

Present:

Mr. Justice Md. Kamrul Hossain Mollah

Civil Revision No.2791 of 2022

IN THE MATTER OF:

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

- AND -

IN THE MATTER OF:

Mosarof Hossain

..... Defendant-Petitioner

-Versus -

Laila Monju

..... Plaintiff-Opposite Party

No one appears

..... For the petitioner

Mrs. Niger Sultana, Advocate

..... For the Opposite Party

**Heard on 20.02.2024 and
Judgment on 29.02.2024**

Md. Kamrul Hossain Mollah, J:

On an application filed by the petitioner, under Section 115(1) of the Code of Civil Procedure, this Rule was issued calling upon the opposite party to show cause as to why the impugned judgment and decree dated 28.04.2022 passed by the learned Additional District Judge, 5th Court, Chattogram in Family Appeal No.182 of 2019 dismissing the appeal and affirming the judgment and decree dated 20.08.2019 passed by the learned Additional Assistant Judge/Family Court, 1st Court, Chattogram in Family

Suit No.119 of 2018 should not be set-aside and/or pass such other or further order or orders passed as to this Court may seem fit and proper.

At the time of issuance of the Rule this Court stayed the operation of the impugned judgment and decree dated 28.04.2022 as well as further proceedings of Family Execution Case No.192 of 2019 for a period of 06 (six) months from the date subject to payment of Tk. 2,00,000/- to be paid to the opposite party through the trial Court within 60(sixty) days from date, in default, the Rule shall stand discharged. However, the trial Court is directed to handover the money to the opposite party forthwith.

Facts for disposal of the Rule in short are that the plaintiff-opposite party was married with the petitioner on 30.09.2016 by registered Nikha nama fixing Tk.6,00,000/- (six lac) as dower money out of which Tk.1,00,000/-(one lac) was realized, after elapse of some time it was apparent to the opposite party that the defendant-petitioner character was apparent to be unnatural and immoral that the defendant-petitioner started torture upon the opposite party. Subsequently, the petitioner divorced the opposite party on 09.03.2017, the opposite party demanded dower money and maintenance money during iddat period, but the petitioner refused to pay dower money and maintenance money during iddot period and the plaintiff-opposite party was constrained to file the aforesaid family suit before the learned Senior Assistant Judge, 1st Court, Chattogram and ultimately, the said family suit was transferred to the learned Additional Assistant Judge, 1st Court/Family Court, Chattogram and was renumbered as Family Suit No.119 of 2018.

The petitioner contested the said family suit by filing written statement contending inter alia that, he married the opposite party on 30.09.2016 on the basis of registered Nikha nama, there was no consummation or cohabitation between the petitioner and the opposite party. On 01.01.2017 was fixed for marriage ceremony, but due to difference of opinion no wedding ceremony or rosumot took place, naturally it is customary that after social marriage ceremony there must be consummation or sexual intercourse between husband and wife in Chattogram, after social ceremony there is intercourse between husband and wife but there was no consummation or cohabitation between the petitioner and the opposite party as she was not given in conjugal life of the petitioner.

After hearing both the parties, upon considering the materials on record, the learned 1st Additional Assistant Judge/Family Court, Chattogram, passed the judgment and decree dated 20.08.2019 (decree signed on 26.08.2019) in Family Suit No.119 of 2018 decreeing the suit.

Being aggrieved by and dissatisfied with the judgment and decree dated 20.08.2019 (decree signed on 26.08.2019) passed by the learned 1st Additional Assistant Judge/Family Court, Chattogram, in Family Suit No.119 of 2018 decreeing the suit, the petitioner filed Family Appeal No.182 of 2019 before the learned District Judge, Chattogram. Thereafter, it was transferred to the learned Additional District Judge, 5th Court, Chattogram for disposal. After hearing both the parties, the learned Additional District Judge, 5th Court, Chattogram dismissed the said appeal

by his judgment and decree dated 28.04.2022 (decree signed on 05.05.2022).

Being aggrieved by and dissatisfied with the judgment and decree dated 28.04.2022 (decree signed on 05.05.2022) passed by the learned Additional District Judge, 5th Court, Chattogram in Family Appeal No.182 of 2019, the petitioner filed this revisional application under section 115(1) of the Code of Civil Procedure and obtained the present Rule and order of stay.

No one appears for the petitioner, when this matter was taken up for hearing and disposal although it appears in the daily cause list several times.

Mrs. Nigar Sultana, the learned Advocate appearing for the opposite party submits that the plaintiff-opposite party was married with the petitioner on 30.09.2016 by registered Nikha nama fixing Tk.6,00,000/- (six lac) as dower money out of which Tk.1,00,000/-(one lac) was realized, after elapse of some time it was apparent to the opposite party that the defendant-petitioner character was apparent to be unnatural and immoral that the defendant-petitioner started torture upon the opposite party. Subsequently, the petitioner divorced the opposite party on 09.03.2017, the opposite party demanded dower money and maintenance money during iddat period, but the petitioner refused to pay dower money and maintenance money during iddot period and the plaintiff-opposite party was constrained to file the aforesaid family suit before the learned Senior Assistant Judge, 1st Court, Chattogram and ultimately, the said family suit was transferred to the learned Additional Assistant Judge, 1st Court/Family

Court, Chattogram and was renumbered as Family Suit No.119 of 2018. After hearing both the parties, upon considering the materials on record, the learned 1st Additional Assistant Judge/Family Court, Chattogram, passed the judgment and decree dated 20.08.2019 (decree signed on 26.08.2019) in Family Suit No.119 of 2018 decreeing the suit. Being aggrieved by and dissatisfied with the judgment and decree dated 20.08.2019 (decree signed on 26.08.2019) passed by the learned 1st Additional Assistant Judge/Family Court, Chattogram, in Family Suit No.119 of 2018 decreeing the suit, the petitioner filed Family Appeal No.182 of 2019 before the learned District Judge, Chattogram. Thereafter, it was transferred to the learned Additional District Judge, 5th Court, Chattogram for disposal. After hearing both the parties, the learned Additional District Judge, 5th Court, Chattogram dismissed the said appeal by his judgment and decree dated 28.04.2022 (decree signed on 05.05.2022) rightly, which is maintainable in the eye of law. Therefore, he prays for discharging the Rule.

I have perused the revisional application, the impugned judgment and decree of the Courts' below, the submissions of the learned Advocate for the opposite party, the papers and documents as available on the record.

It appears from the record that plaintiff-opposite party filed Family Suit No.119 of 2018 in the court of the learned 1st Additional Assistant Judge/Family Court, Chattogram against the defendant-appellant-petitioner demanding the dower and maintenance and as maintenance. Thereafter, the defendant-appellant-petitioner submitted a written statement before the Court of learned 1st Additional Assistant Judge/Family Court, Chattogram

denying the allegation. After hearing both the parties the learned 1st Additional Assistant Judge/Family Court, Chattogram, passed the judgment and decree dated 20.08.2019 (decree signed on 26.08.2019) in Family Suit No.119 of 2018 decreeing the suit. Being aggrieved by and dissatisfied with the judgment and decree dated 20.08.2019 (decree signed on 26.08.2019) passed by the learned 1st Additional Assistant Judge/Family Court, Chattogram, in Family Suit No.119 of 2018 decreeing the suit, the petitioner filed Family Appeal No.182 of 2019 before the learned District Judge, Chattogram. Thereafter, it was transferred to the learned Additional District Judge, 5th Court, Chattogram for disposal. After hearing both the parties, the learned Additional District Judge, 5th Court, Chattogram dismissed the Family Appeal No.182 of 2019 by his judgment and decree dated 28.04.2022 (decree signed on 05.05.2022) rightly.

Considering the above facts, circumstances and materials on record, it is found that marriage and divorce are admitted by both the parties. It is also found from the evidence on record that there is a consummation and cohabitation between both the parties and they also lead the conjugal life between them. Further, it is also admitted that the defendant-petitioner did not pay any maintenance or dower money. So, it is my view that the learned Additional District Judge, 5th Court, Chattogram rightly passed the judgment and decree dated 28.04.2022 (decree signed on 05.05.2022) in Family Appeal No.182 of 2019 is maintainable in the eye of law and I do not find any substance to interference into the said judgment and decree and I find substance in the submission of the learned Advocate for the opposite party.

Accordingly, I do not find any merit in the Rule.

In the Result, the Rule is discharged.

The judgment and decree dated 28.04.2022 (decree signed on 05.05.2022) passed by the learned the learned Additional District Judge, 5th Court, Chattogram in Family Appeal No.182 of 2019 dismissing the Appeal and thereby affirming the judgment and decree dated 20.08.2019 (decree signed on 26.08.2019) passed by the learned 1st Additional Assistant Judge/Family Court, Chattogram, in Family Suit No.119 of 2018 is hereby upheld and confirmed.

The order of stay granted at the time of issuance of the Rule by this Court is hereby recalled and vacated.

Send down the L.C.R along with a copy of this judgment and order to the concerned Court below at once.

Md. Anamul Hoque Parvej
Bench Officer