

Present:

Mr. Justice A.K.M. Asaduzzaman

Civil Miscellaneous Case No. 18 of 2023

Most. Mahfuza Yesmin and another

.....Petitioners.

-Versus-

Md. Sharif Imam

.....Opposite party.

Mr. Md. Anowar Hossain, Adv.

.....For the petitioners.

Mr. Mohammad Humaun Kabir, Adv.

.....For the Opposite party.

Heard and judgment on 21<sup>st</sup> March, 2024.

A.K.M.Asaduzzaman,J.

This rule was issued calling upon the opposite party to show cause as to why the Family Suit No. 118 of 2020, now pending before the Court of Senior Assistant Judge and Family Court, Gaibandha Sadar, Gaibandha should not be transferred from the

said court to any other court of competent jurisdiction in Dhaka District.

Petitioner as plaintiff filed Family Suit No. 118 of 2020 before the Court of Senior Assistant Judge and Family Court, Gaibandha Sadar, Gaibandha and got a decree for dower and maintenance and that decree was properly been executed finally. As per the decree of the said suit, opposite party paid the dower money and started to pay the maintenance of the child. On the date fixed i.e. on 11.02.2020 for appearance of child to see by the defendant, an application was filed by the decree holder petitioner, expressing that the minor child is suffering from dental problem and has been advised by the doctor on 09.06.2023 by way of given a prescription referring him to Faculty of Dentistry BSMMU, Shahbag, Dhaka for better treatment and accordingly time was prayed for. But on that date taking the said medical prescription as a certificate, the learned Judge of the Family Court passed an order that:

"বাদীপক্ষের বিজ্ঞ কৌসুলীর বক্তব্য শুনলাম। দাখিলী দরখাস্তসহ নথি পর্যালোচনা করলাম। শুনানীকালে বিবাদীপক্ষ মৌখিকভাবে জানান যে, সার্টিফিকেট প্রদানকারী ডাক্তার বাদীর নিকট আত্মীয়

হওয়ায় ভূয়া সার্টিফিকেট দিয়েছেন। বাদীপক্ষের দাখিলী ডাঃ ফরসল জাকি এর সার্টিফিকেট পর্যালোচনা আপাতদৃষ্টে উক্ত ডাক্তারি সার্টিফিকেট ভূয়া ও জাল মর্মে আদালতের নিকট প্রতীয়মান হয়। এমতাবস্থায়, ডাক্তারি সার্টিফিকেট এর সঠিকতা যাচাইয়ের জন্য ডাঃ ফরসল জাকি-কে আগামী ০৬ কার্য দিবসের মধ্যে সশরীরে আদালতে উপস্থিত হয়ে প্রদত্ত সার্টিফিকেট-এর সঠিকতা প্রমানের নিমিত্তে কারণ দর্শানোর নির্দেশ প্রদান করা হলো।" (underline is given)

Drawing attention upon this order as well as submitting that court is biased and no fare trial in aspected from him and that since both the parties as well as minor boy are now residing at Dhaka petitioner obtained the instant rule for transferring this case from that court to any other court of competent jurisdiction at Dhaka.

Mr. Md. Anowar Hossain, the learned advocate appearing for the petitioner drawing my attention to the medical prescription as Annexure-C together with the impugned order submits that there was no certificate given by the doctor in the instant case even then the court give a show cause notice upon the doctor taking the prescription as fake certificate. The court appears to be

biased and no fair judgment is expected from that court. He further submits that plaintiff and defendant both the parties are now residing at Dhaka and it would be convenient to both the parties if the case is taken to somewhere at Dhaka to execute the order dated 03.04.2023, to see the son once in a month and to pay his maintenance allowance there. Drawing my attention to the order dated 29.09.2021, the learned advocate further submits that as per direction of the decree minor boy, who is now above 6 years of age and going to school, is entitled to get at least Tk. 15,000/- as his maintenance from his father defendant.

Mr. Mohammad Humaun Kabir, the learned advocate appearing for the opposite party, on the other hand although opposes the rule and try to submit that the petitioner misled the court on not mentioning the true picture of this case but finally considering the convenience of both the parties, agreed that an order may be passed allowing the defendant to see his son as per the direction of the court anywhere at Dhaka.

Heard the learned Advocate and perused the Lower Court Record and the impugned judgment.

It appears that this is a suit for dower and maintenance. Plaintiff obtained a decree and the said decree was executed by the defendant on paying dower money and as per direction of the court, plaintiff is also paid the maintenance to the minor son as would appear from the order passed on 11.06.2023. But on perusal of the impugned order, it appears that a show cause notice was given to the doctor on misquoting the prescription given by him, which was not in conformity of the real picture of the case and thus got some anomalies and got substances on the submission of the learned advocate for the petitioner. However inspite of entering into the merits of this rule, I am of the view that it would be convenient to both the parties if it is allowed the defendant to see his minor boy, aged about 6 years, regularly as per the direction of the trial court, at Dhaka, in a suitable place, which would be before the Registrar of the Supreme Court of Bangladesh in the first working day of every month as per the direction of the trial court.

The Registrar of the High Court Division is hereby directed to take appropriate measure given an opportunity to defendant opposite party to see his minor boy once in a month on the first

working day somewhere in his office room and the plaintiff petitioner is also directed to bring the boy regularly as per the direction of the court there and the defendant also directed to pay the regular maintenance together with back dues of the child as per the direction of the court.

Next going to the decree passed on 29.09.2021 it appears that there was an order to pay Tk. 3000/- to the minor son with further direction that it may be enhanced to the maintenance cost further subject to the social condition of the person concern time to time accordingly. Since the order was passed in the year 2021, when the child was 4(four) years only and now boy is more than 6(six) years of age and studying in a school and his maintenance cost is required to be enhanced. Accordingly this court feel and the learned advocate appearing for the defendant also agreed that it will convenient to enhance the maintenance cost of Tk. 3000/- to Tk. 8000/- per month, which will be enforceable from the month of May, 2024.

The Registrar is also directed to accept the affidavit in compliance and forward to this court with record.

Accordingly the rule is disposed of. The order passed by the judge of the Family Court dated 11.03.2023, issuing show cause upon Dr. Faisal Zaki to appear before the Court is hereby recalled and set aside.

The order of stay granted earlier is hereby recalled and vacated.

Send down the Lower Court Record along with the judgment at once.