

**In the Supreme Court of Bangladesh  
High Court Division  
(Civil Revisional Jurisdiction)**

Present:

**Mr. Justice Md. Riaz Uddin Khan**  
**Civil Revision No. 1547 of 2014**

**IN THE MATTER OF :**

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

-And-

In the Matter of:

Md. Rashadul Islam

..... Petitioner

Versus

Most. Nasima Khatoon

.....Opposite party

Md. Momin Uddin, Adv.

.... For the petitioner

None appears

..... For the Opposite party

**Heard on 08.01.2019 and 09.01.2019 and**  
**Judgment on: 09.01.2019**

**Md. Riaz Uddin Khan, J-**

By this rule the opposite party was asked to show cause as to why the judgment and decree dated 29.01.2014 passed by the learned Joint District Judge, 2<sup>nd</sup> Court, Naogaon in Family Appeal No. 22 of 2013 dismissing the appeal and thereby affirming the judgment and decree dated 24.04.2013 passed by the Assistant Judge, Family Court, Atrai, Naogaon in Family Suit No. 53 of 2011 should not be set aside.

At the time of issuance of rule interim order was passed directing the petitioner to pay 50% of decretal amount and also to pay taka 1,000/- (one thousand) per month as maintenance.

The facts of the case in brief is that the Opposite Party No. 1 as plaintiff filed Family Suit No. 53 of 2011 for realization of dower and maintenance against the defendant-opposite party claiming that her marriage was solemnized with the defendant-opposite party and the dower money was fixed as Tk- 250,000/- (Two lac fifty

thousand) and a Nikkahnama was registered on 25.06.2011; after the marriage the plaintiff and the defendant were leaving together as husband and wife but the defendant started to demand dowry which she refused to pay and ultimately on 30.07.2011 the defendant driven her away from his house; thereafter on several dates, that is, on 03.08.2011 and 08.11.2011 the guardian of the plaintiff tried to settle the matter amicably without paying any dowry; the defendant does not pay maintenance; since the marriage was still in existence the plaintiff filed the suit praying for dower and maintenance.

On the other hand the defendant-petitioner appeared before the court and denied the claim of the plaintiff; he stated in his written statement that no marriage was ever solemnized between him and the plaintiff; he came to know for the first time that the plaintiff filed a Criminal Case against him on the allegation of demanding dowry and the local chairman summoned him by a notice on which he appeared before the chairman and stated that he never married the plaintiff and he also stated that he got information from the concerned Nikkah registrar that there is no existence of such registration of any marriage between the plaintiff and the defendant; he prayed for dismissal of the suit.

The respective parties adduced and produced the evidences before the Court to prove their respective cases. The plaintiff examined herself as P.W-1 and another person as P.W-2 and also produced the Nikkahnama which has been exhibited and marked as exhibit-1; on the other hand the defendant adduced 3 witnesses including himself and the concerned Nikkah registrar who was examined as D.W-3 though it appears from the case record that the said Nikkah registrar was also examined subsequently as P.W-3.

After hearing both the parties and conclusion of trail the learned Assistant Judge decreed the suit against which the defendant filed Family Appeal being No. 22 of 2013. After hearing the appeal

the learned Appellate Court below was pleased to dismiss the appeal and thereby affirmed the judgment and decree passed by the trial court.

Being aggrieved by and dissatisfied with the said judgment and decree the defendant preferred this Civil Revision before this Court and obtained the rule as stated at the very outset.

Mr. Md. Momin Uddin, the learned Advocate appearing on behalf of the petitioner submits that the plaintiff has totally failed to prove her case before the court. He next submits that in the plaint she claimed that marriage was solemnized on 25.06.2011 with the consent of the guardians of the both parties and dower money was fixed as Tk-250,000/- (Two lac fifty thousand). The plaintiff also produced a certified copy of Nikkahnama before the court which was marked and exhibited. Both the courts below found that the plaintiff has failed to prove the genuineness of the said Nikkahnama but erroneously found that marriage was solemnized on 31.12.2010 between the parties on a wrong consideration that the defendant admitted the report submitted by the local Union Parishad Chairman where the Chairman stated that marriage was solemnized between the parties on 31.12.2010. The learned Advocate then submits that both the courts below committed error of law in taking into consideration of a 3<sup>rd</sup> case which was not even mentioned in the four corners of the plaint case. Referring sections 31 and 101 of the Evidence Act, Mr. Momin Uddin, the learned Advocate submits that both the courts failed to consider that according to section 31 of the Evidence Act, the so-called admission by the defendant is not the conclusive prove. He submits that both the courts below failed to consider the legal position as enumerated in section 101 of the Evidence Act. Since the plaintiff has failed to prove her case that marriage was solemnized on 25.06.2011 and also failed to prove the Kabinnama, the suit should have been dismissed. He further submits that the documents, i.e the report filed by a local Union Parishad

Chairman before a Criminal Court cannot be considered as evidence before the Civil Court as it has no admissible value. Mr. Momin Uddin lastly submits that the plaintiff is not entitled to get any relief on the weakness of the defendant. In support of his submission the learned advocate for the petitioner cited the case of Moksed Ali Mondal Vs. Abdus Salam Modal reported in 9 BLC (AD) 220 and Pakistan Development Corporation Ltd Vs. The Bank of Bahawalpur Ltd reported in All-Pakistan Legal Decisions (Karachi High Court) 885.

The learned advocate for the defendant-petitioner by filing supplementary affidavit annexing some papers submits that though the petitioner all through denied the existence of any marriage between him and the opposite party even then the opposite party sent a notice of divorce dated 22.04.2014 to the petitioner (Annexure-X) and thereafter the plaintiff got married with one Md. Tipu Sultan on 25.04.2014 (Nikkahnama, Annexure-Y).

I have heard the learned Advocate and perused the Revisional application and I have also considered the Lower Court Records including the depositions of the witnesses and both the judgments passed by the Courts below.

It appears from the plaint that the plaintiff-opposite party stated in her plaint that with the consent of guardians of both the parties on 25.06.2011 a mirage was solemnized between her and the defendant petitioner fixing Tk-250,000/- (two lac fifty thousand) as dower amongst which only taka 500/- (five hundred) was paid as prompt dower. She further claimed that after the marriage the defendant took her to his dueling house and they were leaving as husband and wife but soon after the defendant claimed taka 200,000/- (Two lac) as dowry and started torture upon her. When the plaintiff refused to pay the dowry, the defendant on 30.07.2011 driven her away from his house. It further appears from the

deposition of the P.W-1, the plaintiff, who also said in order to establish her contention as stated in the plaint, that on 25.06.2011 marriage was solemnized between her and the defendant fixing dower money as Tk-250,000/- (two lac fifty thousand) amongst which only taka 500/-(five hundred) was paid as prompt dower but surprisingly in the cross examination she claimed that marriage was solemnized on 31.12.2010 at the house of one Lutfor Rahman and the marriage was administered by Moulana Delwar. She further stated in her cross examination that after 06 (six) months of the solemnization of marriage it was registered by the Nikkah Registrar. It appears from the evidences that the plaintiff did not adduce any witness in support of her marriage neither she adduced any attesting witness of the said Nikkanama to prove the same. P.W-2 who happens to be her cousin (Fufatobhai) only stated before the court that on 25.06.2011 marriage was held between the plaintiff and the defendant fixing taka 250,000/- (two lac fifty thousand) as dower (Mohorana) and accordingly Nikkanama was registered but in the cross examination he clearly stated that he has no personal knowledge regarding the marriage between the parties. The defendant-petitioner examined himself as D.W-1 and before the court he strongly denied any marriage between him and the plaintiff. He also denied all the assertions of the plaint. In the cross examination the defendant-petitioner stated that the local Union Parishad Chairman summoned him regarding the allegation of demanding dowry from the plaintiff. He appeared before the Chairman and gave statement denying any existence of marriage between him and the plaintiff. He further stated that the Chairman submitted an inquiry report before the Magistrate Court in a Criminal Case filed by the plaintiff and he was acquitted from that Criminal Case. He stated that the report submitted by the Chairman was correct.

The trial court as well as the Appellate Court decreed the suit on the finding that since the defendant admitted that the report submitted by the Chairman was correct and in the said report it is stated that a marriage was solemnized between the plaintiff and defendant by Moulana Delwar Hossain on 31.12.2010. Whether this admission by the defendant regarding the correctness of submission of a report by a local Chairman before a criminal court is admissible in evidence to come to a conclusion in favour of the plaintiff? The plaintiff's clear assertion in the plaint as well as in her deposition in chief that marriage was held on 25.06.2011 and she produced exhibit-1, the Nikkahnama to support her case. In his report the Chairman stated that the plaintiff claimed that marriage was held between the plaintiff and defendant on 31.12.2010 by Maolana Delwar Hossain at the house of Lutfur Rahman while the defendant strongly denied the marriage. The plaintiff neither adduced Maolana Delwar nor Lutfur Rahman to establish her marriage solemnized on 31.12.2010. In such circumstances the admission by the defendant regarding the correctness of submission of the report by the local Chairman in any way cannot be treated as admission of marriage as the plaintiff utterly failed to prove her plaint case.

It is long settled position of law that the plaintiff is to prove his case by his own; the weakness of the defendant will not help the plaintiff to get any decree or relief. In the present case I have already discussed that the plaintiff has totally failed to prove her claim regarding the solemnization of marriage between her and the petitioner on 25.06.2011 as claimed in the plaint. Moreover, both the courts below also found that the exhibit-1 (Nikkahnama) has not been proved by any way but surprisingly both the courts below made a 3<sup>rd</sup> case based on a statement of the defendant. Since the plaintiff herself did not claim in her plaint that marriage was solemnized on 31.12.2010 she cannot claim it before the court without amending the pleadings. Since the petitioner has failed to prove her case as

claimed in the plaint both the Courts below committed an error of law in considering a 3<sup>rd</sup> case which was nobodies case. Both the court below deviated themselves from the cardinal principle of law that the plaintiff has to prove his case independent of the weakness of defect of defendant's case. So I find substance in the submissions of the learned Advocate for the defendant-petitioner.

In the result the rule is made absolute. The judgment and decree passed by the Joint District Judge, 2<sup>nd</sup> Court, Naogaonin Family Appeal No. 22 of 2013 dismissing the appeal and thereby affirming the judgment and decree dated 24.04.2013 passed by the Assistant Judge (Family Court), Atrai, Naogaon in Family Suit No. 53 of 2011 is hereby set aside. The interim order passed by this court at the time of issuance of Rule is hereby recalled and vacated.

Send down the Lower Court Records at once along with a copy of this judgment.