

Present:
Mr. Justice Md. Iqbal Kabir
And
Mr. Justice Md. Riaz Uddin Khan

Civil Revision No. 420 of 2021

Tofail Ahmed
....Petitioner

Versus
Esrat Jahan Ema
....Opposite Party

Mr. Md. Hamidur Rahman, Advocate with
Mr. Emdadul Haque Emdad, Advocate for
Mr. Muhammad Misbah Uddin, Advocate
....For the Petitioner

Mr. Md. Shafiqul Islam, Advocate
....For the Opposite Party

Date of Judgment 13.07.2025.

Md. Iqbal Kabir, J:

On an application under section 115 of the Code of Civil Procedure this Rule was issued calling upon the opposite party No. 1 to show cause as to why the judgment and decree dated 06.12.2020 (decree signed on 15.12.2020) passed in Family Appeal No. 51 of 2019 by the learned District Judge, Sylhet allowing the appeal and modifying the judgment and decree dated 25.06.2019 (decree signed on 01.07.2019) passed in Family Suit No. 36 of 2019 by learned Assistant Judge, Additional Court Sadar, Sylhet and Judge, Family Court, Sylhet decreeing the suit should not be set aside and/or pass such other or further order or orders as to this court may seem fit and proper.

The facts of the plaintiff case, in short, are that on 05.06.2008 marriage was solemnized, fixing the dower of Tk. 10,00,000/- out of which Tk. 3,00,000/- was shown as paid money. Due to such wedlock, a girl child was born on 02.01.2014. However, soon after the marriage, the mother of the defendant and other family members of her family started torturing the plaintiff. At one stage, i.e., on 01.04.2018 defendant gave a Talak Notice to the plaintiff, knowing that such plaintiff had filed the instant suit for restoration of conjugal life. However, subsequently, filed an application for an amendment of the plaint and thereby, prayed for dissolution of marriage, dower money, maintenance, etc., and the suit was decreed.

Petitioner/defendant, by filing a written statement, denied the material assertion and contested the suit. According to him, soon after the marriage, Plaintiff started misbehaving with the mother and other family members of the defendant. The plaintiff is a greedy person. The defendant gave huge ornaments to her, but she was not satisfied. The plaintiff purchased a flat in her name by practicing fraud, while the defendant sent money from abroad.

Upon hearing the parties, the learned Senior Assistant Judge, Additional Court, Sadar, Sylhet decreed the suit in favour of the Plaintiff vide his Judgment and Decree dated 25.06.2019 (decree signed on 01.07.2019).

The plaintiff, as appellant, preferred Family Appeal No. 51 of 2019, challenging the aforesaid judgment and decree passed by the Trial Court. However, upon hearing the appeal, learned District Judge, Sylhet vide its Judgment and Order dated 15.12.2020 allowed the Appeal and modified the Judgment and Decree passed by the Trial Court.

However, the defendant-petitioner, being aggrieved, filed a revisional application and obtained the instant Rule.

Mr. Md. Shafiqul Islam, learned Advocate, appearing for the opposite party, opposes the Rule and submits that the impugned order passed by the learned Judge of the Court of Appeal below is just and proper, which calls for no interference by this Court.

Mr. Md. Hamidur Rahman, learned Advocate on behalf of the petitioner submits that the Court below, beyond its jurisdiction, made some observations related to guardianship and visiting rights. In this case, the Court has no such jurisdiction to settle or give direction on such issues.

He brought notice, by this time, following the Court order, deposited some amount, fixed by the Court. He submits petitioner is willing to pay the maintenance and other costs as it has fixed by this Court, but to make it easy, it would be in installments. Thus, he sought an opportunity to pay the remaining amount in some installments.

In order to appreciate the submissions advanced by the learned Advocate, we have gone through the revisional application, the impugned judgment and order, application, and other materials on record and given anxious consideration to their submissions.

Now the question calls for consideration whether the Court below committed any error of law resulting in an error in the decision occasioning failure of justice in passing the impugned order.

On going through the materials on record, it transpires that the suit was filed for desolation of marriage, dower money, and maintenance. However, the Court below decreed the suit. But the defendant petitioner did not challenge the

aforesaid judgment and decree. Though the plaintiff filed an appeal wherein the learned District Judge modified the Judgment and decree, thereby, enhancing only the maintenance cost of the daughter

It is pertinent to note that the appellate Court also modified the observation related to the visiting rights of a father. For the convenience of understanding, the extract of the observation made in the impugned Judgment and order reads as hereunder:

“তাই বাদিনীর কন্যা সন্তান আইন নির্দিষ্ট সময় পর্যন্ত মার হেফাজতে থাকবে। তবে বাবা মাসের যেকোন ২ দিন অর্থাৎ প্রতিমাসে যেকোন ২ দিন শুক্রবার পিতা তার সন্তানকে নিজ *বাড়ানে* নিতে পারিবেন এবং যথাসময়ে আবার বাদিনীর বরাবরে প্রেরণ করিবেন। এছাড়া বিবাদী যেকোন সময় তার মেয়ের স্কুলে গিয়ে দেখে আসতে পারবেন।

It is further pertinent to note that the appellate Court modified the aforesaid observation and or direction of the Trial Court. For the convenience of understanding, the extract of the observation made by the Appellate Court in the impugned Judgment and order reads as hereunder:

“পক্ষদের নাবালিকা কন্যাকে তার শিক্ষা প্রতিষ্ঠানে গিয়ে অথবা পিতা তার বাড়ীতে নিয়ে সাক্ষাতের যে দিক নির্দেশনা তর্কিত রায়ে উল্লেখ করা হইয়াছে সেটি উক্ত কন্যার মনন বিকাশ ও নিরাপত্তার স্বার্থে সংশোধিত হওয়া আবশ্যিক। বিবাহ বিচ্ছেদ পরবর্তীতে নাবালিকা কন্যার পিতার গৃহে নেয়া হলে পিতার পরিবারের সকল সদস্যের সহানুভূতির সংকট দেখা দিতে পারে। কোন শিক্ষা প্রতিষ্ঠানে কন্যার সাথে সাক্ষাতের বিষয়টিও সর্বদা সুখকর নাও হতে পারে। সকল দিক বিবেচনা করে এমন একটি নিরাপদ জায়গা নির্ধারিত হওয়া দরকার যেখানে নিরপেক্ষ লোকের সম্মুখে তাহার উপস্থিতিতে পিতা তার নাবালক কন্যাকে দেখার সুযোগ পাবে। নাবালিকা কন্যার নিরাপত্তা ও সর্বোচ্চ সম্মানের বিষয় বিবেচনায় এনে বিবাদী প্রতিপক্ষ তার সন্তানকে প্রতি মাসের শেষ দুই শুক্রবার; ১ম শুক্রবার বাদী আপীলকারী আইনজীবী ও ২য় শুক্রবার বিবাদী প্রতিপক্ষের আইনজীবীর চেম্বারে অথবা মাসের শেষ ২ বৃহস্পতিবার বিচারিক সময়ের পর বিচারিক আদালতের এজলাশ কক্ষে সেরেস্তাদারের উপস্থিতিতে দেখা সাক্ষাত করতে পারবেন। এতে নাবালিকা কন্যার নিরাপত্তা মননের উপর কোনরূপ প্রভাব পড়বেনা।”

It was argued that the aforesaid finding and decisions of the Court below are unreasonable and not possible to implement, and are not the subject matter of the suit, thus, committing an error of law, resulting in an error in the decision occasioning failure of justice.

On perusal and considering the above, it appears that for dissolution of marriage, unpaid dower money, and to get maintenance for the plaintiff and her daughter, a suit was filed, and the Court below decreed the suit. However, the plaintiff/appellant against such decree filed an appeal in which the learned District Judge modified the Judgment and decree. By such modification, the Appellate Court enhanced the maintenance cost of the daughter, thereby, fixing it at Tk. 5000/ instead of Tk. 2000/. However, the 10% enhancement rate related to the maintenance cost and other orders would be the same as it was.

It is pertinent to note that the appellate Court also modified the direction related to the visiting rights of a father. In this case, visiting rights are not the subject matter of this case, and such rights were not sought by any parties. The

Court below made such an observation and direction beyond its jurisdiction. Though it is admitted there is no dispute that the father is a natural guardian, and has the right to visit his children, and such visiting right cannot be curtailed. It is at this juncture, the observation and direction as quoted above are required to expunge from the impugned judgment, as it is not the subject matter of the suit. Accordingly, this Court expunges the above-noted observation and direction. However, either party may have the liberty to agitate their grievances before the appropriate Court, if any, if so advised.

Indeed, it appears that the petitioner has agreed to make the payment fixed by the Court, but he submits that, for the betterment, he may be permitted to make such payment in installments. In this context, opposite party bring notice that an execution case being Family Execution Case No. 3 of 2021 is pending before the Family Court, Sylhet and that can be settled therein. This Court finds substance in the submission made by the parties. In this context, we are of the view that justice would be met if this Court gives direction to the execution Court to allow such an application related to the payment of the installment.

In view of the above, the execution Court is directed to consider the application or prayer, if any, by which the appellant may make such a prayer for installment, However, the appellant has the liberty to file such an application, within a month from the date of received of this order, if so advised.

With the above observation and direction, the Rule is made absolute in part without any order as to cost.

The order of stay granted earlier by this Court is hereby recalled and vacated.

Let a copy of this judgment and order with the lower Court record be communicated to the Court concerned forthwith.

Md. Riaz Uddin Khan, J:
I agree.