

25.11.2024

Sl. No.: 6

Court No.30
BM

CRR 700 of 2022

+

IA No.: CRAN 1 of 2024

Rajat Nandi

Vs.

Sonali Nandi & Anr.

Mr. Siddhartha Sarkar

... for the petitioner

Mr. Satadru Lahiri

Mr. Safdar Azam

... for the opposite party

1. The present revisional application has been preferred against an order dated 11.01.2022 in Criminal Appeal No.07/2018 pending before the learned Additional District & Sessions Judge, Fast Track Court No.2, Basirhat, North 24 Parganas.

2. By the said order under revision the court of learned Additional District & Sessions Judge, FTC 2, Basirhat, North 24 Parganas, held as follows:-

“Dated 11.01.2022

.....The record is taken up today.

Both the parties are present by filing respective hazira.

Perused the petition under Section 5 of the Limitation Act.

It is seen that this matter cannot be properly adjudicated without taking evidence.

Hence, both the parties are directed to come ready for evidence and the petitioner is directed to submit examination in chief on affidavit on the next date fixed.

Fix 03.03.2022 for evidence in respect under Section 5 of the Limitation Act.

Sd/-

Addl. Sessions Judge

Fast Track Court No. 2

Basirhat, North 24 Parganas.....”

3. It is submitted by the learned counsel for the petitioner in presence of the learned counsel for the opposite party that an order under the Domestic Violence Act was passed ex-parte against the petitioner/husband.

4. The petitioner prayer for recall was rejected on the ground that it is an appealable order.

5. The petitioner submits that being wrongly guided a revisional application was preferred before the learned sessions court.

6. The said revisional application was also rejected on **19.03.2018** for the same reason.

7. Subsequently, an appeal was filed along with an application under Section 5 of the Limitation Act on 18.04.2018, on the ground that being wrongly guided by his legal counsel the petitioner was pursuing his remedy before the wrong forum, wherein by the order under revision the learned Additional District & Sessions Judge, FTC Court No. 2, Basirhat, North 24 Parganas has directed for recording of evidence in an application under Section 5 of the Limitation Act.

8. Learned counsel for the opposite parties submits that the petitioner is not paying any maintenance by filing one application after another and four execution proceedings are pending against him and at present an outstanding of more than Rs. 2 Lakhs is due to the opposite parties.

9. Thus, considering the materials on record, the judgments of the Hon'ble Supreme Court ***in i) Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy & Ors. reported in (2013) 12 SCC 649.., ii) Pathapati Subba***

(Died) by L. Rs. & Ors. vs. The Special Deputy Collector (LA) reported in (2024) 4 SCR 241 : 2024 INSC 286 and in the interest of justice, the application under Section 5 of the Limitation Act pending before the learned Additional Session Judge is allowed on the condition that a sum of Rs.50,000/- towards arrear maintenance be paid to the opposite parties within 15 days from the date of this order failing which the relief granted to the petitioner in the present case shall stand vacated and the Learned Additional District & Sessions Judge, FTC 2, Basirhat shall be at liberty to proceed in accordance with law.

10. In case the petitioner makes the payment as directed in this order, the learned Additional Session Judge is directed to hear the appeal in presence of both the parties and dispose of the appeal within a period of thirty days on and from 16th December, 2024.

11. The revisional application is accordingly, disposed of.

12. All applications connected thereto stand disposed of.

13. Interim order, if any, stands vacated.

14. Let a copy of the order be sent to the learned trial court at once.

15. Urgent Xerox certified copies of this order, if applied for, shall be supplied to the learned counsel for the parties as expeditiously as possible, in compliance of usual formalities

(Shampa Dutt (Paul), J.)