mentions the name of the person who in fact sent above notice to the plaintiffs and the Chairman of the above Union Parishad. DW2 Rezaul Karim stated in his cross examination that he did not know if notice of above talak was sent by the defendant to the plaintiff. DW3 Elias Hossain stated that the Nikha register arranged the sending of notice to the plaintiff and concerned Union Parishad Chairman. DW4 did not mention anything about sending of above notice of talak to the concerned Union Parishad Chairman.

It is true that dissolving a marriage by talak is an exclusive and unfettered right of a Muslim husband but Section 7(3) of the Muslim Family Ordinance 1961 provides that above talak shall not be effective unless a notice of above talak has been delivered to the wife and the Chairman of the concerned Union Parishad.

The learned Judges of both the Courts below on consideration of evidence on record concurrently held that the notice of talak was not delivered to the concerned Union Parishad Chairman and in view of the discussions made above I am unable to find any illegality or irregularity in above concurrent findings of facts of the Courts below.

In above view of the facts and circumstances of the case and evidence on record I am unable to find any illegality or infirmity in the impugned judgment and decree passed by the learned Additional District Judge nor I find any substance in this Civil Revision under section 115(1) of the Code of Civil Procedure and the Rule issued in this connection is liable to be discharged.

In the result, the Rule is hereby discharged. The order of stay granted at the time of issuance of the Rule is hereby vacated.

However, there will be no order as to costs.

Send down the lower Court's record immediately.