

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.1629 OF 2023

In the matter of:

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

And

Md. Arifur Rahman

... Petitioner

-Versus-

Mst. Nupur Aktar

... Opposite party

None appears

.... For the petitioner.

Mr. Md. Mostafa with

Mr. Mohammad Masud Parvez, Advocates

.... For the opposite party.

Heard on 31.10.2024.

Judgment on 03.11.2024.

This Rule was issued calling upon the opposite party to show cause as to why the judgment and decree dated 05.01.2023 passed by the learned District Judge, Jhalakathi in Family Appeal No.03 of 2022 and thereby affirming the judgment and decree dated 29.09.2021 passed by the Bicharak, Rajapur Family Court and Senior Assistant Judge, Rajapur Court, Jhalakathi in Family Suit No.34 of 2018 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 opposite party as plaintiff instituted above Family Suit for recovery of her unpaid dower of Taka 1,50,000/- and maintenance alleging that the defendant married her on 02.06.2007 by a

registered kabinnama and subsequently subjected the plaintiff to physical and psychological torture on demand of dowry. Due to plaintiffs refusal to pay dowry the defendant divorced the plaintiff on 30.06.2018.

Defendant contested above suit by filing a written statement alleging that the dower of the plaintiff was fixed at Taka 50,000/- and the same was fully paid but in collusion with the marriage register the plaintiff has fraudulently enhanced the dower to Taka 2,00,000/-. The plaintiff having involved in immoral and antisocial activities the defendant has divorced her on 30.06.2018. The defendant purchased sanchoypatra of Taka 40,000/- in the name of the plaintiff which may be utilized for payment of her maintenance.

At trial plaintiff and defendant examined one witness each and the document of the plaintiff was marked as Exhibit No.1 and that of the defendant was marked as Exhibit No.Ka.

On consideration of the facts and circumstances of the case and materials on record the learned Judge of the Family Court decreed the suit and granted plaintiff unpaid dower of Taka 1,50,000/- and maintenance at the rate of Taka 3,500/- from 19.03.2018.

Being aggrieved by above judgment and decree of the Family Court the defendant preferred Family Appeal No.03 of 2022 to the learned District Judge, Jhalakathi who dismissed above appeal and affirmed the judgment and decree of the trial Court.

Being aggrieved by above judgment and decree of the Court of appeal below above appellant as petitioner moved to this Court and obtained this Rule.

No one appears on behalf of the petitioner when the Rule was taken up for hearing although this revision appeared in the list for hearing on several dates.

Mr. Md. Mostafa, learned Advocate for the opposite party submits that the registered kabinnama of the plaintiff was produced at trial which was marked as Exhibit No.1. Above document shows that the dower of the plaintiff was fixed at Taka 2,00,000/- and only Taka 50,000/- was paid. The defendant did not pay maintenance to the plaintiff since 19.03.2018 and the learned Judge of the Family Court gave her maintenance from above date at the rate of Taka 3,500/- which is reasonable and bearable for the defendant. On consideration of above evidence on record the learned District Judge has rightly dismissed the appeal and upheld the judgment and decree of the Family Court which calls for interference.

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

It is admitted that the defendant married the plaintiff on 02.06.2007 by a registered kabinnama and above marriage came to one end by talak on 30.06.2018 at the instance of the defendant.

Plaintiff herself gave evidence as PW1 and produced and proved registered kabinanama dated 02.06.2007 which was marked as Exhibit No.1. Above document shows that the dower of the plaintiff was fixed at Taka 2,00,000/- and Taka 50,00,000/- was realized. As such, the learned Judges of the Court of Appeal below rightly held that the plaintiff was entitled to get Taka 1,50,000/- as unpaid dower.

The learned Judges of the Courts below have granted past maintenance to the plaintiff from 19.03.2018. But the plaintiff did not mention in her evidence as PW1 that she was living separately from the defendant from 19.03.2018 and the defendant did not pay her maintenance from above date. As such the plaintiff has failed to substantiate her claim for past maintenance by legal evidence.

The monthly maintenance of the plaintiff at the rate of Taka 3,500/- as was determined by the learned Judges of the Courts below appears to be reasonable taking into account the existing market price and other expenses of a divorcee woman living separately and alone. Since the defendant divorced the plaintiff on 30.06.2018 the plaintiff is entitled to get maintenance at the rate of Taka 3,5000/- only for his iddat period which amounts to Taka 11,900/-.

In above view of the facts and circumstances of the case and evidence of the record I am of the view that the ends of the justice of will be met if the impugned judgment and decree is modified and

above suit is decreed for Taka 1,61,900/ (Taka 1,50,000/- for unpaid dower and Taka 11,900/- for maintenance instead of Tk.1,72,400/-).

The judgment and decree dated 05.01.2023 passed by the learned District Judge, Jhalakathi in Family Appeal No.03 of 2022 affirming the judgment and decree dated 29.09.2021 passed by the Bicharak, Rajapur Family Court and Senior Assistant Judge, Rajapur Court, Jhalakathi in Family Suit No.34 of 2018 is upheld subject to modification of the decree to Taka 1,61,900/- instead of Taka 1,92,400/-.

This Rule is accordingly disposed of.

Send down the lower Courts records immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER