

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

**Present:**

**Mr Justice Abdur Rahman**

**Civil Revision No. 118 of 2023**

**In the matter of**

Md. Sheikh Nazrul Islam (Saheb)

... Decree Debtor-Appellant

*Petitioner*

**-Versus-**

Halima Khatun

... Decree-holder/Respondent

*Opposite party*

Mr Mohammad Shahidul Islam, Advocate

.....*For the petitioner*

*Ms Ishrat Hasan, with*

*Ms Tanzila Rahman Jui, with*

*Ms Ifat Hasan Shammi, Advocate*

...*for the opposite party.*

**Date of Hearing: 17.6.2026 and 18.6.2026 A.D.**

**Date of Judgment: 22.06.2026 A.D.**

**Monday, 08 Ashhar 1433 B.S.**

**JUDGMENT:**

**Abdur Rahman, J:**

This Rule was issued at the instance of the petitioner under the authority of Section 115(1) of the Code of Civil Procedure, 1908, in the following terms:

“Let a Rule be issued calling upon the opposite party to show cause as to why the impugned judgment and decree dated 29.11.2022 (decree signed on 01.01.2023) passed by the learned District Judge, Bagerhat in Family Appeal No. 30 of 2022 dismissing the appeal against the defendant-appellant-petitioner and affirming the judgment and order dated 05.09.2022 passed by the learned Assistant Judge and Sadar Family Court, Bagerhat passed in Family Decree Execution Case No. 03 of 2018 rejecting the stay application should not be set aside and/or such other or further order or orders as to this Court may seem fit and proper.”

The crux of the facts of the case is that the plaintiff-opposite party got married with the defendant-petitioner on

29.09.2011 under a registered Nikahnama. Thereafter, the defendant-petitioner demanded dowry amounting to Tk. 2,00,000/-, and lastly, the plaintiff-opposite party came to her father's house and had a child on 19.12.2015, namely Sayra Akter. The defendant petitioner did not give any maintenance to them. Then the plaintiff, opposite party, and her minor daughter filed a suit for recovery of dower money and maintenance.

The defendant contested the suit by filing a written statement denying all the material allegations against him and contending, *inter alia*, that the defendant-petitioner never demanded any dowry and has regularly provided maintenance; that the divorce was finally granted to her wife on 30.12.2016.

The learned trial Court completed all legal formalities to conclude the trial and finally decreed the suit, giving a specific decision on the divorce that the defendant has not been able to prove the Talaq.

Thereafter, being aggrieved by and dissatisfied with the decision of the trial Court, the petitioner, being the appellant, filed an appeal before the learned District Judge, Bagerhat, and, after hearing, the learned District Judge dismissed the appeal, affirming the judgment of the trial Court. Thereafter the defendant appellant being petitioner file a Civil Revision being No. 94 of 2019 before the High Court Division and obtained Rule, and after hearing the said Rule the High Court Division was also pleased to discharge the said Rule on 14.11.2021, and moreover, the High Court Division held that the learned Subordinate Courts rightly decided that the divorce has not been proved then the petitioner file another civil suit being No. 404 of 2022 before the Sadar Senior Assistant Judge, Bagerhat for declaration that the Talaq given by him has been effected upon the opposite party Halima Khatun. On the other hand, the opposite party started a Family Execution case, being No. 3 of 2018. During the continuation of the said execution case, the present petitioner, as a decree-debtor, filed an application before the said execution Court to stay the operation of the Execution case till the disposal of the Declaration Suit being No. 404 of

2022. After hearing the said application the learned Execution Court was pleased to reject the said application on 5.9.2022, and then being aggrieved by and dissatisfied with the said order, the present petitioner preferred an appeal being Family Appeal No. 30 of 2022 before the learned District Judge, Bagerhat and after hearing said appeal the learned District Judge was also disallowed the appeal upholding the judgment and order of the execution Court herein after the petitioner being aggrieved with the decision of the learned District judge, Bagerhat preferred this Civil Revision.

The opposite party appeared by filing a wokalatnama through the Legal Aid Office of the National Legal Aid, Supreme Court Committee, without filing a counter-affidavit.

**Mr Mohammad Shahidul Islam**, the learned Counsel appearing on behalf of the petitioner, at the outset, assailed the impugned judgment and order passed by both the learned Subordinate Courts, contending that the Courts below have grossly misread, misconstrued and failed to appreciate the oral as well as documentary evidence available on record in its true perspective. According to the learned Counsel, the Courts

below arrived at their findings without properly evaluating the relevant materials and the surrounding facts and circumstances of the case, thereby committing a manifest error of law resulting in a serious miscarriage of justice.

Learned Counsel further submitted that both the Courts below failed to correctly appreciate the legal effect and consequence of the Talaq already pronounced and effected between the parties. It has been argued that the Courts proceeded on an erroneous assumption that no valid dissolution of marriage had taken place, whereas, in reality, the marital relationship had already come to an end by virtue of the execution of the Talaq. According to the learned Counsel, such a misconception of both facts and law has vitiated the impugned judgments, rendering the findings and conclusions wholly unsustainable in law.

Elaborating on his submissions, the learned Counsel contended that since the opposite party consistently disputed the validity and legal effect of the Talaq, the petitioner was left with no efficacious alternative but to institute Title Suit 404 of 2022 seeking a declaration regarding the due

execution, validity, and legal effect of the Talaq. It has further been submitted that the determination of the said Title Suit has a direct bearing upon the rights and liabilities of the parties, particularly with regard to the claim for maintenance. According to the learned Counsel, unless and until the issue relating to the execution and effectiveness of the Talaq is finally adjudicated upon in the said declaratory suit, the opposite party cannot lawfully claim maintenance as the continuation of such liability is intrinsically dependent upon the subsistence of the marital relationship. He, therefore, submitted that the Courts below acted illegally in proceeding with the execution proceedings without awaiting the outcome of the pending declaratory suit. On these premises, he prayed for the Rule to be made absolute.

Conversely, **Ms Ishrat Hasan**, the learned Counsel appearing on behalf of the opposite party, opposed the Rule and supported the impugned judgments and orders passed by both the learned Subordinate Courts. She submitted that the findings recorded by the Courts below are perfectly justified, being based on a proper appreciation of the evidence on

record as well as the settled principles of law, and, as such, call for no interference by this Court in the exercise of its revisional jurisdiction.

The learned Counsel further submitted that the petitioner is, in substance, attempting to reagitate and reopen an issue which has already attained finality through successive adjudications by the competent judicial forums.

She posited that the controversy regarding the alleged execution and legal effectiveness of the Talaq had previously been examined by the learned Family Court, thereafter by the Appellate Court, and ultimately by the High Court Division, all of which concurrently arrived at the categorical finding that the petitioner had failed to establish the legal effectiveness of the alleged Talaq in accordance with law. Therefore, the petitioner is estopped from reopening the very same issue under the guise of a subsequent declaratory suit.

Learned Counsel further contended that, irrespective of any plea regarding the pronouncement of Talaq, the petitioner remains under a statutory obligation to establish

strict compliance with the mandatory provisions of Section 7 of the Muslim Family Laws Ordinance, 1961, which governs the legal effectiveness of a Talaq. She submitted that the very question of compliance with the statutory requirements is also the subject matter of adjudication in Title Suit No. 404 of 2022, and unless such statutory compliance is established in accordance with law, no legal consequence can flow from the alleged Talaq.

It has also been submitted that the learned Subordinate Courts rightly observed that the issue concerning the alleged execution of the Talaq has already been judicially considered and determined, and that the pendency of Title Suit 404 of 2022 does not create any legal impediment to the continuation or execution of the maintenance decree. According to the learned Counsel, the execution proceedings are founded upon a valid and subsisting decree that remains operative unless and until it is lawfully set aside by a competent Court. Accordingly, the pendency of the subsequent declaratory suit neither eclipses the enforceability

of the decree nor furnishes any lawful ground for staying or obstructing the execution proceedings.

In view of the foregoing submissions, the learned Counsel prayed for discharge of the Rule.

I have carefully perused the revisional application together with the judgments and orders impugned therein, the documents annexed to the application, and the other materials available on record. I have also given my anxious consideration to the respective submissions advanced by the learned Counsel appearing for the contending parties.

On perusal of the judgment and order of the learned trial Court, it is found that the learned Court observed in the following way:

“নথি ও দরখাস্ত পর্যালোচনা করলাম। পর্যালোচনায় দেখা যায় অদ্য মোকদমার ডিক্রীদারপক্ষ অত্র আদালতে পাঃ ০৮/১৬নং মোকদমা দাখিল করিলে দোতরফা চিচারে ডিক্রীপ্রাপ্ত হলে দাইকপক্ষ উক্ত রায়ের বিরুদ্ধে মাননীয় জেলা জজ আদালতে পাঃ আপীল ০১/১৮নং মোকদমা করিলে মাননীয় আপীল আদালত আপিলটি না মনজুর করিয়া নিম্নাদালতের রায় ও ডিক্রী ঐহাল রাখেন। অতঃপর দাইকপক্ষ আপীল আদালতের রায়ের বিরুদ্ধে মহামান্য হাইকোর্ট বিভাগ ঢাকা-তে

সিভিল রিভিশন ৯৪/১৯ মোকদমাটি আনায়ন করিলে মহামান্য হাইকোর্ট বিভাগেও মোকদমাটি ডিসমিস হয়। তদপরৱর্তীতে দাইকপক্ষ ৫াদী হইয়া অত্র আদালতে উচ্চাদালত কর্তৃক নিষ্পত্তিকৃত ঐষয় সম্পর্কে একটি ঘোষণা মূলক মোকদমা দাখিল করেন। যাহার নম্বর দেঃ ৪০৪/২২ উক্ত দেঃ ৪০৪/২২নং মোকদমার প্রেক্ষিতে অত্র মোকদমার ষাণ্টীয় কার্যক্রম স্থিগিত করার প্রার্থনা অত্র মোকদমার কার্যক্রম িলম্বিত করার প্রক্রিয়া মাত্র মর্মে আদালতে নিকট প্রতীয়মান হওয়ায় দাইকপক্ষের আনীত দরখাস্ত না মনজুর করা হলো। ”

Similarly, the learned Appellate Court, Bagerhat, observed that:

“স্বীকৃত মতে পক্ষদ্বয়ের মধ্যে মূল পারিৱারিক ০৮/২০১৬ নং মোকদমা হয়, তাহা দোতরফা িচারে ডিক্রি হইলে পারিৱারিক আপিল ০১/২০১৮ হয়। তাহা নামঞ্জুর হইলে মহামান্য আদালতে সিভিল রিভিশন ৯৪/২০১৯ দায়ের হইলে তাহা নামঞ্জুর হইলে দায়িক পৃথক দেওয়ানী ৪০৪/২০২২ নং মোকদমা দায়ের করেন। পারিৱারিক আদালত পক্ষদের মধ্যে তালাক হয় কিনা তাহা পরীক্ষা ও সিদ্ধান্ত প্রদানের উপযুক্ত আদালত ৫টে। ঐ আদালতে সিদ্ধান্ত হইৱার পর আপিলে ও মহামান্য আদালতে রিভিশনে তাহা ৫হাল থাকিলে পৃথক দেওয়ানী মোকদমা করিৱার প্রয়োজন আছে। মহামান্য আদালতে ঐ প্রকার সিদ্ধান্ত প্রদান করিয়াছে ঐ প্রকার কোন কিছু আপিলকারীপক্ষ আদালতকে দেখাইতে পারেন নাই।

এই অস্থায় আদালতের সিদ্ধান্ত হওয়ার পর পৃথক দেওয়ানী মোকদমা করিয়া সেই মোকদমার প্রেক্ষিতে জারী মোকদমা স্থগিত চাহিয়া আপিলকারী কেবল হয়রানী ও কালক্ষেপণ করিতে চাহিতেছেন নির্ধারণ করা যায়।”

Considering the above observations, ‘facts’ and circumstances and the submissions of the learned Counsel of both parties, I need to look into the proceedings of the enforcement of the Decree of the Family Court, Which depends upon the provisions of Section 16 of the Family Court Ordinance, 1985. The relevant power of the Execution Court is denoted in Sub-section 4 of Section 16, which is as follows:

“(4) The decree shall be executed by the Family Court passing it or by such other Family Court to which the decree may be transferred for execution by the Court passing it, and in executing such a decree the Court to which it is transferred shall have all powers of the Family Court passing the decree as if the decree were passed by it.”

From the plain reading of the aforesaid provisions of Section 16 of the Family Court Ordinance, 1985, it is found

that the execution Court has no room or jurisdiction to stay the operation due to another proceeding pending in another Court except to realize the decretal amount or execution of any proceedings arising out of the preferred matter to it.

Now, by reasons of necessity, I feel to examine the provisions of Section 7 of the Muslim Family Laws Ordinance, 1961, which are reproduced below:

**"Talaq:**

7. (1) Any man who wishes to divorce his wife shall, as soon as may be after the pronouncement of talaq in any form whatsoever, give the Chairman notice in writing of his having done so, and shall supply a copy thereof to the wife.

(2) Whoever contravenes the provisions of sub-section (1) shall be punishable with simple imprisonment for a term which may extend to one year or with a fine which may extend to [ten thousand taka] or with both.

(3) Save as provided in sub-section (5), a talaq unless revoked earlier, expressly or otherwise, shall not be effective until the

expiration of ninety days from the day on which notice under sub-section (1) is delivered to the Chairman.

(4) Within thirty days of the receipt of notice under sub-section (1), the Chairman shall constitute an Arbitration Council for the purpose of bringing about a reconciliation between the parties, and the Arbitration Council shall take all steps necessary to bring about such reconciliation.

(5) If the wife be pregnant at the time talaq is pronounced, talaq shall not be effective until the period mentioned in sub-section (3) or the pregnancy, whichever be later, ends.

(6) Nothing shall debar a wife whose marriage has been terminated by talaq effective under this section from remarrying the same husband, without an intervening marriage with a third person, unless such termination is for the third time so effective."

From the aforesaid provisions of Section 7 of the said Ordinance, it is crystal clear that the process of giving effect to the Talaq has been endorsed here and the said power is ultimately vested in the Family Court.

Moreover, in the instant case, the applicable law is only the Family Court Ordinance, 1985, which has a specific ***non-obstante*** clause governing its enforcement over any other laws. The jurisdiction of the Family Court is specifically mentioned in the provision of Section 5 of the said Act, which is reproduced as under:

"5. Subject to the provisions of the [Muslim Family Laws Ordinance, 1961](#) (VIII of 1961), a Family Court shall have exclusive jurisdiction to entertain, try and dispose of any suit relating to, or arising out of, all or any of the following matters, namely:- (a) dissolution of marriage; (b) restitution of conjugal rights; (c) dower; (d) maintenance; (e) guardianship and custody of children."

The pivotal question involved in the instant Rule is whether the pendency of a subsequently instituted suit challenging the validity or effectiveness of an alleged Talaq can operate as a legal impediment to the execution of a decree lawfully passed by the Family Court. The answer, in my considered opinion, must be negative.

The legislative scheme embodied in the Family Courts Ordinance, 1985, unequivocally manifests that every dispute of the citizens of Bangladesh relating to marriage, dissolution of marriage, dower, maintenance and other ancillary matrimonial rights is triable exclusively by the Family Court. Once the legislature has conferred such exclusive jurisdiction upon the Family Court, no other Court may arrogate to itself the authority to determine issues that the statute has specifically entrusted to the Family Court. Accordingly, any question concerning the legality, validity, or effectiveness of a purported Talaq must be adjudicated by the Family Court alone.

In the case at hand, Title Suit 404 of 2022, instituted by the petitioner before the learned Assistant Judge, Sadar, Bagerhat, admittedly raises questions regarding the alleged dissolution of the marriage. Whether such suit is maintainable, whether the alleged Talaq was legally effective, and what consequential relief, if any, the parties are entitled to receive, are matters which fall exclusively within the jurisdiction of the Family Court. Those questions must be

decided on the basis of evidence adduced by the respective parties and in accordance with the applicable principles of law.

The position of the Execution Court, however, stands on an entirely different footing. It is a settled proposition of law that an Executing Court cannot travel beyond the decree under execution. Its jurisdiction is strictly ministerial and confined to giving effect to the decree as it stands. It possesses neither the jurisdiction nor the authority to reopen issues already concluded by the decree, nor can it adjudicate upon fresh controversies touching the marital status of the parties or the legality of an alleged Talaq. Any attempt by the Executing Court to embark upon such an enquiry would amount to exercising a jurisdiction which the law has never vested in it.

The materials available on record further reveal that the petitioner has failed to discharge the obligations imposed upon him by the decree. The decretal amount of dower has not been paid in its entirety. Equally, the petitioner has failed to satisfy his continuing legal obligation to maintain his minor

daughter. It hardly requires reiteration that the right of a minor child to receive maintenance is an independent statutory and legal right. Such a right neither arises from nor depends upon the existence or non-existence of matrimonial disputes between the parents. The legal liability of a father to maintain his minor child continues irrespective of any controversy concerning the validity or effectiveness of a Talaq. Consequently, the petitioner cannot legitimately withhold maintenance for his minor daughter by taking shelter under an unresolved dispute relating to the dissolution of the marriage.

It further appears that throughout the proceedings, the petitioner has consistently asserted that an effective Talaq had already been pronounced. Such an assertion, however, has remained wholly unsubstantiated. The petitioner failed to establish the alleged Talaq before the Trial Court. The Appellate Court likewise did not record any finding recognizing the legality or effectiveness of such Talaq. Even before the High Court Division, no declaration was obtained in favour of the petitioner holding that the alleged Talaq had

been validly effected in accordance with law. In the absence of any judicial recognition of such a plea, the petitioner's contention remains a mere assertion, devoid of legal effect, and cannot constitute a lawful defense to the execution of the decree.

The legal consequence flowing therefrom is equally well settled. An alleged **Talaq which has not been proved in accordance with law, or which is otherwise found to be legally ineffective, cannot be treated as having dissolved the marital relationship. Equally, such an ineffective Talaq cannot create any legal obstacle preventing a subsequent or fresh Talaq from being pronounced in accordance with the procedure prescribed by law.** An act which is legally ineffective cannot extinguish a right which the law itself recognizes. Therefore, if the petitioner genuinely intends to dissolve the marriage and the earlier attempt is ultimately found to be invalid or ineffective, the law does not prohibit him from initiating a fresh process of dissolution strictly in accordance with the governing legal provisions.

It is equally true that every citizen possesses an unfettered right to seek redress before a Court of competent jurisdiction. The institution of Title Suit 404 of 2022, therefore, cannot by itself be characterized as illegal or incompetent. Nevertheless, the pendency of such a proceeding does not automatically suspend, nullify or render inexecutable a decree which has already attained finality. Unless the operation of the decree is stayed by a competent Court or its execution is otherwise restrained by a lawful order, the decree-holder cannot be deprived of the fruits of the decree merely because another proceeding involving related questions has subsequently been instituted.

The record further demonstrates that the petitioner himself invoked the jurisdiction of the High Court Division in Civil Revision No. 94 of 2019 and obtained a definitive adjudication. Significantly, the petitioner did not challenge the judgment and order passed therein before the Appellate Division of the Supreme Court of Bangladesh. Consequently, the decision of the High Court Division has attained finality and remains binding upon the parties. The petitioner is,

therefore, under a legal obligation to comply with the findings and directions contained therein and cannot be permitted to circumvent their legal consequences through collateral proceedings or by advancing contentions which have already failed to receive judicial acceptance.

Needless to observe, if the petitioner is genuinely of the opinion that continuation of the matrimonial relationship has become impossible and that reconciliation cannot reasonably be expected, the law continues to afford him the remedy of seeking dissolution of the marriage afresh in accordance with the provisions governing Muslim personal law and the relevant statutory framework. However, the availability of such a remedy cannot absolve him from performing the obligations already fastened upon him under an executable decree.

For the reasons discussed above, I am unable to find any illegality, infirmity or jurisdictional error in the impugned judgment and order warranting interference by this Court. The Rule is, therefore, devoid of any substance and is accordingly discharged without any order as to costs.

Before parting with the record, I direct the petitioner to satisfy the decretal dues by paying the outstanding balance of the dower, together with all arrears of maintenance payable to the opposite party and the minor daughter, strictly in accordance with law. However, if the petitioner establishes genuine financial hardship before the Executing Court, it shall be open to that Court, in the exercise of its judicial discretion and subject to such terms and conditions as may appear just and equitable, to permit payment of the decretal amount by suitable instalments, without in any manner prejudicing the rights of the decree-holder.

The office is directed to send down the Subordinate Court's Record (SCR) with a copy of this judgment and order, forthwith.

The Court acknowledges and highly appreciates the diligent efforts, persuasive submissions, and valuable assistance rendered by the learned Counsel for both parties in facilitating the just determination of the issues involved.

*(Abdur Rahman, J)*