

District: Dhaka

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

Present

Mr. Justice Sardar Md. Rashed Jahangir

Civil Revision No. 1539 of 2021

In the matter of :

Arun Kumar Das

... Petitioner

-Versus-

Krishna Das

...Opposite party

Mr. Md.Shah Alam, Advocate

...For the petitioner

Mrs. Most. Nazmun Nahar, Advocate

...For the opposite party

Heard on: 03.12.2024

Judgment on: 15.12.2024

Rule was issued on an application under section 115 of the Code of Civil Procedure calling upon the opposite party to show cause as to why the judgment and decree dated 08.03.2020 passed by the Additional District Judge, 7th Court, Dhaka in Family Appeal No.292 of 2017 affirming the judgment and decree dated 19.09.2017 passed by the Third Assistant (Additional) Judge and Family Court, Dhaka in Family Suit No.550 of 2016 (arising out

of Family Suit No.70 of 2009, Rajbari) dismissing the suit, should not be set aside and/or such other or further order or orders as to this Court may seem fit and proper.

The present petitioner as plaintiff filed Family Suit No.70 of 2009 before the Family Court, Rajbari Sadar, Rajbari for restoration of conjugal relation. The specific case of the plaintiff are that the plaintiff and defendant entered into marriage on 08.08.2007 according to the belief of Hinduism and thereby maintaining their conjugal relation with happiness as a couple. On 26.11.2007 defendant went to her paternal house to make a visit and thereafter despite plaintiff's repeated request she denied to return at his house. That on 19.07.2008, defendant came back to the house of plaintiff under request of the members of both the families. During wedlock a son was born namely Rick Das on 18.05.2015 at the defendant's paternal house; after birth of the son plaintiff made request to defendant and her father through his family members on 25.07.2009 to send back defendant with the new born to his house and accordingly they returned back to plaintiff's house and thereafter, the plaintiff went to his

workplace, Dhaka on 02.08.2009. Plaintiff's family members informed him that the defendant again went to her father's house with their son and she told them that she will not continue the conjugal relation with the plaintiff. Upon getting the said news plaintiff tried to communicate with her parents through telephone, but he failed. The defendant denied to continue her conjugal and family life with the plaintiff without any cogent reason and thus, the plaintiff filed the suit for restoration of conjugal relation.

The defendant contested the suit by filing written statement, contending that plaintiff took Tk.15,00,000/- (fifteen lac) as debt from her father for the purpose of construction work and purchasing a flat. After getting the said money plaintiff's behavior has been changed and started neglect the defendant. Thereafter the plaintiff demanded dowry for the purpose of purchasing a car, the defendant refused that is why the plaintiff misbehaved with the defendant and tortured her physically and mentally. A son namely Rick Das was born out of the wedlock, knowing that news plaintiff did not come to her father's house even to see his son. Thereafter plaintiff came to the house of the defendant's father

and again demanded taka as dowry but defendant refused, thus, the plaintiff again started torture and assaulted the defendant. The defendant filed Nari-O-Shisu Case being No.106 of 2010 against the plaintiff. The plaintiff is a drug addicted, having bad character and he did not maintain any responsibilities as a husband and he got another marriage prior to get marriage the defendant and concealed the said fact at the time of marriage.

During hearing plaintiff examined 2(two) witnesses including himself and adduced some documentary evidences. On the other hand, the defendant examined 1(one) witness. On conclusion of hearing learned Judge of the Family Court by his judgment and decree dated 19.09.2017 dismissed the suit, against which the plaintiff took an unsuccessful appeal being Family Appeal No.292 of 2017 before the District Judge, Dhaka which on transfer was heard by the Additional District Judge, 7th Court, Dhaka and ultimately by his judgment and decree dated 08.03.2020 dismissed the appeal affirming the judgment and decree of the family Court.

On being aggrieved by and dissatisfied with the aforesaid judgment and decree of the Additional District Judge, 7th Court, Dhaka, the plaintiff-petitioner filed this revisional application and obtained the rule.

Mr. Shah Alam, learned Advocate appearing on behalf of the petitioner submits that both the Courts below failed to consider that the plaintiff had to fight to long battle against the defendant, in spite of that, the plaintiff is willing to restore his conjugal relation with the defendant, but it is the defendant who showed her unwillingness to live with the plaintiff at his house and for that reason the plaintiff had to suffer a lot. He further submits that the plaintiff is a qualified engineer serving under the Government and he has a good reputation in the society and in view of above, he prays for making the Rule absolute and thereby sought for a decree in favour of the plaintiff to have his conjugal relation with the defendant.

On the other hand, learned Advocate Mrs. Most.Nazmun Nahar appearing on behalf of the opposite party submits that both the Courts below concurrently found that the defendant can not be

compelled to live with the plaintiff in his house to continue the conjugal relation, because, there are evidences to the effect that the plaintiff tortured the defendant upon demanding dowry. Earlier, the plaintiff got another marriage, which he concealed at the time of marriage with the defendant. Referring to the judgment of the Family Court, she further submits that the conjugal relation between the husband and wife is dependable upon their willingness and interrelationship and since under the Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946, a Hindu woman is entitled to have a separate residence, and from the evidence it is proved that plaintiff having bad characteristic has tortured the defendant on several occasions demanding dowry, thus, both the Courts below rightly dismissed the suit as being not maintainable.

Heard learned Advocates for both the parties, perused the revisional application together with the annexures appended thereto; it appears that the plaintiff filed the suit for restoration of conjugal relation. Both the Courts below while dismissing the suit as well as the appeal concurrently found that the defendant can not

be compelled to have the conjugal relation with the plaintiff when some material allegations against the plaintiff has been raised by way of evidences before the Court.

From the pleadings as well as the evidence, this Court finds that the plaintiff failed to assert any cogent reason to have a decree for restoration of conjugal relation between the plaintiff and defendant. Even the plaintiff could not show any reason regarding unwillingness of the defendant to live with the plaintiff in same house.

On the other hand, the defendant raised many allegation against the plaintiff for which she is not interested to continue her conjugal relation with the plaintiff.

Both the Courts below upon consideration of the aforesaid facts and circumstances held that defendant cannot be compelled to have conjugal relation with the plaintiff, and thus the plaintiff is not entitled to get any relief in the suit .

I do not find any infirmity in the judgments of both the Courts below.

In course of hearing learned Advocate for the petitioner concerns regarding pendency of a proceeding for maintenance. This Court upon consideration of the anxiety of learned Advocate opined that the issues of present suit is altogether different from those of the suit for maintenance.

Accordingly, with the above observation the Rule is discharged without any order as to cost.

Send down the lower Courts' record.

Communicate the judgment and order at once.