

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.3320 of 2019

Ajit Kumar Samantaray *Petitioner*
-versus-
Sasmita Jena *Opposite Party*

CORAM: JUSTICE S. PUJAHARI

ORDER
28.02.2022

Order
No.

11.

1. This matter is taken up through hybrid mode.
2. This Criminal Misc. Case has been filed by the Petitioner-husband with a prayer to quash the order dated 14th October, 2019 passed by the learned S.D.J.M., Bhubaneswar in Criminal Execution Case No.2 of 2016, arising out of CMC No.96 of 2014.
3. Heard the learned counsel for the Parties.
4. It appears that the Petitioner-husband in the execution case was held liable to pay Rs.1,25,000/-. Challenge the same, as out of the amount of Rs.2,25,000/- due on him inasmuch as he had already paid more than Rs.1,00,000/-. Thereafter, according to the Petitioner-husband, a wrong having been made in computation of the amount due on him by the court

concerned, this Court had disposed of the earlier Criminal Misc. Case, i.e., CRLMC No.822 of 2019 with the order as follows:-

“Heard.

This application has been filed by the Petitioner with a prayer to quash the order dated 12.10.2018 passed by the learned S.D.J.M., Bhubaneswar in Criminal Execution Case No.2/2016 arising out of C.M.C. No.96/2014.

The grievance of the Petitioner in this case is that an amount claim is not entitled to pay inasmuch as he has paid part of the amount which the Executing Court has not taken into consideration.

In such view of the matter, this CRLMC is disposed of with a direction to the court below that if the Petitioner furnishes the proof of payment of any amount towards satisfaction of the award of maintenance, the same shall be deducted from the amount claimed and the rest of the amount, which the Petitioner is ready and willing to pay, if paid to the opposite party within six weeks hence, the D.W. and N.B.W., if issued against the Petitioner, shall not be executed.”

5. However, it is stated that the learned S.D.J.M., Bhubaneswar after the said order without taking note of the same again having reiterated the order by directing the Petitioner-husband to pay, he has again come to this Court by filing this Criminal Misc. Case challenging the same which is contested by the Opposite Party-wife. The learned counsel for the Petitioner-husband submits that the same order as such is illegal. However, learned counsel for the Opposite Party-wife dissuaded and justifying the same. To appreciate the

contention, it would be apposite to quote the order impugned, which read as thus:-

“Order dated 14.10.2019

The case record is put up today for passing of appropriate orders after expiry of six weeks from the date of order of the Hon’ble Court passed in CRLMC No.822 of 2019. The Hon’ble Court had directed the O.P. to furnish proof of any proof of payment of any amount towards satisfaction of the award of maintenance and had further directed this court not to execute the D.W./NBW of any of issued against him.

Now, in spite of the direction of the Hon’ble Court the O.P. has failed to produce proof any payment other than the payment mentioned on record. The record reveals that the petitioner has received Rs.1,00,000/- and rest of Rs.1,25,000/- is due to be paid by the O.P. The O.P. was further directed to pay the rest of the maintenance within a period of six weeks but the O.P. has not paid any amount within this period. Payment of the rest of the maintenance was the condition for non-execution of the D.W./NBW as per the order of the Hon’ble Court. Now, as it is clear that the O.P. is required to pay Rs.1,25,000/- more to the Petitioner and he has not paid anything within the time stipulated by the Hon’ble Court. The D.W. issued against him is required to be executed. This court vide order dtd. 16.04.19 had recalled the D.W. after receipt of the order of interim stay of the execution on 16.01.19. So a fresh D.W. is required to be issued against the O.P. Hence issue D.W. against the O.P. Put up on 15.11.19 of production of the O.P.”

6. However, on going through the order of the executing court, though the Petitioner-husband has taken a stand that if he has paid a certain amount pursuant to the order of the appellate court during pendency of the appeal, it has not furnished any proof on the same. Hence, the order as above was passed. Therefore, the impugned order needs no interference.

7. Accordingly, the Criminal Misc. Case stands dismissed.

8. But, if the Petitioner-husband furnishes the proof showing the payment during the pendency of the appeal about the aforesaid, the same shall be taken note of by the executing court.

(S. Pujahari)
Judge

DA

