In the Supreme Court of Bangladesh
High Court Division
(Civil Revisional Jurisdiction)

Present:

Mr. Justice Md. Riaz Uddin Khan

Civil Revision No. 4761 of 2000

IN THE MATTER OF:

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

-And-

In the Matter of:

Md. Khalekuzzaman

... Petitioner

Versus

Mst. Mahamuda Beum

...Opposite party

None Appears

Judgment on: 04.12.2023.

Md. Riaz Uddin Khan, J:

Rule was issued calling upon the opposite party to show cause as to why the impugned judgment and decree dated 18.05.2000 passed by the Sub-ordinate Judge, First Court, Jhalakati in Fmily Appeal No. 10 of 1999 allowing the appeal in part upon modifying the judgment and decree dated 27.07.1999 passed by the Senior Assistant Judge and Family Court, Jhalakati in Family Suit No. 4 of 1998 should not be set aside and or such other order or orders passed as to this court may deem fit and proper.

The facts relevant for the purpose of disposal of this rule, in brief, is that the opposite party No. 1, as plaintiff, instituted a suit being Family Suit No. 4 of 1998 in the Court of Senior Assistant Judge and Family Court, Jhalakhati against the petitioner for dower of Tk.

40,000/- and maintenance of Tk. 36.000/- for herself and for her two minor sons, contending *inter alia*, that the plaintiff, was married to the defendant on 14.5.1989 by registered Kabin-nama; the plaintiff was residing with her husband and two sons namely Mijanur Rahman, of 8 years and Saddam, of 4 years of age were born to their wedlock; the plaintiff filed GR Case No. 39 of 1997 under Dowry Prohibition Act and later on the said case was withdrawn; the defendant did not pay any dower money to the plaintiff at the time of marriage; the defendant drove away the plaintiff from his house with the children and since then the plaintiff has been residing in her father's house from 26.07.1996; the plaintiff filed the suit claiming maintenance of Tk. 1000/- per month for herself and Tk. 500/- + 500/- =1000/- per month for their two children and dower of Tk. 40,000/- which is in total Tk.76,000/-.

Defendant No. 1 contested the suit by filing written statement denying all the material allegation to the plaint contending *inter alia*, that after marriage the plaintiff used to lead a life not approved by Sharia and taking advantage of defendant's absence from his home occasionally used to go to her father's house and she went to her father's house on 11.10.1996; the defendant sent his nephew Feroj and sister's husband A. Mannan to bring his wife back but in vain thereafter he sent a legal notice to the plaintiff on 2.11.1996 to come back but the plaintiff neither replied nor came to her husband's house;

the plaintiff was earlier married to one Majibul Haque, but she and her relations concealed the said factum of marriage and managed to solemnized the marriage with the defendant although the said marriage was not dissolved; soon after the defendant came to know about the earlier marriage he divorced her on 20.12.1996 and notice of the divorce was sent to the plaintiff and the Chairman of the concerned Union Parishad in due time; the defendant claimed the custody of his children and dismissal of the suit.

The Assistant Judge decreed the suit awarding Taka 13,600/- as maintenance and Taka 40,000/- as dower money by his judgment and decree dated 27.7.1999 against which the defendant preferred Family Court Appeal No.10 of 1999 before the court of District Judge, Jhalakati and on transfer the learned Sub-ordinate Judge, First Court, Jhalakati, allowed the appeal in part modifying the judgment and decree of the Trial Court and awarded dower of Taka 20,000/- and maintenance of Taka 3,000/- for the iddat period of the plaintiff and the maintenance of Taka 17,000/- for two minor sons.

In this revisional application the petitioner stated that the plaintiff was earlier married to Md. Majibul Haque and the said marriage was registered on 16.12.1987 which has not yet been dissolved either by divorce or by death. The plaintiff and her relations concealed the factum of the said marriage and the plaintiff could not have any notice or knowledge of the said marriage

and as such the alleged marriage of the plaintiff and the defendant was solemnized on 14.5.1989 before the Nikah Registrar, Kowkhali, Pirojpur wherein in column 5 of the Kabinnama the plaintiff fraudulently managed to state her status as ‘Kumari’ and as such the alleged marriage between the plaintiff and defendant is void *abinitio* and as soon as the defendant came to know of the plaintiff’s earlier marriage which has not yet been dissolved, the defendant had no other alternative than to divorce her.

The petitioner’s further contention is that he, as plaintiff, instituted Title Suit No. 48 of 2000 in the court or Assistant judge, Mongla, Bagerhat, praying for declaration that the Nikah – nama dated 14.5.1989 constituting marriage between the plaintiff (the present petitioner) and the defendant (the present opposite party) is collusive, fraudulent, illegal, in-operative and not binding upon the plaintiff and the said suit is pending. As the alleged marriage is void, *abinitio*, the learned courts below committed error of law in awarding dower and maintenance in pursuance of the said marriage.

No one appears to support or oppose the rule when the matter was taken up for hearing.

It appears from the case record that after obtaining rule and interim order, the petitioner never appeared before this Court or took any step for hearing the rule except on 25.01.2001 praying for out of list of the matter. It further appears that at the time of issuance of Rule a single

Bench of this Court was pleased to stay operation of the Judgment and decree of the lower appellate court for a period of 03(three) months on condition of the defendant's payment of the decreetal amount in 08(eight) installments within 08(eight) months payable from December, 2000. The petitioner did not pay the decreetal amount on installments as ordered by this Court and even failed to pay any installment. The Rule was issued on 23.10.2000 and in the mean time more than 23 years have been passed.

It transpires from record that the petitioner's claim of the marriage as void *abinitio* on the ground of opposite party's earlier marriage with another person was mentioned in the written statement and considered by both the courts below and the petitioner could not prove this fact. This Court sitting in revisional jurisdiction ordinarily should not disturb the concurrent finding of fact by the courts below, unless there is misreading. In the present case I do not find any reason to interfere with the judgments and decrees passed by the courts below. Moreover, the petitioner utterly failed to comply with the interim order passed by this Court at the time of issuance of the Rule.

In such facts and circumstances of the case, I do not find any merit in the Rule which has no legs to stand.

In the result the rule is **discharged**. The judgment and decree dated 18.05.2000 passed by the Sub-ordinate Judge, First Court, Jhalakati in

Fmily Appeal No. 10 of 1999 allowing the appeal in part upon modifying the judgment and decree dated 27.07.1999 passed by the Senior Assistant Judge and Family Court, Jhalakati in Family Suit No. 4 of 1998 is hereby affirmed. The order of stay passed at the time of issuance of rule stands vacated.

Send down the Lower Court Records at once along with a copy of this judgment.

Ziaul Karim
Bench Officer