

10.12.2020
Ct. 30
SL.3
KS

CRR 2032 of 2019
With
IA No. CRAN 1/2020 (Old No. CRAN 806 of 2020)
Sri Vishal Jaiswal
-Vs.-
Namrata Jaiswal & Anr.
(Via Video Conference)

Mr. Nilanjan Sen
Mr. Arindam Dey
Mr. S. Basu
Mr. S. Roy

..... For the Petitioner

Mr. Pawan Kumar Gupta

..... For the O.P.

IA No. CRAN 1/2020 (Old No. CRAN 806 of 2020)

This is an application under Section 5 of the Limitation Act, 1963 for condonation of delay of 45 days in preferring this revisional application.

By consent of both the parties and for the interest of justice, such explanation is accepted as sufficient. The delay is condoned.

Thus the application being, IA No. CRAN 1/2020 (Old No. CRAN 806 of 2020) is allowed and thus disposed of.

In this revisional application, the petitioner-husband has assailed the order dated 11.03.2019 passed by the learned Additional Sessions Judge, 1st Court, Sealdah, South 24 Parganas, in Criminal Appeal No.45 of 2018, thereby affirming the order dated 30.08.2018 passed by the learned 1st Judicial Magistrate, Sealdah, South 24 Parganas in connection with DV Act case no.14 of 2017 directing the petitioner to pay Rs.60,000/- as monthly maintenance to the opposite party no.1 being Rs.30,000/- per month and Rs.30,000/- for the minor son within the 10th day of each calendar month from the date of the order. The order of the Judicial magistrate passed under D.V. Act under the provisions of Section 23 of the Act was assailed in Criminal Appeal No.45 of 2018. It may be taken note of the fact that while the appeal was admitted subject to payment of Rs.40,000/- per month to the wife and to her child the same has not been complied

as yet. The learned Appeal Court has made observation on this score that the order of stay which was passed subject to payment of Rs.40,000/- per month within each succeeding month has not been complied by the present petitioner-husband. But, it would appear that against the order of stay the revisional application was preferred by the petitioner showing inability to pay the sum of Rs.40,000/- as a condition precedent for stay of the criminal appeal and the revisional application was not prosecuted and it has been disposed of.

It is submitted on behalf of the petitioner that the revisional application was not proceeded further because of the final order passed in the criminal appeal disposing of the same. The grievance in the instant application is with regard to the order passed by the appellate court affirming the impugned order of the learned Judicial Magistrate passed on 30.08.2018 in case under reference mentioned-above, inter alia, on the ground that the petitioner has no earning as claimed by his wife. He has earning of Rs.50,000/- and in this connection he has filed a supplementary affidavit where he submitted

photocopy of the Income Tax Return for the assessment year 2019-20. He submitted that his gross income is Rs.4,99,698/- only and accordingly he is unable to make payment to the opposite party-wife to satisfy the order by the Appellate Court.

In my view, the petitioner has not paid a single penny to his wife and to his minor child and even not taken care of about his maintenance, since, the order of stay ordered on condition to pay Rs.40,000/- per month to the husband.

Learned advocate appearing for the opposite party has invited my attention to the averments made in the plaint in a Suit for Dissolution of Marriage under Section 13(1) of the Hindu Marriage Act, 1955 in page 25 at paragraph no. 3 which is reproduced hereunder for apt decision—

“that on 25/04/2012 the marriage was solemnized by and between the parties according to the Hindu rites and customs and the marriage function was held at a Hotel namely Swiss Hotel City Center II, Rajarhat, Kolkata. On the next day the parties stayed at the aforesaid Hotel but separately

from each other and on the next day i.e. on 27/04/2012 the respondent was brought at her matrimonial home at 183B, Vivekanda Road, Kolkata – 700 006 and since then the petitioner and the respondent started their conjugal life as husband and wife at the matrimonial home of the respondent but on the next day i.e. on 28.04.2012 one function was fixed namely Jagran according to the rituals of the petitioner where all the family members of the petitioner would present for celebrating such function. On that particular date i.e. on 28.04.2012 at morning the petitioner called the respondent for getting down on the ground floor then she became furious suddenly and she started to misbehave with the petitioners and she deprive to attend such ritual functions but all the family members and relatives of the petitioner were waiting anxiously and after waiting few hours some relatives left the house and then the entire situation has happened for the respondent shocked the petitioner immensely and to some extent the prestige and the social status of the petitioner and his family members lower down for the newly married wife but on the next day i.e. on 29/4/12 the Bowbhat Ceremony was held at Water-World, Nicco-Park, Kolkata as per earlier schedule. But

such misbehavior, ill attitude and disrespect to the petitioner and his family members especially at the initial stage of marriage shocked the petitioner tremendously which amounted to mental cruelty."

Thus, it is submitted that the petitioner is a businessman and he has sufficient earning to maintain his wife by paying the amount of maintenance as ordered by the learned Magistrate in D.V. Act under the provisions of Section 23 being affirmed by the learned Appellate Court.

In consideration of the averments so made by the petitioner in his plaint for Dissolution of Marriage, admittedly the petitioner is a businessman of substance. However, he might not have earned during the Pandemic situation and earning out of his business is a matter of evidence to be considered at the time of trial.

However, in my view, this revisional application is required to be disposed of with simple modification of the order passed by the learned Judicial Magistrate to the extent that the petitioner-husband would pay a sum of Rs.20,000/- per month to his wife and Rs.15,000/- to his

son per month till the disposal of the application under Section 12 of the D.V. Act which is pending for consideration upon trial before the learned Magistrate. The proceeding under the provision of D.V. Act is necessarily to be undertaken by way of summary trial and it should be expeditiously disposed of by the learned Magistrate within a period of 60 days.

With the above observation and direction, the revisional application being, CRR 2032 of 2019 is disposed of.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of the requisite formalities.

(Shivakant Prasad, J.)