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Ct. No. 237

C.R.R. 1468 of 2022
Md. Naved Quereshi
Vs.
The State of West Bengal & Anr.

Mr. Satadru Lahiri
Mr. Safdar Azam
Mr. Syed Wasim Faruque

...For the Petitioner

Re.: IA No. C.R.A.N. 1 of 2022

This is an application wherein the petitioner has prayed seeking condonation of delay of 2 years 11 months and 6 days in filing the present application.

Learned Counsel appearing on behalf of the opposite party raised objection.

Upon hearing the learned Counsel appearing on behalf of the parties and considering the fact that no intentional negligence or inaction or want of *bonafides* has been specifically attributed and that substantial justice on merit is paramount and pivotal and technical considerations should not be given undue emphasis, I am inclined to condone the delay.

Accordingly, the delay in filing the application is hereby condoned.

CRAN 1 of 2022 is accordingly disposed of.

CRR 1468 of 2022

Assailing the order dated 20th February, 2019 passed by the learned Judicial Magistrate, 2nd Court, Howrah in Misc case no. 748

of 2015 under section 125 of the Code of Criminal Procedure, 1973 present application has been preferred. By the impugned order learned Court below has been pleased to grant maintenance of Rs. 10,000/- per month to the petitioner by 10th of each succeeding month, failure to which liberty has been given to take recourse in accordance with law.

It is submitted on behalf of the petitioner that the marriage between the petitioner and the wife/opposite party was held on 22nd February, 2014 accordingly to Islamic Rites and Customs. It is alleged by the petitioner that opposite party/wife used to quarrel with trivial issues and she also used to abuse petitioner and his family members with filthy languages and she refused to continue conjugal relationship and she also compelled husband/petitioner herein to pronounce Talaque once.

Ultimately wife/opposite party returned to her paternal home and threatened the petitioner to implicate them false with criminal cases. It is further submitted that opposite party also filed aforesaid application under section 125 Cr.P.C. where she has alleged that the husband/petitioner herein use to earn Rs. 1,50,000/- per month and he has also other source of income, on the contrary opposite party/wife has no independent source of income.

Mr. Lahiri on behalf of the petitioner submits that the petitioner/husband did not get opportunity before the court below to contradict the contention of the opposite party/wife regarding the

income of the petitioner by making cross-examination. The Court below has abruptly fixed the said amount in favour of the wife/opposite party herein. Accordingly order impugned is required to be set aside as it has not be based on the materials available in the record and also not based on cogent ground.

Mr. Gupta, learned Counsel appearing on behalf of the opposite party submits that the court below after considering materials and evidence, has come to a just decision and it does not call for interference. He further submits that when the marriage between the parties is not in dispute then the husband is duty bound to pay just amount towards maintenance. He further submits that even after passing the order by the court below the husband/petitioner herein has not paid any amount of maintenance till date. Accordingly, considering the conduct of the husband towards legally married wife, the order impugned does not call for interference. He further submits that the petitioner herein appeared before the court below and Court below after considering the submissions made by both the parties have passed the order impugned.

I have considered submissions made by both the parties. It is now well settled in view of judgment pronounced by Apex Court in ***Rajnish Vs. Neha***, reported in (2021) 2 SCC 324 that the affidavit of disclosure of Assets and liabilities annexed as enclosures I, II and III of the judgment, as may be applicable, shall be filed by both the

parties in all maintenance proceeding including interim maintenance proceeding. The court further held it must be filed to enable court to make an objective assessment of the quantum of interim maintenance and such affidavit should be filed within a maximum period of four weeks.

In such view of the matter the order impugned dated 20th February, 2019 is hereby set aside with a direction upon the Court below to ask both the parties to file affidavit of assets and liabilities in terms of direction made by Apex Court in Rajnesh Vs. Neha (Supra) within a period of three weeks from the date of communication of this order and thereafter he will give opportunity to adduce evidence by the parties if required and then to write a judgement afresh with reason preferably within a period of six weeks thereafter.

However petitioner herein will go on paying an amount of Rs. 10,000/- per month to the petitioner till the disposal of the maintenance application afresh by the Court below without prejudice to the rights and contentions of the parties. The maintenance amount will be paid by 10th of each succeeding month failure to which opposite party herein shall be at liberty to file execution case before the Executing Court, subject to the limitation as laid down in the Statute.

Accordingly, being CRR 1468 of 2022 is disposed of.

I made it clear that I have not gone into the merits of the application and court below will decide the Application afresh without being influenced by any observation made herein.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(AJOY KUMAR MUKHERJEE, J.)