

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

Present:

Mr. Justice Md. Riaz Uddin Khan

Civil Revision No. 4266 of 2015

IN THE MATTER OF :

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

-And-

In the Matter of:

Md. Mizanur Rahman

...Appellant-Petitioner

Versus

Mosammot Rasheda Khatun and another

...Defendant-Opposite parties

Mr. Md. Taufiqul Islam, Advocate with

Mr. Md. Masum Billah, Advocate

... For the petitioner

Ms. Israt Jahan, Advocate with

Ms. Jobaida Parvin, Advocate

... For the Opposite Parties

Judgment on: 16.07.2026

Md. Riaz Uddin Khan, J:

At the instance of the defendant Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 28.05.2015 passed by the Joint District Judge, 1st Court, Kurigram in Family Appeal No. 08 of 2014 affirming the judgment and decree dated 17.04.2014 passed by the Senior Assistant Judge, Family Court, Bhurungamari, Kurigram in Family Suit No. 63 of 2011 should not be set aside and/or such other or further order or orders should not be passed as to this Court may deem fit and proper.

At the time of issuance of Rule the judgment and decree passed by the court of appeal below affirming the judgment and decree passed by the Family Court was stayed

for a period of 06(six) months initially which was extended time to time.

Facts for disposal of this Rule in a nutshell are that the plaintiff-opposite parties filed Family Suit No.63 of 2011 before the Family Court Bhurungamari, Kurigram for dower and maintenance contending *inter alia* that marriage was solemnized between the defendant-petitioner and the plaintiff No.1 on 03.08.2002 as per Muslim Law fixing a dower of Tk-1,29,999/- and during their wedlock a daughter (defendant No.2) was born. At one stage of their marriage life the defendant drove away the plaintiff No. 1 from his house with her minor daughter on 20.09.2011 asking her to bring Tk-50,000/- from her father. In this regard plaintiff No. 1 filed a criminal case against the defendant which was ultimately set at rest with compromise. However, the defendant again drove away her for which the plaintiff filed the instant suit for maintenance and dower. The defendant appeared before the trial court and filed written statement denying all the material allegations made in the plaint contending *inter alia* that the marriage was solemnized between the parties on 03.08.2002 fixing the dower as Tk-29,999/- and not Tk-1,29,999/-. However, as it was impossible for both of them to continue their conjugal life they agreed to dissolution of marriage and in this regard a *Khula talaq* was held which was registered in the Nika Registry Office and the plaintiff received Tk-31,000/- including her dower and maintenance for *iddat* period. The defendant further claimed that he was ready to pay maintenance of defendant No.2, his daughter.

During trial both parties adduced witnesses and produced some documents to prove their respective case. After conclusion of trial the trial court decreed the suit by the judgment and decree dated 17.04.2014 against which the defendant filed Family Appeal No. 08 of 2014 before the District Judge, Kurigram which was ultimately heard by the

Joint District Judge, Kurigram who after hearing the appeal dismissed the same by the impugned judgment and decree dated 28.05.2015 affirming the judgment and decree passed by the trial court.

Being aggrieved by and dissatisfied with the said judgment and decree dated 28.05.2015 the defendant filed the instant civil revision and obtained the Rule and order of stay as stated at the very outset.

Mr. Md. Taufiqul Islam, the learned advocate appearing for the petitioner submits that both the courts below failed to appreciate the legal position that according to Muslim Law the plaintiff cannot be entitled to full dower without the dissolution of marriage. Both the courts below concurrently found that the marriage was subsisting but asked the defendant to pay the full dower as such both the judgments are liable to be set aside.

The learned advocate then submits that the *nikahnama* filed by the plaintiff shows that dower was fixed at Tk-1,29,999/- and in the column-14 it is mentioned that the *muajjal* (prompt) and *Muajjol* (deferred) at Tk-250/- and in the next column, i.e column no.15 it is found that Tk-250/- has already been paid. So, if the marriage is subsisting then the plaintiff cannot claim the rest of the amount which is deferred dower.

The learned advocate next submits that the defendant filed the certified copy of his divorce paper (*khula talaq*) which was registered in the *nikah* registry and an official of the District Registrar deposed before the court in support of the registration of divorce. Though both the courts below disbelieved the documents produced by the defendants but as per Muslim Law the *talaq* has been executed from the date of knowledge of such *talaq* by the wife. Since a compromise *talaq* (*khula talaq*) was executed there was no need to give a notice under section 7(1) of the Muslim Family Laws Ordinance, 1961. The learned

advocate finally submits that the *talaq* was executed and the defendant No.1 is entitled he get the maintenance of only the 3(three) months of her *iddat* period from her knowledge of divorce.

On the other hand Ms. Israt Jahan, the learned advocate appearing on behalf of the opposite parties submits that the plaintiff by producing the original *nikahnama* before the court proved that dower money was fixed at Tk-1,29,999/-. On the other hand the *nikanama* filed by the defendant was a forged one which has been proved by the *nikah* Registrar himself.

The learned advocate then submits that the divorce has not been executed or came into effect as the provision of Section 7 of the Muslim Family Laws Ordinance, 1961 was not complied with. According to the learned advocate provision of Section 7(1) of the Ordinance is mandatory provision and in contravention of that mandatory provision no *talaq* can be effected. The defendant could not prove the so-called *Khula talaq* and both the courts disbelieved the *Khula talaq* as claimed by the husband, hence, the marriage is still subsisting. However, she conceded that as the marriage is subsisting the defendant No.1, the wife, is not entitled to the deferred dower but submits that as in the *nikahnama* the prompt and deferred dower was not fixed, the wife is entitled to entire dower as per section 10 of the Muslim Family Laws Ordinance, 1961.

I have heard the learned advocates for both the parties, perused the revision application. I have also examined the lower court records including the plaint, written statement, depositions of both parties and exhibited documents. I have also carefully examined the judgments passed by the courts below.

During trial both parties produced certified copy of the *Nikahnama*: The *Nikahnama* (exhibit-1) produced by the plaintiff shows that the dower was fixed as Tk-129,999/-

while the *Nikahnama* produced by the defendant shows the dower as Tk-29,999/. It appears from the judgment of the trial court that the trial court did not believe the *Nikahnama* filed by the defendant but believed the *Nikahnama* filed by the plaintiff and fixed dower money as Tk-1,29,999/-. The trial court further disbelieved the documents filed by the defendant regarding the *talaq-e-toufiz* observing that the *khulanama* produced by the defendant in question is not reliable. The trial court further observed that since there is no separate mentioning of prompt and deferred dower in the *Nikahnama* (exhibit-1) as such the entire dower should be treated as prompt one as per section 10 of the Muslim Family Laws Ordinance, 1961.

It appears from the judgment of the court of appeal below that the appellate court concurrent with the findings of the trial court regarding the fixation of dower as contained in the *Nikahnama* filed by the plaintiff but the appellate court differed with the finding of the trial court in relation to following procedure of section 7 and 8 of the Muslim Family Laws Ordinance, 1961 that in case of declaring *talaq* in the form *Khula* or *Mubarat* there is no need to serve notice as provided under section 7(1) of the Ordinance. However, the appellate court also disbelieved the claim of *Khula talaq* as claimed by the defendant.

In the case of Hamira Bibi Vs. Zubaida Bibi reported in (1916) 43 I.A. 294 Lord Parker of Waddington observed:

Dower is an essential incident under the Mussulman law to the status of marriage; to such an extent this is so that when it is unspecified at the time of marriage is contracted the law declares that it must be adjudged on definite principles. Regarded as a consideration for the marriage, it, in theory, payable before consummation; but the

law allows its division into two parts, one of which is called 'prompt', payable before the wife can be called upon to enter the conjugal domicile; the other 'deferred', payable on the dissolution of the contract by the death of either of the parties or by divorce.

This definition of dower was acclaimed all over the world where the Muslim law is applicable. It was also cited in the case of Syed Sabir Husain Vs. Farzand Husan reported in (1937) 65 I.A. 119. From the above celebrated decision it is clear that prompt dower is payable immediately after the marriage, if demanded by the wife; while the deferred dower is payable on the dissolution of the marriage or on the death of either party. But a difficulty arises when it is not settled mentioning the amount of prompt and deferred. In Hanafi law (applicable in the present case) the whole of the dower may be promptly awarded in special circumstances but in the absence of proof of custom, the presumption is that one-half is prompt, and the other half deferred, and portion may be changed to suit particular cases. Usually the dower is fixed at the time of marriage and the *Kazi* or *Nikah* Registrar enters the amount in the register as well as in the *Nikahnama* or *Kabinnama*. In our country there is a statutory Form of *Nikahnama* and in Column No.13 is for mentioning the total amount of dower; Column No.14 is for mentioning of prompt and deferred dower while Column No.15 is for mentioning whether at the time of marriage any part of the dower is paid or not. Section 10 of the Muslim Family Laws Ordinance, 1961 deals with mode of payment of dower which reads as follows:

10. Dower- Where no details about the mode of payment of dower are specified in the *Nikah nama*, or the marriage contract, the entire

amount of the dower shall be presumed to be payable on demand.

In the instant case there is admitted position by both the parties regarding the marriage which was solemnized on 03.08.2002. The 1st dispute between the parties is regarding the amount of dower. Since in the *Nikahnama* (exhibit-1) produced by the plaintiff in Column no.13 the total dower is mentioned as Tk-1,29,999/-. On examination of that *Nikahnama* it appears from column No.14 wherein the prompt and deferred dower is mentioned as Tk-250/- whereas in column No.15 it has been mentioned that Tk-250/- has been paid through ornament. Since in the column no.14 there is a mention of Tk-250/-, it should be treated as prompt dower which has already been paid.

As per Hanafi school of Muslim Law the wife can claim prompt dower at any time and as per Shia law the wife can demand the full dower both prompt and deferred but as per the school of Sunni all the Islamic jurists in a single view opined that the deferred dower can only be claimed through dissolution of marriage either by death or by *talaq* or divorce. In this case the plaintiff claimed that the marriage is still in subsistence hence she cannot claim the entire dower money. It is true that as per section 10 of the Muslim Family Laws Ordinance if there is no mention of prompt and deferred dower the entire dower will be payable on demand. We have already noticed that on examination of exhibit-1, the *Nikahnama* it is found in Column No.14 prompt dower was mentioned as Tk-250/- and as such the finding of both the courts in this regard is not correct. In that view of the case the plaintiff was not entitled to get the entire dower money as per section 10 of the Muslim Family Laws Ordinance, 1961.

Now on the question of divorce or *talaq*: whether was effected as claimed by the defendant. The defendant filed the copy of the divorce paper registered with a

different *Nikah* registry not where the marriage was registered on the contention that a *Khula talaq* was held on compromise in presence of both parties. Even it was neither registered where the wife resides nor the husband himself. Both the courts below did not believe that the *khula talaq* was held between the parties as the plaintiff clearly claimed in her plaint that her signature was obtained in some blank papers and this averment was made, though by an amendment, but it is before the filing of the written statement, hence both the courts below rightly believed that no *khula talaq* as claimed by the defendant was held.

Be that as it may, in traditional Muslim Law there are different forms of *talaq* or dissolution of marriage which has also been recognized by section 8 of the Muslim Family Laws Ordinance, 1961. The legislature has described a procedural law how to communicate the pronouncement of any form of *talaq* by the husband to the wife and the legislature also constituted authority namely arbitration council for reconciliation between the parties regarding the *talaq*. At this juncture it would be profitable if we refer sections 7 and 8 of the Muslim Family Laws Ordinance, 1961 which run as follows:

Section- 7.(1) Any man who wishes to divorce his wife shall, as soon as may be after the pronouncement of *talaq* in any form whatsoever, give the Chairman notice in writing of his having done so, and shall supply a copy thereof to the wife.

(2) Whoever contravenes the provisions of sub-section (1) shall be punishable with simple imprisonment for term which may extend to one year or with fine which may extend to [ten thousand taka] or with both.

(3) Save as provided in sub-section (5), a *Talaq* unless revoked earlier, expressly or

otherwise, shall not be effective until the expiration of ninety days from the day on which notice under sub-section (1) is delivered to the Chairman.

(4) Within thirty days of the receipt of notice under sub-section (1), the Chairman shall constitute an Arbitration Council for the purpose of bringing about a reconciliation between the parties, and the Arbitration Council shall take all steps necessary to bring about such reconciliation.

(5) If the wife be pregnant at the time *talaq* is pronounced, *talaq* shall not be effective until the period mentioned in sub-section (3) or the pregnancy, whichever be later, ends.

(6) Nothing shall debar a wife whose marriage has been terminated by *talaq* effective under this section from remarrying the same husband, without an intervening marriage with a third-person, unless such termination is for the third time so effective.

Section- 8. Where the right to divorce has been duly delegated to the wife and she wishes to exercise that right, or where any of the parties to a marriage wishes to dissolve the marriage otherwise than by *talaq*, the provisions of section 7 shall, *mutatis mutandis* and so far as applicable, apply.

From plain reading of the above provisions it is clear that as per section 7(1) after the pronouncement of *talaq*, in any form, the husband has to give notice in writing to the Chairman of such pronouncement and a copy of the same shall supply to the wife. The pronouncement of *talaq* by the husband in contravention of section 7(1) it is

a punishable offence under section 7(2) of the Ordinance. *Talaq* or divorced is a form of dissolution of marriage and according to traditional Muslim Law husband can *talaq* or divorce his wife at any time without assigning any reason and the husband even can delegate his power of *talaq* to his wife or any third person without diminishing his power of pronouncement of *talaq*. The core question is whether there was any intention of *talaq*: if the language is so clear or unambiguous then the intention need not be proved but if the language is vague then it is to be proved that there was intention of *talaq*. However, after coming into force of the Muslim Family Laws Ordinance, 1961 any law, custom or usage have been made subject to this Ordinance according to section 3 which *inter alia* declares that the provisions of the Ordinance would have effect, “notwithstanding any law, custom or usage”. According to section 7(3) of the Ordinance a *talaq* shall not be effective until the expiration of ninety days from the day on which notice under subsection (1) is delivered to the Chairman. In the case of Syed Ali Newaz Gardezi Vs. Lt. Col. Muhammad Yousus reported in 15 DLR (SC) 9 it was observed:

“... it is obvious that the object of section 7 is to prevent hasty dissolution of marriage by *talaq*, pronounced by the husband, unilaterally, without an attempt being made to prevent disruption of the matrimonial status. If the husband himself thinks better of the pronouncement of *talaq* and abstain from giving a notice to the chairman, he should perhaps be deemed in view of section 7, to have revoked the pronouncement and that would be to the advantage of the wife. Subsection (3) of this section precludes the *talaq* from being effective as such, for a certain period and within that period, consequently, it could not

be said that the marital status of the parties had in any way be changed. They would still in law continue to be husband and wife.”

From the above observation there is no doubt that serving notice upon the Chairman with a copy to the wife under section 7(1) read with 7(2) and 7(3) is a mandatory provision in pronouncing any form of *talaq* except the other form of dissolution of marriage other than *talaq* as mentioned in section 8 of the Ordinance. In the case of Md. Serajul Islam Vs. Most. Helana Begum and others reported in 1999 BLT (AD) 850 wherein our Supreme Court, Appellate Division held-

“... Section 7(1) of the Ordinance provides for giving of notice of talaq to the Chairman and the copy thereof to the wife and provides for punishment for contravention and this law overrides any other provision of any other law. But there being clear intention to divorce by the affidavit on the part of the petitioner and the same having been disclosed and produced before the lower appellate Court by the petitioner himself, the petitioner cannot take advantage of his own wrong and cannot claim the benefit of non-service of notice by him to the Chairman. He is bound by his admission.”

In my view, our apex Court made the above observation keeping in mind ‘that would be to the advantage of the wife’ in the given facts and circumstances of that particular case. In the present case the defendant-petitioner husband claimed that marriage was dissolved through *Khula talaq* but both the courts below concurrently disbelieved it. On examination of that certificate of *Khula talaq* along with depositions of DWs I also do not find any reason to set aside those findings of courts below on this fact as the petitioner failed to prove the *khula talaq*.

In that view of the matter, the marriage between the plaintiff no.1 and the defendant cannot be said to be dissolved through *talaq*. The plaintiff no.1 and the defendant is still in law continue to be husband and wife unless the marriage is dissolved in accordance with law.

In the facts and circumstances and the position of law as discussed above the judgments and decrees passed by the courts below are partially incorrect so far it relates to payment of dower but is correct so far it relates to *talaq*. For the reasons stated above I am constrained to interfere with the impugned judgments and decrees passed by the courts below.

In the result the Rule is made **absolute-in-part**. There will be no order as to cost.

The plaintiff no.1, wife is not entitled to deferred dower money as the marriage has not been dissolved in accordance with law, and prompt dower of Tk-250/- has already been paid. Both the plaintiffs are entitled to their maintenance as decreed by the trial court.

Send down the lower court records along with a copy of this judgment.