

District:Dhaka

In the Supreme Court of Bangladesh

High Court Division
(Civil Revisional Jurisdiction)

Present

Mr. Justice Md. Zakir Hossain

Civil Revision No. 3917 of 2023

Hosna Aketer

.....Plaintiff-Respondent-Petitioner

-Versus-

Mohammad Zahid @ Zahid Mohammad

.....Defendant-Appellant-Opposite Party

Mr. Md. Mahabubur Rahman, Advocate

..... For the petitioner

None appears

.....For the opposite party

Heard on:28.02.2024 & 06.03.2024

Judgment on: 22.04.2024

At the instant of the petitioner, the Rule was issued to examine the chastity of the judgment and order dated 13.07.2023 passed by the learned District Judge in Family Appeal No. 117 of 2023.

Facts leading to the issuance of the Rule are *inter alia* that in Family Suit No. 1189 of 2022, the petitioner filed an application under Section 16A of the Family Court Ordinance, 1985 for interim maintenance of the minor son and daughter. The defendant contested the same by filing a written objection. Upon hearing, the learned Judge of the Family Court was pleased to allow the petition for interim

maintenance. Being aggrieved by and highly dissatisfied with the judgment and order of the Family Court, the defendant-opposite party preferred Family Appeal No. 117 of 2023 before the Court of the learned Senior District Judge, Dhaka. Upon hearing, the learned Senior District Judge was pleased to dispose of the Appeal without hearing the plaintiff-petitioner and directed to reconsider the quantum of the maintenance as fixed by the Family Court. Impugning the judgment and order of the learned Senior District Judge, the petitioner moved this Court and obtained the aforesaid Rule.

None appears to oppose the Rule.

Heard the submissions advanced by the learned Advocate for the petitioner and perused the materials on record at length. The convoluted question of law embroiled in this case has meticulously been waded through. I have also perused the pleadings of the parties and the application for maintenance with care and attention and seriousness as it deserves.

It appears from the record that admittedly, the marriage of the parties was dissolved in accordance with law; therefore, the plaintiff filed the aforesaid Family Suit for realization of the unpaid dower

money, past maintenance and maintenance for the period of *iddot* and also prayed for maintenance of their minor son and daughter.

Considering the facts and circumstances of the case; specially social and economic position of the defendant, the learned Judge of the Family Court fixed Tk. 15,000/- *per mensem* for minor son and daughter who are in the custody of the mother and pursuing their education in a reputed institute of the capital. Considering the market price, accommodation and educational expenditure, the amount of maintenance fixed by the Family Court appears to be reasonable unless it is otherwise decided by the Family Court upon taking evidence.

It is true that the order of interim maintenance is unusual. But in appropriate case, the Court may fix the interim maintenance. I am of the view that if interim maintenance is not provided, the future career of the two minors shall be prejudiced and therefore, I do not find any reason to interfere with the penultimate decision of the Family Court. Hence, the impugned judgment and order passed the learned Senior District Judge is liable to be turned down. Be that as it may, the Family Court shall determine the quantum of maintenance upon taking evidence independently and dispassionately. Hence, the Rule succeeds

In the result, the Rule is absolute, however, without passing any order as to costs. The impugned judgment and order of the learned Senior District Judge is hereby set aside and restored the judgment and order of the learned Additional Assistant Judge, Fifth Court and Judge of the Family Court, Dhaka. The Family Court is directed to dispose of the original suit with utmost expedition preferably within 06 (six) months from the date of receipt of the copy of this order. No unnecessary adjournment petition shall be entertained from either side. The Family Court shall determine the maintenance of the two minor son and daughter independently and dispassionately on merit without taking into consideration of the interim maintenance. The earlier order of stay granted by this Court thus stands recalled and vacated.

Let a copy of the judgment be sent down to the Court below at once.

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Md. Zakir Hossain, J