

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

Present:
Mr. Justice Md. Moinul Islam Chowdhury

CIVIL REVISION NO. 4463 OF 2014

IN THE MATTER OF:

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

-And-

IN THE MATTER OF:

Md. Ismail Hossain

--- Defendant-Appellant-Petitioner.

-Versus-

Bibi Khodeza and another

---Plaintiff-Respondent-Opposite Parties.

Mr. Nur Mohammad Talukder, Advocate

--- For the Defendant-Appellant-Petitioner.

Mr. Mohd. Abdul Momin, Advocate

---For the Plaintiff-Res.-Opposite Parties.

Heard on: 19.07.2023 and 29.08.2023.

Judgment on: 29.08.2023.

At the instance of the present defendant-appellant-petitioner, Md. Ismail Hossain, this Rule was issued upon a revisional application filed 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 complained of in the petition moved in court should not be *set aside*.

The relevant and important facts for disposal of this Rule, *inter-alia*, are that the present opposite party No. 1, namely, Bibi

Khodeza as the plaintiff filed the Family Suit No. 33 of 2011 for realization of dower money and maintenance in the court of the learned Senior Assistant Judge, Family Court, Begumgonj, Noakhali. The plaint contains that the plaintiff No. 1 and the defendant got married by solemnizing Kabinnama on 12.02.2009 and Tk. 3,50,000/- (three lac fifty thousand) was fixed as dower. During their wedlock plaintiff No. 2 was born. During their marriage, they started living in their matrimonial home and sometimes the defendant tortured plaintiff No. 1 (wife) for demanding a dowry of Tk. 1,00,000/- (one lac) which was refused by plaintiff No. 1. The defendant contested the suit by filing a written statement contending, *inter alia*, that the plaintiff No. 1 and the defendant got married on 12.02.2009 by fixing dower money at Tk. 1,50,000/- (one lac fifty thousand) which was subsequently shown to have been fixed as dower money at Tk. 3,50,000/- (three lac fifty thousand) by forgery, thereafter, plaintiff No. 1 left the matrimonial home and the defendant divorced plaintiff No. 1 on 27.02.2011.

The learned Senior Assistant Judge, Family Court, Begumgonj, Noakhali heard both the parties who adduced and produced their documents in support of their respective cases and

the learned Judge of Family Court, Begumgonj, Noakhali decreed the suit on 31.03.2013 by directing the defendant to pay at Tk. 1,50,000/- + 1,85,000/- = 3,35,000/- (Taka Three Lac and Thirty-Five Thousand) to the plaintiff No. 1 within 30 (thirty) days. Being aggrieved the defendant preferred a Family Appeal No. 12(A) of 2013 in the court of the learned District Judge, Noakhali who affirmed the judgment of the learned trial court by his judgment and decree dated 19.06.2014.

Mr. Nur Mohammad Talukder, the learned Advocate, appearing for the petitioner submits that the petitioner divorced the opposite party No. 1 on 27.02.2011 by way of affidavit which has been admitted by the Plaintiff-Witness No. 1 (wife) and PW. 2 in their depositions. As such, both the courts below committed an error of law by misreading and non-considering the fact of divorce, nevertheless, the courts below decreed maintenance for plaintiff No. 1 as a wife, as such, this Rule should be made absolute.

The Rule has been opposed by the present plaintiff-opposite parties.

Mr. Mohd. Abdul Momin, the learned Advocate, appearing on behalf of the opposite parties submits that on

12.02.2009 plaintiff No. 1 and defendant No. 1 got married but the present defendant-appellant-petitioner failed to prove the claim of divorce of the Muslim Marriage and Divorce Ordinance, as such, the defendant-petitioner could not adduce sufficient documents as to the divorce, therefore, both the courts below concurrently found that the plaintiff No. 1 successfully proved her case. The decision of the courts below by concurrent findings over the points no error of law in passing the impugned judgment, as such, the courts below concurrently decreed the suit by awarding to the defendant to pay at Tk. 3,35,000/- (Taka Three Lac and Thirty-Five Thousand) within 3 (three) months as of the date of the decree passed, thus, the Rule was obtained by the petitioner by misleading the court which is liable to be discharged.

Considering the above submissions made by the learned Advocates appearing on behalf of the respective parties and also considering the revisional application filed by the present defendant-appellant-petitioner under section 115(1) of the Code of Civil Procedure along with the annexures therein, in particular, the impugned judgment and decree passed by the learned appellate court below disallowing the appeal and thereby

affirming the judgment and order of the learned trial court, it appears to me that the present defendant-appellant-petitioner and the plaintiff No. 1 got married on 12.02.2009 and during their wedlock a daughter was born. Accordingly, the learned appellate court below affirmed the judgment and decree of the learned trial court by awarding in total at Tk. 1,50,000/- + 1,85,000/- = 3,35,000/- (Taka Three Lac and Thirty-Five Thousand) as dower and maintenance to the plaintiff No. 1 within 3 (three) months for maintenance of the plaintiff opposite party No. 2 (daughter child).

It also appears to me that the defendant is also directed to pay Tk. 5000/- (five thousand) per month for plaintiff No. 1 until the continuance of the marital tie and Tk. 2,000/- (Tk. Two Thousand) per month for plaintiff No. 2 until her marriage or until the defendant lawfully takes the custody of the plaintiff whichever is earlier from April 2013 before the expiry of the first week of every next month for the future maintenance of the plaintiffs.

In view of the above discussions as to the fact and law involved in this Rule, I am of the opinion that the learned appellate court below committed no error of law and there is no

misreading as to the claim of divorce by the present defendant-petitioner because there is no required procedure which was followed in the case of divorce by affirming the judgment and decree of the learned trial court.

However, the learned Advocate for the petitioner claimed that the defendant-petitioner is a poor person he will not pay the said amount instantly, as such, he would get the schedules of payment in installments.

Accordingly, I do not find merit in the Rule.

In the result, the Rule is hereby discharged.

In view of the above submission of the learned Advocate for the defendant-petitioner, the decretal amount cannot be an excuse as to the commit no error of law. However, considering the capability to pay the decretal amount in the following manner:

The defendant is hereby directed to pay the total amount of the remaining decretal money within 6 (six) months in monthly 6 (six) equal installments.

The defendant is hereby also directed to pay the decretal amount within 6 (six) months in 6 (six) installments in the Family Execution Case No. 19 of 2013 which is pending in the

court of the learned Senior Assistant Judge, Family Court, Begumgonj, Noakhali in failure to pay the amount as per the above direction the plaintiff- opposite party No. 1 shall continue with the execution case.

The learned Senior Assistant Judge of Family Court, Begumgonj, Noakhali is hereby directed to stay the proceeding of the execution case, only if, the defendant-petitioner fails to pay any installments within the above 6 (six) months from the date of receipt of this judgment and order.

The interim order passed at the time of issuance of the Rule staying the operation of the impugned judgment and decree dated 19.06.2014 is hereby recalled and vacated.

The concerned section of this court is hereby directed to communicate this judgment and order to the learned courts below immediately.