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

Present:
Mr. Justice S M Kuddus Zaman
And
Mr. Justice Tamanna Rahman Khalidi

CIVIL REVISION NO.1760 OF 2020
In the matter of:
An application under Section 115(1) of the Code of Civil Procedure.
And
Md. Jashim Uddin
... Petitioner
-Versus-
Jesmin Akter
... Opposite party
Mr. Mohammad Eunus, with
Mr. Mohiuddin Ahmed,
Mr. Mohammad Soyeb Muhit Advocates
... For the petitioner.
Mr. Md. Ahsan Habib, with
Mr. Rakibul Hasan,
Mr. Mohammad Sattar Mollah, Advocates
… For the opposite party.
Heard on 10.05.2026 and Judgment on 09.06.2026.

S M Kuddus Zaman, J:

On an application under Section 115(1) of the Code of Civil Procedure, 1908 this Rule was issued calling upon the opposite party to show cause as to why the judgment and decree dated 01.10.2020 passed by the learned Additional District Judge, 4th Court, Chattogram in Family Appeal No.29 of 2019 dismissing the appeal and thereby affirming the judgment and decree dated 31.01.2019 passed by the learned 1st Additional Senior Assistant Judge and Family Court, Sadar, Chattogram in Family Suit No.505 of 2016 (dated 16.11.2016)

corresponding to Family Suit No.314 of 2016 (dated 02.10.2016) decreeing the same on contest should not be set aside and or such other or further or orders as to this Court may seem fit and proper.

Facts in short are that the opposite party as plaintiff instituted above suit for recovery of maintenance and dower amounting to Taka 25,30,000/- alleging that the defendant married her by registered kabinnama on 15.02.2006 for dowry of Taka 3,00,000/- and out of above wedlock one son Fahad and one daughter Jannanatul Mawa were born. On demand of dowry the defendant subjected the plaintiff to physical and mental torture and drove her away from his home on 24.10.2010. The plaintiff took refuge in the house of her father alongwith above children. The plaintiff as complainant filed Nari-O-Shishu Nirjatan Daman Tribunal Case No.762 of 2010 against the defendant and the defendant did not pay any maintenance or dower to the plaintiff.

The defendant contested above suit by filing a written statement alleging that the defendant married the plaintiff on 15.02.2006 by registered kabinnama and out of above wedlock two children Fahad and Jannanul Mawa were born. The plaintiff refused to live with the mother of the defendant and demanded separate accommodation in Chattogram town. The plaintiff willingly and voluntarily left the house of the defendant on 24.10.2010 and staying the house of her father and filedfalse Criminal Case No.762 of 2010 against the defendant in Nari-O-Shishu Nirjatan Daman Tribunal No.2 on 04.011.2010. A

reconciliation meeting was held in the presence of the guardians of the plaintiff and the defendant which was failed. The defendant gave talak to the plaintiff on 19.10.2011 and on 23.07.2011 the brother of the plaintiff Abdul Mannan received Taka 3,00,000/- for dower and maintenance of the plaintiff and the defendant is paying maintenance for above children.

At trial plaintiff and defendant examined one witness each. Documents produced and proved by the plaintiff were marked as Exhibit No.1 and 2 series and those of the defendant were marked as Exhibit No."Ka" series.

On consideration of facts and circumstances of the case and evidence on record the learned Judge of the Family Court decreed above suit for Taka 10,89,000/-. The Plaintiff was given maintenance at the rate of Taka 5,000/- per month from 24.10.2010 and full dower and each child was granted maintenance at the rate of Taka 4,000/- per month from 24.10.2010 which shall increase at the rate of 30% per year.

Being aggrieved by above judgment and decree of the Family Court above defendant as appellant preferred Family Appeal No.29 of 2019 to the District Judge, Chattogram which was heard by the learned Additional District Judge, 4th Court, Chattogram who dismissed above appeal and affirmed the judgment and decree of the trial Court.

Being aggrieved by and dissatisfied with the judgment and decree of the Court of Appeal below above appellant as petitioner moved to

this Court with this Civil Revisional application under Section 115(1) of the Code of Civil Procedure, 1908 and obtained this Rule.

Mr. Mohammad Eunus, learned Advocate for the petitioner submits that the plaintiff alone filed above suit for her maintenance and dower and she did not seek maintenance for her children since the defendant regularly paid maintenance for above children from abroad. The plaintiff could not prove by legal evidence that the defendant forcibly drove her away from his house on 24.10.2010. While giving evidence as PW1 the plaintiff has admitted that on above date plaintiff was in his work place in Qatar. The plaintiff did not seek past maintenance nor any evidence was adduced in support of the same. The learned Judges of both the Courts below on consideration of evidence on record concurrently held that the marriage of the defendant and the plaintiff came to an end by talak and the plaintiff did not challenge above judgment and decree of the Courts below. As such it may be accepted that the marriage of the plaintiff has been dissolved by talak. The defendant is a laborer who works in Qatar and the rate of maintenance awarded by the Courts below at the rate of Taka 5,000/- and 4,000/- per month are excessive and unreasonable. The learned Judge of the Court of Appeal below totally failed to appreciate above facts and circumstances of the case and evidence on record and most illegally dismissed above appeal and affirmed the erroneous judgment and decree of the trial Court which is not tenable in law.

Mr. Mohammad Sattar Mollah, learned Advocate for the opposite party submits that plaintiff alone has filed the suit for recovery dower and maintenance both for herself and her children Fahad and Jannatul Mawa which is proved from the schedule of the plaint. It is true that in above suit their children were not made co-plaintiffs nor specific mention was made as to their maintenance but in the schedule to the plaint specific claim was made for maintenance of above children at the rate of Taka 10,000/- per month. It is admitted that the defendant married the plaintiff and out of above wedlock above two children were born and from 24.10.2010 plaintiff took refuge in the house of her father alongwith above children. The defendant has claimed to have paid maintenance of above children from abroad but he could not prove the same by legal evidence. The learned Advocate lastly submits that the plaintiff did not give divorce to the defendant but the defendant falsely claimed in his written statement that the plaintiff has divorced him. The defendant amended his written statement subsequently and raised a false that the defendant has divorced the plaintiff. The defendant could not prove by legal evidence that above talak was lawfully effective. The notice of talak produced by the defendant is not supported by any postal receipt with acknowledgement due. There is no evidence on record that above notice was received by the concerned Chairman of the Union Parishad. The defendant has produced an order of the local Chairman dated

04.03.2018 (Exhibit No.“Ka3” which shows that the alleged divorce of the plaintiff dated 19.10.2011 was not lawful and effective. The learned Advocate lastly submits that since minor Fahad and Jannatul Mawa are staying with their mother since 24.10.2010 they are entitled to get past maintenance from above date.

We have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record.

It is admitted that the defendant married the plaintiff by a registered kabinnama on 15.02.2006 for dower of Taka 3,00,000/- and out of above wedlock Fahad (10) and Jannatul Mawa (6) were born.

Pleadings is the foundation and boundary of any Civil Suit or case. The plaintiff is required to make specific mention of each and every claim against the defendant and the relief sought from the Court so that the defendant may encounter above claims and relief by submitting written statement. A plaint is not an evidence against the defendant but the same can be used as admission against the plaintiff. The opposite party as sole plaintiff filed above Family Suit for recovery of dower and maintenance. Above children were not co-plaintiffs nor specific mention was made in the plaint that the plaintiff also seeks maintenance for above children. It is only in the schedule to the plaint where the plaintiff has mentioned maintenance of above children at the rate of Taka 10,000/- per month for each and calculated past maintenance at above rate. Every judgment and decree as to

maintenance or otherwise becomes effective from the date of passing of the judgment. If the plaintiff seeks past maintenance she will have to make out a specific claim in the plaint stating from which date the defendant did not pay the maintenance and she seeks past maintenance. In the whole body of the plaint no mention has been made as to claim of past maintenance for the plaintiff or above two children. While giving evidence as DW1 the defendant has admitted in cross examination that the plaintiff left his house on 24.10.2010. Above Fahad and Jannatul Mawa were minors and the defendant did not claim that the plaintiff abandoned above minors in the house of the defendant. As such it can be presumed that the plaintiff left the house of the defendant on 24.10.2010 alongwith above two minors.

In the plaint it has been alleged that defendant subjected the plaintiff to physical assaults on demand dowry and forcibly drove her away from home on 24.10.2010. But in her cross examination PW1 admitted that on 24.10.2010 defendant was in Qatar. As such above claim of forcible expulsion of the plaintiff from the house of the defendant stands not prove. The defendant has claimed that he sent maintenance for plaintiff and two children from abroad through his maternal uncle Nazim Uddin. But in cross examination DW1 admitted that he did not have any prove of payment of above maintenance. But as mentioned above that in her evidence as PW1 the plaintiff did not make out any case for past maintenance nor sought any amount of

money as past maintenance for herself or for above children. In the absence of any such evidence or claim from PW1 Jesmin Akter the learned Judge of the Court of Appeal below committed an illegality in granting past maintenance for the plaintiff and above children which is not tenable in law.

While giving evidence as PW1 the plaintiff stated that she did not receive any notice of talak and her marriage with the defendant did not come to an end by talak. The learned Advocate for the opposite party rightly pointed out that in his written statement submitted on 05.03.2018 the defendant claimed that the plaintiff has divorced the defendant but on 09.09.2018 defendant amended above written statement and made a new claim that defendant has given talak to the plaintiff on 19.10.2011.

A Muslim husband has right to give talak to his wife at any point of time and without any cause but above talak shall not be effective if the wife is under pregnancy until the pregnancy ends or under Section 7(4) of the Muslim Family Laws Ordinance, 1961 before expiry of 90 days the receipt of notice of talak by the concerned Chairman of the Union Parishad. Section 7 of Muslim Family Laws Ordinance, 1961 is reproduced below:

> "7. Talak- (1) Any man who wishes to divorce his wife shall, as soon as may be after the pronouncement of talaq in any form

whatsoever, give the Chairman notice in writing of his having done so, and shall supply a copy thereof to the wife.

(2) Whoever contravenes the provisions of sub-section (1) shall be punishable with simple imprisonment for term which may extend to one year or with fine which may extend to [1][ten thousand taka] or with both.

(3) Save as provided in sub-section (5), a talaq unless revoked earlier, expressly or otherwise, shall not be effective until the expiration of ninety days from the day on which notice under sub-section (1) is delivered to the Chairman.

(4) Within thirty days of the receipt of notice under sub-section (1), the Chairman shall constitute an Arbitration Council for the purpose of bringing about a reconciliation between the parties, and the Arbitration Council shall take all steps necessary to bring about such reconciliation.

(5) If the wife be pregnant at the time talaq is pronounced, talaq shall not be effective until the

> period mentioned in sub-section (3) or the pregnancy, whichever be later, ends.
>
> (6) Nothing shall debar a wife whose marriage has been terminated by talaq effective under this section from re-marrying the same husband, without an intervening marriage with a third-person, unless such termination is for the third time so effective."

Section 7(4) clearly provides that within 30 days from the date of receipt of the notice of talak the concerned Chairman of the Union Parishad shall constitute an arbitration council and make endeavor for making a reconciliation and if above endeavor fails above talak shall be effective after expiry of 90 days from the date of receipt notice by the Chairman.

In support of above talak the defendant has produced a notice of talak addressed to the Chairman of the local Union Parishad and copy to the plaintiff. But above notice is not accompanied by a registered acknowledgement due which could prove the proper service of above notice. The second document produced by the plaintiff is Exhibit No."Ka3 " which is an order passed by the concerned Union Parishad Chairman on 04.03.2018 stating that the plaintiff did not appear in the reconciliation meeting but the defendant appeared and the talak given by the defendant on 19.10.2011 has become effective. Section 7(4)

provides for issuance of notice of talak to the concerned Chairman of the Union Parishad without delay and the defendant claims that notice of talak was sent immediately after pronouncement of talak. But Exhibit No."Ka3" shows that the Chairman recorded the presence of defendant and absence of the plaintiff in the reconciliation meeting after expiry of more than six years of pronouncement of talak which is not tenable in law.

In above view of the materials on record we hold that the marriage of the plaintiff with the defendant did not come to an end by talak as has been alleged by the defendant.

As mentioned above the learned Judges of the Courts below concurrently fixed maintenance for Fahad and Jannatul Mawa at the rate of Taka 4,000/- per month and Taka 5,000/- per month for the plaintiff which appears to be reasonable but the rate of annual enhancement of above maintenance at the rate of 30% per year appears to be excessive, which may be reduced to 10% per anam.

As far as payment of dower is concerned Section 10 of the Muslim Family laws Ordinance, 1961 provides as follows :

> "10. Dower- Where no details about the mode of payment of dower are specified in the nikah nama or the marriage contract, the entire amount of the dower shall be prescribed to be payable on demand."

PW1 produced and proved the nikahnama which was marked as Exhibit No.1 which shows that the dower was fixed at Taka 3,00,000/- out of which Taka 70,000/- was paid and remaining Taka 1,20,000/- was prompt dower and Taka 1,10,000/- was deferred dower. A Muslim woman is entitled to get prompt dower on demand at any time but she is entitled to get deferred dower only after dissolution of the marriage by talak or death of the husband. Since the marriage of the plaintiff with the defendant still exists the plaintiff is entitled to get prompt dower of Taka 1,20,000/-.

On consideration of above facts and circumstances of the case and evidence on record we find substance in this Civil Revisional application and the Rule issued in this connection deserves to be made absolute.

In the result, the Rule is made absolute.

The impugned judgment and decree dated 01.10.2020 passed by the learned Additional District Judge, 4th Court, Chattogram in Family Appeal No.29 of 2019 affirming the judgment and decree dated 31.01.2019 passed by the learned 1st Additional Senior Assistant Judge and Family Court, Sadar, Chattogram in Family Suit No.505 of 2016 is set aside and above Family Suit is decreed on contest against the defendant without cost.

The plaintiff and her two minor child Fahad and Jannatul Mawa shall get maintenance at the rate of Taka 5,000/- and 4,000/-

respectively per month which shall increase at the rate of 10% per year from 31.01.2019 and the plaintiff shall get prompt dower of Taka 1,20,000/-. The defendant is directed to pay above maintenance and dower of the plaintiff and minor children within 60 days from the date of receipt of this order in default the plaintiff shall get the same through Court.

However, there will be no order as to cost.

Send down the lower Court's records immediately.

Tamanna Rahman Khalidi, J:

I agree.

MD. MASUDUR RAHMAN
BENCH OFFICER