

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

Civil Revision No. 1502 of 2021

IN THE MATTER OF

Md. Hasan Ali (Suman)

.....Defendant-appellant-petitioner

-Versus-

Most. Jesmin Akter and another

.....Plaintiffs-respondents-opposite parties

Mr. Abu Hasnat Mofijur Rahman, Advocate

.....For the petitioner

Mr. Amio Chackraborti, Advocate

.....For opposite party Nos. 1-2

Heard on 14.06.23, 09.07.23 and
judgment passed on 12.07.2023

Present:

Mr. Justice Kazi Md. Ejarul Haque Akondo

Kazi Md. Ejarul Haque Akondo, J.

This Rule, under section 115(1) of the Code of Civil Procedure,
1908 was issued in the following term-

*“Record be called for. Let a Rule be issued calling upon
the opposite parties to show cause as to why the impugned
judgment and decree dated 11.03.2021 passed by the learned
Joint District Judge, Rangpur in Family Appeal No. 29 of 2020
and thereby reversing the judgment and order dated
03.09.2020 passed by the learned Judge of the Family Court,
Sadar, Rangpur in Family Execution Case No. 16 of 2016*

rejecting the prayer for submission of taka, and directing the petitioner to submit the taka to the Court below within 30(thirty) days from the date of this order 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 the operation of the impugned judgment and decree dated 11.03.2021 for 06 (six) months from the date and lastly, it was extended on 10.04.2022 till disposal of the Rule.

The present opposite parties as the plaintiffs filed Family Suit No. 167 of 2013 before the Family Court, Sadar, Rangpur against the present petitioner as the defendant praying for a decree of dower money and maintenance. The defendant contested the suit. After the trial, the learned Judge of the Family Court by his judgment and decree dated 27.04.2016 decreed the suit on the contest in part. Being aggrieved by the same the petitioner preferred an appeal before the learned District Judge, Rangpur, and the same was numbered as Family Appeal No. 49 of 2016. After hearing the same the learned Joint District Judge, 2nd Court, Rangpur by his judgment and decree dated 27.08.2017, disallowed the appeal on the contest with cost by affirming those of the Trial Court. Thereafter, the

plaintiffs filed Family Execution Case No. 16 of 2016 before the Family Court, Sadar, Rangpur for the execution of the decree and the Execution Court issued a warrant of arrest against the judgment debtor, i.e. against the petitioner. Then the petitioner filed an application before the Execution Court to recall the order of warrant of arrest after submitting Tk. 20,000/= . After hearing the same the learned Judge by his order dated 03.09.2020 rejected the application.

Being aggrieved by the said order dated 03.09.2020 the petitioner filed an appeal before the learned District Judge, Rangpur, and the same was numbered as Family Appeal No. 29 of 2020. On transfer, after hearing the same the learned Judge of the Appellate Court below by judgment and decree dated 11.03.2021, allowed the appeal partly and set aside the impugned order so passed by the Execution Court and directed the petitioner to deposit the unpaid decretal amount to the Court within 30 days from the date of the order.

Being aggrieved by and dissatisfied with the said impugned judgment and decree dated 11.03.2021, the petitioner had preferred this civil revision before this Court and obtained the instant Rule which is before us for consideration.

Anyway, Mr. Abu Hasnat Mofijur Rahman, the learned advocate appearing for the petitioner submits that the plaintiffs filed the instant suit for harassing the petitioner though he paid most of the decretal amount, and the opposite party No. 1 has taken the total amount of dower money by swearing an affidavit but the learned Judge of the Appellate Court below without considering the materials on record passed the impugned judgment and decree and thereby committed an error of law resulting in an error in the decision occasioning failure of justice which is liable to be set aside for the ends of justice.

Conversely, Mr. Amio Chackraborti, the learned Advocate appearing for the plaintiffs-opposite parties submits that the Appellate Court below considering the facts and circumstances of the case and the materials on record rightly passed the impugned and decree and thereby committed no illegality to interfere with.

Heard the learned Advocates of the contending parties and have perused the materials on record. It appears that the present opposite parties as the plaintiffs filed Family Suit No. 167 of 2013 before the Family Court, Sadar, Rangpur against the present petitioner praying for a decree of dower money and maintenance, which was decreed on 27.04.2016 on the contest in part. Being

aggrieved by the same the petitioner had preferred an appeal before the learned District Judge, Rangpur, and the same was numbered as Family Appeal No. 49 of 2016. After hearing the same the learned Joint District Judge, 2nd Court, Rangpur by his judgment and decree dated 27.08.2017, disallowed the appeal on the contest with cost by affirming those of the Trial Court. Thereafter, the plaintiffs filed Family Execution Case No. 16 of 2016 before the Family Court, Sadar, Rangpur, for the execution of the decree, and the Execution Court issued a warrant of arrest against the judgment debtor, that is to say, against the present petitioner. Thereafter, the petitioner filed an application before the Execution Court to recall the order of warrant of arrest by depositing Tk. 20,000/= in the Court. After hearing the same the learned Judge by his order dated 03.09.2020 rejected the application holding that “নথী পর্যালোচনায় দেখা যায় ডিক্রিদারের মার্চ/২০ পর্যন্ত মোট পাওয়া ৩,০৯,৫০১/- টাকা। কিন্তু দেনদার পক্ষ মাত্র ২০০০০/- টাকা জমা প্রদানের আবেদন করিয়াছে যাহা পাওনা টাকার তুলনায় অনেক কম। কাজেই দরখাস্তটি না মঞ্জুর করা হইল। আগামী ০৫/১০/২০ ইং তারিখ W/A প্রতিবেদন প্রাপ্তি।” Against which the petitioner filed an appeal before the learned District Judge, Rangpur, and the same was numbered as Family Appeal No. 29 of 2020; after hearing the same the learned Judge of the Appellate Court below by judgment and decree dated 11.03.2021 allowed the appeal partly and set aside the order dated 03.09.2020 passed by the Execution

Court, and directed the petitioner to deposit the unpaid decretal amount to the Execution Court within 30 days from the date of the order. I have gone through the impugned judgment and decree and the materials on record. It appears that the learned Judge of the Appellate Court below considering the facts and circumstances of the case and the materials on record rightly passed the impugned judgment and decree and thereby committed no illegality occasioning failure of justice.

Given the above, I do not find any substance in the submissions made by the learned Advocate for the petitioner, and merit in the Rule. Accordingly, the Rule fails.

As a result, the Rule is discharged without cost.

Stay vacated.

The impugned judgment and decree dated 11.03.2021 passed by the learned Joint District Judge, 1st Court, Rangpur in Family Appeal No. 29 of 2020 is hereby affirmed.

Send a copy of this judgment along with the L.C.R to the Court below at once.