

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Civil Revisional Jurisdiction)

Present

Madam Justice Kashefa Hussain

Civil Revision No. 2422 of 2020

Monir Rari

.....petitioner

-Versus-

Lucky Aktar alias Shomaia Sandid

----- Opposite party

Mr. Sharif Arif Newaj, Advocate

----- For the petitioner

Mr. Humayun Kabir Sikder, Advocate

----- For the Opposite Party

Heard on: 30.07.2023, 13.08.2023 and
Judgment on 22.08.2023

Rule was issued calling upon the opposite party to show cause as to why the impugned Judgment and order dated 23.09.2020 passed by the learned Senior District Judge, Barishal in Family Appeal No. 06 of 2020 affirming the order dated 03.02.2020 passed by the learned Senior Assistant Judge and Family Court, Barishal in Family Suit No. 26 of 2019 should not be set aside and or pass such other or further order or orders as to this court may seem fit and proper.

The matter arises out of a Family Suit being Family Suit No. 26 of 2019 in the court of Senior Assistant Judge and Family Court, Barishal filed by the instant opposite party as plaintiff wife impleading the instant petitioner husband as defendant in the suit. However subsequently an exparte decree was passed by the trial court dated 12.11.2017. Thereafter the defendant

husband filed a miscellaneous case before the concerned court under Order 9 Rule 6 of the Family Courts Ordinance, 1985 with Section 151 of the Code of Civil Procedure against the ex parte decree. However the trial court dismissed the case by its judgment and order dated 03.02.2020. Being aggrieved by the judgment and order of the trial court dismissing the miscellaneous case the husband (defendant in the original suit) as appellant filed Family Appeal No. 06 of 2020 which was heard by the Senior District Judge, Barishal. The appellate court however after hearing the family appeal dismissed the appeal by its judgment and order dated 23.09.2022. Being aggrieved by the judgment and order of the courts below the defendant husband petitioner filed a civil revisional application which is instantly before this bench for disposal.

Learned Advocate Mr. Sharif Arif Newaj appeared for the defendant petitioner husband while learned Advocate Mr. Humayun Kabir Sikder represented the plaintiff opposite party wife.

Learned advocate for the petitioner submits that both courts below unjustly rejected the Miscellaneous Case and the family appeal respectively causing great injustice to the petitioner. He submits that the absence of the petitioner in the original trial is not due to any deliberate latches but due to the facts that he was residing abroad due to employment purpose. He submits that he came from abroad only subsequently after the

exparte decree was passed. He draws upon the trial court judgment and submits that the trial court unjustly came upon its decision. He submits that the absence on that particular date is not due to any deliberate latches but due to unavoidable circumstances. He submits that the courts whatsoever overlooked and ignored the overall circumstances of the petitioner since he was abroad previously and unfairly and unjudiciously came upon their finding. He submits that ends of justice and equity demand that the case be heard on the merits since the petitioner could not avail the chance to prove his case on the merits. He concludes his submissions upon assertion that the Rule bears merit and ought to be made absolute for ends of justice.

On the other hand learned advocate Mr. Humayun Kabir Sikder opposes the Rule. He submits that it is clear that the appellant deliberately did not appear in the miscellaneous case. He contends that since he himself filed the miscellaneous case after coming from abroad where he was working, therefore he was fully conversant of the miscellaneous case and the date of judgment. He submits that there is no scope to give any order in favour of the petitioner since the petitioner himself evaded appearance on the date of judgment. He concludes his submissions upon assertion that therefore both courts below correctly gave their judgment and the Rule bears no merit and ought to be discharged for ends of justice.

I have heard the learned Advocates from both sides and perused the application and materials. It appears that an ex parte judgment and decree was passed in the original family suit. Admittedly the petitioner husband was residing abroad where he was working. It is also clear that after coming back to the country at one stage he filed the miscellaneous case under Order 9 Rule 6 of the Family Courts Ordinance, 1985. The trial court dismissed the case on the ground that he could not be found on the particular date. The appellate court also affirmed the finding of the trial court. It appears that the trial court made an observation that since he obtained bail from the court therefore he is completely conversant with the circumstances and concluded that there is no reason to allow the case since he was absent.

I am of the considered view that it is also true that an ex parte decree was passed when the husband was residing abroad due to employment purpose. Truly enough after coming back to the Bangladesh he filed the Miscellaneous Case under Order 9 Rule 6 of the Family Courts Ordinance, 1985 and subsequently duly obtained bail from court. However he was not present on the day of judgment. I am inclined to opine that only because he was not present on the day of judgment ought not to deprive the petitioner from having the case heard on its merits.

I am also of the considered view that ends of justice and equity would be best served if the case is heard on merit.

Therefore under the facts and circumstances of the case, I am inclined to dispose of the Rule with directions of remand to trial court and observations.

In the result, the Rule is disposed of with directions and observations made above. The impugned Judgment and order dated 23.09.2020 passed by the learned Senior District Judge, Barishal in Family Appeal No. 06 of 2020 affirming the order dated 03.02.2020 passed by the learned Senior Assistant Judge and Family Court, Barishal in Family Suit No. 26 of 2019 both are hereby set aside. The exparte decree dated 12.11.2017 passed by the Senior Assistant Judge, Family Court, Barishal is also hereby set aside. The case is sent back on remand to the trial court for fresh hearing. The trial court is directed to hear the case afresh upon hearing the parties in accordance with law and the trial court is also directed to dispose of the suit as expeditiously as possible preferably within 6 (six) months of receiving the copy of the judgment and order.

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

Send down the Lower Court Record at once.

Communicate the order at once.

Shokat (B.O)