

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

Present:

Mr. Justice S. M. Saiful Islam

Civil Revision No. 4243 of 2018

IN THE MATTER OF:

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

And

IN THE MATTER OF:

Md. Harun-or-Rashid @ Khokon.

---- Defendant-Appellant-Petitioner.

-versus-

Shamsad Banu @ Asha.

---- Plaintiff-Respondent-Opposite Party.

Mr. Md. Delwar Hossain Khan, Advocate

---- For the Petitioner.

Mr. Muhammad Hasibur Rahman, Advocate

--- For the Opposite Party.

Heard On: 14.01.2026 and 18.01.2026.

Date of Judgment: 26.01.2026.

S. M. Saiful Islam, J.

This Rule was issued upon an application under section 115(1) of The Code of Civil Procedure 1908, calling upon the opposite party to show cause as to why the impugned judgment and decree dated 10.05.2012 (decree signed on 16.05.2012)

passed by the learned Additional District judge and Bankruptcy Court, Dhaka in Family Appeal No. 86 of 2011 upholding the judgment and decree dated 27.03.2011 (Decree signed on 03.04.2011) passed by the learned Senior Assistant Judge, 2nd Additional Court, Dhaka in Family Suit No. 556 of 2005 decreeing the suit should not be set aside and/or such other or further order or orders passed as to this Court may deem fit and proper.

Facts relevant for the disposal of this Rule is that the opposite party as plaintiff instituted Family Suit No. 316 of 2005 in the Court of 1st Assistant Judge and Family Court Dhaka praying for decree for maintenance. That suit was transferred to Senior Assistant Judge, 2nd Additional Court, Dhaka and was renumbered as Family Suit No. 556 of 2005. At the time of filing of the suit the plaintiff was a minor girl and the suit was filed by her mother on her behalf and as her guardian. Case of the plaintiff in short is that the defendant married the mother of the plaintiff on 24.6.1993. In their wedlock plaintiff was born on 04.08.1994. At one stage mother of the plaintiff came to know that the defendant is a whore-monger and polygamist. Thereafter mother of the plaintiff divorced the defendant. Defendant from then refrained from payment of maintenance of the plaintiff. Plaintiff is living at the residence of her maternal uncle as their

hanger-on. Defendant does not pay any kind of maintenance to the plaintiff, not even take any information about her. Defendant is a wealthy person and has ability to pay maintenance. In the middle of June in 1994, plaintiff's mother demanded the maintenance for the plaintiff but the defendant refused to pay it. Then the mother of the plaintiff filed this suit claiming maintenance for the plaintiff at the rate of Taka 3000/- (three thousand) per month.

The petitioner as defendant contested the suit by filing a written statement stating inter alia that he married the mother of the plaintiff on 24.06.1993 and in their wedlock, plaintiff was born, that mother of the plaintiff divorced the defendant in 1996, that defendant then tried to the utmost to see his daughter but mother of the plaintiff did not let him to see her, that defendant's mother in law took Taka six lac from the defendant to send defendant and his wife to USA but did not send them ultimately, that she misappropriated that money and led her daughter to divorce the defendant, that the defendant is mentally and physically ill and he has no income. Hence the defendant prayed for dismissal of the suit.

For disposal of the suit, learned trial court framed the following two issues namely:

- 1) Whether the plaintiff is entitled to get her past and future maintenance;
- 2) Whether the plaintiff may get the relief as prayed for;

Learned Trial Court upon consideration of oral and documentary evidence adduced by both the parties decreed the suit by the judgment and decree dated 27.3.2011. The Trial Court held that admittedly the plaintiff is living with her mother separately from the defendant. Learned trial court found that the defendant has ability to pay maintenance to the plaintiff. Learned Trial Court fixed the maintenance of the plaintiff at Taka 2000/- (Two Thousand) per month and held that the plaintiff is entitled to get her maintenance from 6 (six) years prior to the institution of the suit and to till her marriage and it will be increased at the rate of 10% per year. Accordingly the suit was decreed in part directing the defendant to pay Taka 2,78,000/- (Two Lac Seventy Eight Thousand) as maintenance for 139 months (September-1999 to march-2011) at the rate of Taka 2000/- per month.

Being aggrieved by that judgment and decree, plaintiff preferred Family Appeal No. 86 of 2011 before the learned District Judge, Dhaka which was transferred to the Additional District Judge and Bankruptcy Court, Dhaka. But the Appeal was

disallowed and the decree of the Trial Court was upheld by the impugned judgment decree dated 15.05.2012.

Being aggrieved by that impugned judgment and decree the defendant petitioner filed this revisional application and obtained the rule. At the time of issuance of the Rule, Family Execution Case No. 30 of 2011 was stayed for a period of 6 (six) months and later on it was extended till disposal of the Rule.

Mr. Md. Delwar Hossain Khan, the learned Advocate, appearing on behalf of the petitioner submits that both the Courts below committed error of law as well as facts resulting in error in the decision occasioning failure of justice. Learned Trial Court showed disinterest to examine defence witness and did not give chance to cross examine the PWs. Learned Appellate Court also did not consider the matter. Trial Court first passed ex-parte decree on 08.08.2006 where the learned Court held that the plaintiff is entitled to get the maintenance from the date of filing of the suit. But after contesting the suit by the defendant, learned Trial Court passed the judgment holding that the plaintiff is entitled to get maintenance from six years prior to the filing of suit. Learned Appellate Court also did not consider this matter. Petitioner has no ability to work or earn. He is suffering from multiple diseases. Petitioner has no other wife or child. He wants to take the plaintiff to reside with him at his village. Plaintiff will

inherit all the properties of the petitioner. Petitioner will have to sale that property to pay the decretal amount and then the plaintiff will inherit nothing. For these reasons learned lawyer for the petitioner prays for making the Rule absolute.

On the other hand, learned Advocate Mr. Anamul Hossain along with the learned Advocate Mr. Hasibur Rahman, appearing on behalf of the plaintiff-respondent, submits that the learned Trial Court has rightly decreed the suit in favor of the plaintiffs and accordingly the learned Appellate Court has rightly disallowed the Appeal preferred by the defendant-petitioner. The learned Courts below have not committed any error of law in the impugned judgment and decree and it has not occasioned any failure of justice. Defendant-petitioner has filed this revisional application only to delay the execution of the impugned decree. Hence, he prays for discharge of the Rule.

Heard the learned Advocates for both the parties. Perused the revisional application and annexures therewith, the impugned judgment and decree as well as the case records of the Courts below.

It is admitted by the defendant-petitioner that he married the mother of the plaintiff on 24.06.1993 and in their wedlock, the plaintiff was born. It is also admitted that the mother of the plaintiff divorced the defendant in 1996 and since then plaintiff

is living with her mother separately from the defendant. According to the provisions of Muslim law, the defendant as father of the plaintiff is bound to give maintenance to her daughter i.e. the plaintiff till her marriage. In such facts and circumstances, the plaintiff is entitled to get her maintenance from the defendant.

In the case of *Jamila Khatun -Vs- Rustom Ali* [48 DLR (AD) 110], our Apex Court held that Article 120 of the First Schedule of the Limitation Act would apply to a suit for maintenance under the Family Court Ordinance, 1985 and the plaintiff would be entitled to get past maintenance for 6 (six) years prior to the filing of the suit. Thus the Trial Court has rightly decreed the suit directing the defendant to pay as past maintenance of the plaintiff for 6 (six) years prior to the filing of the suit and also her future maintenance till her marriage. The learned Trial Court has fixed monthly maintenance at Taka 2,000/- (Two Thousand) per month with increment of 10% per year which is very minimum in context of the present market price. Petitioner has admitted in his application that he has property of his own and by selling it decretal amount can be paid.

It is well settled principle of law that a revisional Court may exercise its power when there is an error of law resulting in

an error which occasioned failure of justice and when the lower Court acted illegally or with material irregularity in exercise of law or has committed error in procedure during the course of trial and such breach or error has affected the ultimate exercise of the jurisdiction of the Court. In revision under section 115(1) concurrent findings of fact cannot be disturbed unless those are manifestly perverse.

In the instant case, the learned Trial Court, considering the oral and documentary evidence, has rightly decreed the suit directing the defendant to pay the past maintenance of the plaintiff for 6 (six) years prior to the filing of the suit and also her future maintenance till her marriage. The learned Trial Court has fixed monthly maintenance at Taka 2000/- (Two Thousand) per month with increment of 10% per year which is not excessive at all. The learned Appellate Court has rightly affirmed the judgment and decree of the Trial Court by the impugned judgment and decree. Nothing is found in the impugned judgment and decree which is unlawful or is based on non-consideration or misreading of evidence on record. The impugned judgment and decree does not suffer from any legal infirmity or impropriety. Therefore, it does not call for any interference by this Court.

In such facts and circumstances, I find no merit in the Rule.

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

The order of stay passed by this Court at the time of issuance of the Rule is hereby recalled.

The lower courts records be sent to the concerned Court below at once along with a copy of this judgment.