

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

Present:

Ms. Justice Kazi Zinat Hoque

Civil Revision No.3076 of 2019

Md. Shahidul Islam

.....Petitioner

-Versus-

Parul Begum

.....Opposite Party.

No one appears

.....For either of the parties

Heard and Judgment on: 03.01.2024

Kazi Zinat Hoque, J:

This Civil Revision is directed against judgment and order dated 07.08.2019 passed by the learned Additional District Judge, 2nd Court, Dhaka in Family Appeal No.224 of 2016.

The opposite party filed Family Suit No. 79 of 2015 before the learned Senior Assistant Judge, 2nd Court, Dhaka against the defendant praying for a decree claiming Tk. 13,20,000/- as dower money and maintenance for 06 (six) months contending, inter alia, that on 11.08.2014 marriage was solemnized between the plaintiff and the defendant (her

husband) through registered Kabinnama. After marriage they were enjoying their conjugal rights. The defendant did not pay dower money to the plaintiff. After 02(two) months of marriage the defendant told the plaintiff that she should go to her paternal home and stay there. He sent her to her paternal home. The defendant refused to take her back. Later he informed her that he would not accept her as his wife. He also told her that he would not spend any money for her, rather the defendant claimed Tk.5,00,000/-(five lac) as dowry which the plaintiff refused to pay. On 06.01.2015 the defendant again claimed dowry of Tk.5,00,000/-(five lac) which the plaintiff refused. On 06.01.2015 at around 08:00 pm the defendant, his father and brother mercilessly beat the plaintiff and inflicted bruises on various parts of her body and threatened her that unless the dowry is given to the defendant, he would divorce the plaintiff. Thereafter the plaintiff filed Nari-O-Shishu Petition Case No.22 of 2015 under section 11(Ga)/30 of the Nari-O-Shishu Nirjatan Daman Ain against the defendant which is pending for trial. Since 11.8.2014 the defendant did not pay any maintenance. The plaintiff is entitled to Tk. 12,00,000/- (twelve lac) as dower and

maintenance of Tk. 1,20,000/- (20,000×6) from 11.08.2014 to 23.02.2015. On 23.02.2015 the plaintiff through local respectable people claimed the said amount from her husband (defendant). The defendant refused to pay the same. On 24.02.2015 the plaintiff filed the aforesaid Family Suit. The defendant contested the suit. On 01.09.2016 the matter was fixed for F.H. On that date the defendant (petitioner) filed an application for staying Family Suit No.130 of 2015 till disposal of Title Suit No.50 of 2015 before the concerned Tribunal. After hearing the concerned Family Court allowed the application filed by the defendant and stayed all further proceedings of Family Suit No.130 of 2015 till disposal of Title Suit No.50 of 2015. Thereafter the plaintiff filed Family Appeal No. 224 of 2016 before the learned District Judge, Dhaka. The said appeal was transferred to the Court of learned Additional District Judge, 2nd Court, Dhaka for hearing. After hearing the parties the court of appeal below allowed the appeal and set aside the order dated 01.09.2016 of the concerned Family Court. The court of appeal below also

directed the Family Court to hear Family Suit No.130 of 2015.

No one appears on behalf of any of the parties either to press or contest the Rule.

On careful perusal of the plaint of Family Suit No.79 of 2015 it is evident that the opposite party filed the aforesaid family suit before the Court of 2nd Senior Assistant Judge, Dhaka claiming decree for dower and maintenance for 06(six) months. Subsequently the said suit was transferred to the Court of Additional Assistant Judge and Family Court and renumbered as Family Suit No.130 of 2015.

On careful perusal of the impugned order dated 07.08.2019 it is evident that the defendant filed Title Suit No.50 of 2015 for a declaration that the kabinnama was ineffective, null and void. Thereafter he filed an application before the concerned Family Court for staying Family Suit No. 130 of 2015 till disposal of Title Suit No.50 of 2015. After hearing the parties, the concerned Family Court allowed the application and passed an order staying all further proceedings of Family Suit No.130 of 2015 till disposal of Title Suit No.50 of 2015. Being aggrieved by and dissatisfied

with the order of the Family Court the plaintiff filed Family Appeal No.224 of 2016 before the Court of District Judge, Dhaka.

In 1985 the Family Courts Ordinance was promulgated. Sections 2(b), 3, 4 and 5 of the Ordinance are reproduced below:

2(b) “Family Court” means a Family Court established under this Ordinance;

3. The provisions of this Ordinance shall have effect notwithstanding anything contained in any other law for the time being in force.

4. (1) There shall be as many Family Courts as there are Courts of [Assistant Judges].

(2) All Courts of [Assistant Judges] shall be Family Courts for the purpose of this Ordinance.

(3) All [Assistant Judges] shall be the Judges of Family Courts.

5. Subject to the provisions of the Muslim Family Laws Ordinance, 1961 (VIII of 1961), a Family Court shall have exclusive jurisdiction to entertain, try and dispose of any suit relating to,

or arising out of, all or any of the following matters, namely:-

- (a) dissolution of marriage;
- (b) restitution of conjugal rights;
- (c) dower;
- (d) maintenance;
- (e) guardianship and custody of children.

Family Court Ordinance 1985 was repealed by Family Courts Act of 2023. The new law is similar to the Family Court Ordinance 1985. As per section 2(ga) Family Court means a Family Court established under this Act. Sections 3, 4, and 5 of the new act are identical to sections 3, 4 and 5 of the Family Court Ordinance 1985. As per section 5 of the Family Courts Act 2023 the Family Court has exclusive jurisdiction to try and dispose of any suit relating to or arising out of dissolution of marriage, restitution of conjugal rights, dower, maintenance, guardianship and custody of children.

In the case of Shafiqul Huq (Md) Vs. Mina Begum [54 DLR (2002) 481]. In that case the opposite party (wife) filed a Family Suit against the petitioner for a decree for dower and maintenance. Subsequently, the petitioner filed a Suit in the Court of Sub-ordinate Judge against opposite party No.1 and others for declaration that the kabinnama dated 24.01.1999

executed by him and opposite party No.1 was obtained by coercion and as such not binding on him and opposite party No.1 is not his wife. He filed an application in the Title Suit praying for an injunction for restraining opposite party No.1 from proceeding with the family suit till disposal of his title suit. The application was rejected by the Sub-ordinate Judge. Thereafter the petitioner filed civil revision before the High Court Division. Rule was issued. The petitioner contended that the Family Court has no jurisdiction to declare whether a kabinnama is illegal and void. The High Court Division held that Family Court has jurisdiction to decide as to whether the kabinnama in question is a genuine and valid document or not and whether any marriage between the petitioner and opposite party was ever solemnized or not before it decides to grant any decree for dower and/or maintenance.

In this case the Family Court most illegally passed an order staying further proceedings of Family Suit No. 130 of 2015 till disposal of the title suit. When one party (wife) to the marriage files suit for dower and maintenance in Family Court, the said court has also jurisdiction to declare whether kabinnama in question is valid or not if such contention is

raised by the other party to the marriage (the husband). The court of appeal below rightly allowed the appeal and set aside the order of the Family Court and directed the Family Court to proceed with Family Suit No.130 of 2015. Therefore the impugned judgment and order does not call for any interference.

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

The concerned Family Court is directed to hear and dispose of Family Suit No.130 of 2015 as expeditiously as possible preferably within a period of 04(four) months from the date of receipt of a copy of this judgment.

Interim order of stay is hereby recalled and vacated.

Transmit a copy of this judgment to the concerned court below at once.