

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.1159 of 2024.

In the matter of:

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

And

Md. Nazrul Islam Bhuiyan (Adv)

...Petitioner

-Versus-

Tajeda Begum Sima (Adv)

...opposite parties

Mr. Kumayun Kabir, Advocate

...For the petitioner

Ms. Salina Easmin, Advocate

..For the opposite parties

Heard on: 24.08.2025 & 26.08.2025.

Judgment on: 18.11.2025.

This Rule was issued calling upon the opposite parties to show cause as to why the judgment and order dated 08.01.2024 passed by the learned District Judge, Dhaka in Paribarik Appeal No.202 of 2023 dismissing the appeal and affirming the order No.61 dated 27.09.2023 passed by the learned Additional District Judge, 5th Court and Paribarik Adalat, Dhaka in Paribarik Suit No.667 of 2015 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 as plaintiff instituted Family Suit No.667 of 2025 for recovery dower and maintenance for herself and her minor daughter.

The defendant entered appearance in above suit and submitted a petition under Section 10 of the Code of Civil Procedure for stay of proceedings of above suit till disposal of First Appeal No.30 of 2022 pending in the High Court Division. It was alleged that the defendant as plaintiff instituted above suit in the 3rd Court of Joint District Judge for cancellation of above kabinnama of the plaintiff which was obtained by coercive measures. Above suit was dismissed by the trial court and against above judgment and decree above plaintiff as appellant preferred First Appeal No.30 of 2022 to the High Court Division which is pending for hearing. The learned Judge of Family Court rejected above petition by order dated 27.09.2023.

Being aggrieved by above judgment and order of the learned Judge of the Family Court above defendant as appellant preferred Family Appeal No.202 of 2023 to the District Judge who dismissed above appeal on 08.01.2024. -

Being aggrieved by and dissatisfied with above judgment and order of the learned District Judge above appellant as petitioner moved to this court and obtained this rule.

Mr. Humayun Kabir learned Advocate for the petitioner submits that the plaintiff filed above family suit for recovery of dower and maintenance on the basis of registered kabinnama dated 23.04.2015. But above kabinnama was not willingly and voluntarily executed by defendant No.1. Plaintiff obtained above kabinnama by coercive measures putting the defendant in police custody. The legality and propriety of above kabinnama is under challenge in a First Appeal in the High Court Division, the learned District Judge should have stayed operation of above family suit till disposal of above First Appeal. But the learned District Judge committed serious illegality in dismissing above appeal which is not tenable in law.

Ms. Salina Easmin learned Advocate for the opposite parties submits that on consideration of facts and circumstances of the case and materials on record the learned District Judge rightly dismissed above appeal which calls for no interference.

I have considered the submissions of the learned Advocate for the petitioner and carefully examined all materials on record.

It is admitted that the petitioner married opposite party No.1 and out of above wedlock minor daughter Samiya Islam was born on 22.09.2014. Opposite party as plaintiff filed Family Suit No.667 of 2015 for recovery of dower and maintenance for both herself and her minor girl Samiya Islam claiming that her marriage with the petitioner was registered by kabinnama dated 23.04.2015.

The defendant as plaintiff filed Title Suit No.273 of 2015 for declaration that above kabinnama was obtained by coercive measures and not binding upon the defendant which was dismissed by the trial court. The plaintiff of above suit was appellant preferred a First Appeal from above judgment which is pending for hearing in this court.

As mentioned above the defendant filed a petition under Section 10 of the Code of Civil Procedure to the learned Judge of the Family Court for staying proceedings of above suit till disposal of above First Appeal but the learned

Judge of the family court did not dispose of above petition by passing an appropriate order.

It is not understandable as to how the defendant could move to the court of District Judge without obtaining an order from the trial court. The learned District Judge also dismissed Family Appeal No.202 of 2023 by a non-speaking order. The petitioner has moved to this court with an application under section 115(1) of the Code of Civil Procedure and obtained this rule. But this court has no order or judgment before it to revise.

Section 10 of the Code of the Civil Procedure provides for stay of proceedings of a suit if there is a previous suit between the parties involving identical issues till disposal of the previous suit. Admittedly the suit of the petitioner challenging the legality and propriety of above kabinnama has been dismissed. A family court has legal jurisdiction to determine the correctness or falsity of a kabinnama in a suit for dower and maintenance of the basis of above kabinnama. It is not understandable as to why instead of raising above allegations against above kabinnama in above family suit the defendant opted to file a separate civil suit.

However since the family court did not pass any order on above petition of the defendant under section 10 of the Code of Civil Procedure I hold that the ends of justice will be met if the impugned judgment and order of the court of appeal below is set aside and the Family court is directed to dispose of above petition of the defendant under section 10 of the Code of Civil Procedure in accordance with law and then proceed with the trial of the suit.

In the result, the impugned judgment and order passed by the learned District Judge in Family Appeal No.202 of 2023 on 08.01.2024 is set aside and the learned Judge of the Family court is directed to dispose of the petition of the defendant under section 10 of the Code of Civil Procedure by passing an appropriate and lawful order and then proceed with the trial of above suit in accordance with law.

This rule is accordingly disposed of.

Let a copy of this judgment be transmitted down to the Court concerned at once.