

**Present:-*****Mr. Justice Mahmudul Hoque*****Civil Revision No.2376 of 2014**

Sharmin Sultana Chowdhury and others  
 ... Petitioners

-Versus-

Mrs. Suraiya Akhter Khanam and others  
 ... Opposite- parties  
 Ms. Syeda Nasrin, Advocate  
 ...For the petitioners  
 No one appeared.  
 ...For the opposite-parties.

**Judgment on 7<sup>th</sup> August, 2025.**

In this application under Section 115(1) of the Code of Civil Procedure, this Rule was issued calling upon the opposite party Nos.1-4 to show cause as to why the impugned judgment and decree dated 17.02.2014 passed by the learned Judge of Family Appellate Court and Joint District Judge, 2<sup>nd</sup> Court, Narsingdi in Family Appeal No.01 of 2013 disallowing the same and thereby affirming the judgment and order dated 18.10.2012 passed by the learned Judge Family Court and Assistant Judge, Sadar, Narsingdi in Family Execution Case No.26 of 2009 accepting a petition of compromise should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

Shorn of unnecessary details, fact of the case lies in a very narrow compus. The opposite party No.1 was the second wife of late Kamal Hossain Chowdhury (Billal) whereas, the petitioner No.1 is his third wife. Other petitioners and opposite parties are children. Said Kamal Hossain was an employee of Titas Gas Transmission and Distribution Company Limited. The opposite party No.1 filed Family Suit No.64 of 1997 before the Family Court, Narsingdi for dower and maintenance, and obtained decree for Tk.1,13,366/-. Thereafter, she filed Family Execution Case No.06 of 1998 wherein she and said Kamal Hossain entered into compromise on the ground that the husband would be liable to pay 85% amount of his salary, pension, gratuity and overtime benefit. On the basis of compromise, the execution Case was disposed of on 04.07.2001. Afterwards, 7(seven) years had gone. The opposite party No.1 on 21.01.2008 filed an application in Execution Case No.06 of 1998 under Section 151 of the Code of Civil Procedure before the Family Court for giving her benefits as per said compromise, which was allowed by the Court on 16.04.2008. Against that, said Kamal Hossain filed an objection which was rejected by the Court on 05.06.2008; against which he

preferred Family Appeal No.10 of 2008 which was allowed by the learned District Judge, Narsingdi on 02.07.2009 holding that after disposal of the execution case long ago and becoming Functus Officio, the same Court had no scope to accept an application under Section 151 of the Code of Civil Procedure and but the opposite party No.1 is at liberty to file family suit afresh.

Thereafter, the opposite party No.1 without filing family suit afresh filed Family Execution Case No.26 of 2009 again for execution of said compromise but the same was rejected on 11.10.2009 as being not maintainable, against which she preferred Family Appeal No.12 of 2009 which was allowed vide judgment dated 11.08.2010 by the learned Additional District Judge, Narsingdi as the second execution case is maintainable.

Meanwhile, said Kamal Hossain died on 20.02.2010 which led the petitioners to file Succession Case No.71 of 2010 wherein the present opposite party Nos.1 to 4 were impleaded as the opposite party Nos.2 to 5 and the learned Joint District Judge by order dated 23.06.2011 issued succession certificate in favour of the petitioners and the opposite parties as per Mohammadan Law. It is also pertinent

to mention that the opposite party No.1 got married otherwise. After demise of Kamal Hossain, the petitioners filed an application for addition of party in the said Family Execution Case No.26 of 2009 which was allowed. On the other hand, the opposite party No.1 and her children on 12.08.2012 filed an application in the said execution case to dispose of the same in light of the earlier compromise as accepted in the first execution case; against which the petitioners filed a written objection on 30.09.2012. Upon hearing the same, the execution court below allowed the application of the opposite parties by the order dated 18.10.2012.

Being aggrieved by and dissatisfied with the judgment and order of the executing court, the petitioner, preferred Family Appeal No.01 of 2013 before the learned District Judge which was transferred to the Learned Family Appellate Court and Joint District Judge, 2<sup>nd</sup> Court, Narsingdi for hearing and disposal, who after hearing by the impugned judgment and decree dated 17.02.2014 disallowed the appeal affirming the judgment and order of the executing court. At this juncture, the petitioners moved this Court by filing this revisional

application under Section 115(1) of the Code of Civil Procedure and obtained the present Rule and order of stay.

Ms. Syeda Nasrin, learned Advocate appearing for the petitioners at the very outset submits that Family Execution Case No.06 of 1998 was finally disposed of on compromise by judgment and order dated 04.07.2001. In that execution case, the decree-holder filed an application under Section 151 of the Code of Civil Procedure, seeking a direction against the employer of judgment-debtor to deposit his service benefit in the account of the decree-holder which was allowed on 16.04.2008. Against the order of the execution court, the judgment-debtor Kamal Hossain filed an application for vacating the order which was rejected and then he preferred Family Appeal No.10 of 2008, wherein, order of the execution court was set aside and advised the decree-holder to ventilate her grievance by filing a suit, but the decree-holder instead of filing a fresh suit filed another Execution Case No.26 of 2009, wherein, opposite party Nos.2-4 judgment-debtor, again filed Solehnama which was accepted by the court.

She submits that second execution case was filed after 7 years of first execution case, as such, the execution case is barred under Section 16 of the Family Courts Ordinance, 1985 which provides 1(one) year from the date specified in the decree. She further submits that service benefit of the judgment-debtor realiseable after retirement or on the death of the judgment-debtor which one is earlier. But the execution case filed by the decree-holder when judgment-debtor was in service and alive, as such, the execution case was prematured and was not maintainable at the time of filing of it. Other than the point of prematurity of the execution case and filing of a fresh suit as advised by the appellate court learned Advocate for the petitioners could not advance any other point to be considered by this Court.

None appears for the opposite parties to oppose the Rule.

Resultantly, this Court heard the leaned Advocate for the petitioners, have gone through the revisional application and the impugned judgment and order passed by both the courts below.

From perusal of order dated 18.10.2012 passed by the executing court in Family Execution Case No.26 of 2009, it appears that when

the decree-holder filed second execution case, decree-holder and other successor of judgment-debtor submitted an aposhnama agreeing with the judgment and decree of the Family Court. Third wife, petitioners also filed an application on 30.09.2012 claiming that she has interest in the property left by the judgment-debtor and in the application she claimed that if the aposhnama is accepted she will be highly prejudiced and prayed for rejecting the compromise between the decree-holder and the successor of the judgment-debtor (opposite party Nos.2-4).

The executing court while accepting compromise and rejecting the application filed by the third wife petitioner held that the terms and conditions of a compromise are not new and also held that the execution court cannot interfere with the decree of the Family Court and rejected the application filed by the third wife. The appellate court while dismissing the appeal observed and held that the appellate court in earlier Family Appeal No.10 of 2008 rightly observed that in a disposed of execution case, the execution court cannot entertain an application under Section 151 of the Code of Civil Procedure giving any relief to the decree-holder. But to enforce the compromise, the

decree-holder can file independent case, it does not mean that the decree-holder ought to have filed a family suit for recovery of money of the compromise, but she rightly filed second Execution Case No.26 of 2009 and in the said execution case the decree-holder and the heirs of judgment-debtor filed solehnama. The appellant-petitioner claiming her third wife filed application praying for not to accept the compromise. She cannot file application where her husband during his life time agreed to satisfy the decree by way of compromise. The judgment and decree passed against the judgment-debtor and they got the dispute compromised by filing solehnama, as such, this Court also find that in allowing solehnama filed by the decree-holder and judgment-debtor before the execution court it has committed no illegality and in dismissing the appeal filed by the petitioners against the order of the execution court has not committed any error of law in the decision occasioning failure of justice.

Taking into consideration the above, this Court finds no merit in the Rule as well as in the submissions of the learned Advocate for the petitioners calling for interference by this Court.



In the result, the Rule is discharged, however, without any order as to costs.

The order of stay granted at the time of issuance of the Rule stands vacated.

Communicate a copy of the judgment to the Court concerned at once.