

Joyjit Chowdhury
-vs-
The State of West Bengal and another

Mr. Manjit Singh
Mr. G. Singh
Mr. Biswajit Mal
Mr. Krishna Yadav

...for the petitioner

Mr. Navanil De
Mr. Rajeshwar Chakraborty

...for the opposite party

The only issue involved in the instant criminal revision is as to whether a Court of the learned Magistrate can interpret and by way of such interpretation reverse the order passed by a Court of Sessions in appeal.

Now the facts.

On an application under Section 12/23 of the Protection of Women from Domestic Violence Act (hereafter described as the said Act) the learned Judicial Magistrate, 4th Court at Alipore passed an ex parte order on 1st July, 2016 directing the petitioner to pay interim monetary relief at the rate of Rs.20,000/- for the wife and Rs.8,000/- for the minor child per mensem. The husband /respondent challenged the said order in appeal. The said appeal was registered as Criminal Appeal No. 169 of 2016. Learned Additional Sessions Judge, 9th Court, Alipore passed the following order in appeal.

“That the Criminal Appeal No. 169/2016 be and the same is allowed on contest on the following terms and conditions:-

- (a) A cost of Rs.10,000/- is payable by the appellant within 15 days from this day.
- (b) Interim relief granted by the Ld. District Judge on 5.8.16 do continue till disposal of the case, whereby appellant is directed to make payment of Rs.12,000/- p.m.
- (c) If the aforesaid conditions are complied with by the appellant, the ld. Court would allow the appellant to cross examine the witnesses of the respondent no.1/wife and to lead evidence from the side of the appellant.
- (d) In case of non compliance of the directions No.(a) & (b) at any stage of the proceeding, the impugned order dtd. 1.7.16 would become absolute without any further order."

Subsequently, the wife /aggrieved person filed Misc. Execution Case No.33 of 2017 for recovery of monetary relief to the tune of Rs.1,95,000/-. The said amount was realized through police of the concerned P.S. and the aggrieved person admittedly received a sum of Rs.1,95,000/-. Subsequently, on 10th April, 2018 the petitioner /aggrieved person filed another Execution Case being M. Execution Case No.118 of 2017 for recovery of interim maintenance allowance to the tune of Rs.1,66,000/- calculating the arrear amount at the rate of Rs.28,000/- per month.

In the said petition, it is pointed out by Mr. Singh, learned advocate for the petitioner /husband that the aggrieved person demanded monetary relief at the rate of Rs.28,000/- per mensem as directed by the learned Judicial Magistrate vide order dated 1st July, 2016 alleging inter alia that the learned Additional Sessions Judge, 9th Court at Alipore directed the petitioner to pay interim maintenance at

the rate of 12,000/- per month within 15th of each succeeding month. It was also directed that in case of non-compliance of the order passed by the learned Additional Sessions Judge in appeal the impugned order dated 1st July, 2016 would become absolute without further order. The aggrieved person contended that the present petitioner /husband failed to make payment of cost of Rs.10,000/- within 15 days from the date of the order i.e., from 2nd August, 2017 and interim monetary relief within the stipulated period of time. The present petitioner/husband duly contested the said execution case by filing a written objection and contended that he made over payment in respect of monetary relief. The learned Magistrate after going through the application for execution and written objection thereto passed the following order.

“(2) As I have already pointed out that the payment of maintenance after lapse of two or three days is not such fatal to the case, I think that the order passed by this Court on 01/07/2016 does not become absolute and the respondent is hereby directed to pay Rs. 12,000/- per month within every 7th day of the English month in compliance to the order of the Ld. Sessions Judge.

(3) Regarding the contention of excess payment of Rs. 2,75,100/- by the respondent, I would like to point out that this matter relates to detailed examination of the statements of accounts as on record.

As the matter is quasi civil in nature, I think, in the spirit of OXXVI : R11, CPC, one commissioner is to be appointed in order to submit a report regarding present status of arrear on consideration of all the petitions filed by the petitioner wife and the actual payments made by the OP for realization of the arrear amount till date.”

The wife being aggrieved preferred criminal appeal No.31 of 2018 against the order passed by the learned Judicial Magistrate, 4th Court in M. Execution Case No.118 of 2017.

The learned Additional Sessions Judge, 18th Court passed the following order while disposing of the appeal.

“that the Criminal Appeal No. 31 of 2018 (R-31/2018) is hereby allowed on contest without cost.

The impugned Order dated 10-04-18 passed by the Court of the Ld. Judicial Magistrate, 4th Court, Alipore, South 24-Parganas, in connection with M. Ex Case No. 118 of 2017 u/Sec. 29 of the Protection of Women from Domestic Violence Act, 2005 is hereby set aside.

The interim stay in respect of the Money Execution Case No. 118 of 17, granted by the Ld. Sessions Judge, South 24-Parganas at Alipore, vide its Order dated 25-04-2018 is hereby vacated.

Let a copy of this Judgement together with the LCR be sent down to the Ld. Court below for its information and necessary action.

The parties are directed to appear before the Ld. Court below on 16.01.20.”

On the admitted facts, it is submitted by Mr. Singh, learned advocate for the husband/petitioner that the petitioner has already over paid a sum of Rs.2,75,100/- to the opposite party /aggrieved person. It is true that the petitioner failed to make payment strictly according to the time framed by the learned Additional Sessions Judge in Criminal Appeal No.169 of 2016. There was some delay in certain cases of 2 to 5 days because of holidays and other reasons. The learned Judicial Magistrate condoned the delay and accepted such payment.

According to Mr. Singh, learned advocate that the Executing Court has the authority and power to accept the delayed payment when it is made with mala fide intention. Mr. Singh calls upon this Court to consider the entire issue

on the perspective as to whether acts and conducts of the petitioner are suggestive of violating the order passed by the learned Additional Sessions Judge, 9th Court at Alipore or delayed payment was made when the circumstances were beyond control of the husband/petitioner.

Learned advocate for the opposite party no. 1, on the other hand, submits that he has no grievance for the reason that payment of monetary relief shall made after two or three days of the time stipulated by the learned Additional Sessions Judge. The opposite party raised the grievance in criminal appeal no. 31 of 2018 for non-compliance of the order passed in criminal appeal no. 169 of 2016 on the ground that cost of Rs. 10,000/- was not paid within fifteen days from the date of the said order. The order was passed on 2nd August, 2017 and the payment was made on 22nd August, 2017 i.e., after five days from the stipulated period of time. The learned Magistrate in the execution case accepted such payment as valid payment. The learned counsel for the opposite party has raised the question as to whether the learned Magistrate had any authority to accept delayed payment as valid one in defiance of the order passed by the appellate Court.

Having heard the learned advocates for the petitioner and the opposite party and on careful

consideration of the entire record as well as the copies of the orders annexed with the application it is not disputed that the present petitioner made certain deposits in respect of monetary relief and cost of the litigation after the date stipulated by the learned Additional Sessions Judge in Criminal Appeal No. 169 of 2016. The point that was raised before the learned Additional Sessions Judge in the subsequent appeal is as to whether such delay in making payment should be condoned and accepted as valid deposit. The learned Additional Sessions Judge in the subsequent appeal held that even one day's delay in payment of monetary relief violates the order of the appellate Court and the learned Judicial Magistrate has no authority to accept such payment as valid one.

There is no statutory provision as to condition of bail in accepting the deposit of certain amount after stipulated period of time towards monetary relief or cost of the litigation by the executing Court. In such case it is for the Court to consider as to whether the conduct of the erring party was bona fide or not. So far as the principle of condonation of delay is concerned, it is no longer *res integra* that the Court should take liberal approach while condoning the delay in filing an application or appeal whether there is no provision with regard to condonation of delay in making payment of maintenance allowance or monetary relief etc. The Court

can fairly borrow the principle relating to condonation of delay from plethora of decisions of the Hon'ble Supreme Court while disposing of an application under Section 5 of the Limitation Act. If the pedantic and absolutely technical approach is taken by the Court, as in the instant case adopted by the learned Additional Sessions Judge in the order impugned, there will be, I am constrained to say, failure of justice. Though the learned Court of Sessions has no inherent power under Code of Criminal Procedure, it was expected from her that the entire matter should be looked into in the light of different provisions contained in order 21 of the Code of Civil Procedure as the relief available under the said act is quasi civil in nature, although there is a specific provision relating to execution in PWDV Act.

This Court has limited its discussion only to the question of condonation of delay and acceptance of late deposit of monetary relief by the executing Court.

Considering the issue involved in the instant revision in the perspective mentioned above, I find that the order passed in criminal appeal No. 31 of 2018 by the learned Additional Sessions Judge, 18th Court at Alipore suffers from material irregularity and hence the instant revision should be allowed.

Accordingly, the instant criminal revision is allowed on contest, however, without costs.

The impugned order dated 27.11.2019 passed in

criminal appeal no. 31 of 2018 by the learned Additional Sessions Judge ,18th Court, Alipore is set aside.

The delayed payment of monetary relief and cost of litigation by the petitioner be regarded as valid deposits. The opposite party is at liberty to collect such amount.

(Bibek Chaudhuri, J.)