District-Rangpur.

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

Present:

Mr. Justice Md. Toufiq Inam

Civil Revision No. 1647 of 2023.

Md. Khairul Islam Lebu.
----Defendant -Appellant-Petitioner.
-Versus-
Mrs. Rupali Akter Rupa and another.
---- Plaintiffs-Defendant-Opposite Parties.

Mr. Md. Bakhtiar Hossain, Advocate
----For the Defendant -Appellant-Petitioner.

Mr. Ashfaqur Rahman, Advocate
----For the Plaintiffs-Defendant-Opposite Parties.

Heard On: 21.10.2025, 22.10.2025.
And
Date of Judgment: 30th Day of September 2025.

Md. Toufiq Inam, J.

This Rule was issued calling upon the opposite party to show cause as to why the judgment and order dated 31.05.2022 passed by the learned Joint District Judge, Court No. 3, Rangpur, in Family Appeal No. 39 of 2021, affirming the order dated 28.03.2021 passed by the learned Family Court, Pirgonj, Rangpur, in Family Execution Case No. 08 of 2016, rejecting the petitioner's application filed in the execution proceeding to consider the fact of *talak/divorce*, should not

be set aside and/or why such other or further order or orders should not be passed as to this Court may seem fit and proper.

The opposite party, as wife, instituted Family Suit No. 83 of 2013 before the learned Family Court, Pirgonj, Rangpur, claiming dower and maintenance from the present petitioner, her husband. Upon full trial, the Family Court partly decreed the suit directing the husband to pay specified amounts of dower, arrear maintenance, and continuing maintenance. The husband did not prefer any appeal against the decree, and thus it attained finality.

Subsequently, the decree-holder wife filed Family Execution Case No. 08 of 2016 for realization of the decretal dues. During pendency of the execution proceeding, the judgment-debtor husband filed an application dated 06.02.2020, producing a *talaqnama* (divorce document) asserting that he had divorced his wife earlier but could not produce the document during trial. He prayed that, in view of the divorce,

the maintenance component of the decree be modified and the continuing maintenance be exempted.

Upon hearing, the learned Family Execution Court, by order dated 28.03.2021, rejected the application holding that since the issue of divorce had already been raised and not proved at trial, there was no scope to adjudicate the matter at the execution stage.

Aggrieved, the husband preferred Family Appeal No. 39 of 2021, against the Family Execution Court's aforesaid order dated 28.03.2021, which was dismissed on 31.05.2022 by the learned Joint District Judge, Court No. 3, Rangpur, affirming the order of the Family Court. Hence, the husband has moved this revisional application and obtained the present Rule

Mr. Md. Bakhtiar Hossain, learned Advocate for the petitioner, submits that the Family Court, being vested with "all powers of a Civil Court" under section 16(3A) of the Family Courts Ordinance, 1985, is competent to consider

relevant additional evidence during execution. He argues that the divorce was not a subsequent event but a pre-existing fact pleaded in the written statement, and that the *talaqnama* now produced merely substantiates that earlier plea.

He further contends that under Muslim law, a divorced woman is not entitled to maintenance beyond the *iddat* period, and enforcing continuing maintenance after a valid divorce amount to unjust enrichment.

Placing reliance on *Robiul Islam vs Shahanara Akhter*, 77 DLR (HCD) 340, learned counsel submits that a Family Court exercising powers akin to a Civil Court may decide factual issues arising during execution when such determination is necessary for effective enforcement of the decree. Therefore, the executing Court ought to have received and considered the divorce document instead of rejecting the application on the ground of lack of jurisdiction.

Per contra, Mr. Ashfaqur Rahman, learned Advocate appearing with Mr. Sumit Kumar Sarker for the opposite

party, submits that the decree in Family Suit No. 83 of 2013 has long attained finality and cannot be reopened in execution. The issue of divorce was raised and specifically decided at trial with a finding that "the defendant failed to prove the talaq." Hence, the executing Court cannot vary, reopen, or revisit an adjudicated fact.

He contends that the *talaqnama* now produced, not having been proved during trial, cannot be accepted at the execution stage. The proper remedy of the petitioner was to prefer an appeal or seek review, not to seek modification in execution upon adducing additional evidence. He therefore prays for discharge of the Rule.

Upon hearing the learned Advocates and examining the record, it is evident that the decree in Family Suit No. 83 of 2013 has attained finality. The Family Court, while decreeing the suit, expressly considered the plea of *talak* and found that the defendant-husband failed to prove the alleged divorce. These finding forms part of the decree and cannot be disturbed collaterally.

Once a decree attains finality, the executing Court is duty-bound to execute it as it stands. It cannot reopen factual findings, reassess evidence, or modify substantive reliefs granted therein.

Under section 16(3A) of the Family Courts Ordinance, 1985, the Family Court is vested with the powers of a Civil Court in execution. These powers are procedural in nature- enabling the court to enforce the decree effectively, such as by summoning witnesses, taking accounts, attaching property, granting instalments, or recording satisfaction in accordance with procedure laid down in Order XXI of the Code of Civil Procedure. However, this authority does not extend to reopening adjudicated facts or altering the operative terms of the decree.

This Court has carefully considered the petitioner's reliance on *Robiul Islam vs Shahanara Akhter*, 77 DLR (HCD) 340. In that case, the judgment-debtor-husband in a Family Execution Case prayed to pay the decretal amount by instalments. During the ensuing Family Miscellaneous Appeal, he further prayed to adduce oral evidence to prove a

talaqnama, marking it as an exhibit. The appellate court rejected that prayer, but the High Court Division in revision, interpreting section 16(3A) of the Ordinance, held that *“Sub-section 3A of section 16 provides that the executing Court in a Family suit shall be vested with "all powers" of a court under the code. The language of the law providing for "all powers" under the code is plain and simple and easily understood.”*

With profound respect, this Court finds it difficult to endorse such a broad interpretation of section 16(3A) of the Family Courts Ordinance, 1985 as enunciated in *77 DLR (HCD) 340*. The said provision indeed empowers the Family Court, at the stage of execution, to exercise “all powers of a civil court” for the limited purpose of *enforcement* of a decree. However, the phrase “all powers” cannot be read in isolation to enlarge the jurisdiction of the executing Family Court beyond the scope of execution proceedings, nor can it import appellate or review powers such as those contemplated under Order XLI, Rule 27 of the Code of Civil Procedure. To do so would render nugatory the well-settled principle that an executing

court cannot go behind, vary, or modify the decree which it is bound to execute. The Family Execution Court is not an appellate or revisional forum; it cannot re-appraise evidence or admit new evidence to reopen findings already merged in the final decree.

The approach adopted in *77 DLR (HCD) 340*, though well-intentioned to ensure complete justice, risks conferring quasi-appellate powers upon an executing court, thereby disturbing the finality of adjudication and blurring the jurisdictional distinction between ‘adjudication’ and ‘execution’. The legislative intent behind section 16(3A) is to make the Family Court self-contained for execution purposes, allowing it to employ procedural tools of the Code to ensure realization of its decree, but not to empower it to re-determine issues of fact or law already adjudicated.

It may therefore be observed that this Court’s view does not amount to overruling the precedent of *77 DLR (HCD) 340* but rather *distinguishes* it on clear factual and legal grounds: while *77 DLR* dealt with the power of a Family Execution

Court to regulate the *mode of satisfaction* of a decree and to consider instalments in payment, the present case concerns a challenge to the subsistence of the decree itself by introducing a plea of divorce, an issue squarely adjudicated and concluded in the main suit.

In the present case, the petitioner does not seek procedural facilitation but a substantive variation of the decree itself by introducing a *talaqnama* to nullify continuing maintenance. This is beyond the jurisdiction of the executing Family Court.

This court is of the considered view that *a Family Court, though vested with powers of a Civil Court under section 16(3A) of the Family Courts Ordinance, 1985, may exercise those powers only for the purpose of execution, adjustment, and enforcement of a decree, but cannot reopen, vary, or re-adjudicate any factual or legal issue already decided in the original suit.* This principle preserves the doctrine of finality of judicial decisions and prevents executing courts from assuming appellate or review powers under the guise of procedural authority.

While the Family Court, in execution, may act with procedural flexibility similar to a Civil Court, it cannot transgress the boundary of the decree. To hold otherwise would frustrate execution proceedings, invite re-litigation, and erode judicial discipline. Both the courts below rightly held that there was no jurisdiction to consider the alleged divorce at the execution stage.

For the reasons discussed above, this Court finds no illegality, impropriety, or material irregularity in the impugned orders warranting interference under section 115 of the Code of Civil Procedure.

Accordingly, the Rule is discharged.

The interim order of stay stands vacated.

Let the copy of this judgment be sent to the courts below at once.

(Justice Md. Toufiq Inam)

Ashraf/ABO.