

CRR 1707 of 2020
(via video conference)

In the matter of:- Moumita Chatterjee @ Manna

...petitioner

Mr. Prosenjit Mukherjee,
Mr. Saptarshi Chakraborty.
...for the petitioner.

Mr. Imran Ali,
Mr. Ashok Das.
...for the State.

Mr. Chittapriya Ghosh
..for the OP.

The impugned order dated 22nd September, 2020 passed by the learned Additional Judicial Magistrate, 1st Court, Uluberia in Misc. Execution Case No.38 of 2020 arising out of judgment and order dated 22nd September, 2020 passed by the learned Additional Judicial Magistrate under Section 12 of the Protection of Women from Domestic Violence Act thereby declining to attach the salary of the opposite party no.2/husband is the subject of challenge of this revisional application.

Admittedly, there was a proceeding under Section 12 of the Protection of Women from Domestic Violence Act taken out by the petitioner/wife, and in connection with which petitioner/wife was favoured with interim monetary assistance. The original proceeding under Section 12 of the Protection of Women from Domestic Violence Act has already been concluded rendering a judgment, wherein the opposite party no.2/husband duly precipitated in the proceeding to put up his defence.

Mr. Prosenjit Mukherjee, learned advocate representing the petitioner/wife advertng to copy of application filed in connection with pending execution case, submits that in connection with the instant execution proceeding, a prayer for recovery of Rs.37,599/- (rupees thirty seven thousand five hundred ninety nine only) was made for the non-

payment of the arrear monetary assistance, which was granted by the learned Court below being one of the fruits of the proceeding.

Mr. Mukherjee contends that by the impugned order, the learned Magistrate has mechanically rejected the prayer thereby declining to attach the salary of the opposite party no.2/husband.

Learned advocate representing the opposite party no.1, State appears upon responding to a notice being served upon the State. The report furnished by State be taken on record.

Mr. Chittapriya Ghosh, learned advocate representing opposite party/husband submits supporting the order of the Court below that the learned Magistrate has rightly rejected the prayer for attachment of the salary, and there lies nothing to be interfered with. It is also contended by Mr. Ghosh that the opposite party no.2 has already paid huge amount to petitioner/wife, and there is no such outstanding due liable to be recovered by invoking any execution proceeding.

Upon perusal of the impugned order, it appears that the learned Court below was not inclined to pass any order pertaining to the prayer for attachment of salary of the husband without issuing any prior notice upon him, as the service already effected was not sufficient as per the findings of the learned Magistrate reached for the purpose.

The principle of law requires that no order should be passed behind the back of opposite party, and every party to the case must be given an opportunity of being heard.

Mr. Ghosh representing husband candidly submits that O.P No.2/husband may furnish a statement of account to ascertain the outstanding amount, and if there be anything due, the same may be liquidated by the husband.

Mr. Prosenjit Mukherjee, learned advocate representing the petitioner contends on such score that there are huge outstanding dues still lying to be recovered, and for which attachment of salary is necessary.

In the given context of this case, it is gathered knowledge in course of the hearing that there are multiple execution cases pending in the Court below, and the date of instant execution proceeding is fixed on 24th September, 2021.

Mr. Ghosh, however, submits that he has received notice of another execution proceeding.

The situation as it stands, ascertainment of actual amount, as outstanding due, is a must, which may be facilitated upon furnishing a statement of accounts by both the parties to the Court below.

Both the parties are under obligation to furnish their respective claims upon submitting an account for the purpose before the Court below. Upon furnishing such statement of accounts by both the parties to this case, the Court below will be in a position to ascertain the actual amount still lying due to be recovered in connection with pending execution case.

That being the position, both the parties are directed to furnish their accounts before the Court below in terms of the observations made herein above either on the date fixed by the Court below, or if for any reasons whatsoever, the same could not be done, the statement of accounts by both the parties may be peremptorily furnished within a fortnight thereafter, preferably within 7th October, 2021. The learned Court below is also directed in connection with the instant execution proceeding to ascertain the exact amount, still lying due to be recovered from such statement of accounts furnished by both the parties to this case, and if there be any outstanding amount, the same may be directed to be

recovered by passing an appropriate order in accordance with law after providing sufficient opportunity of hearing to either of the parties to this case, so that pending execution proceeding may be disposed of at an early date.

With the above observations/directions, the instant revisional application stands disposed of.

Petitioner is directed to make communication of this order to the learned Court below.

Both parties are requested to cooperate with the learned Court below so that the petitioner may not be deprived of the fruits of order, passed in connection with the Protection of Women from Domestic Violence Act.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)