

Bench:
Mr. Justice Bhishmadev Chakraborty

Civil Revision No. 3859 of 2022

Sreedam Das alias Sreedam Babu
.....petitioner

-Versus-
Sujola Rani Das
.....opposite party

Mr. Bidhayok Sarker, Advocate
.....for the petitioner

Mr. Omith Ray, Advocate
.....for opposite party

Judgment on 30.05.2024

The defendant-husband approached this Court with an application under section 115(1) of the Code of Civil Procedure upon which the rule was issued and plaintiff-wife was called upon to show cause as to why the judgment and decree of the District Judge, Sunamganj passed on 22.03.2022 in Family Appeal No. 14 of 2021 dismissing the appeal affirming the judgment and decree of the Assistant Judge and Family Court, Sadar, Sunamganj passed on 28.06.2021 in Family Suit No.61 of 2018 decreeing the suit for maintenance and separate residence shall not be set aside and/or such other or further order or orders passed to this Court may seem fit and proper.

The material facts for disposal of the rule, in brief, are that the plaintiff was given in marriage with the defendant in 1988 according to hindu religious rituals. After marriage it came to her knowledge

that the husband is addicted, indisciplined and unruly. After few months she became pregnant but due to the fear of arrogant husband her father-in-law sent her to the parents' house. The plaintiff gave birth to a female child on 12.07.1990 there. The defendant did never look after the wife and his daughter. Even he did not take their information. The defendant husband took second wife in 2003. The plaintiff has been residing in her parents' house with the daughter since 1990 and has been leading a miserable life. Hence, the suit claiming maintenance and separate residence according to the provisions of the Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946 (the Act, 1946).

The defendant appeared in the suit and filed written statement denying the facts averred in the plaint. He further contended that for plaintiff's disagreement to stay with the second wife she left his house in 2006. The defendant tried his best to bring her back to his house but failed. He has been paying Taka 2000.00 to the plaintiff as maintenance per month. Since the suit has been filed on false statement it would be dismissed.

In the trial, the plaintiff examined 4 witnesses while the defendant examined 2. However, the Family Court on assessing the evidence of the parties decreed the suit deciding the issues in favour of the plaintiff. The Family Court decreed the suit for Taka 6,39,800.00 for previous maintenance and cost of separate residence

of the plaintiff and directed the defendant to pay the amount within 60 days. The Family Court further directed the defendant to pay plaintiff Taka 4000.00 as maintenance and 2000.00 as cost of separate residence per month and that the aforesaid amount should be increased 15% every year.

Being aggrieved by the defendant preferred appeal before the District Judge, Sunamganj. The District Judge heard the appeal and dismissed it. In this juncture, the defendant approached this Court and obtained this rule and stay of the operation of the judgment and decree passed by the Courts below for a limited period subject to deposit Taka 1,00,000.00 to the trial Court within 4 months. The petitioner complied with the aforesaid order and submitted an affidavit of compliance to this Court. The aforesaid payment has been admitted by the learned Advocate for the opposite party.

Mr. Bidhayok Sarker, learned Advocate for the petitioner very candidly submits that since the opposite party is the wife of the petitioner and both of them belong to hindu religion, she is entitled to the maintenance and cost of separate residence under the provisions of the Act, 1946. It is difficult for him to make any submission against entitlement of a hindu married women's maintenance and separate residence from her husband. But he submits that the petitioner is an inhabitant of village Joshpratap of police station Tahirpur within the district of Sunamganj which is a very remote area. The people resides

there have no specific profession of income. Most of them passes their days from hand to mouth. By the passage of time the petitioner became very old and has been suffering from various diseases. It would be difficult for him to provide plaintiff's maintenance and cost of residence at the increased rate as decreed by the Court. He begs mercy of this Court and prays for exemption of 15% increased rate of maintenance cost and separate residence for ends of justice.

Mr. Omith Ray, learned Advocate for the opposite party opposes the aforesaid prayer of Mr. Bidhayok. He submits that due to the gradual increase of the price of goods the above prayer of the petitioner is unacceptable. It would be difficult for the opposite party wife also to maintain her family and the cost of residence even at the increased rate as allowed by the family Court. The rule, therefore, would be discharged and the judgments passed by the Courts below be affirmed.

I have considered the submissions of both the sides, gone through the materials on record and perused the judgments passed by the Courts below. The Family Court considered the evidence and other materials on record and hold that the plaintiff is entitled to get the expense of separate residence and maintenance according to the provisions of section 2(2), (4) and (7) of the Act, 1946 and accordingly decreed the suit for Taka 6,39,800.00 as past maintenance and residence. The family Court further directed the defendant to

provide the plaintiff's expense for separate residence and maintenance of Taka 2000.00 and 4,000.00 respectively on each month. In deciding the aforesaid issues, the Assistant Judge relied on evidence of DW2, the full brother of the petitioner. The aforesaid judgment and decree passed by the Family Court was affirmed by the Appellate Court. On going through the judgments passed by the Courts below, I do not find that the Courts below committed any error in granting past cost of separate residence and maintenance to the plaintiff and also the amount to be paid in each month. But considering the status of both the parties and that they reside in a remote poor area of Tahirpur within Sunamganj district, the increment of 15% on maintenance and residence purpose to be paid to the plaintiff in every month appears me too harsh which is requiral to be exempted. Therefore, I am inclined to allow the prayer of the learned Advocate for the petitioner.

In view of the aforesaid discussions, I find no merit in this rule. Accordingly, the rule is discharged with modification of the trial Court's judgment. No order as to costs. The order of stay passed by this Court stands vacated.

The judgment and decree passed by the Family Court is hereby affirmed in the modified form that the plaintiff has to pay the decretal amount and the monthly payment as ordered by the Family Court, but the amount will not increase 15% in every year.

However, if the plaintiff proceeds with the entitlement in any manner, the amount of Taka 1,00,000.00 which the defendant has already paid shall be deducted.

Communicate the judgment and send down the lower Courts' record.