

Court No. - 5

Case :- APPLICATION U/S 482 No. - 40222 of 2023

Applicant :- Aasheeta (Minor Daughter)

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

Counsel for Applicant :- Pradeep Kumar Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Piyush Agrawal,J.

1. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.

2. The present application under Section 482 Cr.P.C. has been filed with prayer to modify the impugned order dated 19.7.2023 passed by the Additional Principal Judge, Family Court No.5, District- Ghaziabad in Execution Case No.15/2023, under Section 125(3), arising out of Case No.764 of 2017 (Aasheeta Vs. Ashish Rastogi), under Section 125 Cr.P.C., Police Station- Kavi Nagar, District- Ghaziabad by directing the opposite party no.2 to pay interim maintenance to the applicant amounting to Rs. 25,000/- per month from the date of application i.e. 25.11.2017 in compliance of the order dated 19.06.2018 passed in Case No.764 of 2017.

3. Learned counsel for the applicant submits that the opposite party no.2 filed a Criminal Revision No. 2199 of 2018 in which interim order was passed on 13.7.2018 by referring the matter to the Mediation Centre and further a condition was imposed that the respondent no.2 shall pay the maintenance of Rs. 15,000/- to the applicant instead of Rs. 25,000/- per month, as directed by order dated 19.06.2018.

4. He next submits that further a rider was also imposed that in case of default of said amount, the interim order stands automatically vacated. He further submits that the opposite party no.2 did not adhere to the interim order and at first, committed default in August, 2019, when he had paid only Rs. 10,000/-. Subsequently, in March, 2020, he did not pay any amount and afterward, from March 2020 to October 2021, he paid Rs. 10,000/- per month. Thereafter again, committed default for the consecutive three months i.e. November, 2021, December, 2021 & January, 2022.

5. He further submits that once the interim order dated 13.7.2018 has not been complied with in its letter and spirit, the interim protection, granted to the opposite party no.2, stands automatically vacated as per the direction mentioned therein.

6. He next submits that once the interim order stands automatically vacated, opposite party no.2 was duty bound to pay Rs. 25,000/- as maintenance to the applicant, as per the direction given in the order dated 13.07.2018. He further submits that this facts have been brought to the notice to the court below, but while passing the impugned order, has wrongly observed that interim protection granted by this Court is still in operation and has not stand vacated.

7. On perusal of the records, it shows that the Smt. Shweta Kesarwani mother of Aasheet (Minor Daughter)-applicant and Shri Ashish Rastogi opposite party no.2 have entered in some compromise executed on 08.02.2022 out of the Court, whereby settlement was made, but so far as the payment of maintenance to the applicant was concerned, cannot be compromised in the said compromise.

8. After hearing the counsel for the applicant, no notice be issued to the respondent no.2 taking into consideration the nature of the order proposed to be passed.

9. In support of his submission, he has place reliance upon the judgment of Hon'ble Apex Court passed in the case of **Ganesh Vs. SudhirKumar Shrivastava & Ors. (Civil Appeal Nos. 4031-4032 of 2019), decided on 22.04.2019** and submits that the opposite party no.2 was duty bound to pay the maintenance.

10. On perusal of the records, it shows that the opposite party no.2 approached this Court by way of filing Criminal Revision No. 2199 of 2018 in which interim order was passed on 13.7.2018, which reads as under:-

"Heard Sri K.K. Tiwari, learned counsel for the revisionist and Mrs Akanksha Yadav Advocate holding brief of Sri Rakesh Pande, learned counsel for the opposite party no.2. learned AGA for the State.

This is an application filed under Section 482 Cr.P.C. seeking to quash the judgement and order dated 19.06.2018 passed by the Family judge, Family Court, Ghaziabad in Case No.764 of 2017 Aasheet Vs. Ashish Rastogi, under Section 125 CrPC, P.S. Kavi Nagar, District Ghaziabad.

Without going into the merits of the revisionist's case at this stage, since the matter is a family dispute between the sole revisionist and opposite party no.2, who are father and daughter (aged about three years (minor) through her mother Smt Sweta Kesarwani, wife of the revisionist, it is desirable that the parties be required to attempt a reconciliation of their differences with the assistance of Allahabad High Court Mediation and Conciliation Centre.

Learned counsel for the revisionist is in agreement with the aforesaid course of action.

It is directed that revisionist shall deposit a sum of Rs.25,000/- within three weeks from today with the Mediation Centre of which Rs.20,000/- would be paid to the opposite party no.2 for appearance before the Mediation Centre.

Upon deposit aforesaid being made good, the Mediation Centre will issue notice to both the parties fixing an early date for appearance and further proceedings before the Centre.

The Mediation Centre will submit their report within two months from the date parties are

required to first appear before the Centre. Thereafter the case shall be listed before appropriate Bench.

In the meanwhile, in case the revisionist pays a sum of Rs. 15,000/- per month from the date of order by the 10th of each month commencing from 10th August, 2018 regularly by that schedule the operation of the impugned order dated 19.6.2018 shall remain stayed.

In case of default the interim order shall stand automatically vacated."

11. On perusal of the afore-quoted order, it is apparent that in the event, any default of making payment of Rs. 15,000/- per month from the date of ***order by the 10th of each month commencing from 10th August, 2018 shall regularly by the same, interim order shall stands dismissed automatically.***

12. Further records shows that at first, the opposite party no.2 committed default in August, 2019, when he had paid only Rs. 10,000/-. Subsequently, in March, 2020, he did not pay any amount meaning thereby, the order dated 13.07.2018 has not been complied with by the opposite party no.2, therefore, the interim protection granted by this court has stand vacated automatically, in turn, the respondent no.2 was duty bound to pay Rs. 25,000/- per month as directed by order dated 19.06.2018, a copy of same has been annexed as **Annexure No.-1** to the present application. Accordingly, the court below has wrongly observed that the interim order granted is not in operation.

13. Considering the facts and on perusal of the records, this court is of the view that the impugned order dated 19.07.2023 is liable to be set aside and the same is hereby set aside and the matter is **remanded back** to the authority for passing a fresh order after hearing all the stakeholders in accordance with law within two months from the date of production of certified copy of this order.

14. Counsel for the applicant is directed to file the certified copy of this Order within ten days from today before the authority concerned.

15. Accordingly, the application is **disposed of**.

Date :- 1.11.2023

Pravesh Mishra