

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.3282 OF 2015

In the matter of:

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

And

Mohammad Ullah Chowdhury

... Petitioner

-Versus-

Rehena Parvin

... Opposite party

Ms. Sayeda Rafika Khatun, Advocate

... For the petitioner.

Mr. Amirul Hossain Siddique, Advocate

....For the opposite party.

Heard and Judgment on 02.07.2025.

This Rule was issued calling upon the opposite party to show cause as to why the impugned order dated 04.07.2011 passed by the learned District Judge, Chattogram in Family Miscellaneous Case No.8 of 2011 arising out of Family Appeal No.93 of 2010 which was dismissed for default on 17.04.2011 should not be set aside and/or other or further order or orders as to this Court may seem fit and proper.

Facts in short are that the opposite party as plaintiff instituted above Family Suit No.110 of 2009 for recovery for her unpaid

dower and maintenance both for herself and her minor son plaintiff No.2 and above suit was decreed on contest on 31.05.2010 and plaintiff No.1 was given Taka 2,80,000/- as her unpaid dower and Taka 26,300/- for her maintenance and defendant No.2 was given Taka 1,10,250/- for past maintenance and he was given monthly maintenance at the rate of Taka 2,500/-.

Being aggrieved by above judgment and decree of the trial Court above defendant preferred Family Appeal No.93 of 2010 to the District Judge, Chattogram which was dismissed for default on 17.04.2011. For setting aside above order of dismissal and restoration of above appeal above appellant as petitioner filed a Miscellaneous Case No.08 of 2011 on 28.06.2011 under Order 9 Rule 4 of the Code of Civil Procedure to the District Judge Chattogram. In above Miscellaneous Case the petitioner submitted the petition for amendment of above petition and the learned District Judge rejected above petition for amendment and summarily rejected above Miscellaneous Case holding that the same was not tenable in law.

Being aggrieved by above judgment and order of the learned District Judge above petitioner as petitioner moved to this Court with this Civil Revisional application under section 115(1) of the Code of civil procedure and obtained this Rule.

Ms. Sayeda Rafika Khatun, learned Advocate for the petitioner submits that the petitioner as appellant preferred Family Appeal No.93 of 2010 challenging the legality and propriety of judgment and decree passed by the learned Judge of the Family Court in Family Suit No.110 of 2009 but above Family Appeal was dismissed for default. Since for unavoidable circumstances the appellant could not appear before the Appellate Court on the date fixed for hearing of above appeal. As such for setting aside of above order of dismissal and hearing of above appeal on merit the petitioner filed above Miscellaneous Case for restoration of above appeal. But Miscellaneous Case was erroneously filed under Order 9 Rule 4 of the Code of Civil Procedure and for correction of above error the petitioner filed a petition but the learned District Judge most illegally rejected above petition for amendment of above miscellaneous case and summarily rejected above Miscellaneous Case on erroneous perception that the same was not tenable in law. Above judgment and order of the learned District Judge has deprived the petitioner from getting a just and lawful judgment and order in above family appeal which has caused serious inconvenience loss to the petitioner.

On the other hand Mr. Amirul Hossain Siddique, learned Advocate for the opposite party submits that the opposite party No.1

is the divorced wife of the petitioner who was a high official of the Government and plaintiff No.2 is her biological son. The petitioner did not pay unpaid dower of plaintiff No.1 and maintenance of plaintiff No.1 and 2. Above suit was decreed on contest on 31.05.2010 but till date the petitioner did not pay any money for satisfying above decree. The petitioner has utilized each and every possible ways to deprive the plaintiffs from their legitimate decretal money. On consideration of above facts and circumstances of the case and materials on record the learned District Judge has rightly rejected above Miscellaneous Case which calls for no interference.

I have considered the submissions of the learned advocate for the respective parties and carefully examined all materials on record.

It is admitted that the opposite party as plaintiff instituted Family Suit No.110 of 2009 for recovery of unpaid dower and maintenance and above suit was decreed on contest on 31.05.2010 and challenging the legality and propriety of above judgment and decree opposite party preferred Family Appeal No.93 of 2010 to the District Judge, Chattogram which was dismissed for default on 17.04.2011.

Section 17 of the Family Courts Ordinance, 1985 provides for preferring an appeal against every judgment and order of a Family Court by any party to the family suit who feels aggrieved by above judgment and order. But above Ordinance does not provide any provision for filling any Miscellaneous Case for restoration of a Family Appeal which has been dismissed for default. Section 20 of the Family Court Ordinance, 1985 provides that excepting Sections 10 and 11 of the Code of Civil Procedure no other provision of above Code shall apply to any suit or appeal arising under above Ordinance. As such the Family Court Ordinance does not provide for filling any Miscellaneous Case for setting aside the Order of dismissal passed in any Family Appeal for setting aside the order of dismissal and restoration of above appeal. Similarly there is no provision for amendment of a Miscellaneous petition filed for setting aside the order of dismissal of a Family Appeal and the learned District Judge on correct appreciation of above materials on record rightly dismissed above family Miscellaneous Case which calls for no interference.

In above view of the facts and circumstance of the case and materials on record I am unable to find any illegality or irregularity in the impugned judgment and order passed by the learned District Judge, Chattogram nor I find any substance in this Civil Revisional

application and the Rule issued in this connection is liable to be discharged.

In the result, the Rule is discharged.

However, there will be no order as to costs.

Send down the lower Court's records immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER