

30.08.2024
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CRR 2324 of 2024
(CRAN 1 of 2024)

In Re: Dilip Kumar Biswas
.... Petitioner.

Mr. Kushal Mukherjee
Ms. Asrukana Maji
.... For the Petitioner
Ms. Bharati Choudhury
.... For the Opposite Party

Affidavit of service filed on behalf of the petitioner is taken on record.

By consent of the parties the revisional application is taken up for consideration along with the application being CRAN 1 of 2024.

Heard learned counsels for the parties.

The petitioner who is the husband of the opposite party seeks quashing of proceeding in connection with Criminal Execution 17 of 2017 pending before the learned Judicial Magistrate, 2nd Court, Barasat, North 24 Parganas primarily on the ground that the execution case has been initiated in connection with an *ex parte* order granting maintenance to the opposite party passed by the learned trial Court on 11th May, 2017 in C case no. 1144 of 2016. The said order was assailed by the petitioner before this Court and by an order passed on 12th March, 2024 in CRR 1025 of 2024 this Court granted liberty to the petitioner to file an application under Section 25 of the Protection of Women from Domestic Violence Act, 2005

before the learned trial Court for setting aside such *ex parte* order. In compliance thereof the petitioner filed an application under Section 25 of the Act of 2005 before the learned trial Court which is pending. In the meantime, learned trial Court is proceeding with the execution case and by an order passed on 20th May, 2024 issued warrant of arrest against the petitioner.

Learned counsel for the opposite party submits that the petitioner may be directed to pay some amount of maintenance to the opposite party for her sustenance.

I have considered the rival contention of the parties and material on record. Pursuant to the order passed by this Court in CRR 1025 of 2024 the petitioner filed an application under Section 25 of the Act of 2005 before the learned trial Court which is pending. Without considering the said application, learned trial Court is proceeding with the execution petition filed by the opposite party which is detrimental to the interest of the petitioner. Since the *ex parte* order on the anvil of which the execution case is proceeding has been assailed by the petitioner in the application under Section 25 of the Act of 2005, the said application ought to have been disposed of by the learned trial Court prior to the proceeding with the execution of the order.

In view of the above, the trial Court is directed to consider and dispose of the application filed by the petitioner under Section 25 of the Act of 2005 within six months from the next date of hearing fixed before him, without granting any unnecessary adjournment to either of the parties, in accordance with law.

The Execution Case being Criminal Execution no 17 of 2017 shall remain stayed till the disposal of the application under Section 25 of the 2005 Act. The said execution case shall be revived subject to the decision taken by the learned trial Court in the application under Section 25 of the Act of 2005.

CRR 2324 of 2024 is disposed of.

The connection application being CRAN 1 of 2024 is disposed of.

Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Suvra Ghosh, J.)