

Bench:

Mr. Justice Md. Ali Reza

Civil Revision No. 3513 of 2025

Sudipta Roy

.....petitioner

-Versus-

Sathi Mondal

.....opposite party

Mr. G.M. Muzahidur Rahman, Advocate

.....for the petitioner

Mr. Ashutosh Kumar Sana, Advocate

.....for the opposite party

**Heard on: 05.11.2025, 17.11.2025,  
27.11.2025 and 30.11.2025**

**Judgment on: 01.12.2025**

In the instant revision Rule was issued on 28.08.2025 calling upon the opposite party to show cause as to why the impugned order dated 04.08.2025 passed by the learned Additional District Judge, 2<sup>nd</sup> Court, Khulna in Family Appeal Number 10 of 2025 rejecting the applications dated 27.07.2025 filed by the petitioner, now pending in the Court of Additional District Judge, 2<sup>nd</sup> Court, Khulna should not be set aside and/or such other of further order or orders passed as to this Court may seem fit and proper.

The opposite party as plaintiff filed Family Suit Number 05 of 2024 in the Family Court, Dacope, Khulna for custody of minor child Madhav Roy.

The case of the plaintiff in short is that the plaintiff and the defendant were married on 11.05.2016 and on 03.08.2019 a male child named Madhav Roy was born out of the wedlock. Subsequently due to discord between them and owing to litigations and according to the letter of compromise they decided to live separately each on their own responsibility. On 15.09.2023 the defendant took the minor to his residence and did not return the child to the mother. Consequently a criminal case under section 100 of the Code of Criminal Procedure was filed by the plaintiff wherein she was advised to file a suit for the custody of the child. Hence the suit was filed.

Defendant in his written statement denying all the material contentions made in the plaint contended that the plaintiff became involved in an illicit relationship with one Chayan Mahaldar and filed a case under section 100 of the Code of Criminal Procedure on false assertions. In course of investigation in that case the fact of the plaintiff's second marriage was established and pursuant to earlier compromise the court directed that the minor son would be kept in the

custody of the defendant. Since then the minor son has been residing with the defendant. As the plaintiff has contracted a second marriage and is leading her conjugal life elsewhere where the life of the child is not secure and there is no proper scope or facility for his upbringing the defendant for the welfare of the child is legally entitled to retain the child in his custody. The present case having been instituted on false assertions is liable to be dismissed.

Trial Court decreed the suit by judgment and decree dated 07.11.2024. As against the same defendant preferred Family Appeal Number 10 of 2025 in the court of District Judge which was subsequently transferred to the Court of Additional District Judge, 2<sup>nd</sup> Court, Khulna. In appeal defendant-appellant filed two applications on 27.07.2025 for production of additional evidence which are appended to the revisional application as annexures- B and B-1. Those applications were rejected by the appellate court by the impugned order number 9 dated 04.08.2025. As against the same defendant-appellant as petitioner preferred the instant revision and obtained rule on 28.08.2025.

Mr. G.M. Muzahidur Rahman, learned Advocate appearing on behalf of the petitioner submits that the present

opposite party entered into a second marriage with one Chayan Mahaldar and in this regard the Chairman of the concerned Union Parishad as well as the Mayor of Chalna Poursava, Khulna issued a certificate on 11.01.2024 but the appellate court failed to consider this important aspect of the case and wrongly rejected those applications thus the court committed error of law resulting in an error in such order occasioning failure of justice and the impugned judgment being perverse and misconceived is liable to be set aside. He further submits that the appellate court failed to consider the settled principle of law and the *ratio* laid down in the case of Keratul Ain alias Rita and another Vs. Md. Salimullah Khan reported in 9MLR(AD) 329 that claim of paternal grandfather is allowed when the mother is married to her second husband and since the certificate dated 11.01.2024 was brought before the appellate court the court ought to have allowed the applications for production of additional evidence but the appellate court upon misconception of law rejected those applications and committed error of law occasioning failure of justice. He also contends that in view of sections 58, 63(2) and 65(b) of the Evidence Act the compromise deed dated 08.08.2022 was admissible in evidence and there is no bar to

mark it as exhibit and the appellate court also failed to consider that an admission in pleadings is strong evidence as has been supported by the case of Begum Khodeza Akhter and others Vs. Hajera Khatun and others reported in 6 BLD(AD) 161 and Sirajul Haque and others Vs. Zulekha Begum and others reported in 10 LNJ (2021) HC 138 thus the appellate court committed error of law occasioning failure of justice in rejecting those applications upon misconception of law.

On the other hand Mr. Ashutosh Kumar Sana, learned Advocate appearing on behalf of the opposite party submits that according to section 28 of the Family Courts Act 2023 the applications dated 27.07.2025 are not maintainable being barred by law and the appellate court upon proper appraisal of law correctly rejected those applications and the judgment and order passed by the appellate court being proper and just cannot be interfered with by this court in revision. He prays for discharging the Rule outright.

Having heard the learned Advocates for both sides and having perused the impugned order along with the connected papers this Court considers it necessary to examine the applicability of the statutory scheme under the Family Courts Act, 2023.

The appellate court in the impugned observation referred to section 28 of Family Courts Act, 2023 wherein it is expressly provided that save and except the Evidence Act 1872 and sections 10 and 11 of the Code of Civil Procedure no other provisions of those laws shall apply to the proceedings before the family court or the family appellate court. While interpreting the said provision the lower appellate court placed reliance on the case of Saleha Begum Vs. Dilruba Begum reported in 53 DLR 346 and held that the *ratio* of that case would also be applicable in the instant case and accordingly rejected those applications.

This court finds that such reliance has been misplaced. The decision reported in 53 DLR case was rendered under the statutory framework of Family Courts Ordinance 1985. Section 18 of that ordinance vested the authority to summon witnesses or documents solely upon the family court in the following term:

“a Family Court may issue summons to any person to appear and give evidence or to produce or cause the production of any document.....”

Conversely the corresponding provision of section 22 under the Family Courts Act 2023 materially widens the scope

by empowering both the Family Court and the Family Appeal Court to issue summons to any person for the purpose of giving evidence or producing any document. Thus the statutory framework governing the present proceedings is materially different from that under which 53 DLR case was decided.

Accordingly the precedent of 53 DLR case cannot govern the present dispute as the earlier law confined the power of summoning to the trial in Family Court alone whereas the new enactment expressly extends that power to the Family Appeal Court. The 2023 Act being a special law and the empowering clause therein being explicit the bar invoked by the lower Appellate Court does not stand.

In this context it is further observed that the matter relating to reception of additional evidence is guided by order 41 rule 27 of the Code of Civil Procedure. There exists no statutory embargo in the Family Courts Act 2023 that precludes the Appellate Court from invoking the principles of order 41 rule 27 of the Code of Civil Procedure provided such invocation is necessary for a just adjudication of the dispute and is not otherwise inconsistent with the special law.

Therefore the defendant-appellant now petitioner is entitled to seek adjudication of his applications in accordance with order 41 rule 27 of the Code of Civil Procedure. The lower Appellate Court is fully competent under the Family Courts Act 2023 to consider whether the additional evidence sought to be adduced ought to be admitted. Since the Family Courts Ordinance 1985 is not applicable in this case the lower Appellate Court must evaluate the petitioner's applications on their merits in the light of order 41 rule 27 of the Code of Civil Procedure and the enabling provisions of section 22 of Family Courts Act 2023.

Therefore I find merit in this Rule. Accordingly the rule is made absolute.

The appellate court is directed to dispose of the appeal as early as possible preferably within 03(four) months from the date of the receipt of this order.

The order of stay passed by this Court stands vacated.

Communicate this judgment to the concerned Court and send down the lower Court's record.

Md. Ali Reza, J: