

26.07.2024
rc/ct.no.34
Item No.43

CRR No.2664 of 2024
with
CRAN No. 1 of 2024

In the matter of : Sk. Nasir Ali

.....Petitioner

Mr. Bidhayak Lahiri
Ms. Bhaswati Lahiri

...for the Petitioner

Ms. Rita Patra

...for the O.P.

Heard learned counsels for the parties.

The opposite party/wife was granted maintenance under Section 125 of the Code of Criminal Procedure by the learned Trial Court to the tune of Rs.13500/- which was subsequently enhanced to Rs.15000/-. The opposite party challenged the said order of enhancement before the learned Additional Sessions Judge, 2nd Court, Contai, Purba Medinipur in Criminal Revision No. 40 of 2022 and by a judgment delivered on January 24, 2023, the learned Revisional Court directed the petitioner herein to pay an enhanced amount of Rs.16000/- per month to the opposite party/wife from the date of filing of the application within 10th day of each month. The petitioner filed an application before the learned Trial Court under Section 127 of the Code praying for setting aside the order of maintenance on the ground that the opposite party is not entitled to the same and also, the petitioner has retired from service and has no capacity to pay the same.

Learned counsel for the petitioner submits that without disposing of the application filed by the petitioner under Section 127 of the Code, learned Trial Court is proceeding with the execution case being Misc. Execution Case No. 75 of 2023 wherein warrant of arrest has been issued against the petitioner.

Learned counsel for the opposite party submits that two other execution cases being Misc. Case No. 40 of 2023 and Misc. Case No. 30 of 2024 are pending and the petitioner is not paying a single penny to the opposite party/ wife in compliance with the order of the Court.

Upon consideration of the submission made on behalf of the parties, this court is inclined to hold that since the petition filed by the petitioner under Section 127 of the Code is pending before the learned Trial Court being the learned Judicial Magistrate, 1st Court, Contai, Purba Medinipur, the learned Trial Court be directed to dispose of the said case within two 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 3 misc. execution cases pending before the learned Trial Court be stayed till disposal of the application filed by the petitioner under Section 127 of the Code subject to petitioner continuing to pay current maintenance in terms of the order passed by the learned Additional Sessions Judge, 2nd Court, Contai, Purba Medinipur on January 24, 2023 in Criminal Revision No. 40 of 2022.

CRR No. 2664 of 2024 along with CRAN No. 1 of 2023 are disposed of accordingly.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

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

(Suvra Ghosh,J)