

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 3256 of 2022

Sarada Prasan Kar

....

Petitioner

Mr. Cheera Ranjan Satapathy, Advocate

-Versus-

State of Orissa and Another

....

Opposite Parties

Mr. Tapas Kumar Praharaj, SC

CORAM:

MR. JUSTICE R.K. PATTANAİK

ORDER

24.11.2022

Order No.

01.

1. Heard learned counsel for the petitioner and learned counsel for the State.

2. In the present case, the challenge is as to the impugned order dated 30th June, 2022 passed by the learned J.M.F.C.(R), Cuttack in Execution Misc. Case (DV) No.34 of 2022 on the grounds stated therein.

3. Learned counsel for the petitioner submits that learned court below should not have been issued D.W. in Execution Misc. Case (DV) Case No.34 of 2022 under Section 125(3) of Cr.P.C. and proceeded by issuing such warrant for the recovery of the amount due unless the application so made to be within a period of one month from the date on which it became due and the aforesaid provision has been lost sight of while passing the impugned order dated 30th June, 2022 and hence, it is required to be quashed. It is further submitted that the petitioner has challenged the order of maintenance before the court of learned District & Sessions Judge, Cuttack in Criminal Appeal No.23 of 2020 and as such, till date

there is no progress for the reason that opposite party No.2 is not extending cooperation.

4. Mr. Praharaj, learned Standing Counsel for the State submits that learned court below issued D.W. for realization of the arrear amount payable by the petitioner, which cannot be said to have been unjustified. It is further submitted that if any such provision for issuance of warrant is not complied with, the petitioner is at liberty to approach the appellate court for appropriate relief and that it cannot stand as a bar towards realization of the maintenance due payable to opposite party No.2.

5. During and in course of hearing, learned counsel for the petitioner informed the Court that at present, the petitioner is not paying maintenance to opposite party No.2 since the same is challenged in appeal pending before the learned District & Sessions Judge, Cuttack in Criminal Appeal No.23 of 2020.

6. Considering the fact that there is a maintenance order in favour of opposite party No.2, the Court is of the view that since it has not been stayed in appeal by the learned District Court, notwithstanding the delay in applying for recovery of maintenance amount at the instance of opposite party No.2 and in the issuance of D.W. by the court below, which is presently under challenge, the petitioner should approach the appellate court instead for the purpose of staying the recovery, if at all he is not liable to pay the same.

7. On the insistence of the Court, the learned counsel for the petitioner at this juncture submits that the petitioner may be able to pay Rs.40,000/- (Rupees Forty thousand) but it shall be deposited before the learned court below and not to be paid to opposite party No.2 till the final decision in the appeal.

8. However, having regard to the fact that there has been no payment of maintenance to opposite party No.2 till date, the Court

is of the view that notwithstanding the fact that the order of maintenance is still under challenge, the petitioner has to pay some amount towards arrear maintenance even awaiting decision in appeal.

9. In view of the above facts and submission of learned counsel for the petitioner, the CRLMC stands disposed of with a direction to the petitioner to pay Rs.40,000/- (Rupees Forty thousand) to opposite party No.2 by the date fixed, i.e. on or before 9th December, 2022 and on such payment being made, the D.W. which has been issued by the court below and its execution shall be kept in abeyance till Criminal Appeal No.23 of 2020 pending before the learned District Judge, Cuttack stands disposed of hearing of which shall be expedited for an early decision preferably within a period of six weeks from the date of copy of this order.

10. Issue urgent certified copy as per rules.

11. A copy of the aforesaid order be sent to the learned District & Sessions Judge, Cuttack for compliance.

(R.K. Pattanaik)
Judge