

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

Present:

Mr. Justice Md. Bashir Ullah

Civil Revision No. 3921 of 2022

IN THE MATTER OF:

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

And

IN THE MATTER OF:

Md. Rais Uddin Ishali

... Defendant-Appellant-Petitioner.

-Versus-

Most. Sanjila Akter Shila and another

... Plaintiffs-Respondents-Opposite parties.

Mr. Qazi Zahed Iqbal with

Mr. Md. Moinul Hossain, Advocates

...For the petitioner.

Mr. Moloy Kumar Roy, Advocate

... For the Opposite Parties.

Heard on 26.10.2025 and 09.11.2025

Judgment on: 10.11.2025

Md. Bashir Ullah, J.

At the instance of the defendant in Family Suit No. 01 of
2020, this Rule was issued calling upon the opposite parties to show

cause as to why the judgment and decree dated 10.03.2022 passed by the learned District Judge, Nilphamari in Family Appeal No. 45 of 2021, dismissing the appeal and affirming the judgment and decree dated 16.09.2021 passed by the learned Family Court, Jaldhaka, Nilphamari in Family Suit No. 01 of 2020, decreeing the suit should not be set aside and/or such other or further order or orders be passed as to this Court may seem fit and proper.

At the time of issuance of the Rule, all further proceedings in Family Execution Case No. 05 of 2021 pending before the learned Family Court, Jaldhaka, Nilphamari were stayed for a period of 04(four) months which was subsequently extended from time to time and was lastly extended on 24.10.2024, for a further period of 01(one) year.

The facts, relevant for disposal of the Rule, in brief, are that the opposite parties as plaintiffs instituted Family Suit No. 01 of 2020 before the Family Court, Jaldhaka, Nilphamari with prayers for realization of unpaid dower and maintenance against the defendant-petitioner. The plaintiff's case, in short, is that her marriage with the defendant-petitioner was solemnized on 17.01.2017 and the dower was fixed at Taka 4,51,101/- (Four lakh fifty one thousand one hundred and one) of which Taka 4,500/- (Four thousand five hundred) was paid at the time of marriage as

ornaments and the balance amount of Taka 4,46,601/- (Four lakh forty six thousand six hundred one) remained unpaid. After marriage, they initially lived happily and during the subsistence of their conjugal life a femal child (the plaintiff-opposite party No. 02), Most. Roktia Sultana Esmahina was born. However, a few months thereafter, the defendant-petitioner allegedly demanded Taka 5,00,000/- (Five lakh) as dowry on 25.05.2018 from the plaintiff-opposite party No.1. Upon the plaintiff's refusal she was subjected to physical and mental cruelty and was driven out of the house. On 01.06.2018, she requested the defendant to provide maintenance for herself and her minor daughter along with payment of the unpaid dower but he refused to give the same. Consequently, the plaintiff instituted the family suit for realization of the unpaid dower and maintenance.

The defendant-petitioner contested the suit by filing a written statement denying, *inter alia*, that after a few months of marriage the plaintiff started living separately of her own will and during the subsistence of conjugal life the plaintiff No. 2 was born. But the defendant had divorced the plaintiff on 01.07.2018 and sent notice of divorce to the plaintiff same day. He asserted that as the divorce had taken effect, no marital tie existed between them, hence the

plaintiff was not entitled to maintenance and the suit was liable to be dismissed.

Upon hearing, the Family Court, Jaldhaka, Nilphamari decreed the suit by its judgment and decree dated 16.09.2021 directing the defendant to pay Taka 4,46,601/-(unpaid dower) + Taka 10,500/- (maintenance for three months) + Taka 40,400/- (maintenance for the child for past 01 year, 08 months and 06 days) totaling Taka 4,97,501/= to the plaintiffs within a period of 30 days.

Challenging the said judgment and decree, the defendant as appellant preferred Family Appeal No. 45 of 2021 before the learned District Judge, Nilphamari which upon hearing both parties was dismissed on 10.03.2022.

Being aggrieved by and dissatisfied with the Judgment and decree dated 10.03.2022 passed by the learned District Judge, Nilphamari in Family Appeal No. 45 of 2021, dismissing the appeal affirming the judgment and decree dated 16.09.2021 passed by the Family Court, Jaldhaka, Nilphamari in Family Suit No. 01 of 2020 decreeing the suit, the defendant-appellant as petitioner preferred this revisional application and obtained the Rule and with an order of stay.

Meanwhile, the plaintiff filed Decree Execution Case No. 05 of 2021 for execution of the decree of the trial Court dated

16.09.2021. After dismissal of the Appeal, the execution case again became operative.

Mr. Md. Moinul Hossain, learned advocate appearing on behalf of the petitioner contends that it is an admitted fact that the plaintiff did not reside with the defendant at his family residence but the trial court failed to consider that aspect.

He further submits that the divorce between the parties was proved by evidence and during pendency of the appeal the plaintiff married another person and the minor daughter has been in the custody of the defendant-petitioner; yet the trial Court did not consider these material facts.

He next submits that although the trial court awarded arrear maintenance for the minor, but the court failed to consider the evidence on record that the defendant-petitioner had been paying maintenance to the minor regularly and therefore, the judgments and decrees are not sustainable in the eye of law and are liable to be set aside for securing the ends of justice.

The learned counsel further submits that the petitioner has already paid Taka 2,30,000/- and is willing to pay the balance amount by installment, for which he requires sufficient time. He finally prays for making the Rule absolute.

Per contra, Mr. Moloy Kumar Roy, learned Advocate appearing on behalf of the opposite parties submits that there is no illegality or infirmity in the impugned judgments and decrees passed by the Courts below and as such the Rule is liable to be discharged.

He further contends that it is admitted and proved that the marriage having been consummated, the wife (opposite party No. 1) is entitled to immediate payment of the entire unpaid dower—both prompt and deferred—and the minor daughter (opposite party No. 2) is entitled to maintenance. The learned Advocate prays for discharging the Rule.

I have considered the submissions so advanced by the learned counsels at length, perused the judgments and orders and other materials on record.

It appears from exhibit 1 that the marriage of the plaintiff-opposite party was solemnized with the defendant-petitioner on 17-01-2017 and the dower was fixed at Taka 4,51,101/=out of which Taka 4,500/=was paid as ornaments, so the dower of Taka 4,46,601/= remained unpaid. The defendant-petitioner neither in his written statement nor by evidence denied having failed to pay the

unpaid dower money. A husband is legally bound to pay dower to his wife.

It appears that the plaintiff claimed the dower but the defendant refused to pay the same compelling the plaintiff to institute the Family suit. The definition of 'dower' was defined in many cases earlier. In *Jesmin Sultana Vs. Md. Elias*, reported in 2BLC 233 'dower' is defined below:

"In Islamie glossary dower is called 'mahr' which means bridal-money given by the husband to the wife on marrying. In order to constitute a valid marriage under the Islamic law there should always be mahr as consideration from the bridegroom in favour of the bride."

In this regard, the Dissolution of Muslim Marriage Act, 1939 has been enacted. Section 5 of the Dissolution of Muslim Marriage Act, 1939 provides:

"Rights to dower not be affected- Nothing contained in this Act shall affect any right which a married woman may have under Muslim Law to her dower or any part thereof on the dissolution of marriage."

In *A.M. Md. Ebrahim Vs. Ma Ma and others*, reported in AIR 1939 Rangoon 28 it has been held:

"If the marriage was consummated the wife is entitled to immediate payment of the whole of the unpaid dower, both prompt and deferred."

The defendant admitted in paragraph 5 of his written statement that the plaintiff no. 2-opposite party no. 2 was born during their conjugal life and he proposed to pay Taka 1,000/= per month as maintenance for the minor. However, the trial Court directed the defendant-petitioner to pay Taka 2,000/= per month to the plaintiff no. 2-opposite party no. 2 as maintenance with an annual increase of Taka 200/=:, which appears just, proper and legal.

In view of the above discussions and considering the facts and circumstances of the case, I find no reason to interfere with the judgment of the appellate Court affirming the judgment and decree of the trial Court. I, therefore find no merit in the Rule.

In the result, the Rule is discharged, however, without any order as to cost.

The Order of stay passed at the time of the issuance of the Rule is hereby recalled and vacated.

Let a copy of this judgment along with the lower Courts' Records be transmitted to the Court concerned forthwith.

Md. Ariful Islam Khan
Bench Officer