

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

**Present:**

**Mr. Justice Zafar Ahmed**

**Civil Revision No. 3307 of 2022**

**In the matter of:**

Md. Sarwar

Defendant-respondent-petitioner

-Versus-

Nahida Begum Mily

Plaintiff-appellant-opposite party

Mr. Gazi Md. Sadequul Alam,  
Advocate

...For the petitioner

Mr. M. Belayet Hossain, Senior  
Advocate, with

Mr. M. Mahmudul Hasan, Advocate

... For the opposite party

Heard on: 19.03.2025, 24.04.2025,  
29.05.2025, 15.07.2025, and 16.07.2025  
Judgment on: 23.07.2025

In the instant civil revision, this Court issued a Rule on 14.08.2022 calling upon the opposite party to show cause as to why the judgment and decree dated 09.05.2022 (decree drawn on 16.05.2022) passed by the learned Additional District Judge, 4<sup>th</sup> Court, Chattogram in Family Appeal No. 48 of 2021 allowing the appeal and thereby setting aside

the judgment and decree dated 07.12.2020 (decree drawn on 19.01.2021) passed by learned Additional Senior Assistant Judge, 1<sup>st</sup> Court and Family Court, Chattogram in Family Suit No. 570 of 2017 decreeing the suit in part should not be set aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

The defendant (former husband) is the petitioner before this Court. The Rule has been contested by the plaintiff-opposite party (former wife).

The plaintiff filed the family suit for a decree for unpaid dower for Tk. 9,00,000, maintenance cost for a period of 15 months for (15×10,000) = Tk. 1,50,000, maintenance cost for a period of 03 months for the iddat period for (3×10,000) = Tk. 30,000 and treatment cost for Tk. 20,000, total Tk. 11,00,000.

The trial Court found that the marriage was not consummated and as such, the plaintiff was not entitled to full dower amount. Eventually, the trial Court decreed the suit in

part awarding Tk. 4,00,000 for dower money, arrear maintenance cost Tk. 84,000 and Tk. 30,000 as maintenance cost for the iddat period, total Tk. 5,14,000.

On appeal, the appellate Court below allowed the appeal, set aside the judgment and decree of the trial Court and allowed the dower money of Tk. 9,00,000 as claimed holding that the marriage was consummated. The appellate Court also awarded Tk. 84,000 as arrear maintenance cost and Tk. 30,000 as maintenance cost for the iddat period.

Challenging the judgment and decree of the appellate Court below the defendant (former husband) has filed the instant revision and obtained the Rule.

The only issue for determination in the instant Rule, as raised by learned Advocate of the appellant (former husband), is whether the marriage between the parties was consummated.

Marriage between the parties was solemnized on 03.09.2015. Thereafter, the wife

stayed at the husband's residence for about 10 months. However, the relationship between the parties cracked. The wife left the matrimonial home and went to her father's residence on 25.07.2016. She never returned to the matrimonial home. The wife claims both in the plaint and in her deposition that during her stay at the matrimonial home, the marriage was consummated which is denied by the husband in his written statement and in his deposition.

On 27.03.2017, the husband applied to the Chattogram City Corporation for permission to contract another marriage. The application gave rise to Arbitration Council Case No. 423-1/17. The wife filed written objection in the said case on 03.08.2017 (ext. Ga). The Arbitration Council did not grant permission to the husband to contract another marriage. His application was rejected.

Eventually, the wife sent notice of divorce to the husband on 26.09.2017 and the marriage was dissolved in accordance with the law.

The husband's specific case is that the wife was incapable of performing sexual intercourse. Apart from the oral evidence, the husband relied on the statement made in written objection submitted in Arbitration Council Case No. 423-1/17 (ext. Ga) wherein it is stated, *inter alia*, "...পরবর্তীতে বিগত ১০/১০/১৫ ইং তারিখে আনুষ্ঠানিকভাবে পারিবারিক আনুষ্ঠানিকতার শেষে আমাকে স্বশ্রুত আমার বাড়ীতে পাঠানো হয়। কিন্তু আমার স্বামীর প্রতি আমার মধ্যে যে ভীতি জন্মে ছিল তা দূর না হওয়ায় তাহার সহিত আমার কোন শারীরিক সম্পর্ক গড়ে উঠেনি.....।" Relying on this statement, the trial Court held that the marriage was consummated.

The appellate Court below rightly held that exhibit-Ga cannot be considered as legal evidence. The appellate Court below observed that the defendant husband failed to prove that the wife was incapable of performing sexual intercourse. The appellate Court considered facts, circumstances and oral evidence of the wife and held that the marriage was consummated. I find no reason to disbelieve the plaintiff (former wife). Therefore, I am of the view that the marriage was consummated. The

appellate Court below rightly allowed the appeal. Hence, the Rule fails.

In the result, the Rule is discharged.

Send down the L.C.R.