

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

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.3974 OF 2023

In the matter of:

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

And

Md. Shoabul Islam

... Petitioner

-Versus-

Nasrin Ali Mila

.... Opposite party

Mr. Syed Fazle Elahi with

Mr. Sudipta Arjun, Advocates

.... For the petitioner.

Mr. Md. Jahangir Hossain, Advocate

.... For the opposite party.

Heard and Judgment on 13.03.2025.

On an application under Section 115(1) of the Code of Civil Procedure this Rule was issued calling upon the opposite party to show cause as to why the impugned judgment and decree dated 23.05.2023 passed by the learned Family Appellate Court and Additional District Judge, 5th Court, Sylhet in Family Appeal No.79 of 2022 dismissing the appeal and thereby affirming the judgment and decree dated 11.10.2022 passed by the learned Family Court, Sadar, Sylhet in Family Suit No.40 of 2022 decreeing the suit in part 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 party as plaintiff instituted above suit for recovery of unpaid dower and maintenance alleging that defendant married her by a registered Kabinnama on 18.04.2018 for dower of Taka 20,00,000/- out of which Taka 5,00,000/- was paid and above marriage was consummated. The defendant has divorced the plaintiff on 14.10.2018. But did not pay dower and maintenance.

Defendant contested the suit by filing a written statement alleging that the plaintiff married the defendant concealing the facts that she was suffering from serious decease which made her unable to bear child. She also concealed her previously marriage with Hafizur Rahman. Subsequently there was a compromise between plaintiff and defendant and pursuant to above compromise defendant paid Taka 10,00,000/- for outstanding dower of the plaintiff on 17.05.2018.

At trial plaintiff and defendant examined two witnesses each. Documents produced and proved by the plaintiff were marked as Exhibit No.1 and those of the defendant were marked as Exhibit No."Ka" and "Kha".

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

Being aggrieved by above judgment and decree of the Family Court above defendant as appellant preferred Family Appeal No.79 of 2022 to the District Judge, Sylhet which was heard by the learned

Additional District Judge, 5th Court who dismissed above appeal and affirmed the judgment and decree of the trial Court.

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

Mr. Syed Fazle Elahi, learned Advocate for the petitioner submits that the plaintiff was married to one Hafizur Rahman and concealing above fact she married the defendant without divorcing above Hafizur Rahman. Since the plaintiff married the defendant during continuation of her previous marriage with above Hafizur Rahman the subsequent marriage of the defendant was void and unlawful. As such the plaintiff was not entitled to get a decree for dower or maintenance. The learned Advocate further submits that if the judgment and decree of the Court of Appeal below is upheld then the payment schedule as was fixed by the trial Court may be re-fixed with a forward date line.

On the other hand Mr. Md. Jahangir Hossain, learned Advocate for the opposite party submits that the plaintiff married the defendant during continuation of her previous marriage with Hafizur Rahman is false and outside of the pleadings. No evidence was adduced at trial to substantiate above claim. Admittedly the defendant married the plaintiff by a registered Kabinama on 18.04.2018 for dower of Taka 20,00,000/- out of which Taka 5,00,000/- was paid. The defendant has divorced the plaintiff but he did not pay above unpaid dower or

maintenance. On consideration of facts and circumstances of the case the learned Judges of both the Courts below rightly and concurrently held that the plaintiff was entitled to get Taka 15,00,000/- as unpaid dower and maintenance for iddat period at the rate of Taka 5,000/- per month 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 the plaintiff by a registered Kabinnama on 18.04.2018 and dower of above marriage was fixed at Taka 20,00,000/- out of which Taka 5,00,000/- was paid. It is also admitted that the defendant has divorced the plaintiff by talak on 14.10.2018 and the same was effective.

The defendant claimed that on compromise with the plaintiff the unpaid dower of the plaintiff was refixed at Taka 10,00,000/- which was paid to the plaintiff on 17.05.2018. But on consideration of evidence on record the learned Judges of the both the Courts below concurrently held that the defendant could not prove by legal evidence that the dower was refixed to Taka 10,00,000/- and the defendant paid dower to the plaintiff on 17.05.2018 and above concurrent findings appears to be based on legal evidence on record. As such this Court cannot in its revisional jurisdiction interfere with above concurrent findings of fact.

As far as the submissions of the learned Advocate for the petitioner that the plaintiff not only concealed her previous marriage with Hafizur Rahman she in fact married the defendant during

continuation of above marriage with Hafizur Rahman is concerned above submission is totally out of pleadings. In his written statement defendant did not claim that the previous marriage of the plaintiff with Hafizur Rahman was in force when the plaintiff married the defendant nor any evidence was adduced at trial to substantiate above claim.

In above view of the facts and circumstances of the case and evidence on record I am unable to find any illegality or irregularity in the impugned judgment and decree passed by the learned Judge of the Court of Appeal below nor I find any substance in this Civil Revisional application under Section 115(1) of the Code of Civil Procedure and the Rule issued in this connection is liable to the discharge.

In the result, the Rule is discharged but the defendant shall pay the decretal money by fifteen equal monthly installments which shall start from 1st May 2025 and if the plaintiff fails to pay above decretal money the plaintiff shall get the same through Court by execution of the decree.

Send down the lower Court's records immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER