

IN THE SUPREME COURT O1544155F BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)

Present:

Mr. Justice S M Kuddus Zaman

CIVIL REVISION NO.262 of 2024

In the matter of:

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

And

Md. Jamal Uddin

... Petitioner

-Versus-

Most. Tahmina Akhter and others

... Opposite parties

Mr. Md. Ashraful Hasan Siddique, Advocate

... For the petitioner.

Mr. Hasan Mohammad Reyad, Advocates

... For the opposite parties.

Heard on 07.01.2025 and Judgment on 08.01.2025.

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 order dated 15.10.2023 passed by the learned Additional District Judge, 5th Court, Chattogram in Family Appeal No.84 of 2023 should not be set aside and/or pass such other or further order or as to this Court may seem fit and proper.

Facts in short are that the opposite party as plaintiff instituted Family Suit No.31 of 2017 for recovery of maintenance both for herself and her two minor daughters. Above suit was decreed on contest and challenging the legality and propriety of above decree defendant as

appellant preferred Family Appeal No.138 of 2018 to the District Judge, Chattogram which was heard by the learned Additional District Judge who allowed above appeal in part and reduced the rate of enhancement of above maintenance at 5% per annum instead of 30%.

The plaintiff filed Decree Execution Case No.106 of 2018 for execution of above decree and the judgment debtor by installments has deposited Taka 10,48,000/-. Plaintiff No.1 filed a petition in above executing Court for realization of her deferred dower of Taka 4,00,000/- which was allowed and the executing Court directed for payment of above deferred dower and due installments of the maintenance.

Challenging the legality and propriety of above order of the learned Judge of the Family Court the judgment debtor defendant preferred Family Appeal No.84 of 2023 to the District Judge, Chattogram which was heard by the learned Additional District Judge who allowed above appeal in part and directed the appellant judgment debtor defendant to pay above deferred dower by 20 equal monthly installments.

Challenging the legality and propriety of above judgment and order of the learned Additional District Judge above appellant as petitioner moved to this Court and obtained this Rule.

Mr. Md. Ashraful Hasan Siddique, learned Advocate for the petitioner submits that the financial condition of the petitioner has seriously deteriorated and he is earning his livelihood by driving a auto rickshaw and it is not possible for him to pay remaining dower money by 20 equal monthly installment which amounts to Taka 20,000/= per months. The petitioner is not capable to pay Taka 20,000/- per month alongwith the maintenance to his minor daughters. The learned Advocate further submits that instead of 20 monthly installment the defendant may be allowed to pay remaining dower of Taka 4,00,000/- by 50 equal monthly installment.

On the other hand Mr. Hasan Mohammad Reyad, learned Advocate for the opposite parties submits that the petitioner is a businessman and he is the owner of valuable properties and transports and he is capable to pay above deferred dower/-. The petitioner wants to delay the payment of deferred dower to create trouble for the opposite party. The learned Judge of the Court of the Appeal below has allowed the petitioner to pay above deferred dower by 20 installments and the opposite party accepted that. As such the instant Rule is liable to be discharged.

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

Admittedly plaintiff No.1 was married by the defendant and out of above wedlock two daughters plaintiff No.2 and 3 were born and above plaintiffs instituted Family Suit No.32 of 2017 for recovery of their maintenance and the suit was decreed on contest and an appeal preferred against above judgment and decree of the trial Court was allowed in part and defendant has already paid Taka 10,48,000/- out of above decretal money.

It is also admitted that the dower of plaintiff No.1 was fixed at Taka 8,00,000/- in the kabinnama out of Taka 4,00,000/- was paid and Taka 4,00,000/- was deferred dower and opposite party No.1 submitted a petition to the Family Court for realization of above deferred dower of Taka 4,00,000/- which was allowed and defendant has already paid Taka 65,000/- of above deferred dower. As such opposite party No.1 is entitled to get Taka 3,35,000/- of above deferred dower.

It is well settled that deferred dower is payable by the husband on the demand of the wife or after divorce of the marriage either by talak or by death of the husband. There is no provision in the Muslim Law for payment of the deferred dower by the husband by installment but taking into consideration the financial capacity of the defendant the learned Court of Appeal below has provided the petitioner an opportunity to pay above deferred dower of Taka 4,00,000/- by 20

equal monthly installment and the opposite party had accepted above order of the Court of appeal below and received partial payment.

The learned Advocate for the petitioner submits that due to deterioration of financial condition the petitioner may be allowed to pay remaining deferred dower of Taka 3,35,000/- by 50 monthly installments. On the other hand the learned Advocate for the opposite party submits that the opposite party would accept if the petitioner is allowed to pay above remaining deferred dower of Taka 3,25,000/-by 25 equal monthly installments.

On consideration of facts and circumstances of the case and above consent of opposite party No.1 in my view the ends of justice will be met if the impugned judgment and order passed by the learned Additional District Judge is modified and the petitioner is allowed to pay above Taka 3,35,000/- of the deferred dower by 25 equal monthly installments.

In above view of the facts and circumstances of the case and materials on record I find substance in this revisional application under Section 115(1) of the Code of Civil Procedure and the Rule issued in this connection may be disposed of accordingly.

The impugned judgment and order dated 15.10.2023 passed by the learned Additional District Judge, 5th Court, Chattogram in Family

Appeal No.84 of 2023 is modified and the petitioner is allowed to pay remaining deferred dower of Taka 3,35,000/- by 25 equal monthly installment. The petitioner shall also continuously pay the remaining maintenance of his minor daughters, plaintiff Nos.2 and 3. If the plaintiff fails to pay any installment the plaintiff shall get the total deferred dower recovered in accordance with law.

However, there will be no order as to costs.

This Rule is accordingly disposed of.

Send down the lower Courts record immediately.

MD. MASUDUR RAHMAN
BENCH OFFICER