

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

Present:

Mr. Justice Mamnoon Rahman

Civil Revision No. 321 of 2022

In the matter of:

Nikash Deb alias Pakhi.

.....petitioner.

-Versus-

Soma Saha Deb.

.....opposite party.

Mr. Liton Ranjon Das, Advocate

..... for the petitioner

Mr. Tapan Kumar Bepary, Advocate

..... for the opposite party.

Heard on: 16.11.2024 and

Judgment on: 03.03.2024.

In an application under section 115(1) of Code of Civil Procedure, 1908, in the instant Rule was issued on 11.01.2022 calling upon the opposite party to show cause as to why the impugned judgment and decree dated 19.10.2021 passed by the Additional District Judge, 2nd Court, Chattogram in Family Appeal No. 117 of 2020 affirming the judgment and decree dated 12.01.2020 and 16.01.2020 passed by the Additional Senior Assistant Judge, 1st Court, Chattogram in Family Suit No. 358 of 2012 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 opposite party as the plaintiff instituted Family Suit No. 358 of 2012 in the Court of Additional Senior Assistant Judge, Court No. 1, Chattogram impleading the petitioner as defendant for maintenance. The case of the plaintiff-respondent-opposite party, in short, is that, the petitioner-appellant-defendant married the plaintiff on 09.08.2006 on the basis of Hindu Law. After a few days, he started behaving rudely and obscenely with her. After enduring all the oppression, she continued to spend her married life with him. Thereafter, on 14.09.2011 sent to her father's residence with a blood wound to demand dowry. From that time, the plaintiff has been living in his ancestral home, but the defendant has not made any inquires about the plaintiff and has not provided any maintenance. On 12.08.2012 the plaintiff demanded the defendant to pay the announce including maintenance, but the defendant refused hence, the plaintiff filed the case.

The present petitioner-defendant contested the suit by filing written statements denying all the material allegations made in the plaint. The case of the defendant-petitioner, in short, is that, the suit is not maintainable in its present form. The defendant stated that the plaintiff was in her family till dated 14.09.2011. She refused to take her to India for advanced treatment as they had no children in their conjugal life. She voluntarily went to her father's house with a promise of one lac taka and 03(three) vori gold ornaments by

affidavit-in-declaration dated 30.07.2011. So the case is not maintainable at all and will be dismissed. During trial, the plaintiff adduced one witness and the defendant adduced two witnesses. Both the parties adduced evidences both oral and documentary. The trial court framed as many as two issues and proceeded with the suit. The trial Court after hearing the parties and considering the facts and circumstances vide judgment and decree dated 12.01.2020 decreed the suit. Being aggrieved by and dissatisfied with the aforesaid judgment and decree passed by the trial Court, the present petitioner as appellant preferred Family Appeal No. 117 of 2020 before the District Judge, Chattogram and eventually the same was heard and disposed of by the Additional District Judge, 2nd Court, Chattogram who vide the judgment and decree dated 19.10.2021 and 27.10.2021 dismissed the appeal and thereby affirmed the judgment and decree passed by the trial court. Being aggrieved by and dissatisfied with the aforesaid judgment and decree passed by both the courts below, the present petitioner moved before this Court and obtained the present Rule.

Mr. Liton Ranjon Das, the learned Advocate appearing on behalf of the petitioner submits that both the courts below without applying their judicial mind and without considering the facts and circumstances, as well as, a positive case laid by the defendant witnesses most illegally and in an arbitrary manner passed the

impugned judgment and decree, which requires interference by this Court. He further submits that admittedly the plaintiff and defendant married each other but with consent, the plaintiff was residing separately by executing an Angikarnama as much as the plaintiff maintaining an illicit relationship with a 3rd party and when a wife maintaining an illicit relationship with a 3rd party, she is not entitled to get any maintenance in the eye of law. The learned counsel also placed the deposition of D.W. 2.

Mr. Tapan Kumar Bepary, the learned Advocate appearing on behalf of the opposite party vehemently opposes the Rule. He submits that in the case in hand, both the courts below on proper appreciation of the facts and circumstances, materials on record evidence both oral and documentary, decreed the suit, which requires no interference by this court. He further submits that the marriage was admitted by both the parties and mere living separately because a particular cause shall not disentitle a Hindu woman from getting her maintenance as per the relevant law and rituals as well as practice. He further submits that in the case in hand though it has been claimed that the plaintiff had an illicit relationship the same was not proved beyond reasonable doubt. Hence, the Rule is liable to be discharged with cost for ends of justice.

I have perused the impugned judgment and decree passed by both the courts below, revisional application, grounds taken thereon, the Lower Court Records, and heard the learned counsels for the contesting parties.

On perusal of the same, it transpires that the opposite party as the plaintiff filed the suit for maintenance. Admittedly, they did not have any issues and the maintenance was claimed by the plaintiff. It further transpires that both the parties admitted the marriage.

On meticulous perusal of the papers and documents, it transpires that the executed Angikarnama which was produced by the defendant as an Exhibit and in the said Angikarnama reveals that the plaintiff living separately as she is not capable of becoming a mother to the trial court on the said "Angikarnama" came to a conclusion, which runs as follows:

"হিন্দু বিবাহ অবিচ্ছেদ্য এবং হিন্দু ধর্মের বিধান অনুসারে কোন হিন্দু পুরুষ যে কোন অবস্থায় স্ত্রীর ভরন পোষন প্রদানে বাধ্য। এমনকি স্ত্রী বৈধ কারণবশত পৃথক বসবাস করলে ও স্বামী ভরণপোষন প্রদানে বাধ্য থাকিবে। অত্র মামলার বিবাদী পক্ষে দাখিলীয় অঙ্গীকারনামা (প্রদঃ 'ক') পর্যালোচনায় দেখা যায় বাদী বৈধ কারণবশত (সন্তান জন্ম দানে অক্ষমতা হেতুতে) বিবাদী হতে পৃথক বসবাস সহ অন্যান্য বিষয়াদি নিয়ে অঙ্গীকারনামা সম্পাদন করে। উক্ত অঙ্গীকারনামার কোন শর্ত-ই বাদীকে বিবাদী হতে ভরণপোষন পাওয়ার আইনগত অধিকার হতে বঞ্চিত করবে না মর্মে সিদ্ধান্ত গৃহীত হল।"

It further transpires that the defendant claimed that the plaintiff is maintaining an illicit relationship which disentitled her

to get the benefit of maintenance. On meticulous perusal of the D.W. 1, it transpires that the said D.W. is a relation of the defendant and in her deposition he stated that he heard that the plaintiff has an illegal relationship with one DW Mohammad except this statement. I have nothing to show either documentary or any circumstantial evidences about the claim of the immoral life of the plaintiff.

It is now well settled proposition of law is that by exercising the power conferred under section 115 of the Code of Civil Procedure, 1908 this Court cannot go into the factual aspects even if in a case of reversal of judgment and decree. On perusal of the revisional application and the grounds taken thereon, I do not find any materials point of law or gross misreading of evidence raised by the petitioner in the case in hand.

To believe or disbelieve a witness as well as documentary evidence is within the jurisdiction unless there is non-consideration of material evidence affecting the ultimate decision of the Court's below. On perusal of the application it appears that the petitioner would not show any non-consideration of material evidence by the Court's below. The finding arrived at and the decision made by the courts below do not call for any interference by this Court under section 115 of the Code of Civil Procedure, 1908. The finding of

the courts below having been based on proper appreciation of evidence on record do not call for any interference.

Considering the facts and circumstances, I am of the view that both the courts below committed no error or misreading of evidence which requires interference by this Court Hence, I find no reason to interference with same.

Accordingly, the Rule is discharged without any order as to cost and the interim order granted earlier by this Court is hereby recalled and vacated. The impugned judgment and decree passed by the courts below are hereby affirmed.

Send down the Lower Court Records with the copy of this judgment to the concerned Court below at once.

(Mamnoon Rahman, J:)

Matiar Rahaman (BO)