

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

Present:

Mr. Justice Md. Riaz Uddin Khan

Civil Revision No. 3941 of 2022

IN THE MATTER OF :

An application under section 115(4) of the Code of
Civil Procedure

-And-

In the Matter of:

Laila Nur

...Plaintiff-Appellant-Petitioner

-Versus-

Md. Nur-un-Nabi

...Defendant-Respondent-Opposite Party

Mr. Md. Rezaul Karim, Advocate

...for the Defendant-Respondent-Opposite Party

Judgment on: 30.11.2025

Md. Riaz Uddin Khan, J-

Rule was issued calling upon the opposite party to show cause as to why the Order No. 2 dated 03.08.2022 passed by the learned District Judge, Dhaka in Family Appeal No. 45 of 2022 dismissing the appeal and thereby affirming Order No. 11 dated 14.02.2022 passed by the learned Additional Assistant Judge and Family Court No.3, Dhaka in Family Suit No. 861 of 2021 rejecting an application for temporary injunction filed by the plaintiff-petitioner should not be set aside and/or such other or further order or orders should not be passed as to this Court may deem fit and appropriate.

At the time of issuance of Rule the parties were directed to maintain status-quo in respect of possession and position of the Suit Property for a period of 03 (three) months initially which was extended time to time.

Succinct facts for disposal of this Rule is that the present petitioner being the plaintiff filed Family Suit No. 861 of 2021 before the Family Court, contending inter-alia that the petitioner got married with the opposite party in accordance with Muslim law dated 14.01.2011 by fixing a dower of taka 10 lac. During their wed-lock they were blessed with 02 sons. The plaintiff alleged that after the marriage their conjugal live was not so happy and the defendant husband used to torture her physically and mentally. The plaintiff further claimed that the defendant is a rich man having many properties in Dhaka City. The plaintiff along with her sons is residing in a flat situated at 1 New Baily Road, Dhaka while the defendant along with his father and mother resides at Santinagor, Dhaka. On 31.03.2021 the defendant gave a notice of talak to the plaintiff and thereafter the city corporation served notice upon both the parties where upon they appeared before the salasi board and on consultation the defendant withdraw his notice of talak. The plaintiff claimed that the defendant is not paying the maintenance of the plaintiff and their 2 sons from November 2020 to 30 September 2021. As such the plaintiff filed the instant suit claiming dower of taka 10 lac along with maintenance of her and their 2 (two) minor sons.

At one stage of the suit the plaintiff filed an application under section 16A of the Family Law Ordinance, 1985 for passing an order of mandatory injunction against the defendant so that he cannot evict the plaintiff along with their 2 minor sons from the property situated at 1 New Baily Road where they

are living presently. The defendant by filing written objection contested the case. After hearing both parties the trial court rejected the same on the contention that after perusing the written objection along with the annexed papers the court is satisfied that divorce has been effected hence the plaintiff has no right to stay in the flat of the defendant having no marital relationship. The Court further observed that since there is no marital relationship it is the out of the jurisdiction of the Family Court rather it is a civil dispute which can be resolved by a competent Civil Court.

Against the aforesaid order the plaintiff petitioner filed appeal before the District Judge. After hearing the appeal the learned District Judge dismissed the appeal concurring the finding of the trial court.

Being aggrieved by and dissatisfied with the aforesaid judgment and order the plaintiff-petitioner filed the instant revision before this Court and obtained the Rule and order of status-quo as stated at the very outset.

This matter was fixed at the instance of the learned advocate of the opposite party and since 18.11.2025 this matter is appearing in the daily cause list of this Court. On 18.11.2025 the learned advocate for the petitioner took time for 1(one) week but till today the learned advocate for the petitioner did not turn up for pressing the rule. However, Mr. Rezaul Karim, the learned advocate for the opposite party appeared and submits that both the trial court correctly found that there is no marital relationship

between the plaintiff and the defendant at the moment hence application under section 16A of the Family Court Ordinance, 1985 is not maintainable.

Mr. Karim, then submits that admittedly the defendant opposite party is a rich man having various property located in various places of Dhaka City and if the plaintiff got decree there is no chance of frustrating the decree hence this application is not maintainable. In support of his submission the learned advocate relied upon the decision in the case of Emdadul Haque (Md) Vs. Feroja Akhter reported in 12 BLC 245.

I have heard the learned advocate for the opposite party, perused the application filed under section 115(4) of the Code of Civil Procedure along with supplementary affidavit and other documents annexed there with.

It appears from the order dated 14.02.2022 passed by the trial court that the defendant filed written objection against the application of mandatory injunction but no copy was served upon the plaintiff. The trial court observed that in the written objection the defendant annexed a copy of notice of talak dated 03.08.2021 and as such the talak will be effective from 21.11.2021. In such situation a divorced wife has no right to live in a flat of her ex-husband. The trial court further observed that since talak has been effected, application under section 16A of the Family Court Ordinance is not maintainable, rather it is the jurisdiction of the Civil Court regarding the eviction or non eviction of any parties from any properties.

It appears from the judgment and order dated 03.08.2022 passed by the learned District Judge that he fully concurred with the decision of the trial court. On perusing the plaint along with the instant application it appears to me that the so-called notice of talak dated 03.08.2021 purportedly issued by the defendant husband is not admitted fact by the plaintiff. Nowhere in the plaint or in the application the plaintiff-petitioner admitted that she got/received any notice of talak dated 03.08.2021. So, apparently both the courts below committed error in the finding that the talak was admitted by the parties. The suit is still pending and no evidence has been taken regarding the notice of talak as such without taking evidence at this stage the courts below wrongly observed that the plaintiff-petitioner is a divorced wife.

Now, the question is whether an application under section 16A of the Family Court Ordinance, 1985 is maintainable in the present situation. It is the case of the plaintiff that they are (the plaintiff and the defendant) still under wed-lock and they are blessed with 02 (two) minor sons who are living with the plaintiff. Admittedly the plaintiff-petitioner and her 02 (two) sons are living in the disputed flat situated at 1 New Baily Road, Dhaka.

The suit is for dower and maintenance of the plaintiff and their 02 (two) minor sons. The suit is still pending as such my considered view is that in the peculiar facts and circumstances of the present case the application under section 16A of the Family Court Ordinance is very much applicable/maintainable. Now, the question raised by the learned advocate for the

defendant-opposite party that when admittedly the defendant is a rich man and has sufficient property and money to fulfill the prospective decree, if the plaintiff get any, in that case this application should not be allowed. The learned advocate placed the decision reported in 12 BLC 245 (Supra) in that case a Division Bench of this Court observed that the power to grant a temporary injunction is at the discretion of the court. This discretion, however, should be exercised reasonably, judiciously and on sound legal principles. Injunction should not be lightly granted as it adversely affects the other side. The grant of injunction is in the nature of equitable relief, and the court has undoubtedly power to impose such terms and conditions as it thinks fit. Such conditions, however, must be reasonable so as not to make it impossible for the party to comply with the same and thereby virtually denying the relief which he would otherwise be ordinarily entitled to. Generally, before granting the injunction, the court must be satisfied about the following aspects:

- (i) *Prima facie* case: The first rule is that the applicant must make out a *prima facie* case in support of the right claimed by him. The court must be satisfied that there is a *bonafide* dispute raised by the applicant and on the facts before the court, there is a probability of the applicant being entitled to the relief claimed by him. However, the court should not examine the merits of the case closely at that stage because the court

is not expected to decide the suit finally. In deciding *prima facie* case, the court is to be guided by the plaintiff's case as revealed in the plaint, affidavit or other materials produced by him.

(ii) Irreparable injury: The existence of the *prima facie* case alone does not entitle the applicant for a temporary injunction. The applicant must further satisfy the court about the second condition by showing that he will suffer irreparable injury if the injunction as prayed for is not granted, and that there is no other remedy open to him by which he can protect himself from the consequences of apprehended injury.

(iii) Balance of convenience: The third condition for granting interim injunction is that the balance of convenience must be in favour of the applicant. In other words, the court must be satisfied that the comparative mischief or inconvenience which is likely to be caused to the applicant by withholding the injunction will be greater than that which is likely to be caused to the opposite party by granting it.

In that case, this Court further observed that *in the instant case, the marriage between the plaintiff and defendant is admitted. It is the claim of the plaintiff that she was driven out from the house of her*

husband and he is not maintaining her. The prima facie case is established and the balance of convenience is also in favour of the plaintiff. If the Learned trial Court would not grant interim order of injunction, the purpose of the suit would have been frustrated whereby the plaintiff would suffer irreparable loss. In view of the above mentioned discussion and law bearing on this matter, we are of the view that the Learned trial Court correctly passed the interim order of injunction.

So, it is well settled that in getting any interlocutory order, particularly temporary injunction, the plaintiff at first to prove a *prima facie* case and if there is no *prima facie* case then no injunction or interlocutory order can be passed. Secondly, in getting the temporary injunction the petitioner is to satisfy the court that if the injunction is not allowed he/she will suffer irreparable loss and injury which cannot be fulfilled by money. Thirdly, the petitioner is to satisfy the court that the balance of convenience and inconvenience is in his/her favour. In the instant case admittedly the suit is pending for dower and maintenance of the plaintiff and her 02 (two) minor sons. Admittedly the plaintiff and her 02 (two) sons are residing at present in the disputed flat situated at 1 new Baily Road and admittedly the defendant tried to evict the plaintiff from that flat. This Court on 01.09.2022 passed an order of status-quo regarding the possession and position of the suit property and on query the learned advocate for the opposite party conceded that the plaintiff and her 02 (two) minor sons are still living in that flat. Considering all aspects of the case, I am of the view, the justice would be

best served if the order of *status-quo* continue till disposal of the Family Suit No. 861 of 2021 now pending in the Family Court No.23, Dhaka.

The parties are directed to take steps for early conclusion of the trial and the trial court is also directed to conclude the trial as early as practicable.

With this observation the Rule is **disposed of**.

Communicate the judgment and order at once.