

23.03. 2022
item No.58,
59,60,61.
n.b.
ct. no. 34

CRR 2143 of 2019
Chiranjib Biswas
Vs.
Smt. Lovely Biswas & Anr.
With
CRR 2144 of 2019
Chiranjib Biswas
Vs.
Smt. Lovely Biswas & Anr.
With
CRR 29 of 2018
+
IA No. CRAN 2 of 2019(Old No. CRAN 2975 of 2019)
Chiranjib Biswas
Vs.
Smt. Lovely Biswas & Anr.
with
CRR 30 of 2018
+
IA No. CRAN 1 of 2018 (Old No. CRAN 1089 of 2018),
+
IA No. CRAN 2 of 2019 (Old No. CRAN 2974 of 2019),
Chiranjib Biswas
Vs.
Smt. Lovely Biswas & Anr.

Mr. S. R. Das,
Mr. K. P. Mukhopadhyay,
Mr. Sayantan Rakshit
.....for the Petitioner

Mr. Sabyasachi Mukherjee,
Mr. Mukesh Khanna,
Mr. Bibek Dey
.....for the opposite party.

In all the revisional applications, I find that the petitioner has challenged the orders dated 18.11.2017 and 31.7.2019 relating to the execution cases being case no. 20 of 2016 and execution case no.50 of 2015.

Learned advocate appearing for the petitioner submits that the final order dated 8.5.2014 was passed without any audience being given to the present petitioner and as such, the

petitioner subsequently filed an application under Section 25(2) of the P.W.D.V. Act, 2005 praying for alteration/modification of the ex parte order dated 8.5.2014. The said application was filed on or about June 27, 2016 and the learned advocate appearing for the petitioner submits that the contents therein have not been considered by the learned Magistrate and the application till date is pending.

Another grievance which has been expressed by the learned advocate for the petitioner is that the petitioner was earlier paying a sum of Rs.5,000/- per month pursuant to the order passed by the Division Bench in an application under Section 438 of the Code of Criminal Procedure.

Be that as it may, the applicant before the learned Trial Court had a remedy under each of the statutes and each of the Court would consider independently and it is settled law that the highest amount would be paid to the applicant and the lesser amounts would merge with the higher amount. As the order dated 8.5.2014 was passed ex parte, I direct the learned Trial Court to dispose of the application under Section 25(2) of the P.W.D.V. Act, 2005 preferred by the petitioner within a period of sixty days from the date of communication of this order.

Records of CRR 30 of 2018 reflects that by an order dated 10.1.2018 a Co-ordinate Bench of this Court was pleased to direct payment of Rs.10,000/- per month towards the child and wife of the present petitioner which according to the parties is regularly being paid.

In view of the aforesaid, the execution cases may be deferred for the period which has been referred to above, till the disposal of the application under Section 25(2) of the P.W.D.V. Act, 2005. The Learned Magistrate would exhaust harsher process of law if the current amount of Rs.10,000/- per month is not paid during disposal of the application under Section 25(2) of the P.W.D.V. Act, 2005. The Learned Magistrate would thereafter take into consideration regarding the arrears which, have accrued and proceed with the same in accordance with law.

Learned advocate for both the parties are present in Court, I direct that both the parties with their learned advocates would make themselves available before the learned Judicial Magistrate, 2nd Court, Barasat on April 11, 2022 when the learned Court would fix subsequent dates for proceeding with the application under Section 25(2) of the PW.D.V. Act, 2005.

With the aforesaid observations, CRR 2143 of 2019, CRR 2144 of 2019, CRR 29 of 2018, CRR 30 of 2018 are disposed of.

All pending connected applications, if any, are consequently disposed of.

The application would be heard out before the learned Judicial Magistrate in spite of any resolution passed by the local Bar.

The interim order of Rs.10,000/- as directed in the order dated 10.1.2018 would continue till the learned Judicial Magistrate 2nd Court, Barasat comes to his finding.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Tirthankar Ghosh, J.)