

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.3760 OF 2024

In the matter of:

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

And

Md. Jahangir Habibi

.... Petitioner

-Versus-

Most. Suraiya and another

.... Opposite parties

None appears

.... For the petitioner.

Mr. Abantee Nurul, Advocate

.... For the opposite party

No.1.

Heard and Judgment on 25.06.2025.

This Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 28.07.2024 passed by the learned District Judge, Barguna in Family Appeal No.51 of 2023 disallowing the appeal and thereby affirming the judgment and decree dated 26.09.2023 passed by the learned Family Court, Barguna in Family Suit No.122 of 2022 decreed the suit should not be set aside and/or other or further order or orders as to this Court may seem fit and proper.

Facts in short are that opposite parties as plaintiffs instituted above Family Suit for recovery of dower for plaintiff No.1 and maintenance for plaintiff Nos.1 and 2 alleging that defendant married plaintiff No.1 by a registered kabinnama on 10.02.2019 for dower of Taka 10,00,000/- and out of above wedlock plaintiff No.2 was born. The defendant has divorced plaintiff No.1 but refused to pay dower money and maintenance.

Defendant No.1 contested the suit by filling a written statement alleging that the plaintiff as complainant filed Nari-O-Shishu Tribunal Case No.49 of 2020 against the defendant and recovered Taka 2,00,000/- of her dower. The marriage of the defendant and plaintiff No.1 has been dissolved by khola talak.

At trial Plaintiff examined one witness. Document of the plaintiff was marked as Exhibit No.1. On the other hand defendant examined two witnesses and documents of the defendants were marked as Exhibit No.1-C.

On consideration of facts and circumstances of the case and materials on record the learned Judge of the Family Court decreed above suit for Taka 8,50,000/- as unpaid dower of plaintiff No.1 and who was given maintenance at the rate of Taka 2,000/- per month during iddat period and plaintiff No.2 was granted maintenance at the rate of 2,000/- per month shall increase at the rate of 20% per year.

Being aggrieved by above judgment and decree of the Family Court above defendant as appellant preferred Family Appeal No.51 of

2023 to the learned District Judge, Borguna who dismissed above appeal and affirmed the judgment and decree of the Family Court.

Being aggrieved by and dissatisfied with above judgment and decree of the Court of Appeal below above appellant as petitioner moved to this Court with this Civil Revisional application under Section 115(1) of the Code of Civil Procedure and obtained this Rule.

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

Mr. Abantee Nurul, learned Advocate for the opposite party No.1 submits that defendant married plaintiff No.1 on 10.02.2019 by a registered kabinnama (Exhibit No.1) for dower of Taka 10,00,000/- and the defendant paid Taka 1,50,000/- to the plaintiff No.1 through Nari-O-Sihshu Nirjatan Tribunal. As such defendant owes Taka 8,50,000/- as unpaid dower to plaintiff No.1. It is admitted that out of above wedlock plaintiff No.2 was born and she is staying in the custody of plaintiff No.1. The learned Judge of the trial Court has granted maintenance to both the plaintiffs at the rate of Taka 2,000/- per months which is reasonable. Plaintiff No.1 was given maintenance only for her iddot period and plaintiff No.2 was given maintenance until her marriage. On consideration of the facts and circumstances of the case and evidence on record the learned District Judge rightly dismissed the appeal and affirmed the lawful judgment and decree of the Family Court which calls for no interference.

I have considered the submissions of the learned Advocate for the opposite party No.1 and carefully examined all materials on record.

It is admitted that the defendant married plaintiff No.1 on 10.02.2019 by a registered kabinnama for dower of Taka 10,000/- and out of above wedlock plaintiff No.2 was born and plaintiff No.2 is staying in the custody of plaintiff No.1. It is also admitted that the marriage of plaintiff No.1 with the defendant has come to an end by khola talak.

Plaintiff herself gave evidence as PW1 and reiterated all claims and allegations made in the plaint and produced her kabinnama which was marked as Exhibit No.1.

Defendant claimed that he has paid Taka 2,00,000/- of the dower money of the defendant through Nari-O-Shishu Nirjatan Daman Tribunal and in support of above claim defendant produced a certified copy of the order sheet of above Criminal Case which was marked as Exhibit No."A". On a detailed analysis of above document the learned Judge of the Family Court rightly found that the defendant deposited Taka 1,50,000/- by two installments in above Tribunal towards payment of outstanding dower of plaintiff No.1. The defendant could not prove his claim that he paid Taka 2,00,000/- to plaintiff No.1 of her dower.

As far as the monthly maintenance of the plaintiffs are concerned, the learned Judge of the Family Court fixed Taka 2,000/- as monthly

maintenance for both the plaintiffs which appears to be rational and reasonable.

But the learned Judge has provided for annual enhancement of above monthly maintenance of plaintiff No.2 at the rate of 20% which appears to be excessive and unreasonable. In above view of the materials on record I hold that the ends of justice will be met if the rate of annual incresement of the maintenance of plaintiff No.2 is reduced to 6% per year instead of 20% and the impugned judgment and decree of the Court of Appeal below is affirmed with above modification.

Accordingly, the impugned judgment and decree dated 28.07.2024 passed by the learned District Judge, Barguna in Family Appeal No.51 of 2023 disallowing the appeal and affirming the judgment and decree dated 26.09.2023 passed by the learned Judge of the Family Court, Barguna in Family Suit No.122 of 2022 is affirmed subject to modification of the rate of annual enhancement of the maintenance of plaintiff No.2 to 6% instead of 20%.

The Rule is disposed of.

However, there will be no order as to costs.

Send down the lower Court's records immediately.