

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.3323 OF 2023

In the matter of:

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

And

Md. Al-Mamunur Rashid

... .Petitioner

-Versus-

Most. Dilara Parvin @ Dulali

.... Opposite party

Mr. Rowshan Alam Khan, Advocate

.... For the petitioner.

Mr. Sunil Chandra Mondal, Advocate

....For the opposite party.

Heard on 19.08.2025 and Judgment on 20.11.2025

On an application under Section 115(1) of the Code of Civil Procedure the Rule was issued calling upon the opposite party against the judgment and decree dated 17.04.2023 passed by the learned Joint District Judge, 1st Court, Thakurgaon in Family Appeal No.20 of 2022 allowing the appeal and thereby reversing the judgment and decree dated 23.06.2022 passed by the learned Family Judge, Haripur, Thakurgaon in Family Suit No.16 of 2020 decreeing the suit and/or pass such other or further order or as to this Court may seem fit and proper.

Facts in short are that the opposite party No.1 as plaintiff instituted above Family Suit for recovery of her unpaid dower and

maintenance alleging that defendant No.1 married her on 31.08.2011 by registered kabinnama fixing dower at Taka 8,00,000/- out of which Taka 1,000/- was paid. On 04.10.2019 the defendant subjected the plaintiff to physical assaults on demand of dowry and drove her away from home.

Defendant No.1 contested above suit by filling a written statement alleging that the plaintiff created a false narrative of love affairs and detained the defendant in the Kotowali Police Station and compelled him to marry her. Defendant did not marry the plaintiff voluntarily and willingly and above kabinnama of the plaintiff was created by coercive measure. Defendant did not give any gold ornament to the plaintiff. The defendant and the plaintiff did not live a conjugal life. Realizing that above marriage will not make him happy the defendant has divorced the plaintiff on 26.09.2019.

At trial plaintiff examined two witnesses and defendant examined one. Document produced and proved by the plaintiff was marked as Exhibit No.1 and those of the defendant was marked as Exhibit Nos. 'Ka' to 'Gha'.

On consideration of facts and circumstances of the case and evidence on record the learned Judge of the Family Court decreed above suit in part holding that the marriage of the plaintiff with the defendant was lawful but plaintiff has failed to prove that above marriage was consummated and the defendant was directed to pay 50%

of above dower amounting to tk.3,99,000/- and Taka 18,000/- for maintenance for iddot period.

Being aggrieved by above judgment and decree of the trial Court above plaintiff as appellant preferred Family Appeal No.20 of 2022 to the District Judge, Thakurgaon which was heard by the learned Joint District Judge who allowed above appeal and set aside the judgment and decree of the trial Court and decreed above suit in full holding that the marriage of the plaintiff was lawful and above marriage was consummated.

Being aggrieved by above judgment and decree of the Court of Appeal below above respondent 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.

Mr. Rowshan Alam Khan, learned Advocate for the petitioner submits that the plaintiff examined two witnesses but she could not examine the moulavi who solemnized above marriage or the marriage registrar who registered above marriage and issued the certified copy of the kabinnama. The defendant has stated in the written statement and in his evidence in Court that he did not marry the plaintiff willingly and voluntarily and above kabinnama was created by coercive measure. As such the plaintiff was required to prove lawful solemnization of above marriage and due registration of the kabinnama. The defendant has claimed that above marriage has not

been consummated and he divorced the plaintiff on 26.09.2019 within 26 days of the alleged marriage. The plaintiff did not give any evidence in support of consumption of above marriage. As such the learned judge of the trial court rightly held that above marriage was not consummated and granted plaintiff 50% of the dower as mentioned in the kabinama. But the learned Judge of the Court of appeal below utterly failed to appreciate above materials on record and most illegally allowed above appeal and decreed above suit in full which is not tenable in law.

On the other hand Mr. Sunil Chandra Mondal, learned Advocate for the opposite party submits that the defendant has admitted the legality of marriage of the plaintiff by claiming that he has divorced the plaintiff on 16.09.2019. The learned Judge of both the Courts below rightly held that above marriage of the plaintiff with the defendant on 30.08.2019 was lawful. On correct appreciation of above facts and circumstances of the case and evidence on record the learned judge of the Court of appeal below rightly allowed above appeal and decreed the suit in full which calls for no interference.

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

Plaintiff filed above suit for recovery of dower and maintenance and in her evidence as PW1 she has reiterated all claims and allegation as set out in the plaint. She stated that the defendant married her on

30.08.2019 by registered kabinnama for dower of Taka 8,00,000/- out of which Taka 1,000/- was paid. She produced and proved a certified copy of above kabinnama which was marked as Exhibit No.1. The defendant did not deny his signature in above kabinnama.

Defendant alleged that by creating a false narrative of love plaintiff detained him in the kotowali Police Station and compelled him to marry her. But above allegation of the defendant remains unspecific and vague. There is no specific mention as to what was the false love story and how the plaintiff was detained in the Police Station and who compelled the defendant to marry the plaintiff. No evidence oral or documentary was adduced by the defendant at trial to substantiate above claim. In view of above materials on record the learned judges of both the Courts below rightly held that above marriage of the plaintiff and the defendant by registered kabinnama dated 30.08.2019 was lawful.

If a Muslim marriage is proved to be lawful that carries a presumption as to consummation of the marriage. It is the claim of the defendant that above marriage was not consummated. The plaintiff has denied above claim. As such the burden to prove that above marriage was not consummated rests on the defendant. In his evidence as DW1 defendant No.1 has merely stated that no conjugal relation (দাম্পত্য সম্পর্ক) was established with the plaintiff. There is no specific claim that the defendant did not have any physical relation or sexual relation with

the plaintiff pursuant to above marriage. No cause or reason has been assigned as to why defendant could not consume above marriage. No other evidence oral or documentary was adduced by the defendant to substantiate above claim.

The defendant has succeeded to prove that he has divorced the plaintiff by registered talaknama on 26.09.2019 by reliable documentary evidence marked as Exhibit "Ka"- "Gha". By giving divorce the defendant has admitted that the marriage of the plaintiff was lawful.

In above view of the facts and circumstances of the case and evidence on record I am unable to find any illegality or irregularity in the impugned judgment and decree passed by the learned Judge of the Court of appeal below nor I find any substance in this Civil Revision and the rule issued in this connection is liable to be discharged.

Accordingly, the Rule is hereby discharged.

However, there is not order as to costs.

Send down the lower Court's record immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER