IN THE SUPREME COURT OF BANGLADESH

HIGH COURT DIVISION

(CIVIL REVISIONAL JURISDICTION)

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.3676 OF 2023

In the matter of:

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

And

Md. Mintu Bepari

.... Petitioner

-Versus-

Sarmin Begum and others

…. Opposite parties

Mr. S. M. Rezaul Karim with

Mr. Abdul Bari, Advocates

…. For the petitioner.

Mr. Utpal Biswas, Advocate

…. For the opposite party No.1.

Heard on 05.12.2004 and 15.12.2024.

Judgment on 04.02.2025.

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued calling upon the opposite parties to show cause as to why the impugned judgment and decree dated 25.08.2022 passed by the learned Joint District Judge, 1st Court, Faridpur in Family Appeal No.18 of 2019 allowing the appeal in part and thereby reversing the judgment and decree dated 31.07.2019 passed by the learned Judge, Family court (in charge) Additional Sadar No.1, Faridpur in Family Suit No.1, Faridpur in Family Suit No.55 of 2018

dismissing the suit should not be set aside and or/pass such other or further order or orders as to this Court may seem fit and proper.

Facts in short are that the opposite parties as plaintiffs instituted above suit for recovery of maintenance for herself and her minor girl plaintiff No.2 alleging that defendant married plaintiff No.1 on 04.09.2012 by registered Kabinnama. After a few years misunderstanding arose and plaintiff No.1 and defendant agreed to dissolve their marriage by khola talak and accordingly they registered khola talak on 05.04.2015 but no notice was issued under Section 7(1) of the Muslim Family Law Ordinance, 1961 to the concerned Chairman of the Union Parishad. Consequently above khola talak did not come into effect. Plaintiff No.1 and defendant made a settlement resumed conjugal life and again by solemnized their marriage on 15.11.2017 and out of above wedlock plaintiff No.2 was born on 12.10.2017. The defendant did not pay maintenance for the plaintiffs since 14th September 2018.

Defendant contested above suit by filing a written statement alleging that he married the plaintiff by registered Kabinnama and subsequently they mutually agreed to dissolve above marriage by khola talak and accordingly registered above khola talak on 05.04.2015. The defendant paid deferred dower and maintenance to plaintiff No.1. The defendant did not maintain any relation with plaintiff No.1 after above date nor he remarriage plaintiff No.1 on 15.11.2016. He is not the biological father of plaintiff No.2.

At trial plaintiffs examined four witnesses and documents of the plaintiffs were marked as Exhibit Nos.1 and 2. On the other hand defendant examined three witnesses and documents of the defendant were marked as Exhibit No.”Ka”.

On consideration of facts and circumstances of the case and evidence on record the learned Judge of the Family Court dismissed the suit.

Being aggrieved by above judgment and decree of the trial Court above plaintiff preferred Family Appeal No.18 of 2019 to the District Judge, Faridpur which was heard by the learned Joint District Judge, 1st Court who allowed the appeal, set aside of the judgment and decree of the Family Court and decreed the suit.

Being aggrieved by and dissatisfied with above judgment and decree of the Court of Appeal below above respondent as petitioner moved to this Court with this revisional application under Section 115(1) of the Code of Civil Procedure and obtained this Rule.

Mr. S. M. Rezaul Karim, learned Advocate for the petitioner submits that admittedly the defendant married plaintiff No.1 on 04.09.2012 but subsequently they mutually agreed to dissolve their marriage by khola talak which was registered on 05.04.2015. The defendant paid outstanding dower and maintenance to plaintiff No.1. Since above talak was initiated by plaintiff No.1 and became effective on consent of the plaintiff and the defendant the learned Judge of the Court of Appeal below rightly held that there was no necessity of

service of notice under Section 7(1) of the Muslim Family Law Ordinance, 1961. As far as the remarriage of plaintiff No.1 with the defendant on 15.11.2016 is concerned the plaintiff could not prove above claim by legal evidence. The person who allegedly solemnized above remarriage was not examined as a plaintiff witness. PW2 Hashem Mollah and PW3 Shakib Bepary were examined to porve above remarriage but none of them stated that he was present at the time of remarriage of plaintiff No.1 with the defendant. On consideration of above materials on record and the learned Judge of the Family Court rightly dismissed the suit. On an application filed by the appellant the Court of Appeal below arranged DNA profiling of plaintiff No.2 with the defendant and on conclusion of above examination a report was submitted which was marked as Exhibit No.3. In above DNA report it was stated that plaintiff No.2 was the biological daughter of the defendant. In view of above report the petitioner recognized the parentage of plaintiff No.2 and agreed to pay her maintenance. But plaintiff No.1 she is not entitled to get maintenance.

On the other hand Mr. Utpal Biswas, learned Advocate for opposite party No.1 submits that the learned Judge of the Court of Appeal below committed serious illegality in holding that there was no legal necessity of service of notice under Section 7(1) of the Muslim Family Ordinance, 1961 since plaintiff No.1 and the defendant on mutual consent dissolved their marriage by khola talak. In all types of talaks issuance of notice under Section 7(1) of the Muslim Family

Ordinance, 1961 is mandatory. Since no notice was served under Section 7(1) of the Muslim Law Ordinance, 1961 above khola talak did not come into force as has been provided in Section 7(3) of the above Ordinance. As such the marriage of the defendant and plaintiff No.1 continues. It has been proved that plaintiff No.2 is a biological child of the defendant. On consideration of above materials on record the learned Judge of the Court of Appeal below has rightly decreed the suit which calls for no interference.

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

It is admitted that the defendant married plaintiff No.1 by a registered Kabinnama on 04.09.2012 and they wanted to dissolve above marriage by khola talak and accordingly plaintiff and defendant jointly registered a khola talak on 05.04.2014. It is also admitted that plaintiff No.2 was born on 12.10.2017 and pursuant to a DNA profiling it was proved that defendant is the biological father of plaintiff No.2 and the defendant has accepted above DNA profiling report and recognized plaintiff No.2 as his biological daughter.

It has been alleged in the plaint and in the evidence of plaintiff No.1 as PW1 that after their misunderstanding was resolved the defendant and plaintiff No.1 resumed their conjugal life again and consequently plaintiff No.2 was born. The defendant denied both remarriage of the plaintiff and fatherhood of plaintiff No.2. But the DNA profiling examination report proved that defendant was the

biological father of plaintiff No.2 and the defendant has accepted above report.

There is no case of the defendant that plaintiff No.2 was born due to his extramarital sexual relation with plaintiff No.1.

It has been alleged in the plaint that no notice under Section 7(1) of the Muslim Family Law Ordinance, 1961 was issued of above khola talak upon the concerned Union Parishad Chairman. In the written statement the defendant did not deny above claim of the plaintiff that no notice under Section 7(1) of the Muslim Family Law Ordinance, 1961 was issued about above khola talak.

Learned Judge of the Court of Appeal below held that since the marriage of plaintiff Nos.1 and the defendant was dissolved by khola talak the service of notice under Section 7(1) of the above Ordinance upon the concerned Union Parishad was not required. Above views of the learned Judge of the Court of Appeal below as to khola talak and the provision of Section 7(1) of the Muslim Family Law Ordinance, 1961 appears to be misconceived. According to the Sharia Law only a Muslim husband has the right to dissolve the marriage by talak. The process of dissolution of the marriage by khola talak is initiated by the wife and she may offer valuable considerations to the husband to get his consent. But finally the talak can be given by the husband. Section 7(1) of the Muslim Family Law Ordinance, 1961 provides that any man who wishes to divorce his wife shall by talak in any form whatsoever shall give notice in writing to the Chairman with a copy to the wife. All

forms of talak are covered by Section 7(1) and issuance of above notice is mandatory. The consequence of non issuance of above notice shall make the talak ineffective. Section 7(3) of above Ordinance provides that no talak shall be effective until 90 days have expired after delivery of above notice under Sub-section 1 to the Chairman. The purpose of issuance of notice of talak to the Chairman is to enable him to initiate a reconciliation process so that the talak may be recalled and the parties resume conjugal life. The intention of the legislature is to prevent unnecessary and avoidable divorce of marriage by talak and protection of the families. Since no notice of above khola talak was issued under Section 7(1) of the Muslim Family Law Ordinance, 1961 above khola talak was not legally effective and the marriage of plaintiff No.1 and the defendant still exists.

The defendant has paid outstanding dower and maintenance of plaintiff No.1 on 05.04.2015. The learned Judge of the Court of Appeal below fixed the monthly maintenance of plaintiff No.2 at the rate of Taka 7,000/- which appears to be excessive in view of the fact that the defendant is a day laborer. As such the monthly maintenance of both the plaintiffs is fixed at Taka 4,000/- each with annual enhancement at the rate of 4%.

On consideration of above facts and circumstances of the case and materials on record I hold that the ends of justice will be met if the impugned judgment and decree of the Court of Appeal below is affirmed with above modification.

In the result, the impugned judgment and decree dated 25.08.2022 passed by the learned Joint District Judge, 1st Court, Faridpur in Family Appeal No.18 of 2019 is upheld with modification. The registered khola talak dated 05.04.2015 was not legally effective and the marriage of the defendant with plaintiff No.1 still exists and plaintiff Nos.1-2 shall get monthly maintenance at Taka 4,000/- each which shall be increased annual at 4% and this Rule is discharged with above modification in the impugned judgment of the Court of Appeal below.

Send down the lower Court's records immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER