

28.06.2024
rc/ct.no.34
Item No.192

CRR No. 2419 of 2023

In the matter of : Amitava Sarkar

.....Petitioner

Mr. S. Mukherjee
Ms. Poulami Dey
Ms. Ankita Nandi

...for the Petitioner

Mr. Samrat Choudhury
Mr. Anit Dey

...for the O.P.

The petitioner being the husband of the opposite party has assailed the order passed by the learned Judicial Magistrate, 4th Court, Barrackpore on March 18, 2023 in Misc. Case No. 332 of 2022 arising out of Misc. Case No. 627 of 2019.

By an order passed on March 20, 2021 in Misc. Case No. 627 of 2019 under Section 125 of the Code of Criminal Procedure, the learned Judicial Magistrate, 4th Court, Barrackpore granted maintenance to the opposite party to the tune of Rs.10,000/- per month ex parte. The petitioner filed Misc. Case No. 332 of 2022 for vacating the ex parte order along with an application under Section 5 of the Limitation Act. The learned Court, by the order impugned, turned down the application under Section 5 of the Limitation Act upon holding that the petitioner was not able to explain the delay for the period December 27, 2021 to October 13, 2022.

Learned counsel for the opposite party opposes the prayer.

It is true that the day to day delay for the period December 27, 2021 to October 13, 2022 has not been explained by the petitioner properly. However, since the petitioner intends to contest the Misc. Case under Section 125 of the Code and has also cleared the entire arrear amount in respect of which the Misc. Execution Case No. 61 of 2021 was filed as appears from the information slip produced, this Court is inclined to hold that the petitioner ought to be granted opportunity to contest the Misc. Case before the learned Trial Court. It is trite law that an application under Section 5 of the Limitation Act should be construed liberally and it is desirable that the matter be considered on merits and not dismissed on technical grounds.

Accordingly, the application filed by the petitioner under Section 5 of the Limitation Act is allowed. As a consequence, Misc. Case No. 332 of 2022 is also allowed. The ex parte order of maintenance passed by the learned Judicial Magistrate, 4th Court, Barrackpore on March 11, 2021 is set aside. Misc. Case No. 627 of 2019 is restored to its original file and number.

The petitioner shall be entitled to contest the Misc. Case under Section 125 of the Code subject to his continuing to pay Rs.10,000/- per month as maintenance for the opposite party and their son. The arrear maintenance which has fallen due shall also be cleared by the petitioner within two months from date.

The learned Trial Court is directed to dispose of the matter as expeditiously as possible, preferably within six months from

the date of communication of this order without granting any unnecessary adjournment to either party, in accordance with law.

Notice of the Misc. Case be served upon the opposite party by the petitioner in accordance with law.

CRR No. 2419 of 2023 is disposed of.

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)