

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

Present:

Mr. Justice Md. Bashir Ullah

Civil Revision No. 5196 of 2024

IN THE MATTER OF:

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

And

IN THE MATTER OF:

Sayad Akbar

... Defendant-Appellant-Petitioner.

-Versus-

Parvin Aktar and others

... Plaintiffs-Respondents-Opposite parties.

Mr. Mohammad Ziaul Haque, Advocate
... For the petitioner.

Ms. Nigar Sultana, Advocate
... For the Opposite Party.

Heard on 05.11.2025 and
Judgment on: 06.11.2025

At the instance of defendant in Family Suit No. 572 of 2017,
this Rule was issued calling upon the opposite parties to show cause
as to why the judgment and decree dated 15.12.2021 passed by the
learned Additional District Judge, Court of Bankruptcy, Chattogram
in Family Appeal No. 19 of 2020 allowing the appeal in part and
affirming the judgment and decree dated 25.11.2019 passed by the
learned Senior Assistant Judge, First Court, Family Court Sadar,
Chattogram in Family Suit No. 572 of 2017 should not be set aside

and/or such other or further order or orders be passed as to this Court may seem fit and proper.

At the time of issuance of the Rule, all further proceedings of the Family Execution Case No. 22 of 2020 pending before the learned Senior Assistant Judge, First Court and Family Court, Sadar, Chattogram were stayed for a period of 06(six) months which was subsequently extended from time to time and lastly extended on 29.06.2025, for a further period of 01(one) year.

The facts, relevant for disposal of the Rule, in brief, are that the opposite parties as plaintiffs instituted Family Suit No. 572 of 2017 before the learned Senior Assistant Judge, First Court and Family Court, Chattogram for realization of dower and maintenance against the defendant-petitioner. The case of the opposite parties in short is that opposite party No. 1 was married to the petitioner on 26.03.2002 fixing the dower at Taka 1,60,000/- (One Lac and Sixty Thousand) of which Taka 60,000/- (Sixty Thousand) was paid up as prompt dower and the remaining Taka 1,00,000/- (One Lac) was deferred. During their conjugal life, the opposite party Nos. 2-4 were born. The petitioner who was engaged in business in Chattogram had a monthly income of around Taka 70,000-80,000/-, but despite being solvent he failed to maintain his wife and his children properly. He became addicted to alcohol and involved in extra marital affairs and also demanded dowry from her. In this regard, opposite party No. 1 filed C.R. Case No. 383 of 2017 against the petitioner. Thereafter, the

petitioner left the house and stopped maintaining his wife and children. On 22.10.2017, the petitioner refused to pay the unpaid dower and maintenance, hence the opposite parties filed the family suit.

The petitioner contested the suit as defendant by filing written statement admitting the marriage and the birth of the children but alleged that opposite party No. 1 was disobedient, negligent in her conjugal life and failed to maintain family responsibilities. He further alleged that, the opposite parties filed the suit to defame the petitioner in the society. Hence, the suit is liable to be dismissed.

Upon hearing, the trial Court decreed the suit on contest by determining Taka 50,000/- (Fifty thousand) as due dower and arrear maintenance Taka 1, 40,000/-; arrear maintenance for plaintiff No. 2, Taka 1,40,000/- for plaintiff No. 3, Taka 1,40,000/- and for plaintiff No. 4, Taka 1,12,000/- total Taka 5,82,000/- and directed to pay the monthly maintenance to the opposite party Taka 5,000/- (Five thousand) until execution of divorce, Taka 5,000/- (Five thousand) for the opposite party No. 2 until his majority, Taka 5,000/- (Five thousand) for opposite party No. 3 until her marriage and Taka 4,000/- (Four thousand) for the opposite party No. 4 until his majority. The Court also directed that the maintenance would increase by 30% from January of each year and the maintenance for the opposite party Nos. 2-4 would be paid within the first week of each month. The trial Court also directed the petitioner to pay the total decretal amount of Taka 5,

32,000/- (Five lac and thirty two thousand) within 60 days to the opposite parties. The trial Court further directed to the petitioner to pay Taka 50,000/-(Fifty thousand) to the opposite party as the due deferred dower after execution of the divorce.

Challenging the said judgment and decree dated 25.11.2019 passed by the Senior Assistant Judge and Family Court, Sadar, Chattogram, the petitioner as appellant filed Family Appeal No. 19 of 2020 before the learned District Judge, Chattogram which was subsequently transferred to the learned Additional District Judge, Court of Bankruptcy, Chattogram. The learned appellate Court after hearing, allowed the appeal in part on contest, upholding the judgment and decree passed by the trial Court vide its judgment and decree dated 15.12.2021.

Being aggrieved by and dissatisfied with the judgment and decree dated 15.12.2021 passed by the learned Additional District Judge, Bankruptcy Court, Chattogram in Family Appeal No. 19 of 2020 allowing the appeal in part reversing the Judgment and Decree dated 25.11.2019 passed by the learned Senior Assistant Judge and Family Court, Sadar, Chattogram in Family Suit No. 572 of 2017, the petitioner preferred this Civil Revision.

Mr. Mohammad Ziaul Haque appearing on behalf of the petitioner submits that the appellate Court failed to consider that on 26.08.2021, the divorce had become effective by an order of the Arbitration Council and hence, after divorce opposite party No. 1 was

not entitled to maintenance. Therefore, the judgment and decree passed by the appellate Court is bad in law.

He further submits that the petitioner had sent the divorce notice to the opposite party after judgment and decree dated 25.11.2019 and the divorce was duly effected on 05.12.2019 through the intervention of the Arbitration Council in Arbitration Council Case No. 1774-1/19 dated 02.09.2021 under the Chattogram City Corporation, Chattogram. After divorce, the petitioner accordingly paid Taka 50,000/- (Fifty thousand) as deferred dower to Advocate Nizam, the brother of opposite party No. 1 but later the said payment was denied leading to complaint before the Chattogram District Bar Association.

Learned counsel further submits that both the Court failed to appreciate that the maintenance amount for minors and adults cannot be the same. Fixing Taka 5,000/- (Five thousand) per month for each child is excessive and unreasonable. Furthermore, the Appellate Court without any basis decreased the increment of maintenance 30% to 15% but maintained the rest of the maintenance without any cogent reason and hence the judgment and decree is bad in law.

Per contra, Ms. Nigar Sultana, learned Advocate for the opposite parties submits that both the Courts below have rightly decided the matter and that there is no illegality or infirmity in the impugned judgment and decree. She therefore prays for discharging the Rule.

I have carefully considered the submissions of the learned Advocates for both sides, perused the revisional application, both the judgments and decrees passed by the Courts below, the evidence on record and other materials available in the case record.

It appears that the plaintiff claimed the 'dower' and maintenance which the defendant refused to pay compelling the plaintiffs to institute the Family suit. The definition of 'dower' has been settled in several decisions. In *Jesmin Sultana Vs. Md. Elias*, reported in 2BLC 233 'dower' is defined below:

“In Islamic glossary dower is called 'mahr' which means bridal-money given by the husband to the wife on marrying. In order to constitute a valid marriage under the Islamic Law there should always be 'mahr' as consideration from the bridegroom in favour of the bride.”

It is evident from the record that the marriage was consummated and the dower was fixed at Taka 1, 60, 000/- (One lac and sixty thousand) in the Kabin Nama/Nikah Nama. The defendant duly signed the Nikah Nama acknowledging his obligation to pay the dower and maintenance. Therefore, the wife is entitled to the unpaid dower and the offspring are entitled to maintenance. A husband cannot refrain himself from paying his wife for the dower and maintenance to the offspring.

In this regard, the Dissolution of Muslim Marriage Act, 1939 has been enacted, Section 5 of the Dissolution of Muslim Marriage Act, 1939 provides:

“Rights to dower not be affected-Nothing contained in this Act shall affect any right which a married woman may have under Muslim Law to her dower or any part thereof on the dissolution of marriage.”

In *A.M. Md. Ebrahim Vs. Ma Ma and others*, reported in AIR 1939 Rangoon 28 it has been held:

“If the marriage was consummated the wife is entitled to immediate payment of the whole of the unpaid dower, both prompt and deferred.”

In view of the above law and decision the petitioner-husband is legally bound to pay Taka 5,32,000/- as arrears of dower and maintenance to the opposite party No. 1 and to pay regular maintenance to the opposite party Nos. 2, 3 and 4. However, this Court finds it reasonable that the regular maintenance of plaintiff opposite party Nos. 2, 3 and 4 shall increase by 10% in January of each year instead of 15% as awarded by the appellate Court.

Having considered the facts and circumstances, I find no reason to interfere with the concurrent findings of the appellate Court affirming judgment and decree of the trial Court. The Rule therefore has no merit.

In the result, the Rule is disposed of with above-mentioned modification, however, without any order as to cost.

The order of stay passed at the time of the issuance of the Rule is hereby recalled and vacated.

Let a copy of this judgment and order along with the lower court records be transmitted to the Court concerned forthwith.

(Md. Bashir Ullah, J.)

**Md. Sabuj Akan/
Assistant Bench Officer**