District-Dhaka.

IN THE SUPREME COURT OF BANGLADESH

HIGH COURT DIVISION

(CIVIL REVISIONAL JURISDICTION)

Present:

Mr. Justice Md. Toufiq Inam

Civil Revision No. 671 of 2025.

Mr. Muztaba Newaz Md. Zavid,
--------- Defendant-Petitioner.

-Versus-

Sayeda Kanij Kamruj Jahan,
-------- Plaintiff-Opposite Party.

Mr. Muztaba Newaz Md. Zavid (In person)
--------- For the Defendant-Petitioner.

Mr. Muhammad Hasibur Rahman, Advocate, with
Mr. Md Anamul Hossain, Advocate
--------- For the Plaintiff-Opposite party.

Heard On: 28.07.2025 and 03.08.2025.
And
Judgment Delivered On: 04.08.2025.

Md. Toufiq Inam, J.

The instant Civil Revision arises out of the judgment and decree dated 16.02.2025 (decree signed on 23.02.2025) passed by the learned Additional District Judge, 4th Court, Dhaka in *Family Appeal No. 129 of 2024*, whereby the appeal was dismissed and the order dated 30.05.2024 (Order No. 77) passed by the learned 2nd Additional Assistant Judge and Family Court No. 12, Dhaka in *Decree Execution Case No. 17 of 2017* was affirmed.

The opposite party, as plaintiff, instituted *Family Suit No. 487 of 2015* on 10.06.2015 seeking dower and maintenance. Her case, in brief, is that her marriage with the present petitioner was solemnized on 24.04.2001 with dower fixed at Tk. 85,001/-. At the time of marriage,

the plaintiff's parents gave her gold ornaments, and from their wedlock, two daughters were born, namely, Mohoshina Newaz (DOB: 03.06.2003) and Tahin Newaz (DOB: 01.05.2005). Since 29.03.2015, the defendant was no longer residing at the matrimonial home. Despite repeated efforts by the plaintiff, his whereabouts remained unknown. On the same date, the defendant served a letter to the Secretary of the apartment committee stating that the apartment would be locked and no one but himself would be allowed entry. The Defendant also lodged a Gene ral Diary entry with Dhanmondi Model Police Station (GD No. 1412 dated 29.03.2015). Pursuant to that, a notice under section 160 of the Code of Criminal Procedure was issued upon the plaintiff requiring her appearance on 02.04.2015. The plaintiff also stated that the defendant had not paid any maintenance to her or their daughters for three months prior to filing the suit. Several mediations (shalish) were held but were unsuccessful, prompting her to file the suit for recovery of dower and maintenance for herself and her two minor daughters.

The defendant-petitioner contested the suit by filing a written statement denying all material allegations. The learned trial court framed issues, recorded evidence, both oral and documentary, and by judgment and decree dated 17.10.2016, decreed the suit partly for a total sum of Tk. 3,23,001/-. The decree included Tk. 85,001/- as dower, Tk. 30,000/- for iddat maintenance, Tk. 7,000/- as past maintenance for the elder daughter, and Tk. 6,000/- monthly maintenance for the younger daughter from 10.06.2015 to 10.10.2016 (totalling Tk. 2,08,000/-). Additionally, the court fixed future monthly maintenance at Tk. 10,000/- for the elder daughter and Tk. 8,000/- for the younger daughter, effective from 10.10.2016 until their marriage, subject to a 10% annual increase from 01.01.2017.

The defendant-petitioner preferred *Family Appeal No. 37 of 2017*, which was dismissed. He then moved *Civil Revision No. 4204 of 2017* before this Division, which was also dismissed, affirming the decisions of the courts below. Subsequently, the petitioner filed *Civil Petition for Leave to Appeal No. 1965 of 2019* before the Hon'ble Appellate Division. By an interim order dated 17.11.2019, the Hon'ble Chamber Judge directed the petitioner to pay Tk. 5,000/- and Tk. 3,000/- monthly as maintenance for the elder and younger daughters, respectively. The Civil Petition was later dismissed on 30.11.2021, affirming the High Court's decision. The petitioner thereafter filed *Review Petition No. 49 of 2022*, which was also dismissed on 08.12.2022. An application under Article 104 of the Constitution seeking recall of the review order is pending.

To enforce the original decree, the plaintiff-opposite party filed *Decree Execution Case No. 17 of 2017*. Meanwhile, the petitioner filed *Family Suit No. 646 of 2018* on 30.07.2018 seeking custody of the daughters. By judgment and decree dated 30.04.2023 (decree signed on 03.05.2023), the court declared that both daughters are in their own custody.

The petitioner contends that he paid the full decretal amount of Tk. 3,23,001/- between 22.11.2017 and 03.12.2020 and deposited an additional sum of Tk. 2,94,500/- between 25.01.2021 and 02.05.2023 as maintenance for the daughters, which the plaintiff-opposite party received.

Thereafter, on 27.02.2023, the petitioner filed an application in the execution case praying that the plaintiff be debarred from withdrawing maintenance on behalf of the daughters, on the ground that they had attained majority. The learned trial court rejected the application by Order No. 67 dated 01.10.2023. The petitioner also

filed two subsequent applications, one on 02.05.2023 seeking bank account details of his daughters, and another on 09.05.2023 offering to pay Tk. 20,000/- per month in maintenance in view of his alleged financial hardship as an unemployed person. While no order was passed on the former, the court, by Order No. 58 dated 09.05.2023, directed the petitioner to pay Tk. 2,00,000/- in arrears and a further Tk. 35,076/- monthly within 08.06.2023, failing which coercive steps would follow.

Aggrieved, the petitioner preferred *Family Appeal No. 93 of 2023* before the learned District Judge, Dhaka, which was disposed of on 21.06.2023 with a direction to the executing court to hear the application dated 02.05.2023. Thereafter, the trial court passed an order sentencing the petitioner to simple imprisonment for one month. Upon surrendering on 06.08.2023 with a prayer for bail and offering to deposit Tk. 40,000/-, the court rejected the prayer and sent him to jail, where he served out the sentence. Subsequently, by order dated 30.11.2023, the court again issued a warrant and sentenced the petitioner to three months' simple imprisonment, which was also served.

The petitioner then filed an application in *Decree Execution Case No. 17 of 2017* for disposal of the case in full satisfaction on the ground that he had paid the entire decretal amount and continued paying maintenance until 02.05.2023, as directed by the Hon’ble Chamber Judge. He also contended that since both daughters had become majors and were in their own custody, no further execution was warranted. However, by Order No. 77 dated 30.05.2024, the trial court rejected the application, observing that the petitioner failed to pay maintenance for 56 months in respect of Mohoshina Newaz and for 79 months in respect of Tahin Newaz, calculated from the time they became major, and accordingly disallowed the prayer.

Being aggrieved, the petitioner preferred *Family Appeal No. 129 of 2024* before the learned District Judge, Dhaka, which was also dismissed. Against the concurrent orders, the petitioner invoked the revisional jurisdiction of this Court and obtained the present Rule, which is now taken up for disposal.

Mr. Muztaba Newaz Md. Zavid, the defendant-petitioner appearing in person, submits that in view of the facts and circumstances of the case, the appellate court failed to consider the legal aspects involved and most erroneously passed the impugned judgment and order, resulting in an error of law and a failure of justice. He submits that the petitioner has already paid the full decreed amount, including the maintenance cost of his two daughters up to their respective majorities, in compliance with the order of the Hon'ble Chamber Judge. Accordingly, he filed an application seeking disposal of the decree execution case. However, the learned executing court, without properly applying judicial mind, rejected the petitioner's application, thereby occasioning a gross failure of justice.

He further argues that the appellate court, being the final court of fact, failed to appreciate the record which clearly shows that both daughters, one aged over 22 years and the other over 20 years, have already attained majority. As such, the plaintiff-opposite party no longer has any legal authority to receive maintenance on their behalf. Yet, both the learned courts below disregarded this material fact and wrongly rejected the petitioner's application, causing miscarriage of justice.

He lastly contends that once the daughters attained majority, their mother ceased to be their lawful representative, and therefore the maintenance amount should rightfully be paid directly to them. In view of this, the petitioner filed an application seeking to restrain the

plaintiff-opposite party from withdrawing the maintenance amount on their behalf. However, the courts below failed to consider this legal position and summarily rejected the prayer, thereby committing a serious error resulting in denial of justice.

Per contra, Mr. Muhammad Hasibur Rahman, the learned Advocate appearing with Mr. Md Anamul Hossain, Advocate on behalf of the plaintiff-opposite party, submits that both the courts below rightly rejected the petitioner's prayer, as he has consistently failed to comply with the decree passed by the Family Court, which has attained finality up to the Hon'ble Appellate Division.

He contends that although partial payments were made, the petitioner failed to fully discharge his ongoing maintenance obligations towards his daughters as per the terms of the decree. He argues that the decree remains executable unless and until satisfied in full, and that the petitioner's repeated non-compliance and delay tactics cannot be condoned by allowing the execution case to be disposed of.

He further submits that the decree directed future maintenance to be paid to the daughters until their marriage, subject to annual increase. Since the decree was not modified or varied by any competent court, the petitioner is bound to continue payments, and he cannot unilaterally stop discharging his legal obligations on the plea that the daughters have attained majority.

Mr. Rahman lastly argues that the plea regarding majority of the daughters is misconceived, as even after attaining majority, daughters may still be entitled to maintenance under special circumstances, and in any event, the decree remains binding until properly modified. Hence, both courts below rightly rejected the prayer for disposal of the execution case and committed no error warranting interference.

Having heard the defendant-petitioner appearing in person and the learned Advocate for the plaintiff-opposite party, and upon careful consideration of the materials on record, this Court proceeds to render its reasoned findings and decision.

The learned trial court, upon careful consideration of the pleadings, evidence, and arguments advanced by both parties, decreed Family Suit No. 487 of 2015 partly in favour of the plaintiff. The court found that the plaintiff, being the wife, was entitled to recover arrears of maintenance from the defendant and further held that she was also entitled to claim future maintenance on behalf of her two unmarried daughters. The decree was structured in two components: one for the maintenance already due and the other for the future subsistence of the daughters until their marriage. The court, relying on the Family Courts Ordinance, allowed such claims to be made jointly by the mother, irrespective of whether the daughters were made formal parties to the suit.

The defendant, being aggrieved by the judgment and decree, preferred Family Appeal No. 37 of 2017, which was dismissed by the learned appellate court by judgment dated 16.08.2017. The appellate court categorically affirmed the findings of the trial court and upheld the legality of the decree. The appellate court found no merit in the objections raised by the defendant, particularly on the issue of the maintainability of the claim for future maintenance of the daughters. Subsequently, the defendant pursued Civil Revision No. 4204 of 2017, which was also dismissed. Thereafter, Civil Petition for Leave to Appeal No. 1965 of 2019 and Civil Review Petition No. 49 of 2022 were filed before the Hon’ble Appellate Division but both were rejected, leaving the trial court’s decree affirmed up to the highest forum.

This Court is of the considered view that the decree passed in Family Suit No. 487 of 2015, having been affirmed by all superior courts including the Appellate Division, has attained finality and remains binding upon the parties. It is a settled principle of law that once a decree attains finality, the same must be executed as it stands and cannot be altered or nullified. The objections raised in the execution proceeding by the judgment-debtor seek to undermine the substance of the original decree and are not legally sustainable.

The principal ground urged by the judgment-debtor in the execution case, that the daughters have now attained majority and are in their own custody, is wholly untenable. The decree unequivocally directed that the future maintenance is payable until the marriage of the daughters. Admittedly, no evidence has been brought on record by the judgment-debtor to show that the daughters have since been married. It is immaterial whether the daughters are living independently or in the custody of any party, as long as the stipulated condition of their marriage remains unfulfilled. Thus, the liability under the decree remains enforceable.

The objection that the daughters were not made parties to the original suit also deserves outright rejection. The law is well-settled that under the Family Courts Ordinance, a mother is fully competent to file a suit for her children’s maintenance. It is not necessary for the child to file a separate suit or be joined as a co-plaintiff with the mother for claiming maintenance. The Family Court rightly recognized the mother’s right to act on behalf of her minor daughters, and the decree reflects such legal entitlement.

The executing court has no jurisdiction to go behind the decree. It is well settled that the executing court must execute the decree in its original form and has no authority to interpret, modify, or disregard its

contents. Any attempt to frustrate the execution proceeding by introducing facts or considerations not forming part of the original decree is clearly impermissible. In the instant case, the executing court rightly rejected the application of the judgment-debtor seeking disposal of the execution case in full satisfaction on grounds that are inconsistent with the decree.

This Court finds that the decree-holder, being the mother and plaintiff in the original suit, is lawfully entitled to continue execution of the decree for future maintenance until the marriage of her daughters. Since no assertion or proof has been furnished to establish that such marriages have taken place, the execution case remains partially unexecuted and therefore continues to be maintainable in law.

Accordingly, this Court finds no illegality or material irregularity in the impugned order passed by the learned executing court. The application filed by the judgment-debtor for disposal of the execution case in full satisfaction was rightly rejected, as the conditions laid down in the decree have not yet been fulfilled. Hence, there is no scope to interfere with the well-reasoned findings of the courts below.

The revisional application, being devoid of merit, fails.

Accordingly, the Rule is discharged.

The impugned judgments and orders are hereby upheld, and the order of stay stands vacated.

There will be no order as to costs.
Let a copy of this judgment be communicated to the Court concerned at once.

(Justice Md. Toufiq Inam)

Ashraf /ABO