

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

Present:

**Mr. Justice Md. Mozibur Rahman Miah
and
Mr. Justice Mohi Uddin Shamim**

Civil Revision No. 50 of 2020

In the matter of:

Mohammad Malik alias M. A. Malik

... Defendant-Appellant-Petitioner

-Versus-

Rabeya Sultana

.... Plaintiff-Respondent-Opposite-party

Md. Nakib Saiful Islam, Advocate

..... For the defendant-appellant-petitioner

Mr. Ali Imran Khaled Rahim, Advocate with

Mr. A. H. M. Obaydul Kabir, Advocate

..... For the plaintiff-respondent-opposite-party

Heard and Judgment on: 18th October, 2023

Mohi Uddin Shamim, J.

At the instance of the defendant-appellant-petitioner, this Rule was issued calling upon the opposite party to show cause as to why the impugned Judgment and decree dated 08.09.2019 passed by the Additional District Judge, 8th Court, Dhaka in Family Appeal No.216 of 2016 dismissing the appeal and thereby affirming the Judgment and

decree dated 07.08.2016 (decree signed on 14.08.2016) passed by the learned Judge, 5th Senior Additional Assistant and Family Court, Dhaka in Family Suit No.594 of 2013 decreeing the suit should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

At the time of issuance of the Rule, this Court stayed operation of the impugned Judgment and decree dated 08.09.2019 passed by the Additional District Judge, 8th Court, Dhaka in Family Appeal No.216 of 2016 and all further proceedings of Family Execution Case No.109 of 2016, now pending in the Court of 5th Additional Assistant Judge as well as Family Court, Dhaka for a period of 06 (six) months from date, subject to deposit Tk. 5,00,000/- (five lac) by the petitioner in trial Court within 90 (ninety) days from date, in default the Rule shall stand discharge and also directed to the trial Court to handover the said amount to the opposite party forthwith.

It is evident from the record that as per Court's order dated 13.01.2020 the petitioner deposited Tk. 5,00,000/- (five lac) to the Trial Court through treasury chalan being chalan no.15407 dated 24.11.2020, which was marked as Annexure- "X-1" to the affidavit-in-compliance

submitted by the petitioner on 09.06.2022 and the said compliance was accepted by the Court on 23.06.2022 and extended the earlier order of stay till disposal of the rule.

Facts necessary for disposal of the Rule, in short, are that the present opposite party as plaintiff filed family suit being Family Suit No.594 of 2013 against the present petitioner claiming her unpaid dower money, maintenance for her past & 'eddoth' period and past maintenance for her baby girl to the tune of Tk. 22,41,530/- in total, and future maintenance at the rate of Tk. 20,000/- per month stating inter alia that the plaintiff was married with the defendant-petitioner on 21.03.2013 fixing a dower money to the tune at Tk. 20,00,000/-, out of which Tk. 5,00,000/- was paid at the time of solemnizing of marriage as prompt dower and Tk. 15,00,000/- remained due as deferred dower. After marriage they started their conjugal life at the defendant's house. Immediately after their marriage, she discovered that her husband i.e. the defendant petitioner earlier got married twice having two children there. He is a man of immoral character, bad mannered, greedy and leading an unruly life; engaging with an illicit relationship with former wife. The plaintiff tried her level best to restrain him from such relationship but

failed. However, he had continued his immoral, illicit activities despite her repeated request and sincere effort. Not only that, the defendant also demanded dowry from her, and for the dowry, he physically assaulted her; at one stage on 04.07.2013 she left the defendant's house and started staying at her parents' house. In the meantime, a baby girl was born on 16.01.2014 in their wedlock. Having no other choice, the plaintiff sent a divorce notice to him on 09.02.2015. Since the plaintiff left the defendant's house on 04.07.2013, she has not been provided any maintenance, neither for herself nor for her minor girl, which compelled her to file the instant family suit for dower and maintenance.

On the other hand, petitioner contested the suit by filing written statement denying all material averments made in the plaint apart from marriage dated 21.03.2013, divorce dated 04.02.2015 and there is no controversy regarding their daughter and her birth. It is further admitted that he has not maintained her since she left his house on 04.07.2013 but he denied to pay dower money claiming that at the time of marriage actual dower money was fixed at Tk. 5,00,000/- which has fully been paid at the time of marriage. Thereafter, the plaintiff and her mother in connivance with marriage register inserted Tk. 20,00,000/- instead of Tk.

5,00,000/- into the prescribed form of Kabin-nama. Moreover, while the defendant petitioner had been staying out of Dhaka for burial purpose of his dead mother, she left the house of the petitioner taking away about 150 vori of gold ornaments, which was worth approximately Tk. 75,00,000/- and British Pound Starling equivalent to Tk. 10,00,000/- at the then period, which is much higher than the amount she claimed for. So, she would not have entitlement to get any more money, neither for dower nor for maintenance. Nevertheless, the petitioner has divorced him without any reasonable and finally he prayed for dismissal of the suit.

After conclusion of trial the learned Judge, 5th Additional Assistant Judge and Family Court, Dhaka decreeing the suit on contest on 07.08.2016 against the defendant-petitioner and directed the defendant to pay in total Tk. 23,54,666/- (for deferred dower, maintenance for her 'eddoth' period and past maintenance for her and her minor daughter) and Tk. 20,000/- per month for future maintenance of daughter till her marriage. The maintenance of the daughter will be increased 10% in each year.

Challenging the said judgment and decree dated 07.08.2016 the defendant as appellant preferred an appeal before the learned District Judge, Dhaka being Family Appeal No. 216 of 2016. However, on transfer the appeal was heard by the Additional District Judge, 8th Court, Dhaka and after hearing learned Judge, eventually, dismissed the appeal on 08.09.2021 and thereby affirmed the judgment and decree dated 07.08.2016 passed Family Suit No. 594 of 2013.

Being aggrieved by and dissatisfied with the aforesaid judgment and decree passed by the lower appellate court, the defendant as petitioner filed the instant Civil Revision before this Court and obtained Rule and conditional order of stay.

Mr. Nakib Saiful Islam, learned advocate appearing on behalf of the defendant-appellant-petitioner to press the Rule, takes us through the impugned judgment and decree dated 08.09.2019, judgment and decree of the trial Court dated 07.08.2016, the revision application filed by the petitioner and all other connected materials available on record, submits that, both the Courts below failed to consider that the marriage was solemnized at the house of the plaintiff-respondent-opposite party, wherein, the plaintiff in connivance with her mother very tactfully by

managing the marriage registrar input the dower amount at Tk. 20,00,000/- in the *kabinnama* instead of Tk. 5,00,000/- which has fully been paid at the time of marriage. The learned counsel next submits that, while the petitioner was out of his house, the plaintiff left the house taking away all the valuable goods and 'Pound Sterling' which worth approximate Tk. 85,00,000/- at the then point of time and the amount is much higher than the amount she claimed for. So, she would not be entitled to get anything more. However, the learned judge of the trial court as well as the appellate court failed to discuss and consider this very aspect of facts in their respective judgment and accordingly made an error of law occasioning failure of justice. He also submits that, fixing at Tk. 20,000/- per month as maintenance of the plaintiff is highly emotional, unreasonable and contrary to the social status of the plaintiff; thus the courts below committed in error of law resulting an erroneous decisions occasioning failure of justice and prays for setting aside the impugned judgment and decree passed by the Courts below by making the rule absolute.

Mr. A.H.M. Obaydul Kabir, the learned advocate appearing on behalf of the opposite party to oppose the Rule, takes us through the

impugned judgment and decree of both the Courts below and all other connected materials on record, submits that, neither of the trial Court nor the lower appellate Court has committed any error of law or illegality in passing the impugned judgment and decree since the opposite party is entitled to get her unpaid dower money, maintenance for her eddoth period and also maintenance for her daughter till her marriage by law.

He next contends that, though the opposite party did not prefer any cross revision against the impugned judgment and decree but in the prevailing social economic situation, the amounts so fixed by the lower appellate court for future maintenance for their daughter is inadequate to survive. So, the maintenance should be higher and he prays for indulgence of the Court to increase the monthly maintenance amount for the daughter using its inherent powers under section 151 of the Code of Civil Procedure, so that she could maintain a decent life and lastly prays for discharging the Rule by affirming the judgment of both the courts below.

We have heard the learned advocates for contending parties, perused the judgments of both the Courts below, the revision

application and all other connected materials on record, the affidavit of compliance filed by the defendant-appellant-petitioner.

It appears from the record that the petitioner mostly relied upon the ground of past maintenance of the wife. It is well settled principle that, once marriage solemnized between a man and a woman it becomes husband's responsibility to maintain his wife and children, if there is any, under their wedlock. So there is no other option but to pay for maintenance. Here, both the parties are in agreement on the matter of their marriage, entitlement of maintenance of eddoth period and future maintenance of their child. However, the defendant claimed that the amount of dower money showing in the *Kabin-nama* is false and fabricated one; the plaintiff and her mother in connivance with the Nikah Registrar managed to put an amount at taka 20,00,000/- instead of 5,00,000/- but the defendant had not denied the *Kabin-nama* and his signature on it and he paid the dower amount in full though he could not prove the same by adducing and producing any evidence; it is the provision of law that he, who brought new fact and relied upon has to be proved by himself. Moreover, after careful consideration of the evidences on record, we find that both the plaintiff and the defendant

deposed themselves in support of their respective cases but the defendant failed to proof his case by producing any credible witness or other evidence that he paid the dower money of the plaintiff or provide maintenance for the period the petitioner lived in her parents' house. The issues were coherently and comprehensibly explained by both the Courts below in their respective judgment, which was very much lawful and justified.

Considering the above facts and circumstances of the case as well as the evidences and submissions so advanced by the learned advocate for both the sides, we find merit and substance in the submission of the learned advocate for the opposite party and we do not find any merit or force in the submissions so advanced by the learned advocate for the defendant-appellant-petitioner. Thus, we do not find merit in the Rule.

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

The judgment and decree dated 08.09.2019 passed by the learned Additional District Judge, 8th Court, Dhaka in Family Appeal No. 216 of 2016 dismissing the appeal and thereby affirming the judgment and decree dated 07.08.2016 decree signed on 14.08.2016 passed by the Senior Assistant Judge, 5th Additional Court, Dhaka in Family Suit

No.594 of 2013 decreeing the suit in favour of the plaintiff is hereby upheld and affirmed.

The petitioner is hereby directed to pay the remaining decretal amount to the plaintiff-opposite party through the concerned Court (after deducting the Tk. 5,00,000/- deposited earlier to the trial Court in compliance with the order of this Court) within 60 days from the date of receipt of the copy of the Judgment and order of this Court.

The petitioner is also directed to pay the future maintenance of the daughter as per the decree of lower appellate Court failing which the Execution Case will proceed on its own course in accordance with law.

The order of stay granted earlier by this Court is hereby recalled and vacated.

Let a copy of this judgment along with Lower Court's Record (LCR) be communicated to the concerned Court forthwith.

Md. Mozibur Rahman Miah, J.

I agree.