

Court No. - 89

Case :- APPLICATION U/S 482 No. - 37435 of 2023

Applicant :- Mohammad Fazal Ahmad Makki

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Mohd Aadil Siddiqui, Jeetendra Kumar Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Deepak Verma, J.

1. Heard Mohd. Aadil Siddiqui, learned counsel for the applicant and learned A.G.A. for the State.

2. The present 482 Cr.P.C. application has been filed to direct the court below to decide the matter on merit after providing an opportunity of hearing to the applicant in Case No. 356 of 2023 (Smt. Mariyam vs. Mohammad Fazal Ahmad Makki) under Section- 125 Cr.P.C., Police Station- Kotwali Nakhasa, District- Sambhal.

4. The contention of learned counsel for the applicant is that opposite party no.2 initiated a proceeding under section 125 Cr.P.C. against the applicant and the Family Court by order dated 26.07.2023 passed an ex-parte order against the applicant. The court fixed the date for ex-parte evidence as 28.08.2023. Counsel for the applicant further submits that on 28.08.2023, applicant moved an application to set-aside the order passed for ex-parte proceeding on 26.07.2023. The application of the applicant dated 28.08.2023 for setting-aside ex-parte proceeding was allowed with cost of Rs.1,000/- by learned Principal Judge vide order dated 28.08.2023. Counsel for the applicant next submits that he could not deposit the amount of Rs.1,000/- and the court proceeded ex-parte against him. He next submits that if the applicant is abstain from adducing evidence, which is relevant for disposal of case, the proceedings against the applicant would amount to abuse of process of court and moreover, the applicant is ready to deposit the cost amount.

5. Having considered the argument and perused the record, in the interest of justice, an opportunity of hearing must be given. The applicant is ready to deposit the cost amount so in view to fair disposal of case. The order dated 28.08.2023 is set-aside with the

direction that if applicant deposit Rs.1,000/- within **15 days** as the cost awarded by Family Court by order dated 28.08.2023, the order passed on 26.07.2023 as ex-parte proceeding against the applicant shall kept in abeyance and applicant shall be given opportunity to defend the case.

6. If applicant does not deposit Rs.1,000/- amount within 15 days, the order passed here having no effect.

7. The present application under Section 482 Cr.P.C. is, accordingly, **disposed of**.

Order Date :- 1.12.2023

Saif