

**District-Chattogram**

**In the Supreme Court of Bangladesh  
High Court Division  
(Civil Revisional Jurisdiction)**

Present:

Mr Justice Md Atoar Rahman

**Civil Revision No 2618 of 2022**

Topu Barua

... defendant appellant-petitioner

- versus-

Ishita Borua

...plaintiff No 1 respondent opposite party

Mr Mohammad Mohsin Kabir, Advocate

... for the defendant appellant-petitioner

Mr Mr ABM Matiur Rahman, Advocate

... for the plaintiff No 1 respondent opposite  
party

**Heard on: 05.02.2024, 06.02.2024 and  
04.03.2024**

**Judgment on: 20.03.2024**

This Rule was issued on an application under section 115(1) of the Code of Civil Procedure, 1908 calling upon the opposite party to show cause as to why the judgment and decree dated 27.03.2022 (decree being signed on 29.03.2022) passed by the learned Additional District Judge, Bankruptcy Court, Chattogram in Family Appeal No 29 of 2021 disallowing the appeal and thereby affirming the judgment and decree dated 22.11.2020 (decree being drawn up on 29.11.2020) passed by the learned 1<sup>st</sup> Additional Senior Assistant Judge and Family Court, Sadar, Chattogram in Family Suit No 288 of 2017 decreeing the suit in

part should not be set aside and/or passed such other or further order(s) as to this court may seem fit and proper.

During issuance of the Rule an order was passed staying operation of the impugned judgment and order.

The short facts for the purpose of disposal of the Rule are that the opposite party Ishita Borua and her son Jaydeb Borua as plaintiffs No 1 and 2 respectively filed a suit being Family Suit No 288 of 2017 in the Court of 5<sup>th</sup> Senior Assistant Judge and Family Court, Sadar, Chattogram seeking for maintenance stating *inter alia* that the marriage between the plaintiff No 1-opposite party and the defendant petitioner was duly solemnized on 01.02.2013 by way of Buddhiest rituals. After marriage the defendant-petitioner asked the plaintiff No 1 opposite party to stay at her mother's house. During their conjugal life they were blessed with a male baby the plaintiff No 2. The defendant petitioner made a declaration for separation with the plaintiff No 1 opposite party which was received on 31.01.2017. The defendant petitioner did not provide their maintenance; hence the suit for maintenance @ taka 15,000.00 per month for the plaintiff No 1 and @ taka 10,000.00 per month for the plaintiff No 2 was instituted.

The defendant-petitioner contested the suit by filing written statement stating *inter alia* that the plaintiff No 1's mother without disclosing her (plaintiff No 1's) previous marriage again arranged her marriage with him and after few days of marriage he found that she

always remained sick. Thereafter mother of the plaintiff No 1 filed a case being CR Case No 48 of 2017 against him under section 4 of the Dowry Prohibition Act and as he was arrested by the police he could not provided maintenance regularly to the plaintiff No 1 and the child.

The family suit was transferred to the Court of 1<sup>st</sup> Additional Senior Assistant Judge and Family Court, Chattogram for trial and disposal. After hearing the parties learned judge of the family court by his judgment and decree dated 20.11.2020 decreed the family suit in part to the effect that the plaintiff No 1 would get as past maintenance @ taka 5,000.00 per month totaling taka 2,25,000.00 for herself and @ taka 3,000.00 per month totaling take 1,35,000.00 for the child and also direction was given to the defendant to pay as future maintenance @ taka 5,000.00 per month for the wife and @ taka 3,000.00 per month for the child with yearly enhancement of ten percent.

Being aggrieved by and dissatisfied with the above judgment and decree, the defendant prepared an appeal being Family Appeal No 29 of 2021 in the Court of District Judge, Chattogram. On transfer the family appeal was heard by the Additional District Judge, Bankruptcy Court, Chattogram who by his judgment and decree dated 27.03.2022 disallowed the appeal and thereby affirmed the judgment and decree passed by the family court.

Being aggrieved by and dissatisfied with the above judgment and decree passed by the appellate court the defendant-appellant moved to

this court with an application under section 115(1) of the Code of Civil Procedure and obtained the preset Rule and a conditional order of stay.

Mr Mohammad Mohsin Kabir, the learned Advocate appearing on behalf of the defendant-appellant-petitioner has submitted that the judgment and decree passed by the family court was wrong, improper and without application of judicial mind and also the learned judge of the appellate court committed an error of law resulting in an error in the decision occasioning failure of justice in disallowing the appeal and, as such, the judgment and decree passed by the appellate court is liable to be set aside.

Mr ABM Matiur Rahman, the learned Advocate appearing on behalf of the plaintiff No 1-respondent-opposite party has submitted that learned trial court having considered the facts and circumstances of the case rightly and perfectly decreed the suit and learned judge of the appellate court also rightly and perfectly disallowed the appeal and he did not commit any error of law resulting in an error in his decision occasioning failure of justice in deciding the appeal and, as such, the Rule is liable to be discharged.

I have heard the submissions advanced by the learned Advocates for both the parties and perused the application and record along with connected papers.

Admittedly marriage of the plaintiff No 1 Ishita Borua and the defendant appellant petitioner Topu Barua was duly solemnized on 01.02.2013 by way of Buddhist rituals. It is also admitted that during their conjugal life they gave birth a male baby named Joydev Borua, the plaintiff No 2. It is also admitted that the husband and wife have been residing separately since 29.01.2017 and wife Ishita Borua is residing at her mother's house along with the son. It is also not disputed that there is no provision of divorce of the Buddhist community. Thus, it need not be said that marriage between them has not been dissolved in any way and they are still husband-wife.

Considering the evidence and facts and circumstances of the case it appears that the learned judge of the family court rightly held that the defendant petitioner without any valid reason kept away his wife and son and did not perform his obligatory duty in respect of payment of maintenance to his wife and son.

It transpires that learned judge of the family court allowed maintenance from 29.01.2017 to 29.10.2020 @ taka 5,000.00 per months, totaling an amount of taka 2, 25,000,00 and @ taka 3,000.00 per month totaling an amount of taka 1,35,000.00 for the wife and son respectively and also directed the defendant petitioner to pay future maintenance for them. It appears that in the prayer portion of the plaint future maintenance was not claimed, but learned trial judge allowed the future maintenance for both the wife and son. Since in the plaint future

maintenance was not prayed, I am of the opinion that the plaintiff No 1 wife Ishita Borua is not entitle to get future maintenance. But as the son, the plaintiff No 2, has not been made party in the present application future maintenance allowed to him remains intact and he is entitled to get future maintenance as allowed by the trial court from the defendant petitioner.

In view of the above discussions, I am of the view that the Rule is liable to be discharged with modification.

In the result, the Rule is discharged with modification as above without any order as to cost. The impugned judgment and decree passed by the learned Additional District Judge, Bankruptcy Court, Chattogram in Family Appeal No 29 of 2021 affirming the judgment and decree passed by the Familu Court and the Court of 1<sup>st</sup> Additional Senior Assistant Judge Sadar, Chattogram in Family Suit No 288 of 2017 is hereby affirmed with modification as above. As per the order passed by this Division if any amount of the decreetal money is deposited by the defendant-petitioner in the family court the same shall be adjusted with the decreeal amount.

The order of stay granted at the time of issuance of the Rule is hereby vacated.

Let the lower courts' records along with a copy of this judgment be transmitted at once.