

**In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)**

Present:

Mr. Justice Md. Riaz Uddin Khan

Civil Revision No. 4192 of 2024

IN THE MATTER OF :

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

-And-

In the Matter of:

Sheikh Md. Nurullah

... Defendant-Petitioner

Versus

Ummeh Kulsum Tanzila

... Plaintiff-Opposite party

Mr. Abdur Rouf, Advocate

... For the petitioner

None

... For the opposite party

Judgment on: 20.05.2026

Md. Riaz Uddin Khan, J:

Rule was issued calling upon the opposite party to show cause as to why the Judgment and Order dated 27.06.2024 passed by the District Judge, Noakhali in Family Appeal No.19 of 2024 summarily dismissing the appeal and thereby affirming the Order No.09 dated 16.05.2024 passed by the Judge, Family Court, Companygonj, Noakhali in Family Suit No.55 of 2023 should not be set aside and/or such other or further order or orders should not be passed as to this Court may deem fit and appropriate.

At the time of issuance of Rule the operation of the judgment and order dated 27.06.2024 passed by the Court of appeal below dismissing the appeal and affirming the order No.09 dated 16.05.2024 passed by

the Family Court was stayed initially for a period of 03(three) months which was extended time to time.

Succinct facts for disposal of this Rule are that the opposite party as plaintiff filed Family Suit No.55 of 2023 before the Family Court, Companygonj, Noakhali on 29.08.2023 praying for dower and maintenance on the contention that marriage was solemnized between the plaintiff and defendant on 14.08.2019 as per Muslim law fixing dower of Tk-1,000,000/- (ten lac). However, within couple of years disagreement ensued for which the plaintiff divorced the defendant on 02.04.2023 through affidavit in front of a Notary Public and on the same date she claimed her dower and maintenance for both past and *iddat* period but the defendant refused to pay hence the suit.

The defendant appeared and filed written statement on 09.05.2024 denying all the material allegations made in the plaint. At one stage of the suit the defendant filed an application under section 7(2) of the Muslim Family Laws Ordinance, 1961 to take action against the plaintiff and further claimed for rejection of the plaint. After hearing the parties, the trial court rejected the application by his order No.09 dated 16.05.2024 on the finding that the cause of action is to be proved by the plaintiff and fixed the matter for trail.

Against the said dated 16.05.2024 the defendant filed Family Appeal No.19 of 2024 before the District Judge, Noakhali who heard the matter on the point of admissibility and after hearing the learned advocate for the appellant dismissed the appeal *in limine* by his impugned judgment and order dated 27.06.2024 on the

finding that the trial court did not commit any illegality in rejecting the application.

Being aggrieved by and dissatisfied with the judgment and order dated 27.06.2024 the defendant filed the instant civil revision before this Court and obtained Rule and interim order as stated at the very outset.

Mr. Abdur Rouf, the learned advocate appearing for the defendant-petitioner submits that the plaintiff did not serve any notice of divorce upon the Chairman of the Arbitration Council as per section 7(1) of the Muslim Family Laws Ordinance, 1961 and hence it is required to take action against her under section 7(2) of the Ordinance for non-compliance of section 7(1) of the Ordinance. The learned advocate then submits that as per claim of the plaintiff on 20.08.2023 served notice of divorce upon the defendant-husband by registered post but filed the instant Family Suit on 29.08.2023 praying for dower and maintenance both past and for *Iddat* period during the subsistence of the marriage as per section 7(3) of the Ordinance and as such the plaint is liable to be rejected.

No one appears to oppose the Rule.

I have heard the learned advocate for the defendant-petitioner, perused the application along with the annexures. I have also examined the order of the trial court as well as the judgment and order of the Court of appeal below.

The plaintiff-opposite party filed the suit for dower and maintenance, both past and for *Iddat* period against her husband, the defendant-petitioner. The plaintiff claimed in the plaint that she divorced the defendant on 02.04.2023 by swearing affidavit before a

Notary Public. The suit is filed on 29.08.2023. The plaintiff did not state when she served notice upon the Chairman of the Arbitration Council along with the defendant. The suit is filed clearly after more than 4 (four) months of alleged date of pronouncement of divorce (*talaq*). The suit is still in preliminary stage and evidence is yet to be taken. At this stage of the suit the defendant filed an application under section 7(2) of the Muslim Family Laws Ordinance, 1961 for taking action against the plaintiff for alleged violation of the mandatory provision of section 7(1) of the said Ordinance and also for rejection of the plaint.

Section 7 of the Muslim Family Laws Ordinance, 1961 reads as follows:

Talaq- 7.(1) Any man who wishes to divorce his wife shall, as soon as may be after the pronouncement of *talaq* in any form whatsoever, give the Chairman notice in writing of his having done so, and shall supply a copy thereof to the wife.

(2) Whoever contravenes the provisions of sub-section (1) shall be punishable with simple imprisonment for term which may extend to one year or with fine which may extend to ten thousand taka or with both.

(3) Save as provided in sub-Section (5), a *Talaq* unless revoked earlier, expressly or otherwise, shall not be effective until the expiration of ninety days from the day on which notice under Sub-section (1) is delivered to chairman.

(4) Within thirty days of the receipt of notice under sub-section (1), the Chairman shall constitute an Arbitration Council for the purpose of bringing about a

reconciliation between the parties, and the Arbitration Council shall take all steps necessary to bring about such reconciliation.

(5) If the wife be pregnant at the time *talaq* is pronounced, *talaq* shall not be effective until the period mentioned in sub-section (3) or the pregnancy, whichever be later, ends.

(6) Nothing shall debar a wife whose marriage has been terminated by *talaq* effective under this section from re-marrying the same husband, without an intervening marriage with a third-person, unless such termination is for the third time so effective.

From plain reading of the section it appears that if anyone wishes to divorce his wife shall give the Chairman notice in writing as soon as the pronouncement of *talaq* and shall supply a copy thereof to the wife. This provision is mandatory and whoever contravenes the provision shall be punishable with imprisonment or with fine. *Talaq* shall not be effective until the expiration of ninety days from the day on which notice under Sub-section (1) is delivered to chairman.

In the present suit we have already noticed that it is still in a preliminary stage. The date of marriage, divorce and serving notice of divorce etcetera are yet to be proved by the plaintiff. It appears that the questions raised by the defendant are questions of law highly dependent on disputed questions of facts which cannot be decided summarily without taking evidence. Whether the divorce was held on the date as claimed by the plaintiff is true or not and whether the plaintiff served notice of divorce as per section 7(1) of the Ordinance and when the cause of

action of the suit arose etcetera are to be decided by the trial court after examination of the witness and evidence. Moreover, the offence punishable under section 7(2) of the Ordinance is a criminal offence and the civil court has no jurisdiction to try it. If after conclusion of the trial of the instant suit, it is proved that the plaintiff contravened the provision of section 7(1) of the Ordinance then the aggrieved person may have a cause to take appropriate legal recourse in an appropriate court having jurisdiction. The plaint cannot be rejected under section 7(2) of the Muslim Family Laws Ordinance, 1961. The application itself was not maintainable and rightly rejected by the courts below. In that view of the matter the trial court did not commit any illegality or error of law which has been found correct by the Court of appeal below. The learned advocate for the petitioner could not raise any legal question before this court regarding the commission of error by the courts below which warrants interference by this court. I do not find any reason to interfere. Hence, the Rule being devoid of merit destined to fail and I am constrained to discharge the Rule.

In the result, the Rule is **discharged**. However, without any order as to cost.

The order of stay passed earlier by this Court stands vacated. The trial court is directed to conclude the trial expeditiously as practicable.

Communicate the judgment and order at once.