

Form J(1)

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

CRR 4661 of 2022

**Tauseefulla Khan
Vs.
Nazia Firdaus**

**For the petitioner : Mr. Mahinudin Mandal,
Sk. Md. Sakil Ali.**

Judgement on : 26.04.2023.

Bibek Chaudhuri, J.

An order dated 21st October, 2022 passed in Misc Case No.50 of 2016 by the learned Principal Judge, Family Court at Calcutta is under challenge in the instant revision.

The petitioner is the husband of opposite party. The opposite party as petitioner filed an application under Section 125 of the Cr.P.C praying for maintenance at the rate of Rs.50,000/- per month as well as Rs.50,000/- towards litigation cost before the learned Principal Judge, Family Court at Calcutta which was registered as Misc Case No.50 of 2016. It is further stated by the petitioner that as he resides in Bangalore, it was not possible for him to attend the court on the date fixed. However the case was represented by a learned Advocate engaged by him. The learned Advocate for the petitioner has not filed any written objection against the application under Section 125 of the Cr.P.C and the said application was allowed ex-parte.

It is submitted by the petitioner that he works in a private hotel

as cashier at Bangalore on daily wage basis and he gets Rs.245/- per day. For the reasons stated above, the petitioner has prayed for setting aside of the impugned order dated 21st October, 2022 on the ground that he has no sufficient ground to pay maintenance at the rate of Rs.20,000/- per month in favour of his wife.

Since proviso to Sub-section (2) of Section 26 clearly states that an ex-parte order of maintenance can be set aside for good cause shown on an application made within three months from the date thereof subject to such terms including terms as the payment of costs to the opposite party as the Magistrate may think just and proper.

Since the learned Judge, Family Court is empowered to set aside an ex-parte order, this Court is of the view that at this stage the instant revision is not admissible. Accordingly the instant revision is summarily dismissed.

(Bibek Chaudhuri, J.)