

Bench:  
Mr. Justice Bhishmadev Chakrabortty  
And  
Mr. Justice Md. Akhtaruzzaman  
Civil Revision No.3762 of 2018  
Kazi Kawsar Hossain Chowdhury  
..... petitioner  
-Versus-  
Mst. Farzana Islam .....opposite party  
Ms. Joya Bhattacharjee, Advocate  
..... for the petitioner  
No one appears for the opposite party  
Judgment on 13.11.2023

Bhishmadev Chakrabortty, J.

At the instance of the plaintiff-husband, this Rule was issued calling upon the opposite party to show cause as to why the judgment and decree dated 18.01.2018 passed by the Joint District Judge, Court No.1, Moulvibazar in Family Appeal No.08 of 2016 heard along with Family Cross Appeal No.15 of 2016 upholding the judgment and decree dated 30.11.2015 passed by the Judge Family Court, Moulvibazar in Family Suit No.11 of 2015 in a modified form by enhancing the maintenance of the plaintiff and her child should not be set aside and/or pass such other or further order or orders to this court may seem fit and proper.

At the time of issuing the Rule all further proceedings of Family Execution Case No.02 of 2016 pending in the Family Court was stayed for a limited period on condition of payment of Taka 2 lac there within 03(three) months, in default, the Rule shall stand discharged. The

petitioner-husband complied with the said order and filed affidavit-of-compliance and accordingly the order of stay has been extended till disposal of the Rule.

Facts relevant for disposal of the Rule, in brief, are that the plaintiff was given in marriage with the defendant through a registered *kabinnama* on 01.06.2012. The dower money was fixed at Taka 10 lac out of which Taka 3 lac was shown to have been paid. During their wedlock a female child was born on 16.02.2013. But their conjugal life was not sound and peaceful because the defendant-husband used to demand dowry to the wife and for its nonpayment he tortured her physically and mentally. At one stage, the plaintiff's father and other relations went to the house of the defendant on 06.05.2014 and tried to convince him but their steps went on vain. On that very day, the plaintiff with her child left the house of defendant and started living in her father's house. The defendant did not pay any maintenance to the plaintiff and his child during the period of her staying at her parent's house. Ultimately, the defendant divorced her on 01.02.2015. She received the notice and claimed the unpaid dower money of Taka 7 lac and her maintenance at Taka 10,000/- per month and Taka 15,000/- per month for the child. The defendant did neither respond to it nor paid any amount. Hence, the family suit claiming dower money and maintenance as claimed above.

The defendant contested the suit by filing written statement denying the statements made in the plaint. He contended that the plaintiff was physically and mentally unsound and ill tempered lady. The dower money was fixed at Taka 10 lac out of which Taka 7 lac was shown to have been paid. An agreement was executed between the guardians of both the parties fixing date of marriage on 29.06.2012 and the marriage was solemnized in the Community Centre on that day. After divorce, the plaintiff filed Petition Case No.59 of 2015 under section 98 of the Code of Criminal Procedure and took away all the goods including an *almirah* from the house of the defendant. In the *almirah* defendant's passport was kept. For want of that passport he failed to go to UK. The plaintiff also took away the goods and cash money which was valued more than the claimed dower money and maintenance. The plaintiff refused to go to the defendant's house and for that reason he divorced her. In the aforesaid facts and circumstances the plaintiff is not entitle to get decree as prayed for.

During trial, the parties examined 3(three) witnesses each and their documents were exhibited as exhibits-1 and 2 and Ka-Yea respectively. However, the trial Court considering the evidence and other materials on record decreed the suit in part allowing dower money to the plaintiff of Taka 7 lac and maintenance to the plaintiff from 06.05.2014 to 23.06.2015 for Taka 5,000/- per month and to the

child from 06.05.2014 to 31.12.2017 for Taka 6,000/- per month along with 10% interest upon each till realization.

Being aggrieved by the defendant preferred Family Appeal No.08 of 2016 while the plaintiff preferred Cross Appeal No.15 of 2016 against granting of inadequate maintenance. The appeals were heard on transfer by the Joint District Judge, Court No.1, Moulvibazar who after hearing dismissed Family Appeal No.08 of 2016 of the defendant and allowed Cross Appeal No.15 of 2016 of the plaintiff by upholding the judgment and decree of the family Court in a modified form enhancing maintenance of the plaintiff and his child from Taka 5,000/- to 10,000/- and 6,000/- to 15,000/- respectively.

Against the aforesaid judgment and decree the defendant approached this Court and obtained this Rule with an *interim* order of stay.

Ms. Joya Bhattacharjee, learned Advocate for the petitioner taking us through the judgment of the Courts below very candidly submits that it is difficult for her to make any submission about dower money as decreed by the trial Court and affirmed by the appellate Court. She then refers to the evidence of PW 1, plaintiff and submits that it is admitted fact that the wife left the house of the husband on the date as alleged and thereafter she took away from her husband's house all household goods, sharees and ornament, *et cetera* by the order of a petition case. The petitioner's passport and cash money were kept in

the drawer of an almirah which was seized and taken away by the wife. The petitioner failed to go abroad for want of that passport. Although earlier he served in the UK but after that incident he became financially insolvent. He has no ability to pay the maintenance as claimed. The Court of appeal below without considering the aforesaid facts and evidence enhanced the maintenance which cannot be sustained in law. She finally submits that the judgment and decree passed by the Court of appeal below enhancing maintenance, therefore, should be set aside.

No one appears for the opposite party, although Mr. Md. Rois Uddin, Ms. Sadia Yesmin and Mr. Ruhul Amin, learned Advocates for the opposite party filed vokalatnama to contest the Rule. The matter has been appearing in the daily cause list for a couple of days with the names of the aforesaid learned Advocates but none turned up to oppose the Rule.

We have considered the submissions of Ms. Bhattacharjee and gone through the materials on record. The plaintiff produced the *kabinnama* exhibit-1 and proved that the marriage was solemnized and registered on 01.06.2012. The documents exhibited by the defendant to prove that the marriage was solemnized on 29.06.2012 has not been proved. The discussion, findings, observation and decision on that point passed by the Courts below is sound and based on evidence. From the notice of divorce exhibits-2 and 'Ja' it has been proved that the defendant divorced the plaintiff on 23.03.2015. On perusal of oral

evidence and examining the documents both the Courts correctly held that the dower money was Taka 10 lac out of which Taka 3 lac was paid. Therefore, the findings and decision of the Courts below that the plaintiff is entitle to Taka 7 lac as unpaid dower money is upheld. The family Court granted maintenance to the plaintiff at Taka 5,000/- per month from 06.05.2014 to 23.06.2015 including her *iddat* period and maintenance to the child from 06.05.2014 to 31.12.2017 at Taka 6,000/- per month including 10% interest till realization. In holding so the family Court considered the present status of the plaintiff and defendant but the appellate Court enhanced the said amount from Taka 5,000/- to Taka 10,000/- and Taka 6,000/- to Taka 15,000/- respectively. It appears that the defendant in the written statement made out a specific case that after leaving the husband's house, the plaintiff filed a complain case and by an order of the Court she with police force moved to the house of the defendant where she lived in. She seized and took away huge goods from the house including a three part almirah. The defendant asserted the fact that his passport was kept in the drawer of that almirah and since it was taken away by the plaintiff with the passport he failed to go to UK. The aforesaid fact was not denied specifically by the plaintiff rather in cross-examination she admitted the seizing and recovery of goods from the husband's house including an almirah and further stated- “ঐ ড্রয়ারে বিবাদীর পাসপোর্ট ছিলো কিনা জানিনা। সত্যনহে, ঐ ড্রয়ারে সোনার আংটি, ল্যাপটপ, স্মার্ট ফোন এবং নগদ ১,৮৬,০০০/- টাকা ছিল।

আমারা তালাবদ্ধ অবস্থায় মালামাল উদ্ধার করি। ” ..... “সত্য নয় যে, আমি পাসপোর্ট নিয়েছি এবং পাসপোর্ট ফেরত না দেওয়ায় বিবাদী যুক্তরাজ্য যেতে পারছেন না।” (*emphasis supplied*)

The above evidence proves the defendant’s assertion about his present financial condition. It can be presumed safely that as the defendant failed to go to UK, his subsequent financial condition was not good enough. Therefore, the judgment and decree passed by the appellate Court, so far it relates to enhancing the maintenance of the plaintiff and her child is not justified and based on evidence. We, therefore, find substance in the submission of the learned Advocate for the petitioner.

In view of the discussion made hereinabove, we find merit in this Rule to some extent. The judgment and decree passed by the appellate Court is hereby set aside and those of the family Court are restored. The plaintiff-opposite party will get dower money and maintenance as decreed by the Family Court.

However, as the execution case is pending and the petitioner paid Taka 2 lac in compliance of the order of this Court, the execution case will proceed after deducting Taka 2 lac.

Communicate the judgment and send down the lower Court records.

Md. Akhtaruzzaman, J.

I agree.