

Present:

Mr. Justice Md. Kamrul Hossain Mollah

Civil Revision No.764 of 2022

IN THE MATTER OF:

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

- AND -

IN THE MATTER OF:

Md. Mahafuz Uddin

....Defendant-Appellant -Petitioner

-Versus –

Umme Salma Nargis Akter

....Plaintiff-Respondent-Opposite Party

No one appears

.... For the petitioner

Mr. Md. Ferdous Sarker, Advocate

.....For the Opposite-Parties

**Heard on 13.12.2023 and
Judgment on 17.12.2023**

Md. Kamrul Hossain Mollah, J:

On an application filed by the petitioner, under section 115(1) of the Code of Civil Procedure, this Rule was issued in the following terms:

Let a Rule be issued calling upon the opposite party to show cause as to why the impugned Judgment and Decree dated 26.01.2022 (decree signed on 31.01.2022) passed by the learned Additional District Judge, 5th Court, Chattogram in Family Appeal No.104 of 2019 dismissing the Appeal and thereby affirming the Judgment and Decree dated 02.05.2019

(decree signed on 08.05.2019) passed by the learned Judge, Family Court and Senior Assistant Judge, 1st Court, Potia Chowki, Chattogram in Family Suit No.44 of 2017 decreeing the suit in part, should not be set-aside and or pass such other order or further order or orders as to this Court may seem fit and proper.

At the time of issuance of the Rule this Court directed the petitioner to deposit Tk.1,00,000/- within 04(four) months from the date, failing which the Rule shall stand discharged.

Facts necessary for disposal of the Rule, in short are that, the plaintiff Umme Salma Nargis Akter was married with the defendant on 04.06.2016 fixing the dower to be Tk.8,00,000/-. They were living happily for a while, but after some time, the plaintiff got to know the immoral character of the defendant. The defendant started torture and hurt the plaintiff on demanding Tk.2,00,000/- as dowry from the parents of the plaintiff, and when she refused to bring the money, she was sent to her paternal home on 10.08.2016. Since then he did not give her any money as maintenance. On 22.01.2017, the defendant sent a notice of talaq to the plaintiff. Thereafter, on 01.08.2017, the defendant refused to pay her the past maintenance and the unpaid dower.

The defendant-petitioner contested the suit by filing written statement denying all the material allegations brought against him and contested the suit stating inter-alia that after their marriage, the plaintiff got involved in illicit relationship/extra marital affair with one of her relatives named Mamun. She always quarreled with the defendant, threatened him to escape from his house and was passionate to live with the said Mamun,

leaving the defendant. On 01.01.2017, the plaintiff eloped with her said lover taking Tk.50,000/- and valuable ornaments. Finding no other alternative, he filed a complaint with the Potia Police Station. Thereafter, she was found in one Kanon's house in Kornel Hat, Chattogram. The defendant requested her to get back, but she refused. Then on 14.01.2017, the family members of both the parties tried to patch up with both the parties at Nongor Restaurant, Potia, but she refused to stay with the defendant-petitioner. The defendant-petitioner, finding no other option, divorced the plaintiff on 22.01.2017 complying with all the formalities of law. As the plaintiff was always belligerent and never willing to carry on the conjugal life and is not entitled to maintenance.

After hearing the parties and perused the materials on records and considering the oral and documentary evidences adduced by the parties in support of their respective case, the learned Judge, Family Court and Senior Assistant Judge, 1st Court, Potia Chowki, Chattogram decreed the Family Suit No.44 of 2017 against the defendant-petitioner by his judgment and decree dated 02.05.2019 (decree signed on 08.05.2019) and directed the petitioner to pay Tk.7,00,000/- as dower and maintenance for the iddat period amounting to Tk.15,000/- totaling to Tk.7,15,000/-in 12 equal installment.

Being aggrieved by and dissatisfied with the judgment and decree dated 02.05.2019 (decree signed on 08.05.2019) passed by the learned Judge, Family Court and Senior Assistant Judge, 1st Court, Potia Chowki, Chattogram in Family Suit No.44 of 2017 decreeing the suit, the defendant-petitioner filed Family Appeal No.104 of 2019 before the Court of learned

Additional District Judge, 5th Court, Chattogram. After hearing the parties, the learned Additional District Judge, 5th Court, Chattogram dismissed the Family Appeal No.104 of 2019 by his judgment and decree dated 26.01.2022 (decree signed on 31.01.2022) and affirmed the judgment and decree dated 02.05.2019 (decree signed on 08.05.2019) passed by the learned Judge, Family Court and Senior Assistant Judge, 1st Court, Potia Chowki, Chattogram in Family Suit No.44 of 2017 decreeing the suit.

Being aggrieved by and dissatisfied with the judgment and decree dated 26.01.2022 (decree signed on 31.01.2022) passed by the learned Additional District Judge, 5th Court, Chattogram in Family Appeal No.104 of 2019 the petitioner filed this revisional application under section 115(1) of the Code of Civil Procedure and obtained the present Rule and direction.

No one appears on behalf of the petitioner to press the instant Rule, when the matter was taken up for hearing, although it appears in the daily cause list several times.

Mr. Md. Shahadat Hossain, the learned Advocate appearing for the opposite party submits that, the plaintiff Umme Salma Nargis Akter was married with the defendant on 04.06.2016 fixing the dower to be Tk.8,00,000/-. They were living happily for a while, but after some time, the plaintiff got to know the immoral character of the defendant. The defendant started torture and hurt the plaintiff on demanding Tk.2,00,000/- as dowry from the parents of the plaintiff, and when she refused to bring the money, she was sent to her paternal home on 10.08.2016. Since then he did not give her any money as maintenance. On 22.01.2017, the defendant sent a notice of talaq to the plaintiff. Thereafter, on 01.08.2017, the

defendant refused to pay her the past maintenance and the unpaid dower. The defendant-petitioner contested the suit by filing written statement denying all the material allegations brought against him. After hearing the parties and perused the materials on records and considering the oral and documentary evidences adduced by the parties in support of their respective case, the learned Judge, Family Court and Senior Assistant Judge, 1st Court, Potia Chowki, Chattogram decreed the Family Suit No.44 of 2017 against the defendant-petitioner by his judgment and decree dated 02.05.2019 (decree signed on 08.05.2019) and directed the petitioner to pay Tk.7,00,000/- as dower and maintenance for the iddat period amounting to Tk.15,000/- totaling to Tk.7,15,000/-in 12 equal installment. Being aggrieved by and dissatisfied with the judgment and decree dated 02.05.2019 (decree signed on 08.05.2019) passed by the learned Judge, Family Court and Senior Assistant Judge, 1st Court, Potia Chowki, Chattogram in Family Suit No.44 of 2017 decreeing the suit, the defendant-petitioner filed Family Appeal No.104 of 2019 before the Court of learned Additional District Judge, 5th Court, Chattogram. After hearing the parties, the learned Additional District Judge, 5th Court, Chattogram dismissed the Family Appeal No.104 of 2019 by his judgment and decree dated 26.01.2022 (decree signed on 31.01.2022) and affirmed the judgment and decree dated 02.05.2019 (decree signed on 08.05.2019) passed by the learned Judge, Family Court and Senior Assistant Judge, 1st Court, Potia Chowki, Chattogram in Family Suit No.44 of 2017 decreeing the suit rightly, which is maintainable in the eye of law. Accordingly, he prays for discharging the Rule.

I have considered the submissions of the learned Advocate for the opposite parties minutely, perused the revisional application, the impugned judgment and decree of the Courts' below, the papers and documents as available on the record.

It appears from the record that, the plaintiff Umme Salma Nargis Akter was married with the defendant on 04.06.2016 fixing the dower to be Tk.8,00,000/-. They were living happily for a while, but after some time, the plaintiff got to know the immoral character of the defendant. The defendant started torture and hurt the plaintiff on demanding Tk.2,00,000/- as dowry from the parents of the plaintiff, and when she refused to bring the money, she was sent to her paternal home on 10.08.2016. Since then he did not give her any money as maintenance. On 22.01.2017, the defendant sent a notice of talaq to the plaintiff. Thereafter, on 01.08.2017, the defendant refused to pay her the past maintenance and the unpaid dower. For this reason, the plaintiff-opposite party filed Family Suit No.44 of 2017 in the Court of learned Judge, Family Court and Senior Assistant Judge, 1st Court, Potia Chowki, Chattogram following all legal formalities. The defendant-petitioner contested the suit by filing written statement denying all the material allegations brought against him. After hearing the parties and perused the materials on records and considering the oral and documentary evidences adduced by the parties in support of their respective case, the learned Judge, Family Court and Senior Assistant Judge, 1st Court, Potia Chowki, Chattogram decreed the Family Suit No.44 of 2017 against the defendant-petitioner by his judgment and decree dated 02.05.2019 (decree signed on 08.05.2019) and directed the petitioner to pay

Tk.7,00,000/- as dower and maintenance for the iddat period amounting to Tk.15,000/- totaling to Tk.7,15,000/-in 12 equal installment. Being aggrieved by and dissatisfied with the judgment and decree dated 02.05.2019 (decree signed on 08.05.2019) passed by the learned Judge, Family Court and Senior Assistant Judge, 1st Court, Potia Chowki, Chattogram in Family Suit No.44 of 2017 decreeing the suit, the defendant-petitioner filed Family Appeal No.104 of 2019 before the Court of learned Additional District Judge, 5th Court, Chattogram. After hearing the parties, the learned Additional District Judge, 5th Court, Chattogram dismissed the Family Appeal No.104 of 2019 by his judgment and decree dated 26.01.2022 (decree signed on 31.01.2022) and affirmed the judgment and decree dated 02.05.2019 (decree signed on 08.05.2019) passed by the learned Judge, Family Court and Senior Assistant Judge, 1st Court, Potia Chowki, Chattogram in Family Suit No.44 of 2017 decreeing the suit.

Considering the above facts and circumstances and materials on record, it appears that the plaintiff-opposite party is entitled to get dower and maintenance money of Tk.7,00,000/- and for the iddat period amount of Tk.15,000/- . Further, it appears from the record that the petitioner in the meantime paid Tk.1,00,000/- as per direction of the Hon'ble High Court Division. So, now, the plaintiff-opposite party is entitle to get amount of total Tk.6,15,000/-in 12 equal installment.

In view of the discussion made above, facts and circumstances, I think that the learned Additional District Judge, 5th Court, Chattogram rightly passed the judgment and decree dated 26.01.2022 (decree signed on

31.01.2022) in Family Appeal No.104 of 2019 dismissing the said Appeal. So, this Court finds no merit in the present Civil Revision Case and as such, in the impugned judgment and decree dated 26.01.2022 (decree signed on 31.01.2022) warrants no interference by this Court and as such, the Rule is liable to be discharged.

In the result, the Rule is discharged with the modification of total decretal amount be paid Tk.6,15,000/- as because Tk.1,00,000/- by the petitioner by the Court's order.

The judgment and decree dated 26.01.2022 (decree signed on 31.01.2022) passed by the learned Additional District Judge, 5th Court, Chattogram in Family Appeal No.104 of 2019 dismissing the Appeal and affirming the judgment and decree dated 02.05.2019 (decree signed on 08.05.2019) passed by the learned Judge, Family Court and Senior Assistant Judge, 1st Court, Potia Chowki, Chattogram in Family Suit No.44 of 2017 decreeing the suit is hereby upheld and confirmed.

The petitioner is hereby directed to pay the dower and maintenance money of Tk.6,15,000/- to the plaintiff-opposite party within 30(thirty) days from the date of receipt of this judgment and order, failing which the concerned lower Court will take necessary steps to recovery the said money.

The order of direction granted at the time of issuance of the Rule is hereby recalled and vacated.

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

Md. Anamul Hoque Parvej
Bench Officer