

Court No. - 81

Case :- MATTERS UNDER ARTICLE 227 No. - 6508 of 2023

Petitioner :- Smt. Kela Devi

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Nidhi Agarwal, Abhay Pratap Singh

Counsel for Respondent :- G.A.

Hon'ble Mrs. Jyotsna Sharma, J.

1. Heard Sri Abhay Pratap Singh, learned counsel for the petitioner and Sri L. D. Rajbhar, learned A.G.A. for the State and perused the record.

2. This petition under Article 227 of the Constitution of India has been filed praying for following reliefs:-

"(i) direct the court below to recover the award amount from the respondent no.2 and release in favour of the petitioner.

(ii) direct the respondent no.2 to rest property attach and occasion to pay the award amount order dated 25.3.2017.

(iii) direct the court below to attached the property was sold by respondent no.2 on 12.02.2020 after award dated 25.3.2017."

3. The submissions of the petitioner in nutshell are that husband of the petitioner sold his property in 2020 only to avoid payment of maintenance. The petitioner Smt. Kela Devi was granted Rs.2,500/- per month and her daughter Rs.1000/- per month as maintenance by order of the court of Additional Principal Judge, Family Court, Allahabad passed on 25.03.2017. The opposite party has not paid any money since then though execution proceedings drawn under Section 128 Cr.P.C. are pending since 2017.

4. The only grievance of the petitioner against respondent no.2 is that he has been avoiding payment of maintenance by adopting different tactics and that the court concerned has not been able to recover the maintenance amount.

5. From perusal of the ordersheet drawn by the court concerned, it appears that opposite party no.2 Gyanchandra Yadav was arrested for non payment of Rs.8,50,000/-. He refused to pay any money and was remanded to civil imprisonment for 30 days, he was released thereafter but did not pay a single penny.

6. Section 125 (3) of the Code Of Criminal Procedure, 1973 is as below:-

"(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole, or any part of each months [allowance for the maintenance or the interim maintenance and expenses of proceeding,

as the case may be,] remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:"

7. Before me the counsel for the petitioners submits that the opposite side has certain property in his name, which can be attached and be auctioned for recovery of the maintenance amount, however the same has not been done. On making a query, the counsel for the petitioner has failed to show that in fact he gave any details of the property belonging/held by opposite side before the executing court to enable it to issue process for attachment of the same. Obviously the burden of giving details of property held by the opposite side lies on the petitioner/applicant only, otherwise the applicant cannot raise such a grievance. In my opinion, in case the requisite steps are taken by the petitioner/applicant to enable the court to pass some effective orders for recovery of maintenance amount, the court shall proceed as expected of it, in accordance with law.

8. In view of the circumstances, the court concerned is directed to pass effective orders for recovery of maintenance amount, provided the petitioner/applicant gives details of property i.e., movable or immovable and takes requisite steps and fully cooperate with the executing court. However, this should not be construed to mean that the court concerned is absolved of its duty to take effective steps and pass suitable orders for recovery of maintenance amount.

9. Accordingly, this petition is **disposed of**.

Order Date :- 1.11.2023

Asha