

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

Present:

Mr. Justice Md. Bashir Ullah

Civil Revision No. 3181 of 2020

IN THE MATTER OF:

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

And

IN THE MATTER OF:

Md. Ashique Hossain Asha

... Defendant-Respondent-Petitioner.

-Versus-

Mosa. Kaniz Fatima Tumpa

... Plaintiff-Appellant-Opposite party.

Ms. Afroza Chowdhury, Advocate

... For the petitioner.

None appears.

... For the Opposite Party.

Heard on 30.11.2025 and 01.12.2025

Judgment on: 04.12.2025

Md. Bashir Ullah, J.

At the instance of the defendant in Family Suit No. 08 of 2016, this Rule was issued calling upon the opposite party to show cause as to why the judgment and decree dated 20.05.2019 passed by the learned Joint District Judge, First Court, Magura in Family Appeal No. 11 of 2018, allowing the appeal in part and modifying the judgment and decree dated 12.08.2018 passed by

the learned Family Court, Magura Sadar, Magura decreeing the aforementioned suit should not be set aside and/or such other or further order or orders be passed as to this Court may seem fit and proper.

At the time of issuance of the Rule, the operation of the judgment and decree dated 20.05.2019 passed in Family Appeal No. 11 of 2018 was stayed for a period of 01(one) year subject to payment of Taka 3,00,000/- within the said period in 3(three) equal installments, the 1st installment to be paid on or before 13.02.2020 and the 2nd and 3rd installments to be paid on or before 13.06.2020 and 13.10.2020 respectively; in default, the Rule was to stand discharged.

The facts, relevant for disposal of the Rule, in brief, are that the opposite party as plaintiff instituted Family Suit No. 08 of 2016 before the Court of the learned Senior Assistant Judge and Family Court, Sadar, Magura seeking realization of unpaid dower and maintenance against the defendant. The plaintiff's case, in short, is that the marriage between the parties was solemnized on 11.10.2009 and the dower was fixed at Taka 4,00,000/- (Four lac) by a registered Nikahnama. During their conjugal life, the defendant subjected her to cruelty for dowry and ultimately drove her out of his residence demanding dowry of Taka 2,00,000/- (two lacs) on 04.09.2015. On 15.07.2016, the plaintiff along with

witnesses went to the defendant's house where he refused to take her back without dowry. Subsequently, the plaintiff demanded her dower and maintenance which was refused by the defendant. Hence, the plaintiff instituted the suit.

The defendant contested the suit by filing a written statement denying all material allegations, *inter alia*, that the defendant never claimed the dowry of Taka 2,00,000/-. He alleged that the plaintiff had fraudulently altered the figure of dower amount from Taka 40,000/- to Taka 4,00,000/- in the registered Kabinnama and asserted that he had paid the dower in gold ornaments. He alleged that the plaintiff was disobedient and unwilling to maintain the conjugal life and that she left the marital home without the consent of her husband. On these grounds, the plaintiff was not entitled to dower and maintenance from the defendant as she stayed her father's house. The plaintiff filed the suit with false statements and sought dismissal of the suit.

Upon hearing the parties, the Family Court (Sadar), Magura decreed the suit in part by its judgment and decree dated 12.08.2018, directing the defendant to pay Taka 2,00,000/- as unpaid dower and Taka 1,44,000/- as maintenance for thirty three months totaling Taka 3,44,000/= to the plaintiff within 30 days.

Challenging the said judgment and decree, the defendant as appellant filed Family Appeal No. 11 of 2018 before the learned District Judge, Magura, which was transferred to the learned Joint District Judge, First Court, Magura. Upon hearing, the appellate Court allowed the appeal on 20.05.2019 modifying the decree of the trial Court.

Being aggrieved by and dissatisfied with the Judgment and decree dated 20.05.2019, the petitioner preferred this revisional application and obtained the Rule along with an order of stay.

Ms. Afroza Chowdhury, learned advocate appearing on behalf of the petitioner, submits that the petitioner has already paid Taka 3,00,000/- and the plaintiff has waived Taka 1,00,000/- and therefore no amount remains due. She finally prays for making the Rule absolute.

None appeared for the opposite party to oppose the Rule though the matter has been appearing with the name of the learned Advocate for the opposite party.

I have considered the submissions so advanced by the learned counsel at length and perused the judgments and decrees and the materials on record.

It appears from exhibit 1 that the marriage between the parties was solemnized on 11.10.2009 with dower fixed at Taka 4,00,000/=. The defendant failed to pay the unpaid dower. A

husband is legally bound to pay dower to his wife under Muslim Law.

It appears that the plaintiff demanded her dower but the defendant refused to pay the same compelling her to institute the Family suit. The definition of 'dower' was defined in many cases earlier. In *Jesmin Sultana Vs. Md. Elias*, reported in 2BLC 233 'dower' is defined below:

"In Islamic glossary dower is called 'mahr' which means bridal-money given by the husband to the wife on marrying. In order to constitute a valid marriage under the Islamic law there should always be mahr as consideration from the bridegroom in favour of the bride."

In this regard, the Dissolution of Muslim Marriage Act, 1939 has been enacted. Section 5 of the Dissolution of Muslim Marriage Act, 1939 provides:

"Rights to dower not be affected- Nothing contained in this Act shall affect any right which a married woman may have under Muslim Law to her dower or any part thereof on the dissolution of marriage."

In *A.M. Md. Ebrahim Vs. Ma Ma and others*, reported in AIR 1939 Rangoon 28 it has been held:

"If the marriage was consummated the wife is entitled to immediate payment of the whole of the unpaid dower, both prompt and deferred."

In view of the above discussions and considering the facts and circumstances of the case, I find no cogent reason to interfere with the judgment of the appellate Court modifying the judgment and decree of the trial Court. I, therefore find no merit in the Rule.

From the affidavit of compliance dated 24.09.2020, it appears that the petitioner has paid an amount of Taka 1,00,000/- through the trial Court. It further appears from the affidavit of compliance dated 11.08.2025 that the father of the plaintiff received Taka 2,00,000/- in cash on 13.02.2025 by way of an out-of-court settlement and thereby waived the remaining amount. In such circumstances, the Rule has become infructuous. Nevertheless, although, the Rule has becomes infructuous, the decree itself remains valid and stands affirmed.

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

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

Let a copy of this judgment, along with the lower Courts' Records be transmitted to the Court concerned forthwith.

Md. Ariful Islam Khan
Bench Officer