

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.922 OF 2023

In the matter of:

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

And

Md. Mukhlesur Rahman

... Petitioner

-Versus-

Most. Ruma Akter and another

... Opposite parties

Mr. Md. Mahbubur Rashid, Advocate

...For the petitioner.

Ms. Laila Nasrin, Advocate

... For the opposite party No.1.

Heard on 07.01.2025 and Judgment on 10.02.2025.

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued calling upon the opposite No.1 to show cause as to why the impugned judgment and decree dated 06.07.2022 passed by the learned Senior District Judge, Jamalpur in Family Appeal No.03 of 2021 disallowing the appeal and affirming the judgment and decree dated 28.02.2021 passed by the learned Assistant Judge, Family Court, Melandha, Jamalpur in Family Suit No.39 of 2017 decreeing the suit 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 Nos.1 as plaintiff instituted above Family Suit for recovery of unpaid dower of Taka 3,99,000/- and maintenance at the rate of Taka 5,000/- per month from 17.04.2017. It was alleged that defendant No.1 married the plaintiff by a registered kabinama on 02.09.2014 with dower of Taka 4,00,000/- out of which Taka 1,000/- was paid. On 17.04.2017 defendant No.1 on demand of dowry subjected her to above and drove her away from his house and the plaintiff took refuge in the house of her father.

Defendant No.1 contested above suit by filing writing statement alleging that the plaintiff fraudulently took the defendant to Dhaka and forcibly obtained his Left Thumb Impression on some blank stamp papers and subsequently claimed defendant No.1 as her husband. As such the father of above defendant filed a Criminal Case which was subsequently compromised. Defendant No.1 never married the plaintiff and defendant No.1 was a minor at the time of alleged marriage. The alleged kabinnama of the plaintiff was a forged document.

At trial plaintiff examined two witnesses and her documents were marked as Exhibit Nos.1 and 2. On the other hand defendant examined two witnesses and the documents of the defendant were marked as Exhibit Nos."Ka" to "Uma".

On consideration of facts and circumstances of the case and evidence on record the learned Judge of the Family Court decreed above suit for Taka 3,99,000/- as unpaid dower and granted monthly maintenance at the rate of Taka 2,000/- per month for iddat period.

Being aggrieved by above judgment and decree of the Family Court above defendant preferred Family Appeal No.03 of 2021 to the learned District Judge, Jamalpur who dismissed the appeal and affirmed the judgment and decree of the trial Court.

Being aggrieved by and dissatisfied with above judgment and decree of the Court of Appeal below above appellant as petitioner moved to this Court with Civil Revision under Section 115(1) of the Code of Civil Procedure and obtained this Rule.

Mr. Md. Mahbubur Rashid, learned Advocate for the petitioner submits that at the time of alleged marriage defendant was minor and a student of College. There was no valid marriage between the plaintiff and defendant No.1 and the registered kabinnama was a forged document which was not executed by defendant No.1. But the learned Judge of the Court of Appeal below failed to appreciate above materials on record properly and most illegally dismissed the appeal and upheld the flawed judgment and decree of the trial Court which is not tenable in law.

On the other hand Mr. Laila Nasrin, learned Advocate for opposite party No.1 submits that at trial plaintiff herself while giving evidence as PW1 produced a certified copy of the registered kabinnama dated 02.09.2014 which was marked as Exhibit No.1. The defendant cross examined above PW but she was not cross examined as to above registered kabinnama nor any suggestion was put to above witness to the effect that above kabinnama was a forged document. Defendant

No.1 gave evidence as DW1 but he did not mention in his evidence that he did not give signature in the above kabinnama or above kabinnama was a forged document. Admittedly, the defendant was a student of a College at the time of his marriage with the plaintiff and above marriage was legally valid. On consideration of above facts and circumstances of the case and evidence on record the learned Judges of both the Courts below concurrently found that the marriage of the plaintiff was lawfully solemnized with defendant No.1 and above kabinnama was a valid document. Above concurrent findings of fact of the Courts below being based on evidence on record this Court cannot in its revisional jurisdiction interfere with above concurrent findings of fact.

I have considered the submissions of the learned Advocates for the respective parties and carefully examined all materials on record including the pleadings, judgments of the Courts below and the evidence adduced by the parties at trial.

As mentioned above in the plaint plaintiff has made specific mention that the defendant married the plaintiff by a registered kabinnama on 02.09.2014. In the written statement the defendant has claimed that above kabinnama was an imaginary, void and unlawful document. At trial plaintiff herself gave evidence as PW1 and produced a certified copy of above kabinnama which was marked as Exhibit No.1. Above witness was cross examined extensively by the defendants but she was not cross examined as to above kabinnama. Even no

suggestion was put to PW1 that above registered kabinnama was in fact a forged document. Defendant No.1 gave evidence as DW1 but in his evidence he did not mention that above kabinnama (Exhibit No.1) was a forged document or he did not execute above document by putting his LTI. As such above evidence of PW1 that Exhibit No.1 was a lawful kabinnama of her marriage with defendant No.1 stands uncontroverted.

As far as the claim of the defendant that he was a minor at the time of alleged marriage with the plaintiff is concerned, admittedly both the plaintiff and defendant No.1 were students of the same College at the time of above marriage. As such defendant No.1 was legally competent to enter into a marital contract or getting married with the defendant.

On a detailed analysis of evidence on record the learned Judge of the Family Court held that the plaintiff has succeeded to prove by legal evidence that defendant No.1 married her by registered deed of kabinnama dated 02.09.2014 and her dower was fixed at Taka 4,00,000/- out of which 1,000/- was paid. On an independent assessment of the evidence on record the learned Judge of the Court of Appeal below concurred with above findings of the trial Court and affirmed the judgment and decree of the trial Court. Above concurrent findings of the Courts below that above kabinnama (Exhibit No.1) was a valid document which proves the marriage of the plaintiff with defendant No.1 being based on evidence on record this Court cannot in

the absence of an allegation of misreading or non consideration of any legal evidence on record interfere with above findings of fact.

In above view of the materials on record I am unable to find any substance in this Civil Revision under Section 115(1) of the Code of Civil procedure and the Rule issued in this connection is liable to be discharged.

In the result, the Rule is discharged. The order of stay granted at the time of issuance of the Rule is vacated.

However, there will be no order as to cost.

Send down the lower Court's records immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER