

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

Present:

Mr. Justice S. M. Saiful Islam

Civil Revision No. 5524 of 2023

IN THE MATTER OF:

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

And

IN THE MATTER OF:

Md. Monwar Hossain.

---- Defendant-Appellant-Petitioner.

-versus-

Most. Shapla Akter and another.

---- Plaintiff-Respondent-Opposite Parties.

Mr. Ziaul Haque, Advocate

---- For the Petitioner.

Mr. Md. Mamunur Rashid Chowdhury,

Advocate

--- For the Plaintiff-Respondent-O.Ps.

Heard On: 07.01.2026

Date of Judgment: 11.01.2026.

S. M. Saiful Islam, J.

This Rule was issued, on an application under section 115(1) of The Code of Civil Procedure 1908, calling upon the opposite parties to show cause as to why the judgment and decree dated 02.07. 2023 (decree being drawn up on 06.07.2023) passed by the learned District judge, Nilphamari in Family

Appeal No. 09 of 2023 dismissing the appeal and thereby affirming the judgment and decree dated 15.09.2022 (Decree being drawn on 21.09.2022) passed by the Jaldhaka Family Court, Nilphamari in Family Suit No. 59 of 2019 decreeing the suit shall not be *set aside* and/or such other or further order or orders passed as to this Court may deem fit and proper.

Facts relevant for the disposal of this Rule is that the opposite party No. 1 as plaintiff instituted Family Suit No. 59 of 2019 in the Jaldhaka Family Court, Nilphamari praying for dower and maintenance for herself as well as maintenance for her minor daughter. In that suit the plaintiff-opposite party No. 1 claimed that her marriage was solemnized with the defendant petitioner on 15.05.2016 fixing the dower at Taka 4,75,105/- (Four Lac Seventy Five Thousand One Hundred and Five) amidst of which Taka 105/- was paid at the time of marriage ceremony and accordingly Taka 4,75,000/- (Four Lac Seventy Five Thousand) remained unpaid. Thereafter, they started their marital life and in their wedlock one daughter (plaintiff No. 2) was born. After marriage, the defendant and his family members created pressure upon the plaintiff for dowry. When the plaintiff refused to pay the dowry, defendant tortured her and drove her out of his house. Plaintiff then asked the defendant on 28.08.2019 to pay her unpaid dower along with maintenance. But the defendant refused to pay it. Then the plaintiff instituted the suit for her unpaid dower and maintenance for herself and for her minor daughter. Plaintiff No.1 claimed maintenance @ Taka 5000/- per month for herself and @ Taka 3000/- per month for plaintiff No. 2.

The petitioner as defendant contested the suit by filing a written statement stating *inter alia* that he got married with the plaintiff on 15.05.2016 fixing the dower at Taka 4,75,105/- (Four

Lac Seventy Five thousand One hundred and Five) amidst of which he paid Taka 105/- as cash and the rest remained unpaid. In their wedlock plaintiff No. 2 was born. Plaintiff No.1 used to lead a reckless life and objurgate the parents of the defendant in obscene language. Defendant being failed to correct her, divorced her on 18.10.2018. The defendant is day labor and he has ability to pay only Taka 1,000/- (One Thousand) per month to plaintiff No. 2 as maintenance and can pay Taka 5000/- (Five Thousand) per month as dower to plaintiff No. 1.

Learned Trial Court decreed the suit on 15.09.2022 and directed to pay the defendant decretal amount of Taka 5,74,083/- (Tk. 4,75000/- as unpaid dower + Tk. 10,500/- as maintenance for *iddat* period + Tk. 88,583/- as maintenance for the minor child for 35 months 13 days @ Taka 2500/- per month) in total to the plaintiffs. The defendant was also directed to pay Taka 2500/- (Two Thousand and Five Hundred) per month as maintenance in future to the plaintiff No. 2 for the lawful period.

Being aggrieved by that judgment and decree, plaintiff preferred Family Appeal No. 09 of 2023 before the learned District Judge, Nilphamari which was disallowed by the judgment and decree dated 02.07.2023 (decree signed on 06.7.2023). Being aggrieved by that impugned judgment and decree the defendant-petitioner filed this revisional application and obtained the Rule. At the time of issuance of the Rule on 09.10.2023, operation of the impugned judgment and decree was stayed for a period of 6 (six) months from date subject to depositing Taka 1,00,000/- (One Lac) in the trial Court. No further extension was granted thereafter.

Learned Advocate Mr. Ziaul Haque appearing on behalf of the petitioner submits that the learned Trial Court and Appellate

Court below passed the judgment and decree without considering all the aspects of the case and thereby arrived at an erroneous decision occasioning failure of justice. Judgment and decree of the Courts below are totally based on misreading, non consideration of material evidence on record and misconstruction of document. The petitioner is a day labor and he has no ability to pay the amount as decreed. He further submitted that the petitioner has given plaintiff ornaments and a cow worth Taka 1,70,000/- (One Lac and Seventy Thousand) which will be deducted from the dower money . Thus, he prays for making the Rule absolute.

On the other hand learned Advocate Mr. Mamunur Rashid Chowdhury, appearing on behalf of the plaintiff-respondents, submits that learned Trial Court has rightly decreed the suit in favor of the plaintiffs and accordingly learned Appellate Court has rightly disallowed the Appeal preferred by the defendant-petitioner. Learned Courts below have not committed any error of law in the impugned judgment and decree and it has not occasioned any failure of justice. Defendant-petitioner has filed this revisional application only to delay the execution of the impugned decree. Hence, he prays for discharge of the Rule.

Heard the learned Advocates for both the parties. Perused the revisional application and annexures therewith, the impugned judgment and decree as well as the case records of the Courts below.

It is admitted by the defendant-petitioner that he married the plaintiff No. 1 on 15.05.2016 fixing the dower at Taka 4,75,105/- (Four Lac Seventy Five Thousand One Hundred and Five) amidst of which he paid Taka 105/- as cash and the rest remained unpaid. It is also admitted that in their conjugal life, a daughter, plaintiff No. 2 was born and the marital relationship

between the plaintiff and the defendant has been dissolved by *talak* (তলাক). Learned Advocate for the petitioner has submitted that the petitioner has given the plaintiff No. 1 jewelry and a cow worth Taka 1,70,000/- (One Lac Seventy Thousand) as dower. But there is no such claim in the written statement filed by the defendant in the trial Court. He made this claim at the time of Appeal. But as that claim is beyond his pleadings, it is not tenable in law. Moreover, such claim of the defendant is not proved by proper evidence. Petitioner also claims that he has no ability to pay the decretal amount. But dower is a debt and the petitioner is bound to pay the unpaid amount of dower of his divorced wife i.e. plaintiff No. 1 unless she remit it. On the other hand, petitioner as a father is bound to maintain his daughter until she is married. Monthly maintenance for daughter of the petitioner has been fixed at Tk. 2,500/- only which is very minimum in the context of present market price. Petitioner-defendant has admitted in his cross-examination that he works in a garments factory. So, it appears that he has ability to pay the maintenance fixed by the Court.

In view of the discussions made about, I am of the opinion that the learned trial Court, considering the oral and documentary evidence, has rightly decreed the suit directing the defendant-petitioner to pay the plaintiff Taka 4,75000/- (Four Lac Seventy five Thousand) as unpaid dower money, Taka 10,500/- (Ten Thousand and Five Hundred) as maintenance for three months *iddat* (ইদ্দত) period and Taka 88583/- (Eighty Eight Thousand Five Hundred and Eighty Three) as maintenance for plaintiff No. 2 for 35 months and 13 days. Amount of maintenance per month fixed by the learned Trial Court seems to be just and proper. Learned Appellate Court has rightly affirmed the judgment and decree of the trial Court by the impugned judgment and decree.

No error of law or miscarriage of justice is found in the impugned judgment and decree and I find no reason to interfere with the concurrent findings of the Courts below.

In such facts and circumstances, I find no merit in the Rule.

In the result, the Rule is discharged with a cost of Taka 20,000/- (Twenty Thousand) to be given by the defendant-petitioner to the plaintiff-opposite parties.

Lower Court Records be sent to the concerned Court below at once with a copy of this judgment.