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20.09.2022
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C.R.R. 2486 of 2021
With
CRAN 1 of 2022

In Re: An application under Section 482 of the Code of Criminal Procedure;

Sri Saikat Rakshit
Versus
Smt. Pampa Rakshit (Dey)

Mr. Rabindra Kumar Jaiswal.
...for the petitioner.

Mr. Moyukh Mukherjee.
..for the opposite party no.1.

Supplementary affidavit so filed by the petitioner be kept with the record.

Learned advocate for the petitioner is aggrieved by the distress warrant issued in Misc. Execution Case No.83 of 2022. The petitioner contends that there are two proceedings; one under Section 125 of the Code of Criminal Procedure and the other under Section 12 of the PWDV Act, 2005. In the proceedings under Section 125 of the Code of Criminal Procedure, there was a direction by the Magistrate for paying a sum of Rs.3,000/- per month to the wife and Rs.2,000/- per month to the minor child till disposal of the case. The said order was passed on 11th February, 2015. Attention of the Court is also drawn to the order passed in the proceedings under Section 12 of the PWDV Act wherein the learned Magistrate was pleased to direct maintenance of Rs.3,000/- per month to the wife and Rs.4,000/- per month to the minor daughter. The petitioner contends that in both the proceedings he has been paying.

Be that as it may, as a settled proposition of law, the petitioner is directed to pay the maintenance, which is higher after adjusting the award in the other proceedings. This has been the consistent view. As such, the petitioner is entitled to pay Rs.7,000/per month until the same is amended and altered by the learned Magistrate.

So far as the misc. execution case is concerned, the learned trial court is directed to quantify the same and calculate the dues, which are accruing. As undertaking is given by the learned advocate for the petitioner before this Court that whole of the dues would be cleared by 30th September, 2022, once such amount is paid, the learned trial court would recall the distress warrant. The petitioner is granted liberty to approach the executing court if there are any contest on the issue relating to the quantum fixed by the learned executing court.

So far as the appeal is concerned, I direct the learned Sessions Court in seisin of the appeal to dispose of the appeal by 30th November, 2022 after affording opportunity to both the parties.

With the aforesaid observations, CRR 2486 of 2021 is disposed of.

Pending applications, if any, is consequently disposed of.

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

(Tirthankar Ghosh, J.)

