

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.3511 OF 2023

In the matter of:

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

And

Most. Sharmin Sultana

... Petitioner

-Versus-

Md. Abul Kalam Azad (Razu)

.... Opposite party

Ms. Afsana Begum, Advocate

....For the petitioner.

Mr. Md. Moniruzzaman, Advocate

.... For the opposite party No.1.

Heard on 12.02.2025.

Judgment on 13.02.2025.

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued calling upon the opposite party to show cause as to why the impugned judgment and decree dated 07.02.2023 passed by the learned Joint District Judge, 2nd Court, Naogaon in Family Appeal No.37 of 2019 affirming those order dated 22.08.2019 passed by the learned Assistant Judge, and Judge of Family Court, Naogaon in Family Suit No.123 of 2018 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 petitioner as plaintiff instituted above Family Suit for recovery of her unpaid dower Taka 94,500/- and maintenance both for herself and her minor son alleging that the defendant married the plaintiff on 20.07.2007 for dower of Taka 1,00,000/- out of which Taka 5,500/- was paid and a son namely Mahir Daiyan was born out of above wedlock. The defendants did not pay them any maintenance.

In above suit plaintiff submitted a petition on 04.07.2019 for amendment of the plaint for correction of the amount of money paid by the defendant and reduce the total amount to Taka 5,49,833/-. It was further stated that the marital tie of the plaintiff with the defendant still exists.

The learned Judge of the family court rejected above petition vide order dated 22.08.2019.

Being aggrieved by above judgment and order of the Family Court above plaintiff preferred Family Appeal No.37 of 2019 to the District Judge, Naogaon which was heard by the learned Joint District Judge who dismissed above appeal and affirmed the judgment and order of the trial court.

Being aggrieved by and dissatisfied with above judgment and order of the court of appeal below above appellant as petitioner moved to this Court with this Civil Revisional application under Section 115(1) of the Code of Civil Procedure and obtained this Rule.

Ms. Afsana Begum, learned Advocate for the petitioner submits that the Family Courts Ordinance, 1985 has been repealed and substituted by Act No.26 of 2023 on 18.09.2023 and Section 9 of above Act provides for amendment of the plaint and written statement at any stage of the proceedings. The learned Judges of both the Courts below rejected above petition for amendment of the plaint on the sole ground that the Family Courts Ordinance, 1985 does not provide for amendment of the pleadings. Since a new provision has been made providing for amendment of the pleadings and the petition filed by the plaintiff for amendment of the plaint is necessary for the ends of justice the impugned judgment and order of the Courts of below may be set aside and amendment of the plaint may be allowed.

On the other the Mr. Md. Moniruzzaman, learned Advocate for opposite party No.1 concedes that since Act No.26 of 2023 provides for amendment of the pleadings by the Family Court this Rule may be made absolute and the petition of the plaintiff for amendment of the plaint may be allowed.

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

As mentioned above the petitioner as plaintiff instituted above suit for recovery of her unpaid dower and maintenance both for herself and her minor son totaling an amount of Taka 6,34,000/-. But subsequently it was revealed that above calculation of the unpaid dower and maintenance was erroneous and accordingly she submitted

a petition for amendment of the plaint to reduce the total amount of money of her claim to Taka 5,49,833/-. The Family Courts Ordinance, 1985 did not provide for amendment of the pleadings in order to ensure expeditious conclusion of trial of suits arising out of above Ordinance. But the plaintiff wanted to make correction of calculation errors and thereby reduce the total claimed amount of money which benefits the defendant. It is not understandable as to why the defendant raised objection against making above correction of the plaint.

The learned Judge of the Court of Appeal below failed to appreciate above materials on record properly and most illegally dismissed above appeal which is not tenable in law.

On consideration of above facts and circumstances of the case and materials on record I find substance in the Civil revisional application under Section 115(1) of the Code of Civil Procedure and the Rule issued in this connection deserves to be made absolute.

In the result, the Rule is hereby made absolute. The impugned judgment and decree dated 07.02.2023 passed by the learned Joint District Judge, 2nd Court, Naogaon in Family Appeal No.37 of 2019 affirming those dated 22.08.2019 passed by the learned Assistant Judge, and Judge of Family Court, Naogaon in Family Suit No.123 of 2018 is set aside and above petition for amendment of the plaint is allowed.

The defendant be at liberty to file an additional written statement in view of above amendment of the plaint within 15 days from the date of receipt of this order. The learned Judge of the Family Court is

directed to conclude the trial of the suit expeditiously within a period of 6 (six) months from the date of receipt of this order.

However, there will be no order as to costs.

MD. MASUDUR RAHMAN
BENCH OFFICER