

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

Present

Madam Justice Kashefa Hussain

Civil Revision No. 1923 of 2020

Md. Aslam Miah

.....petitioner

-Versus-

Mrs. Morzina Begum and another

----- Opposite parties.

Mr. Ashoke Kumar Ghosh, Advocate

----- For the petitioner

Mr. Mr. M.A. Kader, Advocate

----- For the Opposite Parties.

Heard on: 26.01.2022, 27.01.2022

and Judgment on 23.02.2022.

Supplementary affidavits do form part of the main petition.

Rule was issued in the instant Civil Revisional application calling upon opposite parties to show cause as to why the judgment and decree dated 15.10.2017 passed by the learned Joint District Judge, 1st Court, Manikgonj in Family Appeal No. 22 of 2015 dismissing the appeal and affirming thereby the judgment and decree dated 08.06.2015 (decree signed on 08.06.2015) passed by the learned Assistant Judge, Daulatpur, Manikgonj in Family Suit No. 30 of 2013 decreeing the suit

should not be set aside and or pass such other order or further order or orders as to this court may seem fit and proper.

The instant opposite party No. 1 as plaintiff instituted Family Suit No. 30 of 2013 in the court of learned Assistant Judge, Daulatpur, Manikgonj praying for dower and maintenance for herself that is plaintiff No. 1 and plaintiff No. 2 impleading the instant petitioner husband as defendants in the suit. The trial court upon hearing the parties adducing evidences, framing issues etc. allowed the suit by its judgment and decree dated 8.6.2015. Being aggrieved by the judgment and decree of the trial court the defendant husband in the suit as appellant filed Family Appeal No. 22 of 2015 which was heard by the learned Joint District Judge, 1st Court, Manikgonj. The appellate court upon hearing the suit however dismissed the suit for default by its judgment and decree dated 15.10.2017.

Being aggrieved by the judgment and decree of the courts below the defendants in the suit as appellant filed the instant civil revision which is instantly before this court for disposal.

Plaint's case inter alia is that the plaintiff No. 1 got married with the defendant on 04.06.2012 in accordance with the Muslim Law fixing a dower money of Tk. 11,50,000/- (eleven Lacs and fifty thousand) only. They passed conjugal life together. At that time plaintiff No. 2 was born in their conjugal life. The father of the plaintiff No. 1 gave Tk. 6,00,000/- (six

Lacs) only and 5 vori gold ornaments along with many precious gifts to the defendant at the time of their marriage. The defendant tortured the plaintiff various times demanding Tk. 5,00,000/- (five lacs) only as dowry. The defendant and his family members created pressure on the plaintiff and tortured her to bring more money from her father. The defendant demanded dowry amount Tk. 5,00,000/- (five lacs). Lastly on 04.06.2013 the defendant forcibly sent the plaintiff No. 1 to her father's house by signing stamp and she was compelled to stay there until she gave dowry money. On 01.07.2013 the defendant again demanded dowry from the brother of the plaintiff No. 1. The plaintiff then claimed maintenance and dower money. Hence the suit.

The defendants contested the suit by filing written statements contending inter alia that the suit is not maintainable in its present form and manner, suit is barred by limitation and barred by principle of estoppel, waiver and acquiescence. The specific case of the defendant is that the defendant got married to the plaintiff No. 1 in accordance with Muslim Law fixing a dower money of Tk. 1,50,000/- (one lac and fifty thousand) only. The plaintiff No. 2 was born in their conjugal life, plaintiff No. 1 did not obey her husband. The plaintiff quarreled with her mother in law and father in law. The plaintiff always wanted to live separately for which she went to her mother's residence at her own will. The defendant divorced the plaintiff on 04.06.2013

through negotiation by local people. However, plaintiff was pregnant on 04.06.2013. The defendant settled the dispute through mediation of local people. For settling dispute defendant paid total Tk. 3,00,000/- (three lacs) only to the plaintiff got Tk. 1,50,000/-* (one lac fifty thousand) only as dower money and Tk. 1,50,000/- (one lac fifty thousand) only as maintenance for their child up to aged 8 (eight) years and at the same time the defendant prepared a compromise deed and plaintiff signed on this deed on 04.06.2013. There was no cause of action to file the suit. Thus, the suit of plaintiffs is liable to be dismissed.

Learned Advocate Mr. Ashoke Kumar Ghosh appeared for the petitioner while Mr. M.A. Kader, learned Advocate represented the opposite parties.

Learned Advocate for the petitioner submits that both courts below upon misappraisal of facts and non consideration of the evidences came upon erroneous finding and those judgments are not sustainable and ought to be set aside for ends of justice. He submits that the trial court upon misappraisal of facts and evidences on records came upon a wrong finding particularly on the compromise agreement which was signed upon consent of the plaintiff and upon not relying upon the compromise agreement the Trial Court committed grave injustice. He submits that although the defendant husband paid the dower money to the plaintiff but however the trial court upon total misleading of facts

gave a wrong finding and caused grave injustice upon committing error in law. He next contends that the appellate court most unjustly discharged the Appeal for default given that it is apparent from the records that the defendant husband was not a habitual defaulter. He draws attention to the records and submits that it is palpable from the records that the appellant husband could not appear in court on the day the default order was passed. He shows from the previous records that the appellant husband regularly appeared in court. He submits that the appellate court unjustly without hearing the case discharged the case for default due to incidental absence of one day only. He concludes his submission upon assertion that both courts below committed a serious error of law and both the judgments of the courts below ought to be set aside and the Rule bears merit ought to be made absolute for ends of justice.

On the other hand learned Advocate for the opposite parties submits that both courts below upon proper appreciation of the facts and circumstances came upon their respective findings. He submits that the appellate court also correctly dismissed the appeal on the ground of default. He submits that the appellate court in its order dated 15.10.2017 categorically stated that the appellant husband could not be found in court when the matter was taken upon for hearing. He concludes his submission upon assertion that both the courts below that is the

trial court allowed the suit correctly upon correct appraisal of the evidences on record on the merits of the case, while the appellate court also correctly discharged the Appeal for default due to non appearance of the defendant-appellant husband. He concludes his submission upon assertion that both courts below came upon their finding correctly and there are no errors in the judgment and therefore the Rule bears no merit ought to be discharged for ends of justice.

Heard the learned Advocates for both sides, perused the application and materials on record and the judgments of the courts below. It appears from the record that the trial court heard the suit pursuant to a proper trial and disposed of the suit on the merits of the case by allowing the suit whatsoever. However it is clear that the appellate court discharged the case for default by its judgment and decree dated 15.10.2017.

In my considered opinion for proper adjudication of the matter at this stage it is not necessary to enter into the factual merits of the case of the original suit. Rather, I am inclined to examine as to whether the order of the appellate court was appropriate in discharging the Appeal for default without hearing the matter on its factual merits. I have examined the judgment and order of the appellate court dated 15.10.2017 whereby the appellate court dismissed the Appeal for default due to non appearance of the appellant husband. I am also of the considered

opinion that to determine as to whether the order the appellate court is appropriate otherwise it is necessary to examine as to whether the defendant appellant is a habitual defaulter or not. For the purpose I have examined some previous orders of the appellate court. I have particularly examined the orders dated 23.07.2015, 24.08.2015, 12.10.2015, 17.01.2016 including some other orders. The learned Advocate for the opposite parties attempted to produce some previous orders whereby he shows that the petitioner sought time and has not been present. However those orders were not in the L.C.R at the time of hearing.

Be that as it may I am of the considered opinion is that the petitioner originally appeared in court on some days and even on subsequently dates he prayed for time. Even if he was not present on some dates, nevertheless non appearance only on some days does not establish the fact that he was a habitual defaulter in the absence of adequate evidence. It is apparent from the order that is 24.05.2015 with other orders which the learned Advocate for the opposite parties attempted to place but however it was not in the L.C.R at the time of hearing.

For ends of Justice, I am of the considered opinion that the appellate court ought to afford another chance to the appellant to have the Appeal heard on the merits of the case. I am inclined to observe that upon sending the case back on remand to the

appellate court if the petitioner again makes non appearance as a defaulter the appeal will be dismissed.

Relying on the foregoing discussion made above and upon hearing the learned Advocates for both sides, I am inclined to set aside the judgment dated 15.10.2017 of the appellate court and the appellate court is hereby directed to hear the case on the merits.

In the result, the Rule is disposed of with directions. The case is sent back on remand to the appellate court and the appellate court is hereby directed to hear the case on the merits and observations made above.

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

Send down the L.C.R at once.

Communicate the judgment at once.

Arif(B.O)