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gd/ssd

MAT/1415/2019
IA NO: CAN/1/2019(Old No:CAN/10162/2019)
SRI SANKAR KUMAR DAS
VS
ALLAHABAD BANK & ORS.

Mr. Anirban Mitra,
Mr. Amit Halder,
Md. Wasim Akram,
Mr. Akash Ghosh
..for the Appellant

Mr. Ajit Kumar Mondal
..for the Respondent Bank

Mr. Sounak Bhattacharyya,
Mr. Raja Ghosh,
Mr. Chandra Nath Sarkar
..for the Respondent Wife

This appeal is at the instance of the writ petitioner.

Perused the order of the learned Single Judge dated 04.09.2019 whereby WP 15676(W) of 2019 has been disposed of with a direction to the Kolkata Port Trust Authorities and the Defence Authorities not to disburse any pension to the appellant in any manner whatsoever until such time they receive appropriate orders from the court in seisin of the proceedings under Section 125 Cr.P.C.

The appellant had approached the writ court with a plea that he is a retired government employee and there is a matrimonial dispute going on between the

appellant and the respondent wife and the wife had initiated the proceedings under the Domestic Violence Act and also the proceedings were initiated under Section 125 Cr.P.C. for grant of maintenance to the wife and the daughter and that the appellant had approached the bank for operating his account which was not allowed, hence, the petition was filed with a prayer to issue a direction to the respondent bank manager to permit the appellant to operate his savings account and withdraw the money from that account.

Before the learned Single Judge stand was taken by the respondent wife that she was residing with the daughter in the property gifted by the appellant and the notice of eviction was received by her and that the appellant was not paying the maintenance amount to her and daughter though he was receiving the pension as an ex-employee. In the aforesaid background, the impugned direction was issued by the learned Single Judge.

Learned counsel for the appellant submits that in view of the order of the learned Single Judge, the appellant is not able to receive the pension which is being deposited in the account in question and that the appellant is duly paying to the wife the amount awarded by the competent court under Section 125 of the Cr.P.C. and he will continue to pay the same. He has

further submitted that the account is in the joint name of the appellant and the respondent wife. He has fairly submitted before this court that the appellant will not encash the FD's till the dispute is pending, but he should be allowed to withdraw the amount from the account in question.

Submission by learned counsel for the respondent wife is that ex parte divorce decree has been passed for which the application under Order 9 Rule 13 of the CPC has already been filed and that the respondent wife has been awarded Rs.2,000/- pm in the proceedings under Section 125 of the Cr.P.C. without awarding any amount to the daughter, therefore, the order under Section 125 of the Cr.P.C. is under challenge in the criminal revision, therefore, amount be secured.

Having heard the learned counsel for the parties and on the perusal of the record, we find that the appellant's pension cannot be stopped because after the retirement it is his only source of support and survival. It is settled in a catena of judgments of the Supreme Court that the pension is not a bounty but a right. That apart, nothing has been pointed out to show that in the facts of this case dispute relating to the quantum of maintenance amount under Section 125 of the Cr.P.C. could be examined in exercise of the writ jurisdiction and entire pension of appellant could be

stopped to secure the future uncertain amount specially when he is duly complying the order of the court and paying the maintenance amount.

The submission made by counsel for the appellant that he will not encash the FD during the pendency of dispute adequately protects the interest of the respondent wife.

In these circumstances, we are of the opinion that the impugned order of the learned Single Judge directing the Kolkata Port Trust Authorities and the Defence Authorities not to disburse any pension to the appellant in any manner cannot be sustained and is hereby set aside. The respondent bank is directed to permit the appellant to operate the bank account in accordance with law.

The appeal is, accordingly, disposed of.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)

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