

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

Present:

**Mr. Justice Md. Mozibur Rahman Miah
and**

Mr. Justice Md. Bashir Ullah

Civil Revision No. 707 of 2024

In the matter of:

An application under Section 115(1) of the Code of Civil
Procedure, 1908

And

In the matter of:

Md. Nazim Imtiaz

--- Defendant-Appellant-Petitioner.

-Versus-

Dilshad Shobnom

--- Plaintiff-Respondent-Opposite party.

Mr. Sk. Md. Morshed, Senior Advocate, with
Mr. Md. Helal Uddin, Advocate

---For the petitioner.

Not represented

--- For the opposite party.

Heard on 10.02.2025

Judgment on: 16.02.2025

Md. Bashir Ullah, J

At the instance of the defendant in Family Suit No. 57 of 2012, this Rule was issued calling upon the opposite party to show cause as to why the judgment and decree dated 07.06.2016 passed by the learned Additional District Judge, First Court, Dhaka in Family Appeal No. 291 of 2015 dismissing the appeal and thereby modifying the judgment and decree dated 23.09.2015 passed by the 5th Additional Senior Assistant Judge and Family Court, Dhaka in the aforesaid suit decreeing the same

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

At the time of issuance of the Rule, the proceeding of Execution Case No. 108 of 2016, pending in the Senior Assistant Judge, 5th Additional and Family Court, Dhaka was stayed for a period of 06(six) months which was subsequently extended time to time and lastly it was extended on 04.02.2025 for further period of 02(two) months.

However, the petitioner was directed to deposit Taka 5,00,000/- only before the Execution Court within 02(two) months from the date, in default, the order of stay would stand vacated and the Rule would stand discharged. The petitioner was also directed to file affidavit-in-compliance after making payment. Accordingly, the petitioner in compliance with the direction of this Court, deposited Taka 5,00,000/- to the Execution Court on 14.03.2024.

Facts, relevant for the disposal of this Rule, are that, the plaintiff and defendant got married on 26.11.2005 and dower amount was fixed at Taka 10,00,000/-. Then out of their wedlock, a daughter was born on 26.09.2007. After a few days of marriage, she came to know that her husband is a hot headed, drug addicted and a man with bad character. Her other in-laws were also abusive to her. Moreover, the defendant kept on claiming dowry from the plaintiff from the inception of marriage and when she was unable to provide dowry, she was tortured mentally and physically. The defendant went to U.S.A on 25.05.2009 by taking Taka Ten lakh from the plaintiff. Subsequently, the plaintiff with her daughter visited her husband on 22.11.2009 in U.S.A. The defendant asked the

plaintiff to go back to Bangladesh and accordingly she returned. Later on, the defendant came back to Bangladesh and started staying with the plaintiff. On 28.05.2010, the defendant left the house without informing anything to the plaintiff. All of a sudden, the defendant divorced her on 12.06.11. The defendant did not pay the dower and maintenance to the plaintiff and her minor daughter. Hence, she filed the suit praying for dower money and maintenance for herself and her daughter.

The defendant contested the suit by filing a written statement denying all material allegations made in the plaint stating *inter alia* that, the plaintiff and defendant got married and the defendant paid the dower money. The plaintiff was highly ambitious, outgoing and extrovert. She was very much indifferent to their kid. The defendant was compelled to divorce the plaintiff on 12.06.2011 and prayed for dismissing the suit.

In order to dispose of the suit, the learned Judge of the Trial Court framed as many as 02 (two) issues. To support the case, the plaintiff examined 01 (one) witness while the defendant also examined 01 (one) witness. The plaintiff and the defendant also produced several documents which were marked as exhibits.

Upon hearing the parties and on perusal of the pleadings and evidence, the 5th Additional Senior Assistant Judge and Family Court, Dhaka decreed the suit in-part on contest against the defendant on 23.09.2015, declaring that the plaintiff is entitled to get her dower, maintenance for the period of *iddat* and maintenance for her minor daughter from the defendant totaling Taka 19,34,000. The Court also directed the defendant to pay Taka 20,000/- per month as maintenance to

the daughter of the plaintiff to be increased 20% yearly until her marriage.

Feeling aggrieved by the judgment and decree dated 23.09.2015, the defendant then preferred Family Appeal No. 291 of 2015 before the learned District Judge, Dhaka who transferred the same to the learned Additional District Judge, First Court, Dhaka for disposal. Upon hearing the parties, the learned Additional District Judge, First Court, Dhaka dismissed the Family Appeal No. 291 of 2015 on 07.06.2016 affirming the judgment and decree passed in Family Suit No. 57 of 2012 with modification to the effect that the defendant-appellant would pay to the plaintiff-respondent Taka 10,00,000/- (Ten lakh) as dower, Taka 60,000/- (Sixty thousand) as maintenance for the period of *iddat* and Taka 10,000/- (ten thousand) only per month from 02.02.2012 as maintenance of their daughter and the maintenance payable to the daughter would be increased 10% per annum instead of 20% fixed by the trial Court.

Being aggrieved by and dissatisfied with the judgment and decree dated 07.06.2016 passed by the learned Additional District Judge, First Court, Dhaka in Family Appeal No. 291 of 2015, the defendant-appellant as petitioner preferred this instant Civil Revision and obtained Rule and order of stay.

Mr. Sk. Md. Morshed, learned Senior Advocate with Mr. Md. Helal Uddin, Advocate appearing on behalf of the petitioner contends that the plaintiff-respondent-opposite party left Bangladesh on 16.02.2013 which was verified by Special Branch, Immigration Wing,

Bangladesh Police but the power of attorney produced by her mother shows that it was executed on 04.03.2013. So, it is clear that the power of attorney was forged and fraudulent. Hence, conducting the family suit on behalf of the plaintiff by the mother as agent by way of such forged Power-of-Attorney has no legal value and thus the suit was not maintainable in the eye of law.

He further contends that the defendant-appellant-petitioner paid the dower money amounting to Taka 10,00,000/- after their wedding and he also gifted huge gold ornaments worth Taka 31,20,000/- but the trial Court and the Appellate Court below did not consider this which has resulted in an error in the decision that occasioned failure of justice.

Mr. Morshed submits that the amount of maintenance is unreasonably high and the direction to pay maintenance of the daughter till her marriage is illegal as such the learned Additional District Judge, First Court, Dhaka erred in law and facts in passing the impugned judgment and decree and therefore the same is liable to be set aside.

With those submissions, the learned counsel finally prays for making the Rule absolute.

None appeared for the opposite party to oppose the Rule.

We have heard the submissions of the learned Advocate for the petitioner, perused the Civil Revision, impugned judgment and decree passed by the Trial Court and the Appellate Court and other materials on record.

The plaintiff authorised her mother as her agent by power-of-attorney to appear and conduct judicial/legal proceeding in the family

suit. The lawyer on behalf of the defendant-appellant-petitioner alleged that the power-of-attorney is defective, forged because the same was executed on 04.03.2013 but the plaintiff left the country on 16.02.2013. Learned counsel contends that since the power of attorney has no legal value so the suit is not maintainable. It appears from the power-of-attorney that the executant did not mention any date with her signature or any date of execution. The document was notarized and authenticated by a Notary Public on 04.03.2013. It seems that the plaintiff executed the power-of-attorney before leaving the country but it was notarized later. When the agent of the plaintiff was examined as PW 1 then no question was raised regarding legality of the said power-of-attorney even she was not crossed examined about the same. In this regard, the appellate Court below observed,

“নথি পর্যালোচনায় দেখা যায় যে, উক্ত আম মোক্তারনামা বলে পি.ডব্লিউ-১ সাক্ষ্য প্রদানকালে বিবাদীপক্ষ হইতে আদৌ আম মোক্তারনামার বৈধতার বিষয়ে কোন প্রশ্ন উত্থাপন করা হয় নাই এবং উক্ত আম-মোক্তারের বিষয়ে পি,ডব্লিউ-১ কে আদৌ কোন জেরা করা হয় নাই।”

It appears that the defendant also authorised his father as agent by a power-of-attorney. His father was also examined as DW 1 in the trial of the suit. The trial Court rightly accepted and considered both the power-of-attorneys. We find that the power of attorney explicitly authorised the agent to conduct the legal proceeding and the same was duly signed and notarized. Provisions of Order 3, Rule 2 of the Code of Civil Procedure empowers authorised person holding a power-of-attorney to make appearance, applications and do acts on behalf of the

executor. So, the contention raised by the counsel appearing on behalf of the defendant-appellant-petitioner is not acceptable at all.

The plaintiff claimed the 'dower' but the defendant refused to pay the same and as such the plaintiff constrained to institute the Family suit. However, the husband is obliged to pay the dower. The definition of 'dower' was defined in many cases earlier. In **Jesmin Sultana Vs. Md. Elias**, reported in 2BLC 233 'dower' is defined below:

"In Islamic glossary dower is called 'mahr' which means bridal-money given by the husband to the wife on marrying. In order to constitute a valid marriage under the Islamic law there should always be mahr as consideration from the bridegroom in favour of the bride."

It appears from the record that the plaintiff proved her case. Admittedly, the defendant married her and the marriage was consummated. At the time of marriage, dower was fixed at Taka 10,00,000/-. The amount was clearly written in *Kabin Nama/Nikah Nama*. The defendant put his signature on the *Nikah Nama* agreeing to pay the dower to the plaintiff. So the wife is entitled to have the whole of unpaid dower. A husband cannot refrain himself from paying the dower to his wife.

In this regard, the Dissolution of Muslim Marriage Act, 1939 has been enacted. Section 5 of the Dissolution of Muslim Marriage Act, 1939 runs as follows:

"Rights to dower not be affected- Nothing contained in this Act shall affect any right which a married woman may have under Muslim Law to her dower or any part thereof on the dissolution of marriage."

In **A.M. Md. Ebrahim Vs. Ma Ma and others**, reported in AIR 1939 Rangoon 28 it has been held:

"If the marriage was consummated the wife is entitled to immediate payment of the whole of the unpaid dower, both prompt and deferred."

The defendant stated in the written statement that he has paid the dower money after their wedding. But the defendant did not examine any witness or produce any kind of evidence showing that he paid the dower. Exhibit no. 1 shows that the dower amount is Taka 10,00,000/- and no amount was paid as '*ushil*'. So, the trial Court and the appellate Court below rightly decreed to pay the dower and opined that the plaintiff is entitled to get the whole amount of dower.

Further, a father is bound to maintain his daughter until she is married. Considering the socio-economic status of both parties the trial Court opined that the plaintiff should get monthly amount of Taka 20,000/- for 3 months as maintenance for the period of *iddat* and the daughter should get Taka 20,000/- per month as maintenance until her marriage and the maintenance of the daughter will be increased at the rate of 20% yearly. Accordingly, thus the trial Court decreed the suit. However, the appellate Court modified the decree in respect of the maintenance of the daughter.

Having considered the status of the parties, their living standard, educational expenses of the daughter, the cost of living and other circumstances, we are of the view that, the appellate court below has rightly directed the defendant to pay the plaintiff Taka 10,00,000/- as dower which the plaintiff is legally entitled and that of Taka 60,000/- as maintenance for her period of *iddat vis-a-vis* Taka 10,000/- as maintenance per month for the daughter of the plaintiff from 02.12.2012 and the said amount will increase at the rate of 10% per annum.

Regard being had to the above facts and circumstances, we do not find any illegality in the impugned judgment and of substance in the rule which is liable to be discharged.

Resultantly, the rule is discharged, however without any order as to cost.

The impugned judgment and decree dated 07.06.2016 passed by the learned Additional District Judge, 1st Court, Dhaka in Family Appeal No. 291 of 2015 is thus affirmed.

The defendant-appellant-petitioner is directed to pay rest dower Taka 5,00,000/- (Total Dower Taka 10,00,000/- minus Taka 5,00,000/- already paid as per direction of this Court) as dower, Taka 60,000/- as maintenance for the opposite party for her *iddat* period and Taka 10,000/- monthly as maintenance for the daughter from 02.12.2012 on regular basis until her marriage within a period of 3 months from date. The monthly maintenance, payable to the daughter will increase at the rate of 10% per annum.

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

Since the judgment and decree passed in Family Appeal No. 291 of 2015 has been affirmed, so there is no bar to proceed with the Execution Case no.108 of 2016 pending in the 5th Court of Additional Assistant Judge and Family Court, Dhaka and the learned Judge is directed to proceed with the same if the above direction is not complied with.

Let a copy of this judgment along with Lower Court's Record be communicated to the court concerned forthwith.

Md. Mozibur Rahman Miah, J.

I agree.