

District-Rangpur.

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

Present:

Mr. Justice Md. Toufiq Inam

Civil Revision No. 1647 of 2021.

Md. Khurshid Alam Salim,

----- Defendant-Appellant-Petitioner.

-Versus-

Mst. Salma Begum (Hena) and others.

----- Plaintiff-Respondents-Opposite Parties.

Mr. Md. Robiul Alam, Senior Advocate with

Mr. Depankar Kumar Ghosh, Advocate

----- For the Defendant-Appellant-Petitioner.

Mr. Chaman-E-Alahi, Advocate

---For the Plaintiff-Respondents-Opposite Parties.

Heard On: 31.07.2025, 11.08.2025.

And

Judgment Delivered On: 17.08.2025.

Md. Toufiq Inam, J.

Upon institution of Family Suit No. 83 of 2015, the learned Family Court, Sadar, Rangpur framed issues and, after recording evidence from both sides, decreed the suit on 16.09.2019. The court found that the marriage between the parties was duly proved by the *kabinnama* produced by the plaintiffs, that the alleged verbal divorce was not established in accordance with law, and that the plaintiffs were entitled to *denmohar* and maintenance as claimed. Aggrieved, the defendant-petitioner preferred Family Appeal No. 89 of 2019 before the learned District Judge, Rangpur, which was heard and disposed of by the learned Joint District Judge, Court No. 3, Rangpur. By judgment and decree dated 09.03.2021, the appellate court dismissed the appeal, concurring with the findings of the trial court. The defendant-petitioner thereafter invoked the revisional jurisdiction of this Court, whereupon this Rule was issued.

The opposite parties, as plaintiffs, instituted Family Suit No. 83 of 2015 on 01.04.2015 in the Family Court, Sadar, Rangpur, seeking recovery of *denmohar* and maintenance for plaintiff No. 1 and her two children. Their case is that on 12.10.1997, plaintiff No. 1, Mst. Salma Begum Hena, was married to the defendant-petitioner, Md. Khurshid Alam Salim, under a registered *kabinnama* in accordance with Islamic Shariah, fixing *denmohar* at Tk. 90,501/-. After the marriage, two children, Mirajul Islam Shaon and Zannatul Ferdous, were born. Despite this, the defendant allegedly continued to torture plaintiff No. 1 for dowry and, on 02.11.2011, assaulted and drove her out along with the children. Since then, she has been residing at her father's house. On 13.03.2015, she, accompanied by witnesses, went to the defendant's house requesting resumption of conjugal life, but he refused, demanded dowry, and declined to pay maintenance or *denmohar*.

The defendant-petitioner contested the suit, denying the allegations and asserting that the marriage took place in 1987, not 1997, with a *denmohar* of Tk. 20,001/-, and without the consent of his guardians. He claimed that due to the plaintiff's and her family's ill-treatment and alleged anti-social activities, he left her father's house in 1990, married again with her consent, continued to provide maintenance, and verbally divorced her on 05.06.1997 in the presence of witnesses. He further alleged that the plaintiff fabricated a false *kabinnama* with an inflated *denmohar*, leading to P.R. Case No. 251 of 2018 and a PBI investigation, which resulted in charges only against the plaintiff under Sections 467/468/471 of the Penal Code, 1860.

The Family Court, after full trial, decreed the suit on 16.09.2019. Family Appeal No. 89 of 2019, filed by the defendant, was dismissed by the learned Joint District Judge, Court No. 3, Rangpur on 09.03.2021, affirming the trial court's findings. The defendant-

petitioner thereafter obtained the present Rule, contending that both courts below misread, ignored, and misconstrued material evidence, thereby occasioning a failure of justice.

Mr. Rabiul Alam Budu, learned Senior Advocate, appearing with Mr. Depankar Kumar Ghosh, Advocate for the defendant-petitioner, submits that the marriage was solemnised in 1987 at the plaintiff's relative's house by a Moulovi with a *denmohar* of Tk. 20,001/-, of which Tk. 150/- was paid in ornaments. He argues that the marriage took place without the consent of the defendant's guardians, who forbade him to bring the plaintiff to their home. Consequently, he resided at her father's house, where two children were born. Learned counsel contends that the plaintiff and her family ill-treated the defendant, engaged in anti-social activities, and even drug trafficking. Unable to tolerate such conduct, the defendant left in 1990, married again with the plaintiff's consent, continued to bear maintenance and educational expenses, and eventually divorced the plaintiff verbally on 05.06.1997 in the presence of witnesses.

He further submits that the *kabinnama* dated 12.10.1997 showing *denmohar* of Tk. 90,501/- is a forged document fabricated to cheat the defendant. In support, he refers to P.R. Case No. 251 of 2018, in which PBI submitted a report *implicating* plaintiff No. 1 under Sections 467/468/471 of the Penal Code, 1860.

He also submits that plaintiffs No. 2 and 3 are now adults, married, and financially independent, Mirajul Islam Shaon being 28 years old with a Master's degree, and Zannatul Ferdous being 25 years old. The defendant-petitioner has duly discharged his parental duties by financing their education and marriages. He argues that both courts below misread and misconstrued the evidence and thereby caused a failure of justice.

Mr. Chaman-E-Elahi, learned Advocate for the opposite parties-plaintiffs, supports the concurrent findings of the courts below. He submits that the marriage was solemnised on 12.10.1997 under a registered *kabinnama* fixing *denmohar* at Tk. 90,501/-, and that the plaintiff resided with the defendant as husband and wife, during which two children were born. He contends that the defendant continuously tortured the plaintiff for dowry, culminating in the incident of 02.11.2011 when she was driven out with her children.

He submits that on 13.03.2015, in the presence of witnesses, the plaintiff requested the defendant to resume conjugal life, but he refused, insisting on dowry and declining to pay maintenance or *denmohar*. The alleged verbal divorce of 05.06.1997, counsel contends, is a concocted plea, unsupported by credible evidence, and contrary to law. The *kabinnama* produced by the plaintiff is a valid document executed in due form, and the plea of forgery is an afterthought.

He argues that the trial and appellate courts, upon proper appreciation of evidence and assessment of credibility, concurrently held in favour of the plaintiffs. Such concurrent findings of fact cannot be interfered with in revision unless manifestly perverse or occasioning miscarriage of justice, which is absent in this case. He therefore prays for discharge of the Rule.

Having considered the submissions of learned counsel, perused the judgments of the courts below, and examined the evidence and materials on record, it is clear that two children were born out of the relationship, and that the parties lived together as husband and wife for a considerable period. The core issues are: (i) the date and terms of the marriage; (ii) the alleged verbal divorce of 05.06.1997; and (iii) the validity of the *kabinnama* dated 12.10.1997.

The plaintiffs relied upon a registered *kabinnama* dated 12.10.1997, fixing *denmohar* at Tk. 90,501/-. The defendant, however, denied the genuineness of this document and asserted that it was forged. In support of his plea, he examined the concerned Nikah Registrar, Azharul Islam, as DW-2, who unequivocally deposed that he did not issue the said *kabinnama* and further confirmed that no such record exists in the official marriage register. This categorical testimony, coming from the statutory custodian of the register, strikes at the root of the plaintiffs' case. Significantly, the plaintiffs did not produce any rebuttal evidence to discredit DW-2's deposition or to establish the authenticity of the alleged 1997 *kabinnama*.

In contrast, the defendant consistently pleaded and deposed that the marriage was solemnised in 1987 at the plaintiff's relative's house by a Moulovi with a *denmohar* of Tk. 20,001/-, of which Tk. 150/- was paid in ornaments. Although the defendant has not been able to produce a contemporaneous *kabinnama* of 1987, the testimony of DW-2 dislodges the evidentiary foundation of the plaintiffs' claim of a 1997 marriage. When the registered document relied upon by the plaintiffs stands effectively challenged by the Registrar himself, the only credible version that survives is the defendant's assertion of a 1987 marriage.

As to the alleged verbal divorce, while the defendant has pleaded pronouncement on 05.06.1997 in the presence of witnesses, the law under the Muslim Family Laws Ordinance, 1961 requires notice to the Chairman of the Union Parishad/Municipality and observance of prescribed procedure. No such notice or acknowledgment has been produced. Thus, the plea of divorce fails in law, and the marital tie, whether from 1987 or otherwise, must be held to have subsisted at the time of institution of the suit.

With regard to the allegation of forgery, although P.R. Case No. 251 of 2018 resulted in a PBI report implicating plaintiff No. 1 under Sections 467/468/471 of the Penal Code, a civil court must independently assess the matter. The un rebutted testimony of DW-2, coupled with the absence of any authentic record in the Registrar's book, strongly supports the defence case that the alleged *kabinnama* of 1997 is not genuine.

On maintenance, the plaintiff's evidence that she and her children were driven out in 2011 and not maintained thereafter remains unshaken. While the defendant claims to have borne educational and marital expenses, that does not absolve him of statutory and contractual obligations. Dower, being an essential right of the wife, is legally enforceable, and non-payment gives rise to cause of action.

Dower, though an essential right, must correspond to the terms of the actual marriage contract. If the plaintiffs' *kabinnama* of 1997 is discredited, the enforceable dower amount would be that agreed upon in 1987, i.e., Tk. 20,001/. Thus, upon weighing the evidence, this Court finds that the testimony of DW-2, the statutory Registrar, effectively dislodges the plaintiffs' reliance on the alleged *kabinnama* of 1997. The balance of probabilities supports the defendant's version of a 1987 marriage with a *denmohar* of Tk. 20,001

In view of the foregoing, this Court finds no illegality, impropriety, or irregularity in the impugned judgment and decree dated 09.03.2021 (decree signed on 15.03.2021) passed by the learned Joint District Judge, Court No. 3, Rangpur in Family Appeal No. 89 of 2019, affirming the judgment and decree dated 16.09.2019 (decree signed on 20.09.2019) of the learned Family Court, Sadar, Rangpur in Family Suit No. 83 of 2015. The concurrent findings of fact are based on

proper appreciation of evidence and call for no interference in revision.

It is noted that, at the time of issuance of this Rule, the petitioner deposited a pay order of Tk. 40,000/- in favour of the plaintiff, which has not yet been received by her.

Accordingly, **the Rule is discharged**. The judgments and decrees of the courts below are upheld. There will be no order as to costs.

Let a copy of this judgment be communicated to the courts concerned at once and the Lower Court Records be sent back forthwith.

(Justice Md. Toufiq Inam)

Ashraf/ABO.