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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. 2499/2016 & CrI.M.A. 10750/2016 (stay)

TANVEER ALAM @ GUDDU

..... Petitioner

Represented by: Mr. Javed Ahmad, Mr. Pardeep
Kumar, Advs.

versus

RAFAT JAMIL

..... Respondent

Represented by:

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

19.07.2016

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By the present petition the petitioner challenges the order dated 2nd April, 2016 whereby for non-payment for a sum of ₹4 lakhs warrants of arrest were issued against the petitioner, who is the judgment debtor.

The contention of learned counsel for the petitioner is that a sum of ₹5000/- per month was fixed as maintenance in the complaint under Section 125 Cr.P.C. for which the respondent filed an execution petition. The said execution petition was dismissed for non-prosecution on 20th February, 2009. Thereafter the respondent filed a fresh execution petition in the year 2012 being Execution No.22/2012. The said application was also dismissed for non-prosecution by the learned family Court on 18th October, 2014. The respondent filed a restoration application wherein without restoring Execution No.22/2012 learned family Court passed the order impugned in the present petition issuing warrants against the petitioner.

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Heard learned counsel for the petitioner. A perusal of the order sheet would reveal that after Execution No.22/2012 was dismissed for non-prosecution on 18th October, 2014 the respondent filed an application for restoration of the execution petition which came up for hearing before the learned family Court on 7th November, 2014. Notice in the application was issued to the petitioner, who entered appearance on 3rd December, 2014. The matter was listed for arguments and thus without technically restoring the execution petition, the learned Principal Judge after hearing arguments on behalf of the parties passed the order impugned on 2nd April, 2016 issuing warrants of arrest.

A perusal of the order sheet would reveal that there is no order of the Court restoring the execution petition, however in view of the fact that after the petitioner entered appearance, the matter proceeded on merits, the same would be only a technical irregularity. The import of the order is clear. The family Court had restored the execution petition but failed to note the same in the order sheet and proceeded with the matter. I find no reason to quash the order impugned on this technical irregularity committed by the learned family Court.

Petition and application are accordingly dismissed.

MUKTA GUPTA, J.

JULY 19, 2016
‘ga’

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