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CRR 2433 of 2024

In Re : Sidharth Agarwal

... Petitioner.

Mr. A. Bhattacharjee

Mr. Arpit Choudhury

Mr. S. K. Poddar

... For the Petitioner

Mr. Apalak Basu

Nazir Ahmed

Ms. Sanghamitra Mridha

... For the Opposite Party

Heard learned counsels for the parties.

It is submitted on behalf of the petitioner that the opposite party/wife filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 before the learned Judicial Magistrate, Alipore, South 24 Parganas which was registered and made over to the learned Judicial Magistrate, 9th Court, Alipore for disposal. Learned Magistrate directed submission of requisites for service of the application upon the present petitioner. The opposite party filed an application under Section 23(2) of the PWDV Act which was considered and disposed of *ex parte* by the learned Court directing the petitioner/husband to pay Rs.1,82,000/- per month to the opposite party/wife and minor son with effect from 15th December, 2023 in addition to Rs.50,000/- per month for alternative accommodation. The said order was carried in appeal by the petitioner before the learned Sessions Judge, Alipore and by an order passed on 16th May, 2024 the learned

Sessions Judge (in charge) granted stay of the order of the learned Magistrate subject to payment of Rs.62,500 per month to the opposite party/wife and Rs.57,000/- to the minor son before 10th day of each month. The award for alternative accommodation was also stayed by the learned appellate Court.

Learned counsel for the petitioner places reliance on the authority in ***Rajnesh vs. Neha & Anr.*** reported in **(2021) 2 Supreme Court Cases 324** and submits that the quantum of interim maintenance ought to have been considered by the learned trial Court as well as by the learned appellate Court on the basis of pleadings filed by both the parties and the affidavits of disclosure. Such hefty amount of interim maintenance could not have been granted by learned Court without granting opportunity of hearing to the petitioner.

The opposite party is admittedly the legally married wife of the petitioner. The quantum of maintenance to which the opposite party and the minor son are entitled shall be adjudicated by the learned Court upon consideration of submission made on behalf of both the parties as well as the affidavits submitted by them.

At this stage, this Court is inclined to hold that since the criminal appeal is pending before the learned Sessions Judge in charge and the next date has been fixed before the learned Judge on 16th July, 2024, the learned Sessions Judge in charge is directed to consider and dispose of the criminal appeal in accordance with law within one month from the date of appearance of the opposite party/wife before the learned trial Court.

The petitioner shall continue to pay interim maintenance as directed by the learned Sessions Judge vide order dated 16th May, 2024 in criminal appeal no. 124/2024 till the disposal of the appeal.

Learned counsel for the petitioner submits that distress warrant has been issued against the petitioner by the learned trial Court.

Distress warrant be stayed subject to the petitioner paying interim maintenance in favour of the opposite party and the minor child in terms of the order passed by the learned Sessions Judge on 16th May, 2024 for the months of May and June within 15 days from date. The petitioner shall continue to pay the said interim maintenance for each month within the 10th of each succeeding month as directed.

The revisional application being CRR 2433 of 2024 is disposed of.

Urgent certified website copy of the order, if applied for, be given to the parties on compliance of requisite formalities.

(Suvra Ghosh, J.)