

Bench:

Mr. Justice Bhishmadev Chakrabortty

And

Mr. Justice Md. Akhtaruzzaman

Civil Revision No.1325 of 2020

Md. Jahangir Miah ..... petitioner

-Versus-

Mst. Keya Begum .....opposite party

Mr. Md. Nasimul Hasan, Advocate

..... for the petitioner

Ms. Fatema Sultana, Advocate

..... for the opposite party

Judgment on 19.11.2023

Bhishmadev Chakrabortty, J.

This Rule, at the instance of the defendant-husband, was issued calling upon the opposite party-wife to show cause as to why the judgment and decree dated 24.02.2020 passed by the Joint District Judge, Court No.2, Gaibandha in Family Appeal No.44 of 2019 dismissing the appeal affirming the judgment and decree dated 29.05.2019 passed by the Family Court, Sadullahpur, Gaibandha in Family Suit No.28 of 2016 decreeing the suit should not be set aside and/or such other or further order or orders passed to this court may seem fit and proper.

At the time of issuing the Rule, operation of the impugned appellate judgment and decree affirming those of the trial Court was stayed for a limited period subject to deposit of Taka 2 lac to the Family Court within 02(two) months, in default, the Rule shall stand discharged. The petitioner-husband complied with the said order and

consequently the order of stay has been extended till disposal of the Rule.

Facts relevant for disposal of the Rule, in brief, are that the opposite party as plaintiff instituted the aforesaid family suit in the Family Court praying for a decree of dower money and maintenance stating that she was given in marriage with to the defendant through a registered *kabinnama* dated 11.04.2015 fixing dower money at Taka 10 lac out of which Taka 50,000/- was shown to have been paid. The defendant after some days of the marriage started torturing her on demand of dowry. He demanded dowry Taka 5 lac to her and for its nonpayment drove her away to the parents' house on 17.11.2015. The plaintiff then claimed unpaid dower money of Taka 9,50,000/- and maintenance of Taka 5,000/- per month. The defendant refused to pay it and then she instituted the instant suit.

The defendant contested the suit denying the statements made in the plaint. He specifically stated in the written statement that he did not know the plaintiff and no marriage was solemnized with her. The plaintiff in collusion with her parents and Nikah Registrar created the *kabinnama* dated 11.04.2015 showing the marriage between them. The *kabinnama* is forged, collusive and inoperative. The defendant married to one Nasima Begum on the same day at dower money of Taka 4 lac and he has been continuing his conjugal life with her. Since

the suit has been filed on false averments, it would be dismissed with cost.

In the trial, the plaintiff examined 6(six) witnesses while the defendant examined 8. The plaintiff produced documents exhibits 1 and 2, on the other hand, the defendant exhibited documents exhibits-Ka-Chha. However, the Family Court on framing 5(five) issues decreed the suit for Taka 9,50,000/- as unpaid dower money and maintenance for 3 months of Taka 9,000/-.

Against the aforesaid judgment and decree, the defendant-husband preferred appeal before the District Judge, Gaibandha. The appeal was heard on transfer by the Joint District Judge, Court No.2, Gaibandha who by the judgment and decree under challenge in this revision dismissed the appeal and affirmed the judgment and decree passed by the Family Court.

Mr. Md. Nasimul Hasan, learned Advocate for the petitioner taking us through the materials on record submits that no marriage was solemnized between the petitioner and the opposite party. The plaintiff in collusion with her parents and the Nikah Registrar created the *kabinnama* dated 11.04.2015 showing the defendant as her husband. Mr. Hasan refers to a report of expert Annexure-D to the petition and submits that the petitioner's thumb impression put on the *kabinnama* was sent to the expert to compare it with his admitted thumb impression but the expert opined that those are dissimilar and

thus the plaintiff failed to prove the genuineness of the *kabinnama* showing the marriage between them. He refers to the evidence of PW3 and submits that the certified copy of the *kabinnama* do not support the volume in respect of paid amount of dower money. He submits that on the same day the petitioner got married to one Nasima Akter through exhibit-Gha. Two other *kabinnamas* proves that the plaintiff married other two men on different dates which indicates that the instant *kabinnama* has been prepared by her at the instance of her relatives and the Nikah Registrar. Both the Courts below failed to consider the above vital aspect of the case and thereby committed error of law resulting in an error in such decree occasioning failure of justice. In the aforesaid premises, this is a fit case to interfere with the judgment and decrees passed by the Courts below. The Rule, therefore, should be made absolute.

Ms. Fatema Sultana, learned Advocate for the opposite party-wife opposes the Rule and submits that both the Courts below concurrently found that the marriage was solemnized between the plaintiff and the defendant on the prescribed date. The concurrent finding of facts arrived at by the Courts below should not be interfered with by this Court in revision unless there is gross misreading and non-consideration of the evidence and other materials on record. The Family Court considering the evidence and other materials on record on threadbare discussion decreed the suit which was affirmed by the

appellate Court. She refers to the evidence of the defendant, DW1 and submits that she admitted that the marriage was solemnized on 11.04.2015 by exhibit-1 and PWs 3 and 6 proved the aforesaid *kabinnama*. Since the marriage has been proved by the oral and documentary evidence, the plaintiff is entitled to get dower money and maintenance as claimed. There is no error in the impugned judgment and decrees and as such the Rule should be discharged.

We have considered the submissions of both the sides and gone through the evidence and other materials on record. To prove the case, the plaintiff examined 6(six) witnesses and exhibited *kabinnama* as exhibit-1 and the affidavit showing the solemnization of marriage exhibit-2. On perusal of exhibit-1 it is found that the marriage was solemnized between the plaintiff and the defendant at dower money of Taka 10 lac out of which Taka 50,000/- was shown to have been paid. The defendant-petitioner raised serious objection as to the genuineness of the *kabinnama*. In his written statement he stated that the plaintiff was not at all known to him and the *kabinnama* was created by the plaintiff with the help of her parents and the Nikah Registrar. In support of this *kabinnama* plaintiff herself as PW1, PW3 the Nika Registrar, PW5 an Advocate appointed on behalf of the plaintiff and PW6, a witness to the *kabinnama* were examined. On appraisal of the evidence of PWs 1, 3, 5 and 6, we find that the plaintiff has been able to prove that a marriage was solemnized

between the petitioner and the opposite party on the date and in the office of PW3. The aforesaid witnesses corroborated each other as to the solemnization of the marriage between the plaintiff and defendant on the date. The learned Advocate for the defendant-petitioner refers Annexure-D, the report of the expert and submits that the defendant did not put any thumb impression on the *kabinnama*. We have examined the report. It shows that the thumb impression alleged to have been put on the *kabinnama* was sent to the expert to compare with the admitted thumb impressions of the defendant but those were found dissimilar. We do not find any reason to put thumb impression by the defendant on the volume of the *kabinnama* because he is an educated man and doing his job in the BGB. We further do not find any reasoning of the expert to form the opinion. He simply passed opinion that the thumb impressions are dissimilar. Where there is no reasoning of forming opinion, the Court can reject the opinion passed by the expert. In addition to that, we find that the defendant himself as DW1 admitted the marriage in cross-examination by stating- “বাদীনির সাথে মোহরানা ১০ লক্ষ টাকা হওয়ায় আমার পরিবার উক্ত বিবাহ মেনে নিতে অস্বীকার করেছে সত্য”। The affidavit in support of the marriage exhibit-2 is also proved by the evidence of PWs 1, 2 and 4. The defendant-petitioner although tried to make out a case of preparing the *kabinnama* collusively by the plaintiff and her men but failed to establish it.

On perusal of the evidence of the defendant's witnesses, it appears that they instead of proving of their case tried to assassinate the character of the defendant of polygamy. The Family Court and the Court of appeal below entering into every four corners of the case decreed the suit for dower money and maintenance. It is well settled position of law that concurrent finding of facts arrived by the Courts below should not be interfered with by this Court unless there is gross misreading and non-consideration of the evidence on record for which the result of the case could have been otherwise. Here, we do not find any misreading and non consideration of evidence and therefore find no reason to interfere with the judgments passed by the Courts below.

In view of the discussion made hereinabove, we find no merit in this Rule. Accordingly, the Rule is discharged without any order as to costs.

The order of stay stands vacated.

However, in case of filing any execution case, Taka 2 lac paid by the petitioner in the meantime shall be deducted.

Communicate the judgment and send down the lower Court records.

Md. Akhtaruzzaman, J.

I agree.