

Court No. - 29

Case :- CRIMINAL REVISION No. - 1219 of 2023

Revisionist :- Shyam Sundar

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Deptt. Lko. And 2 Others

Counsel for Revisionist :- Rakesh Kumar Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Mrs. Renu Agarwal,J.

1. Heard learned counsel for the revisionist and learned AGA for the State.
2. The present criminal revision under Section 19(4) Family Court Act is preferred against the impugned judgment and order dated 06.04.2023 as well as order dated 18.09.2023 passed by Additional Principal Judge-III ,Family Court, District-Sultanpur, in Criminal Misc. Case No. 455 of 2022 under Section 126(2) Cr.P.C. in respect of application for recall of the order dated 11.10.2019 which was passed in the application under Section 125 Cr.P.C. filed by the Respondent No. 2 and 3.
3. It is submitted that ex-parte order for maintenance was passed against the revisionist vide order dated 11.10.2019. It is further submitted that the court below directed the revisionist to pay Rs. 3,000/- to the wife of the revisionist and Rs. 1,000/- to the son of the revisionist as maintenance per month. When the revisionist came to know about the proceedings, he moved an application under Section 126(2) Cr.P.C. for setting aside the order dated 11.10.2019 which was allowed by the court concerned subject to deposit of cost of Rs. 50,000/-. It is contended that revisionist is a labour involved in work of settling Tiles on day to day basis and the cost imposed upon him is beyond his financial capacity. It is next contended that when he could not appear in the court below due to illness, the court issued recovery warrant against the revisionist, therefore, both the orders dated 06.04.2023 and 18.09.2023 are challenged by way of instant revision with a prayer to set-aside the orders dated 06.04.2023 as well as order dated 18.09.2023.

4. I have heard the rival submissions advanced on behalf of the parties and perused the entire material brought on record.

5. It transpires that in the non presence of revisionist, the ex-parte order for payment of maintenance was passed which was set-aside by order dated 06.04.2023 subject to deposit of fine of Rs. 50,000/-. Revisionist has paid no cost neither he appeared in the Court. During the course of the argument, learned counsel for the revisionist submitted that revisionist wants to live with opposite party No. 2 and 3 and, in respect of this, he has filed a civil suit for restitution of conjugal rights under Section 9 of the Hindu Marriage Act which was dismissed in default. It appears that the revisionist has filed the civil suit under Section 9 of the Hindu Marriage Act, however, he did not pursued that civil suit also. Opposite party No. 2 is living separately since then and not a single penny has been paid to her by the revisionist.

6. Law mandates that both the parties should be provided reasonable opportunity of being heard. If such a heavy cost is imposed on litigant, it will amount to deny him legal remedy. Cost of Rs. 50,000/- is exorbitant and it will serve no purpose if it is deposited in the state funds, hence, **revisionist is directed to pay Rs. 50,000/- towards the maintenance to opposite party No. 2 which shall be adjusted towards the total amount due to the revisionist.**

7. In view of the aforesaid observations and direction, instant revision is finally **disposed of.**

(Renu Agarwal,J.)

Order Date :- 2.11.2023

Karan