

CRR No. 2771 of 2024

In the matter of : Vivek Agarwal.

..... petitioner.

Mr. Dhiraj Trivedi
Mr. Sunil Gupta
Ms. Supriti Sarkhel
Mr. Bankim Pal ...for the petitioner.

Mr. Anirban Gope
Mr. Dhananjay Banerjee
Ms. Oindrila Ghosh
...for the opposite party.

Photocopy of the demand drafts submitted by the
petitioner is taken on record.

Heard learned counsels for the parties.

Three demand drafts of a total amount of
Rs.3,70,000/- is made over to the private opposite party in
Court this day.

It is not in dispute that the petitioner is continuing
to pay a sum of Rs.20,000/- per month to the private
opposite party in terms of direction of the co-ordinate
Bench of this Court in CO 51 of 2023.

The petitioner has assailed the order of the learned
Sessions Judge, Howrah on 18th April, 2024 in Criminal
Appeal No.90 of 2023 turning down the prayer of the
petitioner under Section 29 of the Protection of Women

from Domestic Violence Act, 2005 and under Section 5 of the Limitation Act. The learned Judge turned down both the applications without going into the merits of the same.

By an order passed on 18th August, 2023 in CRR 2011 of 2023 a co-ordinate Bench of this Court granted liberty to the petitioner to prefer an appropriate appeal under Section 29 of the Act of 2005 before the learned District and Sessions Judge. The learned Appellate Court was further directed to deal with the application to be filed by the petitioner under Section 5 of the Limitation Act leniently and thereupon allow the petitioner to canvass all the issues including pendency of the matrimonial case/civil proceedings, earnings particularly with regard to his capacity, finding of the learned Trial Court while awarding interim monetary allowance and other factual circumstances.

In terms of the said order, the petitioner approached the learned District Judge with an application under Section 29 of the Act of 2005 along with an application under Section 5 of the Limitation Act.

Since the application under Section 29 was turned down by the learned Sessions Judge, without taking into consideration the observation made by this Court in the order passed on 18th August, 2023, the said order is required to be set aside.

In view of the above, the revisional application being CRR 2771 of 2024 is allowed. The order passed by the learned Sessions Judge, Howrah on 18th April, 2024 in Criminal Appeal No.90 of 2023 is set aside.

The learned Sessions Judge is directed to consider and dispose of the application under Section 29 of the Act of 2005 on merits without dismissing the same on the ground of limitation, upon considering the application under Section 5 of the Limitation Act leniently.

The learned Judge is directed to dispose of the appeal as expeditiously as possible, preferably within a period of two months from the date of communication of this order.

Pending disposal of the appeal, the Misc. Execution Case being No.55 of 2023 pending before the learned Judicial Magistrate, 2nd Court, Howrah be stayed subject to the condition that the petitioner shall continue to pay Rs.20,000/- per month to the private opposite party in terms of the order of this Court in CO 51 of 2023.

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

(Suvra Ghosh, J.)