

Present:
Mr. Justice Md. Salim

CIVIL REVISION NO.474 OF 2022

Md. Anwar Hossain
..... *Defendant-Petitioner.*

-VERSUS-

Mst. Shahnaj Pervin and another
.....*Plaintiff-Opposite parties.*

Mr. Md. Riaz Hossain Sikder with
Mr. S.M. Zakir Hossain, Advocates
..... *For the Petitioner.*

Mr. Md. Shahidul Islam with
Ms. Nahid Hossain, Advocate
..... *For the Opposite Parties.*

Heard on 09.07.2024 and
10.07.2024

Judgment on 10.07.2024

This Rule is directed against the judgment and decree dated 01.01.2020 passed by the learned Additional District Judge, 3rd Court, Khulna, in Family Appeal No.62 of 2016, allowing in part and thereby modifying the judgment and decree dated 09.05.2016 passed by the learned Assistant Judge, Family Court (Rupsha), Khulna, in Family Suit No.671 of 2011.

The facts necessary for the disposal of the Rule are that the opposite party, No. 1, as plaintiff, instituted a family suit bearing No. 671 of 201 before Family Court Khulna for money decree towards

prompt dower and for Maintenance of plaintiff NO.1-2 contending, inter-alia that on 24.09.2009 the plaintiff No.1 was married to the defendant through a registered kabinnama fixing dower at Tk.2,00,001/-; that in their conjugal life, a daughter was born out of their wedlock; that after the birth of the child defendant started to torture the plaintiff No.1 in demand of dowry; that on 05.04.2011 the defendant called her father and sister over the phone giving information about her sickness; the defendant forcefully took signatures of plaintiff No.1 and her father and sister and also took L.T.I. of the plaintiff No.1 on some papers and stamps and created forged Talaqnama using those signatures; after taking their signatures defendant took plaintiff No.1 and her father and sister to Mawferryghat and then boarded them at launch; the plaintiff No.1 did not divorce defendant; she has been living in her father's house since 07.04.2011; on 21.10.2011 the plaintiff demanded dower and Maintenance from the defendant over the phone but he refused to pay; hence the suit.

On the other hand, the defendant-petitioner contested the suit by filing a written statement denying all the material allegations brought in the plaint. The defendant's case is that during their conjugal life after a daughter was born, plaintiff No.1 tortured her physically and mentally; on 29.03.2011, the father and sister of plaintiff No.1 came to her house and at the mediation of local respectable people and the father and sister of the plaintiff No.1 has

been dissolved by way of khula talaq on 30.03.2011 which had been registered in the office of Notary Public and the office of Marriage and Divorce Register; the plaintiff No.1 received Tk.2,00,001/- as dower and Tk.1,30,000/- as Maintenance of plaintiff No.2. So they are not entitled to get any dower and Maintenance. With this averments, he prayed for dismissal of the suit.

Upon the pleadings of both the parties, the learned Assistant Judge and Family Court framed three issues in the suit.

Both the parties adduced and produced evidence in support of their respective cases.

Consequently, the learned Assistant Judge, Family Court (Rupsha), Khulna, dismissed the suit by the judgment and decree dated 09.05.2016.

Being aggrieved by and dissatisfied with the above judgment and decree, the plaintiff, as appellant, preferred Family Appeal No.62 of 2016 before District Judge Khulna. On transfer, the appeal was heard by the learned Additional District Judge, 3rd Court, Khulna. Eventually, the learned Additional District Judge, 3rd Court, Khulna, by the judgment and decree dated 01.01.2020, partly allowed the appeal.

Being aggrieved by and dissatisfied with the impugned judgment and decree dated 01.01.2020, the defendant-petitioner preferred the present Civil Revision and obtained the instant Rule and an order of stay.

Mr. Nahid Hossain, the learned Advocate appearing on behalf of the defendant-petitioner, submits that the appellate court below failed to consider that the plaintiff is not entitled to get her dower money and Maintenance as she has already received Tk.2,00,001/- and 1,13,000/- from the defendant petitioner as dower and Maintenance, so the appellate court below committed an error of Law resulting in an error in the decision an occasioning failure of justice; that the appellate court below failed to consider that the trial court rightly arrived a correct decision that the divorce was accomplished by both the consenting parties with the consent of the husband and the wife.

Mr. Md. Shahidul Islam, the learned Counsel appearing for the opposite party No.1, submits that the Judgment and Decree of the appellate court were proper, but the family court did not at all consider the existing Law of the country, had arbitrarily rejected the suit.

I have considered the submission of the learned Counsel for both parties. perused the impugned judgment and decree of the courts below and other material available on record.

Admittedly, plaintiff No.2 is the daughter of the defendant. Admittedly, the defendant had paid Taka 5000/- monthly from 23.05.2011 to 14.07.2011 to defendant No. 2.

To substantiate the submissions advanced by the Bar, the relevant Law may be quoted as follows:--

“370. Maintenance of children and grandchildren--- (1) A father is bound to maintain his sons until they have attained the age of puberty. He is also bound to maintain his daughters until they are married. But he is not bound to maintain his adult sons unless they are disabled by infirmity or disease. The fact that the children are in the custody of their mother during their infancy does not relieve the father from the obligation of maintaining them. But the father is not bound to maintain a child who is capable of being maintained out of his or her own property.

(2) if the father is poor and incapable of his own labour, the mother, if she is in easy circumstances, is bound to maintain her children as the father would be.

3. If the father is poor and infirm, and the mother also is poor, the obligation to maintain the children lies on the grandfather, provided he is in easy circumstances.”

It manifests that a father must provide Maintenance to his unmarried daughter until married as per the provision enumerated in section 370 of the Mohammadan Law.

In view of the above, I am of the view that the defendant petitioner is bound to maintain his unmarried daughter(plaintiff No.2) till the date of her marital status. The law does not say that the daughter will lose her right to maintenance from her father after attending the age of eighteen (18).

It is revealed that the court of appeal below, having considered the evidence of P.Ws. and D.Ws., rightly allowed the appeal by modifying the judgment and decree of the trial Court. Therefore, I find no reason to take a view different from that of the learned Additional District Judge, 3rd Court, Khulna. Since the plaintiff-opposite party has been living in a different residence since 15.07.2011 without receiving any maintenance cost from the defendant, the court of appeal below rightly allowed maintenance costs in favour of the plaintiff-daughter with effect from 15.07.2011 which is very much reasonable in the facts and circumstances of the case. The appellate court below allowed the amount of Tk.3,00,000/- to be given for past Maintenance for his daughter and Tk.3,000/- per month for the running time for his daughter, i.e., opposite party No.2 and Tk.100 will be increased every calendar year. We allow the same and find no merit in the Rule.

Resultantly, the Rule is discharged without any order as to cost.

The impugned judgment and decree dated 01.01.2020 passed by the learned Additional District Judge, 3rd Court, Khulna, in Family Appeal No.62 of 2016 is hereby affirmed.

Send down the L.C. records and communicate this judgment.

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(Md. Salim, J).

Kabir/BO