

28.01. 2022
item No.15
n.b.
ct. no. 34

(via video conference)
CRR 3124 of 2019

Debtaru Banerjee
Vs.
Pratima Banerjee & Anr.

Mr. Md. Sabir Ahmed,
Mr. Mujibar Ali Naskar,
.....for the Petitioner

Mr. Tanmay Basu
.....for opposite party.

Affidavit of service filed by the petitioner be kept with the record.

The learned advocate appearing for the petitioner is aggrieved by the ex parte order dated January 4, 2019 so passed by the Learned Additional Chief Judicial Magistrate at Baruipur, District South 24 Parganas in connection with Case no. M-554 of 2014.

Learned advocate appearing for the private opposite party no.1 submits that in spite of several dates being fixed the petitioner/husband did not participate and as such the learned Magistrate was compelled after exhausting the process of law to proceed ex parte and as such arrived at his verdict on January 4, 2019.

In view of the reasons so assigned by the learned advocate appearing for the petitioner that he was not aware regarding the proceedings as also the learned advocate did not inform him, I grant an opportunity to the present petitioner to take out an

appropriate application under the statute explaining the circumstances under which the petitioner in spite of due diligence did not take any step during the proceedings before the learned Additional Chief Judicial Magistrate. The learned Additional Chief Judicial Magistrate will consider the same after issuing notice to both the parties and thereafter arrive at a finding as to whether the husband would be permitted to cross-examine the evidence of the applicant and her witnesses before the Trial Court as also the witnesses and documents he intends to produce in support of his case. So far the quantum of maintenance which has been awarded by the learned Magistrate by its order dated January 4, 2019 is concerned, the same is not interfered with. The husband /petitioner is directed to continue paying the same until and unless the Magistrate arrives at a fresh finding.

Needles to state that this court has not entered into the merits of the case and has only considered the issue whether the husband should be afforded an opportunity for hearing before the learned Judicial Magistrate on the issue of the ex parte hearing which has already been concluded after the trial proceeded in his absence.

With the aforesaid observations CRR 3124 of 2019 is disposed of.

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

Interim order, if any, is hereby vacated.

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

(Tirthankar Ghosh, J.)