In the Supreme Court of Bangladesh

High Court Division

(Civil Appellate Jurisdiction)

Present:

Mr. Justice Kazi Md. Ejarul Haque Akondo
And
Mr. Justice Mohi Uddin Shamim

First Appeal No. 319 of 2016

In the matter of:

Md. Ruhul Amin
…….. Plaintiff-appellant

Versus

Rima Khatun and another
…..... Defendants-respondents

Mr. Sirajuddin Ahmed, Advocate with
Mr. S.S. Arifin Jaman, Advocate
..... For the plaintiff-appellant
Mr. Mohammad Bakir Hossain, Adv.
…. For the defendant-respondent No.1

Heard on 3rd & 4th November, 2024
and
Judgment on 13.11.2024

Mohi Uddin Shamim, J.

This appeal, at the instance of the plaintiff-appellant, is directed against the judgment and decree dated 30.08.2016 (decree signed on 07.09.2016) passed by the learned Joint District Judge, 2nd Court, Rajbari in Civil Suit No.101 of 2013 dismissing the suit.

The facts necessary for disposal of the appeal, in short, are that the present appellant as plaintiff, filed Civil Suit No.101 of 2013 in the Court of Joint District Judge, 2nd Court, Rajbari

against the present defendant-respondents for declaration that the dower amount at tk.14,00,000/- (Fourteen lac) mentioned in serial no.13 of registered Nikahnama dated 16.05.2011 of Habaspur Union Parishod Nikah Registrar, Pangsha is unlawful, illegal, concocted, mala fide, ineffective and not binding upon the plaintiff stating inter alia that on 16.05.2011 marriage was solemnized fixing dower money at tk.1,40,000/- and, that was duly signed by the witnesses in hurried way. Most of the Kabinnama was remained blank and those had to be filled afterwards. One Md. Kalam Munshi recited the marriage. After solemnizing the marriage, they had started their conjugal life with harmony. A few months later, on family disputes the defendant no.1 fled away to her father's house. From anxiety of any unusual happening, the father of the plaintiff lodged 2 separate G.D. (General Diary) with Rajbari Police Station being G.D. No.735 dated 18.06.2013 and G.D. No.600 dated 16.07.2013. However, on 30.07.2013 the defendant filed a C.R. Case being No.622 of 2013 against the plaintiff under section 4 of the Dowry Prohibition Act, in the Court of Senior Judicial Magistrate, Cognizance Court No.1, Rajbari, in where, the defendant no.1 filed the said Kabinnama. It transpires from the contents of the Kabinnama dated 16.05.2011 that, the dower money was at tk.14,00,000/- (fourteen lac) instead of tk.1,40,000/- (one lac and

forty thousand). The plaintiff believed that Md. Ali Bepari, the father of defendant no.1 in connivance with the Nikah Registrar changed the original amount of dower money enhancing the same at tk. 14,00,000/- and sat it entered in the volume book of Nikah register. Hence the instant suit.

The suit was contested by defendant No.1 by filing written statements denying the material allegations made in the plaint contending that, the suit is not maintainable in its present form and manner, the suit is barred by limitation, as well as principle of stopple, waiver and acquiescence. The marriage was solemnized between the parties on 16.05.2011 fixing a dower money at tk.14,00,000/- and the witnesses and others put their signatures after reading, understanding, satisfying and agreeing upon the contents in the Nikahnama. At the time of marriage, the father of defendant no.1 gifted tk.5,00,000/- in cash as well as a Motorcycle to the plaintiff. Soon after few days of the marriage, the plaintiff started torturing her upon demanding dowry. At one stage of such demand and torture the defendant no.1 filed C.R. Case No.622 of 2013 against the plaintiff.

On the above pleadings and perusing the material evidence on record, the trial Court dismissed the suit vide its judgment and order dated 30.08.2016.

Challenging the said judgment and order dated 30.08.2016, the plaintiff as appellant filed the instant family appeal being First Appeal No.319 of 2016 before this Hon'ble Court.

Mr. Sirajuddin Ahmed, the learned Advocate appearing for the plaintiff-appellant at the very outset submits that the marriage was solemnized on 16.05.2011 fixing a dower amount at tk.1,40,000/- and, that was duly signed by the witnesses. But in an ulterior motive the father of the defendant no.1 in connivance with the Nikah Registrar enhanced the agreed amount of dower money at tk.14,00,000/- and sat it to the volume book of the Nikah register. It transpires from the kabinnama dated 16.05.2011 that P.W. 2 Md. Jafar Ali and Moniruzzaman Monir witnessed the said kabinnama and they were in a chorus voice deposed and confirmed the amount of dower at tk.1,40,000/-. He also submits that both the parties are from respective poor families and living hand to mouth. The appellant is a police constable, and the father of the respondent no.1 is a 'borga chashi' and considering their socio-economic condition and family status dower money was fixed at tk.1,40,000/-. The Dower money at tk.14,00,000/- is not rational to her family status. Learned counsel next submits that the dower money was also fixed at tk. 50,000/- to her elder sister. It has also been submitted that at the time of marriage all the columns of Kabinnama were not filled up. Subsequently, the

father of the respondent no.1 in connivance with DW-3, the Nikah registrar manipulated the figure of dower money as tk.14,00,000/- instead of tk.1,40,000/- inserting a '0' to the right side of that figure. He next submits that it is highly strange that the dower money could be fixed at tk.14,00,000/-. In view of the aforesaid facts and circumstances of the case, the learned Judge of the trial Court has committed gross illegality in dismissing the suit, which was prejudicial and detrimental to the plaintiff and thus the impugned judgment and order dated 30.08.2016 is liable to be set aside. He finally prays for allowing the appeal and thereby declaring the amount mentioned in the Kabinnama is fraudulent, collusive, ineffective and not binding upon the plaintiff appellant.

On the other hand, Mr. Mohammad Bakir Hossain, the learned Advocate appearing for the defendant-respondent no.1 takes us through the impugned judgment, written statements and additional written statements on behalf of the defendant no.1 and also the written statements of defendant No.2 and other materials on record and submits that, this appeal has got no substance at all and the conduct of the plaintiff appellant is not fair and he is trying to elude and delay making payments of dower money to the defendant respondent no.1. He further submits that Nikahnama is an agreement between the parties and the parties who signed in it would be presumed that he/they did the same after reading,

understanding and agreeing with the contents of the agreement. Once he signed would be under legal obligation to comply with its contents. He next submits that PW-3, proved the Nikahnama as evidence at the time of hearing and thus the plaintiff has no other option but to comply with the Nikahnama. The learned Counsel finally submits that after considering the pros and cons of the case as well as the evidences on record, the learned Judge of the trial Court passed the decree, and therefore, there is no reason to interfere with the findings of the Court bellow, despite of the fact that, the plaintiff-appellant has filed this appeal for declarations as prayed in title suit no.101 of 2013 by setting aside the impugned judgment, which lacks any legal basis and prays for dismissing the appeal.

We have heard the learned Advocates for the contending parties, perused the memo of appeal, the judgments passed by the trial Court and the other connected materials on record.

Admittedly, the marriage between the plaintiff and defendant no.1 was solemnized on 16.05.2011, which has not been denied by either of the parties.

The persistent case of the plaintiff-appellant is that the dower money was fixed in the marriage at tk.1,40,000/-. But, due to greed, the father of the defendant-respondent no.1 in connivance with the marriage registrar has created a fake and

fictitious Kabinnama by inserting dower money at tk.14,00,000/- instead of agreed tk.1,40,000/-. On perusal of the judgment passed by the trial Court, it transpires that indeed, the plaintiff's only grievance is of enhanced amount of dower money. Therefore, the pertinent question to be decided here is whether the dower money was fixed in the marriage at tk. 1,40,000/- or tk. 14,00,000/-.

Now let us turn our eyes to the judgment passed by the Trial Court below.

It appears from the judgment passed by the Trial Court that the plaintiff adduced 3 witnesses including himself to prove his case. The plaintiff deposed himself as PW-1, categorically reiterated the plaint case stating that marriage was solemnized between him and the defendant no.1 on 16.05.2011 fixing a dower amount at tk.1,40,000/-. Both, the bride and the groom and the witnesses for either of the parties signed the Nikahnama in a hurried way since the night had been getting deeper. Most of the columns including column no.13, fixed for the dower entry remained blank. The Nikah Registrar told them that those blank columns would be filled within a short while due to shortage of time. One Md. Kalam Munshi recited the marriage. Few months later, following a series of family disputes it was detected that in the reserved column for dower entry had been filled with an

amount of tk.14,00,000/- instead of tk.1,40,000/-. The plaintiff believed that out of greed, the father of defendant no.1 in connivance with the Nikah Registrar enhanced the mentioned dower amount and sat it entered in the volume book of Nikah register. However, he came to know about the said enhancement on 10.10.2013, while the defendant no.1 filed the said 'Kabinnama' in C.R. Case No.622 of 2013. He deposed that both the parties are from respective poor families and living hand to mouth. The plaintiff appellant is a police constable, his father works as putter in Bangladesh Railway and the father of the respondent no.1 is a 'borga chashi'; that in the earlier occasion the dower amount was fixed at taka 50,000/- for her elder sister. And considering their socio-economic condition and family status dower money at taka.14,00,000/- was not rational. P.W.2 Md. Jafar Ali and PW.3 Moniruzzaman Monir witnessed the said 'Kabinnama' and they were deposed in a chorus voice with PW-1 and confirmed the amount of dower money at tk. 1,40,000/-.

The defendant no.1 had also adduced 3 witnesses including herself as DW-1 and deposed that, on 16.05.2011 she had been given marriage to the plaintiff, fixing a dower amount at tk.14,00,000/-, out of which tk.1500/- was shown paid off. In support of her deposition the plaintiff proved the Nikahnama as Exbt. Kha. She deposed that her father gifted tk.5,00,000/- before

marriage and a Bazaz Motorbike after marriage to the petitioner. but in her cross she could not have remembered the date and month when the said amount paid to the plaintiff. DW-2 is the uncle of defendant no.1 and deposed in the same line as of DW-1 by deposing that the father of the defendant no.1 initially demanded Tk. 20,00,000/- as dower and after negotiation it had been settled and fixed at tk.14,00,000/-.

Defendant no.2, the Marriage Registrar, deposed as DW-3 that, he was the registrar of the marriage between the plaintiff and the defendant no.1 and registered the 'Kabinnama'. He also deposed that after filling each of the columns of 'Kabinnama' took signatures of the concerned parties and witnesses. The dower amount in the marriage was fixed at tk.14,00,000/-. In cross he denied any difference of writing in column fixed for dower amount and the other columns and also denied the suggestion that he altered the dower amount in connivance with the father of defendant no.1. In cross he stated that the amount of dower money had been written in column 13 of the register book in both forms, in words as well as arithmetical numbers but, there was no overwriting, no erasing or use of fluid. He proved the Nikahnama and the register book.

On proper sorting of evidence adduced by the parties and materials on record, learned judge of the trial Court held that the

plaintiff-appellant failed to prove his case by adducing PWs and by shattering the DWs in their respective cross.

On the other hand, the defendant no.1 safeguarded her case by producing registered 'Nikahnama' (Exbt. Kha), wherein, it was stipulated that the dower money was fixed at tk.14,00,000/-. She had categorically and very robustly supported her case by producing evidence. On perusal of the certified copy of the 'Nikahnama' as well as the 'Nikah register' produced by the Nikah Registrar, the learned judge of the trial Court did not find any inconsistency, neither in the 'Kabinnama' nor in the Nikah register, relating to the dower amount. There was no overwriting or pen through, no erasing or use of fluid in the Nikahnama, notably in clause 13 of the volume book in respect of dower amount. Accordingly, the learned Judge of the trial court dismissed the suit. In dismissing the suit, the learned judge summarized his judgement as "অত্র মামলায় বিয়ের বিষয়টি উভয় পক্ষ কর্তৃক স্বীকৃত। উভয় পক্ষ কাবিননামার যে সার্টিফাইড কপি দাখিল করেছেন তাতে দেনমোহরে ঘরে ১৪,০০,০০০/- টাকার কথা উল্লেখ রয়েছে। অত্র মামলায় বিয়ের নিকাহ্ রেজিস্ট্রার ডি,ডাব্লিউ-৩ হিসেবে আদালতে সাক্ষ্য প্রদান করেন। তিনি তার বক্তব্যে সুস্পষ্টভাবে জানান- কাবিন নামার প্রত্যেকটি কলাম পূরণ করার পরে উভয় পক্ষের স্বাক্ষর

নেওয়া হয় এবং উক্ত বিয়েতে ১৪ লক্ষ টাকা দেনমোহর ধার্য্য করা হয়। অত্র সাক্ষী তার বক্তব্যে আরও জানান দেনমোহরে টাকার পরিমান লেখা হয়েছিল বাদী-বিবাদী উভয় পক্ষের সম্মতিতে। অত্র স্বাক্ষী জেরাকালে তার জবানবন্দি বক্তব্য থেকে বিচ্যুত হন নাই। বিবাদী পক্ষের প্রদত্ত সকল সাজেশন তিনি তার জেরা কালে অস্বীকার করেন। ডি,ডাব্লিউ-৩ আদালতে স্বাক্ষ্য প্রদান কালে কাবিন নামার রেজিঃ ভলিয়ুম আদালতে দাখিল করেন। উক্ত ভলিয়ুমের ১৩ নং পাতাটিই নালিশী কাবিন নামা মর্মে প্রতীয়মান হয়। উক্ত পাতার নিরীক্ষণে দেখা যায় তার ১৩ নং কলামে দেনমোহরের পরিমান ১৪,০০,০০০/= (চৌদ্দ লক্ষ) লেখা রয়েছে। দেনমোহরের পরিমান কথায় এবং অংকে ১৪ লাখ টাকাই লিখিত আছে। কাজেই আপাততঃ দৃষ্টিতে কাবিন নামায় দেনমোহরের পরিমান ১৪ লাখ মর্মেই প্রতীয়মান হয় যা দালিলিকভাবে প্রমাণিত উক্ত কাবিন নামা সম্পাদানকারী নিকাহ রেজিষ্টারের মৌখিক সাক্ষ্য দ্বারা প্রমানিত।

বাদী পক্ষ দাবী করেছেন বিয়ের সময় কাবিন নামার ঘরটি ফাঁকা রাখা হয়েছিল। কাবিন নামা পর্যালোচনায় দেখা যায় সেখানে বরের অর্থাৎ বাদীর এবং বরের উকিলের স্বাক্ষর আছে। উপরন্ত, কাবিননামা আরো দুইজন সাক্ষীর স্বাক্ষর আছে। কাবিননামা দৃষ্টে দেখা যায় কাবিননামা

সম্পাদনের সময় বরের বয়স ২২ বৎসর ছিল। অর্থাৎ অত্র মামলার বাদী কাবিননামাটি সম্পাদনের সময় অপ্রাপ্ত বয়স্ক ছিলেন না। কাজেই একজন সুস্থ প্রাপ্ত বয়স্ক ব্যক্তি কাবিননামার ঘর ফাঁকা রেখে স্বাক্ষর করে দিবেন এমন বক্তব্য বিশ্বাস যোগ্য নয়। উপরন্ত, উভয় পক্ষের বিয়ে ১৬/৫/২০১১ ইং তারিখ সম্পাদিত হলেও বাদী মামলাটি দায়ের করেন ৩১/১০/২০১৩ ইং তারিখে। এত দীর্ঘ সময় বাদী তার বিয়ের কাবিননামা এবং দেনমোহরের বিষয়টি জানতেন না এমন বক্তব্য অবিশ্বাস্য।

বাদী তার নালিশী দরখাস্তের ৫ নং কলামে উল্লেখ করেছেন ৮/৬/১৩ ইং তারিখ উভয় পক্ষের মধ্যে একটি শালিশ হয় যেখানে ১ নং বিবাদীর সাথে নিকাহ্ রেজিষ্ট্রারের যোগসাজোস প্রতিষ্ঠিত হয়। বাদী তার নালিশী দরখাস্তের ৪ নং কলামে উল্লেখ করেছেন ১৮/৬/২০১৩, ১৫/৭/১৩ ইং তারিখ বিবাদীর বিরুদ্ধে দুইটি জিডি করেন। বাদী পক্ষ উক্ত জিডি দুইটির কপি আদালতে দাখিল করেছেন যা দৃষ্টে দেখা যায় জিডিতে বিবাদী দেনমোহর সংক্রান্ত কোন বিরোধের কথা উল্লেখ করেন নাই। বাদী তার নালিশী দরখাস্তে উল্লেখ করেছেন বিবাদী বাদীর নামে ৬২২/২০১৩ যৌতুকের মিথ্যা মামলা করলে সেই মামলায় দাখিলীয় কাবিননামা থেকে ১৪ লাখ টাকা দেন মোহর বিষয়টি অবগত হন। কিন্তু বাদী অর্থাৎ পি,ডাব্লিউ-১ জেরা কালে জানান ৮/৬/২০১৪ তারিখ তারা শলিশের

মাধ্যমে জানেন যে, কাবিনে ১৪ লাখ টাকা লেখা হয়েছে। কাজেই বাদী পক্ষের বক্তব্য পরস্পর বিরোধী। কাজেই বাদী মামলাটি তামাদি দ্বারা বারিত মর্মেও প্রতীয়মান হচ্ছে।

বাদী পক্ষ দেনমোহরের বিষয়টি প্রতারনামূলক মর্মে দাবী করেন এর কারন হিসেবে উল্লেখ করেছেন বিবাদীর বড় বোনের বিয়ের কাবিননামার পরিমান ছিল ৫০ হাজার টাকা, কাজেই বিবাদীর বিয়ের দেনমোহরের পরিমান অযৌক্তিক। কিন্তু চুক্তি আইন অনুসারে একজন প্রাপ্ত বয়স্ক পক্ষ যে কোন শর্তেই চুক্তিতে আবদ্ধ হতে পারেন। কাজেই একটি বিয়ে থেকে আরেকটি বিয়ের দেনমোহরের পরিমান ভিন্ন ভিন্ন হতে পারে। যেক্ষেত্রে কাবিননামায় উভয় পক্ষের, অন্যান্য সাক্ষীদের স্বাক্ষর সহযোগে দেনমোহরের পরিমান সুনির্দিষ্ট করা হয়েছে সেক্ষেত্রে ঐ দেনমোহরকে উপেক্ষা করে অন্য কোন অনুমানমূলক দেনমোহর গ্রহনযোগ্য হবে না। দেনমোহরের পরিমান উহ্য থাকলেই কেবলমাত্র কনের সামাজিক মর্যাদার বিষয়টি বিবেচ্য হতো। কিন্তু যেহেতু তর্কিত কাবিননামায় দেনমোহরের পরিমানটি সুস্পষ্টভাবে লেখা আছে, কাজেই এক্ষেত্রে সামাজিক মর্যাদার বিষয়টি অগ্রাধিকার পাবে না।

উপর্যুক্ত আলোচনা পর্যালোচনায় শেষে অত্র আদালতের সিদ্ধান্ত এই যে, নালিশী কাবিননামায় উল্লেখিত দেনমোহরের পরিমান দালিলিক এবং

মৌখিক সাক্ষ্যের মাধ্যমে ১৪ লাখ মর্মে প্রমাণিত হয়েছে, বিধায় বাদীর মামলাটি খারিজ যোগ্য।”

It is proper and appropriate to mention here that in the midst of hearing of the appeal, we have directed the concerned Nikah registrar, the defendant No.2 of the suit, to produce the original volume of the Nikah register of the marriage dated 16.05.2011 before the Court within one month from date i.e. 04.06.2024 by allowing an application filed by the learned counsel for the appellant. Accordingly, the Nikah registrar appeared before us on 04.11.2024 with original volume of the concerned Nikah register and presented the same before us. We have perused the volume and found no irregularities therein. We have observed no difference in writing, no over writing, no erasing or use of fluid and we also examined him in open Court about the alleged connivance and enhancement of the dower amount, which he vehemently denied.

A marriage is a social and civil contract between the parties who sign the same. In this case, the marriage was solemnized by

signing the Nikahnama on 16.05.2011 by the plaintiff and the defendant No.1, at the time the plaintiff was at the age of 22 and all the witnesses were also at their majority and there was no other allegation of their incompetency. So, a major and sound person can enter into an agreement with any lawful terms and condition therein and he will have to abide by the same.

The lower dower amount of the sister, or lower income socio-economic condition or the family status cannot be a restriction factor for fixing a higher for in the instant case. Thus, the submissions have no legs to stand.

Considering the facts and circumstances of the case as well as the evidences so adduced by the parties, we are of the view that the learned judge of the Trial Court meticulously weighing the evidences and dismissed the suit. Therefore, we are of the opinion that there is no earthly reason to interfere with the findings of the Court below sitting on an appellate jurisdiction.

In view of the discussions made in foregoing paragraphs, we find no substance in the appeal, rather, we find merit and force

in the submissions of the learned advocate for the defendant respondent.

In the result, the **appeal is dismissed** without any order as to cost.

Communicate a copy of this judgment along with the Lower Court Records (L.C.R.) to the court of learned Joint District Judge, 2nd Court, Rajbari at once.

Kazi Md. Ejarul Haque Akondo, J.

I agree

Syed Akramuzzaman
Bench officer