

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

Present:

**Mr. Justice Md. Mozibur Rahman Miah
and
Mr. Justice Mohi Uddin Shamim**

Civil Revision No. 3548 of 2019

In the matter of:

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

AND

In the matter of:

Prodip Roy alias Sumon

.... Defendant-appellant-petitioner

-Versus-

Tumpa Kar and others

.... Plaintiffs-respondents-opposite-parties

Mr. S. M. Moniruzzaman, Advocate with
Mr. Md. Asad Miah, Advocate with
Mr. Debashish Deb, Advocate

..... For the defendant-appellant-petitioner

Mr. Muhammad Mijanur Rahman (Masum), Advocate
with

Ms. Jobaida Gulshan Ara, Advocate

... For the plaintiff-respondent-opposite-party No.1

Heard on: 10.01.2024 and

Judgment on: 15.01.2024

Mohi Uddin Shamim, J.

At the instance of the defendant-appellant-petitioner, this Rule
was issued calling upon the opposite parties to show cause as to why the

impugned judgment and decree dated 25.04.2019 passed by the learned Additional District Judge, 5th Court, Chattogram in Family Appeal No.80 of 2018 dismissing the said appeal on contest by affirming the judgment and decree dated 31.05.2018 passed by the 2nd Additional Senior Assistant Judge and Family Court, Chattogram in Family Suit No.86 of 2016 decreeing the suit in part on contest without any order as to cost should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

At the time of issuance of the Rule, this Court stayed operation of the impugned judgment and decree dated 25.04.2019 passed by the learned Additional District Judge, 5th Court, Chattogram in Family Appeal No. 80 of 2018 dismissing the appeal on condition that the petitioner shall continue the payment of Tk. 6,000/- (Taka Six Thousand) only as directed by the Trial Court below with effect from December, 2019.

Facts necessary for disposal of the Rule, in short, are that the present opposite parties as plaintiff No.1-3 filed a family suit being Family Suit No. 86 of 2016 against the present petitioner impleading him as sole defendant praying for maintenance, contending, inter-alia, that

the marriage between the plaintiff No.1 and the defendant was solemnized on 02.12.2010 on accomplishing all Hindu rituals. During their wed-lock, two daughters namely Poushaly Roy, the plaintiff No.2 and Joyita Roy, the plaintiff No.3 were born. The defendant was unhappy and dissatisfied upon the plaintiff No.1 for giving birth of two female children. Thereafter, he started to torture the plaintiff No. 1 on different issues, specifically on dowry.

Thereafter, on 20.07.2014 the defendant tortured the plaintiff No.1 physically on demanding dowry and drove out her from his house along with the minor daughters at about 8.00 AM on the day. Having no other alternative, the plaintiff No. 1 took shelter at her father's house with her minor daughters. Since then, the defendant did not communicate with them and did not provide any maintenance for them. On 26.08.2015, the plaintiff No.1 dissolved the marital bond with the defendant by swearing an affidavit and since then i.e. 20.07.2014, the defendant is not providing maintenance to his wife as well as his 2 (two) minor daughters. Lastly on 23.01.2016, the plaintiff No.1 demanded maintenance for herself along with their minor daughters from the

defendant but he denied paying any. Thus the plaintiff No.1 was compelled to file the instant Family Suit.

On the other hand, the defendant contested the suit by filing written statement denying all the material averments made in the plaint, contending inter alia that, the marriage of the plaintiff No.1 and the defendant was solemnized on 02.12.2010 accomplishing all Hindu rituals. After a few days of marriage, the true face of the plaintiff No.1 started to reveal itself, that the plaintiff No.1 was disobedient, desperate, undisciplined and stubborn in nature. She used to misbehave with the family members of the defendant. Moreover, the defendant also came to know that she was engaged in an extra-marital relationship with one of her teachers. Even after learning about the improbity of the plaintiff no.1, the defendant kept patience for the sake of future peace. In the meantime, two daughters, the plaintiffs No.2 and 3, were born in their wedlock. Even after the birth of the children, the plaintiff No.1 did not rectify herself. On 10.07.2015, she along with the 2 (two) minor daughters willingly left his house taking gold ornaments, valuable things and tk. 60,000/- (Taka Sixty Thousand) only in cash with her. On the very next day, Hasni vai, the Commissioner of no. 20 Dewan Bazar

Ward, in a 'shalish boithak', after mediating between the parties, gave a decision in the presence of both the parties- that the plaintiff no. 1 had to go back to the house of the defendant but the plaintiff no.1 cleverly took additional time for returning and went to her father's house instead. Since then, she did not communicate with the defendant. The defendant tried to get her back several times but instead of coming back she sent a copy of affidavits to the defendant for dissolution of their marriage. Moreover, she falsely filed a complaint in the office of Bangladesh Legal Aid and Services Trust (BLAST) dated 26.10.2015 against the defendant. The defendant has no financial ability to carry out the order of the BLAST. Still he tried his best to get her back to his house and lastly he tried to get her back on 11.09.2017 but she denied coming back. The plaintiff No.1, being an unwilling wife is not entitled to get any maintenance from the defendant. Plaintiff No. 2 and 3 are the daughters of the defendant and he is always ready to take them in his custody and suit instituted against him falsely by the plaintiffs is liable to be dismissed with cost.

After careful segmentations of the pleadings, the learned Judge of the Trial Court framed the following issues for proper adjudication of the disputes in the suit as under:

1. Whether the suit is maintainable in its present form and manner.
2. Whether the suit is barred by limitation.
3. Whether the plaintiffs are entitled to get relief as prayed for.

During trial, the plaintiff no.1, namely Tumpa Kor, adduced both oral and documentary evidences and deposed 02 witnesses including herself as P.W. 1 & 2. She also exhibited some documents bearing exhibits no.1-3. On the other hand, the defendant examined himself as D.W. 1 and also adduced both oral and documentary evidences in order to substantiate his case but exhibited no document at all. After conclusion of trial, the learned judge of the Trial Court vide its judgment and decree dated 31.05.2018 decreed the suit in part.

Challenging the said judgment and decree dated 31.05.2018, the defendant as appellant, filed Family Appeal No. 80 of 2018 before the learned Additional District Judge, 5th Court, Chattogram and after hearing the appeal and perusing the materials on record the appellate

Court dismissed the appeal and thereby affirming the judgment and decree dated 31.05.2018 on 25.04.2019.

Being aggrieved by and dissatisfied with the aforesaid judgment and decree dated 25.04.2019 passed by the learned appellate Court in Family Appeal No.80 of 2018, the defendant as petitioner filed the instant Civil Revision being No.3548 of 2019 before this Court and obtained Rule and conditional order of stay.

Mr. S. M. Moniruzzaman, the learned Advocate appearing with Mr. Md. Asad Miah along with Mr. Debashish Deb, learned Advocates on behalf of the petitioner to press the Rule, takes us through the impugned judgment and decree, the judgment and decree of the trial Court, the revision application filed by the petitioner and all other connected materials available on record and submits that, admittedly the defendant petitioner is a clock mechanic. Plaintiff No.1 being the P.W. 1 admitted in her cross-examination that the defendant is a man of small earner but the learned Judge of the trial Court without considering the same most illegally decreed the suit in part and thereby passed a decree for Tk. 2,18,200/- (Taka Two Lac Eighteen Thousand Two Hundred) only as past maintenance and directed the defendant petitioner to

deposit full decretal amount in the Court within 10 (Ten) months from the date of decree, through 10 (Ten) equal installments each bearing of tk. 21,820/- and also directed to deposit Tk. 6000/- (Tk.3000+Tk.3000) in the Court within the first ten days of each English month for monthly maintenance of their two minor daughters. The learned Judge of the lower appellate Court also without considering the facts and circumstances of the case and also without considering the socio-economic condition of the defendant, most illegally dismissed the appeal and thereby affirmed the impugned judgment and decree of the trial Court; thus both the Courts below committed error of law resulting in an error of decisions occasioning failure of justice. The learned counsel finally prays for setting aside the judgment and decree passed by lower appellate Court affirming the judgment and decree passed by the trial Court by making the Rule absolute.

Mr. Muhammad Mijanur Rahman (Masum), the learned Advocate along with Ms. Jobaida Gulshan Ara, the learned Advocate appear on behalf of the opposite party to oppose the Rule and takes us through the impugned judgment and the judgment of the Trial Courts and all other materials available on record, and submits that, neither the trial Court

nor the lower appellate Court has committed any error of law or illegality in passing the respective judgments and decree since the opposite parties are entitled to get their past maintenance and also future maintenance for their daughters till their marriage by law. He further contends that, though the opposite party did not prefer any cross appeal or revision against the impugned judgment and decree but in the prevailing socio economic situation, the amounts so fixed by the trial Court which has been affirmed by the lower appellate Court for future maintenance for their daughters is inadequate to survive. So, the maintenance should be higher and he prays for indulgence of this Court to increase the monthly maintenance amount for the daughters using its inherent power under section 151 of the Code of Civil Procedure, so that they could maintain a decent lifestyle and fulfill their fundamental requirements of living. The learned counsel finally prays for discharging the Rule by affirming the judgment of both the courts below.

We have heard the learned Advocates for contending parties, perused the judgments of both the Courts below, the revisional application and all other connected materials available, the supplementary affidavit submitted by the defendant-appellant-petitioner

and also Form “Gha” of the Paribarik Adalat Bidhimala, 1985 at the time of hearing supplied by the petitioner.

The point for determination in this Rule is whether the Court of appeal below has committed any error of law by discharging the appeal and thereby affirmed the judgment and decree passed by the trial Court on 31.05.2018, resulting in erroneous decision occasioning failure of justice.

It appears that the present opposite party No.1 to 3 as plaintiffs instituted Family Suit No.86 of 2016 in the 2nd Additional Court of Senior Assistant Judge and Family Court, Chottogram against the present petitioner as defendant for their maintenance.

Admittedly, the marriage between plaintiff no.1 and the defendant was solemnized on 02.12.2010 by accomplishing all Hindu rituals. During their wedlock two daughters i.e. plaintiff No.2 and 3 were born. It is alleged that, for giving birth of 2 (two) daughters one after another, the defendant-husband became dissatisfied and started torturing the plaintiff-wife both mentally and physically and also demanding dowry from her. At last, on 20.07.2014 at about 8.00 AM, the defendant tortured the plaintiff No.1 on demands of dowry and ultimately drove

her out from his house along with the 2 (Two) minor daughters. Finding no other alternative, the plaintiff No.1 took shelter in her father's house along with her two minor daughters and since then the defendant did not communicate with them, nor did he provide any maintenance to them. Eventually, the plaintiff no. 1 by executing an affidavit on 20.07.2015 got dissolution of marriage with the defendant and sent a copy of the same to him on the very same day i.e. on 26.08.2015. Thereafter, the plaintiff no.1 demanded maintenance for her along with her two minor daughters to the defendant on 23.01.2016 but he denied to pay the same.

On the other hand, the defendant by filing written statements in the suit denied all materials averments made against him. It is alleged that, the plaintiff No.1 was a woman of questionable character. After few days of their marriage, she started of misbehaving with the family members of the defendant. Even then the defendant kept patience for the sake of future peace of the family. In the meantime, two daughters, plaintiffs No. 2 and 3, were born out of their wedlock. Still she did not rectify herself. It is stated that, she along with her minor daughters willfully left the house of the defendant on 10.07.2015 taking gold

ornaments, valuable things and also cash of Tk. 60,000/- (Taka Sixty Thousand) only with her. The defendant also stated that he tried to get her back several times but she did not come back, rather- she sent a copy of the affidavit for dissolution of their marriage. In such circumstances, she is not entitled to get any maintenance from the defendant.

In view of the pleadings of both parties herein before, the prime question is whether the plaintiffs are entitled to get any maintenance from the defendant.

In this regard, the trial Court came to a finding that the person of any faith can sue against her husband for maintenance before the Family Court. Although it is admitted that the marital tie was dissolved by an affidavit on 26.08.2015 but under the Hindu Law, the Hindu marriage is sacrament and husband and wife both are indissoluble soul to each other. As such, their marriage cannot be dissolved by any affidavit. In such view of the matter, the husband is bound to maintain her wife till her demise. In the present suit, the plaintiff No.1 is staying in her parent's house along with her two minor daughters. As such, some postulated grounds are required to be considered for allotment of maintenance. The Hindu Married Women's Right to Separate Residence

and Maintenance Act, 1946 in its section 2, attached some grounds of entitlement of getting maintenance of a married Hindu woman staying in separate residence. They are:

- (a) If her husband is suffering from any loathsome disease not contracted from her;
- (b) If he is guilty of such cruelty towards her as renders it unsafe or undesirable for her to live with him;
- (c) If he is guilty of desertion, that is to say, of abandoning her without her consent or against her wish;
- (d) If he marries again;
- (e) If he ceases to be a Hindu by conversion to another religion;
- (f) If he keeps a concubine in the house or habitually resides with a concubine;
- (g) For any other justifiable cause.”

But, proviso to section 2 spelt out that a Hindu married woman shall not be entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be a Hindu by change to another religion or fails without sufficient cause to comply with a decree of a competent Court for the restitution of the conjugal rights.

In such view of the provision of section 2 along with the pleadings of the parties, if the plaintiff can establish that the defendant is guilty of

such cruelty towards her as renders it unsafe or undesirable for her to live with him or she is staying away from the defendant for any justifiable cause, she will be entitled to get maintenance from the defendant while still staying separately. On the other hand, if the defendant can establish that the plaintiff No. 1 is unchaste and she is staying away from him without any sufficient cause, then she will not be entitled to get maintenance from her husband.

The trial Court found that although the plaintiff No.1 stated in her plaint that she was driven out forcefully by the defendant from his house on 20.07.2014 but she stated in her cross examination that, আমি ২০১৪ সালে বিবাদীর সংসার থেকে বের হয়ে আসি।” meaning that she has admitted the contention of the defendant that, she left the house of the defendant willfully. It also found that, the plaintiff No.1 did not adduce any other evidences suggesting the facts that the defendant tortured the plaintiff No. 1 with cruelty or that the house of the defendant was unsafe for the plaintiff. Accordingly, the trial Court came to a conclusion that the plaintiff has failed to prove her entitlement to get maintenance while staying in a separate residence than that of her husband’s house without proving the postulated grounds so attached in section 2 of the Hindu

Married Women's Separate Right to Residence and Maintenance Act, 1946. Hence, the trial Court held that, the plaintiff No.1 is not entitled to get maintenance as she was not able to establish any grounds i.e. cruelty or other grounds mentioned in section 2 of the aforesaid Act, 1946 for getting maintenance from her husband while stayed in her parent's house.

However, so far as the claim of past maintenance as well as future maintenance for two minor daughters are concerned, the trial Court found that the defendant admitted the paternity of the daughters, the plaintiff Nos. 2 and 3, and they are residing with their mother. As such, it was held that the plaintiffs No. 2 and 3 are entitled to get their maintenance for both past and future till their marriage by law. However, the defendant denied the contention of past maintenance for his 2 (two) daughters since he is neither allowed to keep daughters with him, nor allowed to visit the daughters. The High Court Division in the case of *Rustom Ali Vs. Jamila Khatun*, reported in 43 DLR 301 held that past maintenance cannot be granted by the Court unless there is prior agreement in pursuance of it but this view of the High Court Division was reversed by the Appellate Division in the case of *Jamila Khatun Vs.*

Rustom Ali, reported in 48 DLR (AD) 110 holding that, mother can claim the past maintenance of her child/children if her husband did not contribute to maintain the minor child/children.

Therefore, the trial Court held that the plaintiff no.1 is entitled to get past maintenance for her minor daughters from 20.07.2014 to 31.05.2018 for 36 months and 11 days. She is also entitled to get continuous future monthly maintenance for their daughters from the defendant till their marriage.

Considering the socio economic condition and social status of the plaintiff No. 2 and 3 as well as the defendant, the trial Court has fixed Tk.3,000/- (Taka Three Thousand) only per month for each of the two minor daughters for their future maintenance till their marriage, which will be increased @ 10% at the beginning of each Christian Calendar year. So, she is entitled to get continuous future monthly maintenance for them at total Tk.6000/- (Tk.3000/-+Tk.3000/-) per month. She is also entitled to get past maintenance for 36 months and 11 days (from 20.07.2014) for the children in total of Tk. 2,18,200/-. On such findings the trial Court decreed the suit in part vide its judgment and decree dated 31.05.2018.

The lower appellate Court while dismissing the appeal came to a finding that, admittedly the daughters, the plaintiff no. 2 and 3, are in the custody of plaintiff no. 1 and staying with her at her parent's house. The defendant did not give maintenance to them since 20.07.2014 till filing of the suit i.e. for 18 months and 11 days. Accordingly, the lower appellate Court came to a precise and definite finding that, as per Family Law, since the defendant being the father of the children is bound to give maintenance to them. As such, the trial Court legally and convincingly passed the impugned judgment and decree. Furthermore, two daughters are of 8 and 6 years old and they are studying. So, fixing of future maintenance at Tk. 3000/- (Taka Three Thousand) only each per month is not a big amount considering their educational expenses, daily incidental costs, maintenance and medical expenses. Regarding custody of the minor children, the lower appellate Court observed that, the plaintiff no.2 and 3 being minor children will be in the custody of their mother, i.e. the plaintiff no.1 being the legal guardian until their marriage.

The only ground, which has been taken in this Rule, is both the courts below failed to consider the socio-economic and financial

condition of the defendant while passing the judgment and decree and fixing the amount for maintenance is not rational and has been fixed at an a much higher rate than it should have.

However, on cautious perusal of the impugned judgment and decree of both the courts below, the trial Court in passing the judgment and decree upon maintenance of the plaintiff no. 2 and 3 elaborately discussed all legal and factual aspects of the case. The lower appellate Court also having considered the pros and cons of the matter in controversy passed the impugned judgment and decree affirming those of the trial Court. We also find that, grounds taken by the defendant petitioner in this Rule has rightly been dealt with in accordance with law in upholding the findings and decisions arrived at by the trial Court.

So, the findings and verdicts delivered by the Courts below being based on proper appreciation of law and facts, and we do not find any irregularity or illegality in the judgment and decree. Thus, we find no earthly reason to interfere with the judgment of the appellate Court as well as the trial Court and find no merit in the rule.

In the result, the Rule is **discharged** without any order as to costs.

And accordingly, the judgment and decree dated 25.04.2019 passed by the learned Additional District Judge, 5th Court, Chattogram in Family Appeal No. 80 of 2018 arising out of the judgment and decree dated 31.05.2018 passed by the Senior Assistant Judge, 2nd Additional Court, Chattogram in Family Suit No.86 of 2016 is hereby affirmed though in modified form.

The defendant petitioner is hereby directed to pay Tk. 2,18,200/- to the trial Court in 12 (Twelve) equal monthly installments, which is to be paid within first 10 (Ten) days of every English month commencing from March, 2024 to the Court (any amount paid earlier by the defendant, if any, will be deducted from total amount). The defendant is also directed to deposit continuous monthly installment of Tk. 3,000/- (Taka Three Thousand) only for each of the daughters, the plaintiff no.2 and 3, to the Court, which (future monthly maintenance) will be increased @ 10% at the beginning of each Christian Calendar year to be deposited within the first 10 (Ten) days in every English month.

The Court of 2nd Additional Senior Assistant Judge and Family Court, Chattogram is also directed to release the said amounts to the plaintiff-opposite party no.1 as soon as it is deposited by the defendant

petitioner. If the defendant-petitioner fails to do as directed, the plaintiffs are at liberty to get it realized by putting the decree in execution.

The order of stay granted at the time of issuance of the Rule stands recalled and vacated.

Let a copy of this judgment along with the lower Court records be communicated to the Court of 2nd Additional Senior Assistant Judge and Family Court, Chattogram forthwith.

Md. Mozibur Rahman Miah, J.

I agree.

Syed Akramuzzaman
Bench Officer