

Court No. - 28

Case :- APPLICATION U/S 482 No. - 9912 of 2023

Applicant :- Pankaj Kashyap @ Pankaj Kumar Kashyap

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home, Civil Sectt. Lko.
And Another

Counsel for Applicant :- Niraj Kumar Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Shree Prakash Singh,J.

Heard Sri Niraj Kumar Srivastava, learned counsel for the applicant as well as Sri Nirmal Kumar Pandey, learned AGA for the State and perused the material placed on record.

Instant application has been filed with prayer for quashing the entire proceeding of Criminal Case No.1276 of 2020 (Kirti Kashyap Vs Pankaj Kashyap) pending in the court of Civil Judge (junior division)/FTC (New), Lakhimpur Kheri, arising out of Complaint Case No.676 of 2018, till disposal of application for interim relief application in Criminal Appeal No.31 of 2022 and to direct the Civil Judge (Junior Division)/FTC (New), Lakhimpur Kheri not to proceed in pursuance of the order of recovery and warrant issued by the Civil Judge (junior division)/FTC (New), Lakhimpur Kheri.

Learned counsel for the applicant submits that in the month of January, 2019, the complaint was moved which was registered as Complaint No.350 of 2019 and the applicant was directed to pay the amount of Rs.50,000/- out of total amount of Rs.1,50,000/-. Thereafter, against the order, the applicant preferred an appeal bearing No.31 of 2022, before the Sessions Judge, Lakhimpur Kheri, which is pending consideration. He added that in the meantime, the execution proceeding is going on and the present applicant is being harassed unnecessarily.

He pointed out that the applicant moved an Application u/s 482 bearing No.3916 of 2022, wherein an order was passed on 24.06.2022, which is reproduced here-under.

"Heard learned counsel for the applicant.

The present application has been filed for quashing of order dated 07.06.2022 passed by Civil Judge (Junior Division)/FTC (New), Lakhimpur Kheri in Criminal Case No.1276 of 2020 (Keerti Kashyap v. Pankaj Kashyap) whereby the application filed by the applicant has been rejected.

Learned counsel for the applicant argues that against the order passed

under the Domestic Violence Act, an appeal has been preferred although the same is time barred.

Considering the fact that the appeal is pending consideration, the applicant would be at liberty to move an appropriate application before the appellate Court for early hearing of the stay application.

In case such an application is filed, the same shall be decided expeditiously, preferably within a period of two weeks from the date of filing of the said application.

*The present application is accordingly **disposed off.** "*

Referring to the aforesaid, he submits that the Appellate Court was directed by a Co-ordinate Bench of this court to decide the matter expeditiously, preferably within a period of two weeks from the date of filing of the application, thereafter the applicant moved an appropriate application before the Appellate Court but even after passing of long period of time, the same has not been decided yet and the execution proceeding is still going on. He next added that the trial would be a futile exercise once the execution proceedings is completed and that the interest of justice would be sub-served if this Hon'ble Court may be pleased to direct the Appellate Court to decide the application of the applicant within the stipulated time as may be fixed by this court.

On the other hand, learned AGA for the State has opposed the contention aforesaid and submitted that the application moved by the applicant has no merit, therefore, the instant application is liable to be dismissed.

Having heard the learned counsel for the parties and after perusal of the material available on record, it transpires that after order dated 16.01.2020, applicant deposited Rs.50,000/- out of the total amount of Rs.1,50,000/- which was awarded to him as maintenance. So far as the payment of maintenance is concerned, this Court has noticed that though there was an order directing the Appellate Authority to decide the application pending with the Appellate Court within a period of two weeks from the date of filing of such application but as per assertion of the learned counsel for the applicant, execution proceedings are still going on.

In view of the aforesaid submissions and discussions, the Appellate Court is hereby directed to decide the application moved by the applicant within a period of three weeks from the date of this order, in accordance with law.

Till the decision, further proceedings of execution case in pursuance of Complaint Case No.676 of 2018 shall remain in

abeyance.

However, it is open for the Court concerned to proceed after the aforesaid period of time.

In view of the above-said, the instant application is hereby **disposed of.**

Order Date :- 11.10.2023

Manoj K.