

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

Present

Mr. Justice Md. Iqbal Kabir

And

Mr. Justice Md. Riaz Uddin Khan

Civil Revision No. 328 of 2020

IN THE MATTER OF:

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

-And-

IN THE MATTER OF:

Md. Kamrul Islam Bhuiyan

... Defendant-Appellant-Petitioner

Versus

Mst. Khaleda Akter Nasrin and another

... Plaintiff-Respondent-Opposite Parties

Mr. Md. Ashaque Momin, Advocate for

Mr. Md. Bodiuzzaman Tapadar, Advocate

... For the Defendant-Petitioner

Mr. Sarder Md. Abul Hossain, Advocate

... For the Plaintiff-Opposite Parties

Judgment on: 19.05.2025

Md. Riaz Uddin Khan, J:

Rule was issued calling upon the opposite parties to show cause as to why the judgment and decree dated 30.10.2019 passed by the Additional District Judge, 5th Court, Dhaka in Family Appeal No. 02 of 2018 dismissing the appeal and allowing the cross-appeal by enhancing the maintenance of the plaintiff-appellants and thereby modifying the judgment and decree dated 18.07.2017 passed by the 5th Additional Assistant Judge and Family Court, Dhaka in Family Suit No. 116 of 2013 arising out of Family Suit 59 of 2013 decreeing

the suit, should not be set aside and/or such other or further order or orders should not be passed as to this court may seem fit and proper.

At the time of issuance of the rule all further proceedings of Family Execution Case No. 94 of 2017 of the Court of 5th Additional Assistant Judge and Family Court, Dhaka was stayed for a period of 6(six) months subject to payment of Tk. 150,000/-(one lac and fifty thousand) to be paid to the opposite party within 60(sixty) days from date as well as Tk. 6000/- (six thousand) for maintenance of her daughter every month from March, 2020 without fail and the executing court was directed to handover the money to the opposite parties forthwith. The order of stay was extended till disposal of the Rule on 17.10.2023.

The facts of the case in brief are that the plaintiffs filed Family Suit No.116 of 2013 against the defendant alleging *inter alia* that plaintiff No.1 and the defendant got married on 24.12.2004 and her dower was settled at Tk-200,000/- out of which the defendant paid Tk-50,000/- only in cash; soon after the marriage the plaintiff no.1 was living at her father's house with the defendant; thereafter on 01.05.2007 she went to Ramgonj to live with the defendant but on 19.5.2007 she came back to her father's house as at that time she was pregnant and an examinee of BA Examination and till then

living there but the defendant did not pay her maintenance; however, on 09.01.2008 she gave birth a daughter, Nafisa Anjum in a hospital who is the plaintiff No.2; the defendant used to work in foreign shipping line from 2009 and on 05.04.2011 the defendant paid taka 40,000/- as hospital bill of birth of their daughter; thereafter the defendant came to Bangladesh and start living with her from 23.08.2012 at her father's house; she asked the defendant to take her into the house of the petitioner's family but he demanded Tk-10,00,000/- as dowry otherwise threaten to divorce her; however, on 30.08.2012 the defendant send divorce notice to the plaintiff No.1 which she received on 03.10.2012; in such circumstances the plaintiffs filed the suit claiming Tk-150,000/ as deferred dower and maintenance of 3 months 10 days during *iddat* period along with past maintenance from 19.05.2007 at the rate of Tk-15,000/ per month and also claimed maintenance of the daughter from her date of birth at the rate of Tk-15,000/ per month and thus prayed for a decree of total Tk-20,60,000/.

The defendant contested the suit by filing written statement denying the material allegation made in the plaint contending *inter alia* that the plaintiff No.1 was his wife and they got married on 24.12.2004 with settled dower at Tk-200,000/-; meanwhile he paid all the dower money; at the

time of marriage as his wife was a student he bore all her expenses of education; at that time she used to live a unruly life with so many young people for which he brought her with him at his place of job, Lashmipur but she started physical and mental torture upon him and at one stage she left his residence for her father's house with Tk-80,000/- without his permission; however, a daughter was born on 09.01.2008 in a hospital and the defendant paid all hospital bills; the defendant tried his best to continue their conjugal life but the plaintiff no.1 denied to live with him for which on 30.08.2012 the defendant divorced her and paid Tk-130,000/ to her as rest dower and maintenance which was settled by an amicable family settlement on 15.10.2012 and also paying Tk-3000/ per month as maintenance of his daughter and as such the plaintiffs are not entitled to get any relief in the suit which is liable to be dismissed with cost.

At the trial plaintiffs examined two witnesses including the plaintiff No. 1 and the defendant himself examined as D.W-1 and the witnesses were cross-examined by other side and both the parties exhibited some documents in support of their respective cases.

After trial, the Family Court passed the judgment and decree dated 18.7.2017 declaring that the plaintiff No.1 is entitle to get Tk-

5,000/- per month from 19.05.2007 to 30.11.2012 as past maintenance and unpaid dower of Tk-150,000/ amounting to total taka (3,31,833/+1,50,000/)= 4,81,333/- and plaintiff No.2 is entitle to get her maintenance from the date of her birth that is 09.01.2008 to till her marriage at the rate of Tk-4,000/ per month amounting to Tk-4,57,200/ till the date of judgment and thus passed a decree of Tk-9,39,033/-only.

Being dissatisfied with the judgment and decree passed by the Family Court, the defendant preferred Family Appeal No.02 of 2018 in the Court of District Judge, Dhaka and the plaintiffs also filed cross objection against the said judgment which was ultimately heard by the Additional District Judge, 5th Court, Dhaka who was pleased to dismiss the Appeal and allowed the cross-appeal enhancing the maintenance of the plaintiffs modifying the judgment and decree passed by the Family Court by his judgment and decree dated 30.10.2019.

Being aggrieved by and dissatisfied with the said judgment and decree passed by the Additional District Judge dated 30.10.2019 the defendant moved this Court and obtained the rule and interim order as stated at the very outset.

By filing affidavit-in-compliance on behalf of the defendant-petitioner it has been stated that pursuant to the order dated 02.02.2020

passed by this Court the defendant-petitioner deposited taka 1,56,000/ on 17.02.2020, taka 30,000/ on 05.8.2020, taka 6,000/ on 06.9.2020, taka 6,000/ on 07.10.2020, taka 6,000/ on 16.11.2020, taka 12,000/ on 07.01.2021, taka 6,000/ on 14.02.2021 and taka 6,000/ on 16.3.2021, taka 12,000/ on 13.10.2021, taka 12,000/ on 14.11.2021, taka 18,000/ on 16.01.2022, taka 12,000/ on 20.02.2022, taka 12,000/ on 22.03.2022, taka 6,000/ on 20.04.2022, taka 6,000/ on 03.07.2022, taka 6,000/ on 10.08.2022, taka 42,000/ on 16.10.2022, taka 36,000/ on 04.01.2023, taka 18,000/ on 11.07.2023, taka 18,000/ on 22.10.2023, taka 36,000/ on 10.01.2024, taka 36,000/ on 08.07.2024 and taka 36,000/ on 06.01.2025 in the Family Court, Dhaka and got money receipts which has been annexed.

Mr. Md. Ashaque Momin, the learned advocate for the defendant-petitioner submits that both the Courts below failed to consider the averment of the plaint wherein it is evident that defendant maintained his conjugal life with the plaintiff up to 23.8.2012 and by filing the suit plaintiff claims her past maintenance for the first time though the defendant paid their maintenance while the plaintiff stayed her father's house but without considering that the courts below decreed the suit awarding past maintenance and thereby committed an error of law

resulting in an error in the decision occasioning failure of justice.

He then submits that both the Court's below concurrently committed an error of law in decreeing the suit in favour of the plaintiffs for their past maintenance though the plaintiffs have failed to prove their case of past maintenance before filing the instant suit while they have matrimonial relationship up to 23.08.2012 with full satisfaction of the plaintiff no.1 resulting in an error in the decision occasioning failure of justice.

The learned advocate next submits that from the plaint as well as the deposition of the PW-1 it is evident that the defendant maintained their conjugal life with all responsibility till their divorce. He has been paying the maintenance of his daughter regularly and is ready to pay maintenance of his daughter every month according to his ability. The defendant being a Diploma Engineer used to serve in foreign ship and in every year pass months together without any job and salary while he has other liabilities to his parents but the Appellate Court non-considering that aspect arbitrarily enhanced the maintenance of the plaintiffs causing hardships of the defendant as such the impugned judgment and decree is liable to be set aside.

The learned advocate lastly submits that in any view the judgments and decrees passed by the

Courts below are illegal, improper and bad as a result there has been total failure of justice to the great prejudice of the defendant-petitioner.

Per contra, Mr. Sarder Md. Abul Hossain, learned advocate for the plaintiffs opposite party supports the impugned judgment and decree passed by the lower appellate court. He submits that courts below did not commit any illegality by granting past maintenance to the plaintiff no.1 as wife can claim her past maintenance up to 6(six) years as decided by our apex Court in the case of Jamila Khatun Vs. Rustom Ali reported in 43 DLR(AD) 110.

The learned advocate then submits that wife is entitled to get maintenance even if she resides separately on valid reason. He finally submits that by enhancing the amount of maintenance the appellate court rightly considered the socio-economic condition of both the parties along with the present day expenditures.

We have heard the learned advocates for the parties, perused the revisional application along with the annexures, supplementary-affidavit, affidavit-in-compliance, the Lower Court records including the plaint, written statements, depositions of witnesses and the exhibited documents.

It is admitted position that on 24.12.2004 marriage between the plaintiff no.1 and defendant

was registered as per Muslim law settling Tk-200,000/- as dower amongst it Tk-50,000/ was paid as prompt dower. Plaintiff no.1 claimed rest deferred dower i,e Tk-150,000/- as divorced took place on 30.08.2012 when defendant issued divorce notice. Defendant claimed he paid Tk-130,000/- as deferred dower and maintenance through family amicable settlement on 15.10.2012.

On perusal of evidence on record it is clear that defendant could not prove by oral or documentary evidence that he has ever paid the deferred dower of Tk-150,000/- or any amount on 15.10.2012 or in any date by amicable family settlement. So, both the courts below rightly found that the plaintiff no.1 is entitled to get Tk-150,000/- as deferred dower.

Now, let us consider the claim of past maintenance by the plaintiff no.1 from 19.05.2007. No doubt according to Muslim Law wife is entitled to maintenance from her husband and her priority is established before children. Provided always that she is obedient and allows husband free access at all lawful times. The highest obligations arise on marriage are the maintenance of wife and children. A Muslim wife may refuse to live her husband and can claim separate maintenance against him where she has a just ground.

In the present suit it has been claimed in the plaint that since marriage plaintiff no.1

used to live at her father's house and often used to live with her husband (defendant) at his place of job, Laksmipur and on 01.05.2007 the defendant took her to his house of place of job, Ramgonj. At that time she was pregnant and was an examinee of B.A final exam for which she requested him to take her to Dhaka and the defendant boarded her Dhaka bound bus on 19.05.2007. But in her deposition she claimed that the defendant expelled her from his house on 19.05.2007. In the plaint it is further stated that the defendant lived with her in 2009 at her father's house from where he went for his job in the foreign ship and came back in 2011 in her father's house and subsequently on 05.04.2011 paid Tk-40,000/- as hospital bill of their daughter. It is further stated that thereafter the defendant again went to foreign ship and came back in August, 2012 and stayed at night on 23.08.2012 at her father's house. All these statements prove that the defendant maintained conjugal life living together whenever the defendant was in the country. According to classical Muslim law a wife cannot claim maintenance for living separately from her husband without valid reason. Generally it is expected that husband and wife would live together unless there is any valid or just ground for living separately. Since the plaintiff claims maintenance from her husband long after more than 5 (five) years according to section 101 of the

Evidence Act the onus or burden of proof lies upon the plaintiff to prove that there was valid reason for living separately from her husband but the lower appellate court wrongly shifted the burden upon the defendant. The plaintiff could not prove any reasonable cause to live separately from her husband by adducing evidence for which she cannot claim maintenance. However, she is entitle to her maintenance for the period of her *iddat* i,e 3 months 10 days. In that view of the matter we are inclined to interfere with the impugned judgment and decree passed by the lower appellate court. Nevertheless, the findings and decision of enhancement of maintenance of the plaintiff no.2, the daughter, passed by the lower appellate appears to be eminently fair and just to us considering the socio-economic condition of both the parties along with the present day expenditures.

In the result therefore, the rule is made **absolute-in-part.**

The judgment and decree dated 30.10.2019 passed by the Additional District Judge, 5th Court, Dhaka in Family Appeal No. 02 of 2018 dismissing the appeal and allowing the cross-appeal by enhancing the maintenance of the plaintiffs and thereby modified the judgment and decree dated 18.07.2017 passed by the 5th Additional Assistant Judge and Family Court, Dhaka in Family Suit No. 116 of 2013 arising out

of Family Suit 59 of 2013 is hereby set aside so far it relates to granting maintenance to plaintiff no.1 except during *iddat* period. Other part of the impugned judgment and decree passed by the appellate court will remain as it is.

The order of stay passed earlier by this Court stands vacated and the executing Court is at liberty to proceed with the execution in the light of this judgment.

Send down the Lower Court Records at once along with a copy of this judgment.

Md. Iqbal Kabir, J:

I agree.