

Present:-

Mr. Justice Mahmudul Hoque

Civil Revision No. 4021 of 2023

Monira Begum Promi

... Petitioner

-Versus-

Mohammad Kaium

...Opposite-party

Mr. S. M. Arif, Advocate

...For the petitioner

Ms. Nusrat Jahan, Advocate

...For the opposite-party

Judgment on 11th December, 2024.

On an application under Section 115(4) of the Code of Civil Procedure this Rule was issued at the instance of the petitioner calling upon the opposite party to show cause as to why the judgment and order dated 02.02.2023 passed by the learned District Judge, Chattogram in Family Miscellaneous Case No. 05 of 2022 allowing the same staying all further proceedings in Family Suit No. 178 of 2021, now pending before the learned 1st Additional Senior Assistant Judge and Family Court, Chattogram should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

Shorn of unnecessary details, fact of the case lies in a very narrow compus. The petitioner, as plaintiff, filed Family Suit No.

42 of 2021 in the Court of Family Court (5th Assistant Judge), Chattogram against the opposite-party, for dower money and maintenance on 19.01.2021, renumbered as Family Suit No. 178 of 2021 on transfer to the Court of 1st Additional Senior Assistant Judge and Family Court, Chattogram.

The opposite-party, as plaintiff, filed Other Suit No. 75 of 2021 on 01.03.2021 in the Court of Joint District Judge, Patiya, Chattogram against the present petitioner, as defendant, praying for rectification of kabinnama.

Both the suits are pending before the respective courts. The opposite-party, as defendant, in Family Suit No. 178 of 2021 filed an application praying for stay further proceeding till disposal of Other Suit No. 75 of 2021. Learned 1st Additional Senior Assistant Judge and Family Court, Chattogram heard the application and after hearing by its order dated 30.10.2021 rejected the same. In this situation, the opposite-party, as defendant moved before the learned District Judge, Chattogram who heard the application and after hearing by its order dated 30.10.2022 rejected the same. Thereafter, the opposite-party, as defendant, filed Miscellaneous

Case No. 05 of 2022 under Section 25 of the Family Court Ordinance, 1985, before the District Judge and prayed for stay of further proceeding in Family Suit No. 178 of 2021 till disposal of Other Suit No. 75 of 2021, in the alternative for withdrawing both the suits from respective courts and transfer the same to the court of competent jurisdiction at Patiya, Chattogram for analogous trial and filed an application praying for stay further proceeding of Family Suit No. 178 of 2021. Learned District Judge by the impugned judgment and order dated 02.02.2023 disposed of the miscellaneous case and stayed further proceeding in Family Suit No. 178 of 2021 till disposal of Other Suit No. 75 of 2021. At this juncture, the petitioner, moved this Court by filing this application under Section 115(4) wrongly instead of filing miscellaneous appeal (F.M.A.) or application under Section 115(1) of the Code and obtained the present Rule and order of stay.

Mr. S.M. Arif, learned Advocate appearing for the petitioner submits that Family Suit No. 178 of 2021 filed by the petitioner on 19.01.2021 and Other Suit No. 75 of 2021 filed by the opposite-party, as plaintiff, on 01.03.2021 for rectification of kabinnama.

Suit of the opposite-party is subsequent one. For filing subsequent suit proceeding in earlier suit cannot be stayed as per provision of law. Therefore, the trial court rightly rejected the application, but the learned District Judge committed error of law staying further proceeding of earlier Suit No. 178 of 2021 allowing to proceed with the subsequent Other Suit No. 75 of 2021 beyond the scope of law occasioning failure of justice.

Ms. Nusrat Jahan, learned Advocate appearing for the opposite-party No. 1 submits that admittedly, Other Suit No. 75 of 2021 filed after about $1\frac{1}{2}$ months of filing Family Suit No. 178 of 2021. She submits that in family suit the petitioner claimed that dower money was fixed at Tk. 50,00,000/- (Taka fifty lac) and ornaments was mentioned 50 tolas. In fact, columns of the kabinanama were not filled in at the time of solemnization of marriage, concerned Nikah Register only took signatures of the opposite-party and the petitioner on kabinnama and in their absence when it was written, in connivance with guardian of plaintiff, dower money has been mentioned amounting to Tk. 50,00,000/- in place of Tk.10,00,000/- and ornaments has been written 50 tolas

instead of 5 tolas. Therefore, he filed an independent suit before the Joint District Judge, Patiya, Chattogram for rectification of said kabinnama. Before disposal of the suit for rectification of kabinnama if the family suit is disposed of conflicting decision may come, consequently, the opposite-party filed an application for staying further proceeding of Family Suit No. 178 of 2021. The learned District Judge considering such aspect rightly allowed the miscellaneous case and stayed further proceeding of Other Suit No. 178 of 2021, as such, committed no error in the decision occasioning failure of justice.

She argued that the order passed by the learned District Judge in a miscellaneous case. Against the order the petitioner ought to have filed miscellaneous appeal (F.M.A) before this Court but for the reason best to known to her filed an application under Section 115(4) of the Code seeking leave to revision which is absolutely beyond the scope of law, as such, the Rule is liable to be discharged.

Heard the learned Advocates of both the parties, have gone through the revisional application, plaint in both the suits,

application for stay further proceeding of Family Suit No. 178 of 2021 and the impugned judgment and order of both the courts below.

It is true that family suit was filed earlier and the suit for rectification of kabinnama field later on within a very short span of time. Dispute between the parties in respect of dower money and ornaments. On the other hand, the opposite-party claimed that the kabinnama was created in connivance with the plaintiff's family and the Nikah Register. Matter to be decided by the court actually what was the dower money and the quantum of ornaments. If the family suit is allowed to be proceeded before determination of dower money, maintenance and other fact, there is every chance of conflicting decision. Considering such aspect learned District Judge stayed further proceeding of Family Suit No. 178 of 2021 to avoid conflicting decision though the said suit was filed earlier. The petitioner claimed that because of pendency of this revision the trial court is unwilling to pass necessary order.

When the trial court rejected the application for stay for further proceeding of Family Suit No. 178 of 2021, the opposite-

party preferred miscellaneous case before the learned District Judge under Section 25 of the Family Court Ordinance. The learned District Judge registered the same as miscellaneous case considering alternative prayer in the application for transfer of both the suits. However, the learned District Judge disposed of the miscellaneous case staying further proceeding of Family Suit No. 178 of 2021, instead of transferring the suit.

I think that purpose of the parties will be served and justice will be met, if both the suits are tried by a single Court analogously or simultaneously and there will be nothing to be aggrieved by both the parties and in the event of trying both the suits analogously or simultaneously there will be no chance of conflicting decision.

Considering such aspect I am inclined to dispose of the Rule withdrawing Other Suit No. 75 of 2021 from the Court of Joint District Judge, Patiya, Chattogram and transferring the same to the Court of 1st Additional Senior Assistant Judge, Chattogram for analogous or simultaneous trial with Family Suit No. 178 of 2021, maintaining the order of stay passed by the learned District Judge, till transfer of both the suits to the Court concerned.

Accordingly, the Rule is disposed of, however, without any order as to costs.

The 1st Additional Senior Assistant Judge and Family Court is hereby directed to hear both the suits analogously or simultaneously as he thinks fit and dispose of the same within a shortest possible time giving top most priority preferably within 06(six) months from the date of receipt of this judgment and order.

Stay granted at the time of issuance of the Rule stands vacated.

Communicate a copy of the judgment to the Court concerned at once.