

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO. 4921 OF 2022

In the matter of:

An application under Section 115(1) of the Code of Civil Procedure.

And

Md. Nasir Uddin

... Petitioner

-Versus-

Most. Mehjabin Choa through her legal guardian Mst. Sarmin Sultana

... Opposite party

Mr. Md. Faridul Islam, Advocate

.... For the petitioner.

Mr. Rabiul Islam, Advocate

.... For the opposite party.

Heard and Judgment on 02.09.2024.

This Rule was issued calling upon the opposite party to show cause as to why the judgment and order dated 20.06.2022 passed by the learned District Judge, Satkhira in Misc. Appeal NO.1 of 2022 , affirming the judgment and order dated 07.12.2021 passed by the Judge of the Family Sadar Court, Satkhira rejecting the application for reducing the decretal amount and thereby directing the petitioner to pay the remaining decretal amounting of Tk.3,931 out of total amount of Tk.1,41,500/- in 36 installment should not be set aside and or pass

such other or further order or orders as to this Court may seem fit and proper.

Facts in short are that the opposite party No.1 as plaintiff instituted Family Suit No.19 of 2016 for recovery of maintenance for her minor girl Most. Mehjabin Choa who was born on 28.01.2014.

Defendant No.1 contested above suit by filing written statement alleging that at the time of the mutual divorce the maintenance of above minor girl was waived by the plaintiff.

At trial plaintiff and defendant No.1 gave evidence in support of the respective claim.

On consideration of fact and circumstances of the case and evidence on record the learned Judge of the Family Court decreed the suit and fixed the maintenance of minor girl Most. Mehjabin Choa at the rate of Tk.4,000/- per month which was made effective from the date of filing of the suit on 15.03.2016.

Being aggrieved by above judgment and Decree of the Family Court defendant preferred Family Appeal No.39 of 2016 to the District Judge, Satkhira which was heard by the learned Joint District Judge, 1st Court, Satkhira who dismissed the appeal and affirmed the judgment and decree of the trial Court.

The appellant did not challenge the legality and propriety of above judgment and decree of the Court of appeal below.

The plaintiff filed Family Execution Case No.23 of 2017 for realization of above decree and the Executing Court directed the judgment debtor to pay total decretal amount of Tk.1,41,500/ in 36 equal monthly installment.

Being aggrieved by above judgment and order the judgment debtor preferred Miscellaneous Appeal No.1 of 2022 to the District Judge, Satkhira who dismissed the above appeal and affirmed the judgment and order passed by the learned Judge of the executing Court.

Being aggrieved by above judgment and order of the learned District Judge above appellant as petitioner moved to this Court and obtained this Rule.

Mr. Md. Faridul Islam, learned Advocate for the petitioner submits that the petitioner is an employee in a shop and he is financially incapable to pay maintenance of minor Most. Mehjabin Choaat at the rate of Tk.4,000/- per month. The executing Court has directed the petitioner to pay Tk.3,931/- per month as maintenance to the above minor. But that is beyond the financial physical capacity of

the petitioner. The petitioner can pay maintenance to above minor Most. Mehijabin Choa at the rate of Tk.1,000/- per month.

On the other hand Mr. Rabiul Islam, learned Advocate for the opposite party submits that the rate of monthly maintenance for minor Most. Mehijabin Choa was determined after trial of the Family Suit and the same was affirmed on appeal. The petitioner accepted the judgment and decree passed by the Court of appeal below. As such he cannot raise any question about the quantum of the maintenance fixed by the trial Court.

I have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record.

It is admitted that for realization of maintenance of minor girl Most. Mehijabin Choa her mother as plaintiff instituted Family Suit No.19 of 2016 which was decreed on contest and the trial Court granted her monthly maintenance at the rate of Tk.4,000/- and against above judgment and decree the petitioner preferred Family Appeal No.39 of 2007 which was dismissed on contest. The petitioner did not challenge the legality and propriety of above judgment of the Court of appeal below and the same reached finality.

As such the monthly maintenance of Tk.4,000/- granted by the Family Court for minor Most. Mehijabin Choa. The petitioner cannot

challenged above quantum of maintenance fixed by the trial Court and affirmed by the Court of appeal in this execution proceedings.

I am unable to find any substance in this application under Section 115(1) of the Code of the Civil Procedure and the Rule issued in this connection is liable to be discharged.

In the result, the Rule is discharged.

However, there is no order as to costs.

The order of stay granted at the time of issuance of the Rule is recalled and vacated.

Send down the lower Court's record immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER