

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

Civil Revision No. 1747 of 2020

IN THE MATTER OF

Al Amin Mamunur Rashid

.....Defendant-Respondent-Petitioner

-Versus-

Sifta Binte Mamun @ Mifta Binte Mamun (Minor) and another

.....Plaintiffs-Appellants-Opposite parties

Mr. Md. Zulfiqur Matin with

Mr. Khondaker Jahirul Haque, Advocates

.....For the petitioner

Mr. S.M. Rifaz Uddin, Advocate

.....For the opposite parties

Heard on 29.05.23 and judgment passed on 08.06.2023

Present:

Mr. Justice Kazi Md. Ejarul Haque Akondo

Kazi Md. Ejarul Haque Akondo, J.

This Rule, under section 115(1) of the Code of Civil Procedure, 1908, was issued in the following term-

“Let the records be called for and a Rule be issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 01.09.2020 passed by the learned District Judge, Kustia in Family Appeal No. 20 of 2019 allowing the appeal

and reversing the judgment and decree dated 05.09.2019 passed by the learned Judge of the Family Court, Kumarkhali, Kustia in Family Suit No. 67 of 2018 decreeing the suit in part should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.”

At the time of issuance of the Rule, this Court stayed the operation of the impugned judgment and decree dated 01.09.2020 for 03 (three) months from the date on the condition which was extended time to time and lastly, it was extended on 07.03.2023 for 06(six) months from the date.

The present opposite parties as the plaintiffs (represented by their mother) instituted Family Suit No. 67 of 2018 in the Family Court, Kumarkhali, Kustia against the present petitioner as the defendant for a decree of maintenance.

The plaintiffs' case, in short, is that on 03.11.2004 a marriage took place between the defendant and their mother by fixing a dower money of Tk. 1,50,000/- and thereafter, on 18.08.2007 and 20.11.2009 their parents were blessed with the plaintiffs, aged

about 12 and 10 years respectively. But the defendant on demand of dowry drove their mother along with them from his residence on 27.01.2018. The defendant, who is a Sub-Inspector of the Police did not look after them and gave them any maintenance, hence the suit.

The defendant contested the suit by filling a written statement denying the averments made in the plaint contending, inter alia, that on 01.02.2018, the defendant divorced the plaintiffs' mother and in the meantime, the same has been executed. But thereafter, their mother brought a false and fabricated criminal case against him under section 4 of the Joutuk Nirodh Ain, which is pending before the Court. Presently, the plaintiffs are in their mother's custody. The defendant was sending Tk. 2,500 x 2=5000/- (Five thousand) to the plaintiffs per month for their maintenance through a Money Order since 01.02.2018 but they did not receive the same. The defendant, a petty government servant was getting a salary of Tk. 27,511/- per month out of which, he was paying Tk. 4,000/- in a deposit scheme and as such, he could not able to give the plaintiffs beyond the said amount as maintenance,

for he had no other income except his poor salary hence the suit is liable to be dismissed.

After the conclusion of the trial the learned Judge of the Family Court, Kumarkhali, Kustia by judgment and decree dated 05.09.2019 decreed the suit in part on contest.

Being aggrieved by and dissatisfied with the same the plaintiffs filed an appeal before the learned District Judge, Kustia, and the same was numbered Family Appeal No. 20 of 2019. After hearing the same the learned District Judge by judgment and decree dated 01.09.2020 allowed the appeal on contest, set aside the judgment and decree of the Trial Court, and decreed the suit in a modified form.

Being aggrieved by and dissatisfied with the said impugned judgment and decree dated 01.09.2020 the defendant as the petitioner had preferred this civil revision before this Court and obtained the instant Rule which is before us for consideration.

Mr. Md. Zulfiqur Matin, the learned advocate appearing with Mr. Khondaker Jahirul Haque, Advocate on behalf of the petitioner submits that the learned Judge of the Trial Court considering the

facts and circumstances of the case and the evidence on record rightly decreed the suit but on appeal, the learned Judge of the Appellate Court below without proper assessment of the evidence on record, and the status of the petitioner passed the impugned judgment and decree modifying those of the Trial Court and thereby committed an error of law.

He also submits that the learned Judge of the Appellate Court below failed to appreciate that the petitioner is a petty employee of the Bangladesh Police and he has no other income except his salary, but since the minor plaintiffs have been in their mother's custody since 27.01.2018 he is sending them Tk. 5,000/- per month for their maintenance through Money Order and he is ready to pay the same; otherwise, it will be a hardship for the petitioner to lead his life along with his parents.

Conversely, Mr. S.M. Rifazuddin, the learned Advocate appearing for the plaintiffs-opposite parties submits that the minors have been staying in the mother's custody since 2018 and passing days in a very hardship with their mother's little income and as such, the learned Judge of the Appellate Court below

considering the facts and circumstances of the case and the status of the petitioner rightly passed the impugned judgment and decree setting aside those of the Trial Court and thereby committed no illegality.

Heard the learned Advocates of the contending parties and have perused the materials on record. It appears that the minor opposite parties as the plaintiffs filed the instant suit for their maintenance and after hearing the same the learned Trial Judge decreed the suit in part against which the plaintiffs preferred an appeal before the learned District Judge, who after hearing the same allowed the appeal and decreed the suit in a modified form by setting aside the judgment and decree of the Trial Court. It appears to us that the learned Judge of the Appellate Court below considering the facts and circumstances of the case and the evidence on record, and that of the social status of the petitioner rightly passed the impugned judgment and decree, and thereby committed no illegality occasioning failure of justice as the learned Advocate for the petitioners hopelessly failed to show any misreading or non-consideration of the material facts on record or

error of law in passing the impugned judgment and decree, and as such there is nothing to interfere with the same.

Given the above, I do not find any substance in the submissions so made by the learned Advocate for the petitioner.

Accordingly, the Rule fails.

As a result, the Rule is discharged without costs.

Stay vacated.

The impugned judgment and decree dated 01.09.2020 passed by the learned District Judge, Kustia in Family Appeal No. 20 of 2019 allowing the appeal and thereby setting aside the judgment and decree dated 05.09.2019 passed by the learned Judge of the Family Court, Kumarkhali, Kustia in Family Suit No. 67 of 2018, and decreed the suit in a modified form is hereby affirmed.

Send a copy of this judgment along with the LCR to the Court below at once.