

Court No. - 81

Case :- MATTERS UNDER ARTICLE 227 No. - 7213 of 2023

Petitioner :- Pratima Modanwal And Another

Respondent :- Gulab Modanwal

Counsel for Petitioner :- Vinay Kumar Pandey

Hon'ble Mrs. Jyotsna Sharma,J.

1. Heard Sri G.N. Tripathi, Advocate holding brief for Sri Vinay Kumar Pandey, learned counsel for the petitioners.

2. *This petition under Article 227 of the Constitution has been filed claiming following relief:-*

"i) issue an order or direction directing the Additional Principal Judge, Family Court, First, Jaunpur to decide the Execution Case No. 1502 of 2021 (Pratima Modanwal and another Vs Gulab Modanwal) filed by the plaintiffs/petitioners Under Section 128 Cr.P.C. arising out from judgment and award dated 13/07/2021 passed in Maintenance Case No. 777 of 2017 (Pratima Modanwal and another Vs Gulab Modanwal) under section 125 Cr.P.C. within stipulated period."

3. Contention of the petitioners is that the petitioners/applicants filed an application under section 125 Cr.P.C. against the opposite party, which was finally decided on 13.07.2021 granting Rs. 4,000/- per month to petitioner/applicant no. 1 and Rs. 1,500/- per month to petitioner/applicant no. 2, as monthly maintenance. It is submitted that the opposite side has not paid a single penny in pursuance of aforesaid order. The petitioners/applicants, therefore, filed an execution proceedings in 2021 for recovery of arrears of maintenance of Rs. 2,64,000/-, however nothing has been recovered so far, therefore, the court below may be directed to decide the execution case in a time bound manner.

4. From the papers on record, it is revealed that the orders for recovery of maintenance amount through R.C. have been passed by the court concerned and that once the opposite side was arrested and was remanded to civil imprisonment of 30 days by order dated 15.03.2022, however he hasn't paid any amount. 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 petitioners 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 petitioners/applicants only, otherwise the applicants cannot raise such a grievance. The applicants assure that they shall give the details of such property before the court concerned. In my opinion, in case the requisite steps are taken by the petitioners/applicants 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.

5. In view of the circumstances, the court concerned is directed to pass effective orders for recovery of maintenance amount, provided the petitioners/applicants give details of property i.e., movable or immovable and take 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.

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

Order Date :- 1.11.2023/#Vikram/-