

21.09.2022
Item no.12.
Court No.35.
I.T

C.R.R No.3204 of 2016
With
CRAN 1 of 2016 (Old No: CRAN 3805 of 2016)

Somraj Ghosh
-Vs.-
Sujata Ghosh

Mr. Aritra Chakraborty,
Mr. Anurag Rai

.....for the Petitioner.

Petitioner/husband has filed the present revision case to challenge the order passed by the Judicial Magistrate, 1st Court at Barrackpore on January 21, 2016 in Misc Case No.315 of 2015.

Bereft of any unnecessary details, it can be stated the petitioner/husband who has been living separate from his wife, that is, the opposite party in this case, is aggrieved with the order of the trial court dated January 21, 2016, mainly on the ground that the same has been passed ex-parte against him and he has not been provided by the court with any opportunity of hearing regarding his capacity to pay and his living standard etc and an amount of maintenance has been fixed.

Learned Advocate on behalf of the petitioner submits that the service upon the opposite party is completed and the affidavit of service to that effect in the present case is filed in court. Let the same be kept with the record.

From the affidavit of service it appears that the postal endorsement and receipt copy is incorporated therewith. The same is found to be a good service. However, in spite of that, today no one appears on behalf of the opposite party when the matter is taken up for hearing.

Learned Advocate on behalf of the petitioner submits further that his client did not come to court to defend in the case, pursuant to assurances given by the opposite party/wife that no steps would be taken in the said case against the present petitioner. It is submitted that on the oral assurances and mutual understanding the petitioner acted and as he was living out of station, did not present himself on the date of hearing. By referring to the copy of the order of the court dated November 18, 2015, it is submitted that the opposite party herself did not press her application for interim maintenance and in that event the court took up the maintenance petition for ex-parte hearing which was not stipulated between the parties to be done on the said date.

The order of the trial court dated November 18, 2015 is produced below:-

"Order Dated 18.11.15

Today is fixed for evidence on ex-parte mode. The petitioner is present along with her Ld. Advocate. The O.P is absent without step. None found on behalf of the O.P on repeated call. The Ld. Advocate for the petitioner did not press the application for interim maintenance. So the petition for interim maintenance is rejected as not pressed.

The record is taken up for evidence on ex-parte mode.

The petitioner has been examined in chief on ex parte mode in full as PW-1.

Heard. Considered.

Fix 21.12.15 for passing order.”

Unfortunately court's proceedings cannot be on the basis of the wishes, desires, understanding and stipulations made between the parties. The present opposite party/wife being the petitioner before the trial court exercised her option not to proceed with her interim maintenance petition. That was accepted by the court and therefore without wasting any further time the court moved on to hear out the main case pending before it. I do not see any infirmity or irregularity in the business of the court in doing so.

On his desperate attempts, Ld. Advocate on behalf of the petitioner has brought to the notice of this court various averments made by the opposite party/wife, before different fora, which, according to him, are self contradictory and thereby expresses ill-will and malice on part of the opposite party no.2 to proceed against the petitioner before the trial court. He has also specifically pointed out to Sub-Section (4) of Section 125 of Cr.P.C, 1973, to submit that since she has refused live with her husband without any sufficient reason, her case squarely comes under the four corners of the above stated provision of law to disable her to receive any amount of maintenance from the court of law.

On perusal of the records of the trial court it clearly appears that the petitioner has not been able to put forth any

credible reason for his non-appearance before the trial court and it is not a case that he has been restrained by any cause, much less any justifiable or satisfactory one, to appear before the court. Upon this finding, pleas taken by the petitioner in this revision case, are found to be only misconceived.

On the basis of the discussion as above I find that petitioner's prayer does not merit success in this revision case and the impugned order dated November 18, 2015, is just proper and legal. Hence, there is no reason for this court to interfere with the impugned order dated November 18, 2015, and the revision case is liable to be dismissed.

On the findings as above the present revision being C.R.R 3204 of 2016 is dismissed. All the connected application are disposed of. The impugned order dated November 18, 2015, stands affirmed.

Urgent photostat Certified Copy of this order, if applied for, be given to the parties, on priority basis.

(Rai Chattopadhyay, J.)