

02.04.2024

Sl. No.: 35

Court No.30
BM

CRR 2391 of 2019
+
IA No.: CRAN 1 of 2019
(Old No.: CRAN 3407 of 2019)

Uttam Kumar Bose
Vs.
The State of West Bengal & Anr.

For the petitioner : Mr. Bibaswan Bhattacharya,
Ms. Bindia Paul.

For the State : None.

For the Opposite Party No. 2 : None.

Affidavit of service filed shows due service upon the opposite parties but in spite of service there is no representation on behalf of the opposite party no.2.

The present revision has been preferred against an ex-parte order No.07 dated 26th February, 2018 passed by the learned Additional Chief Judicial Magistrate at Sealdah, South 24 Parganas in connection with M. Case No.127/17, thereby granting monthly maintenance in favour of the opposite party no.2 herein at the rate of Rs.15,000/- payable within 10th day of each succeeding month of the Gregorian calendar with effect from the date of the aforesaid order.

Learned counsel for the petitioner has brought notice of this court to the address of the petitioner which is at 1, Ferryghat Road, Bhatpara, North 24 Parganas. At page 20 of the revisional application is a copy of the notice/summons issued to the petitioner in a Misc. Execution Case being No.152 of 2018 wherein

it appears that the said notice has been served upon the petitioner at the same address at Bhatpara. At page 23 is a copy of the envelope in which summons was sent to the petitioner and the address on the envelope is also at Bhatpara.

It is submitted by the learned counsel for the petitioner that the address in the application under Section 125 of the Cr.P.C. shows the wrong Police Station and the PIN code is wrong.

It is further submitted that the application praying for interim maintenance allowance also has the wrong address and as such the petitioner was never served and the ex-parte order under challenge was passed by the trial court on taking up the matter ex-parte, which has thus caused prejudice to the petitioner.

It is also submitted by the learned counsel for the petitioner that such an order was first brought to his notice, when he received the summon in the Execution Case which is dated 31.07.2019 and was received by the petitioner on 10.08.2019 and the present revisional application has been filed on 29th August, 2019. As such this satisfies the Court that the petitioner filed the present revision within 30 days **from the date of knowledge.**

Accordingly, the delay in the present proceeding is condoned in the interest of justice and the application under Section 5 of the Limitation Act being IA No.: CRAN 1 of 2019 (Old No.: CRAN 3407 of 2019) is allowed.

The revisional application is also taken up for hearing, considering the fact that the order challenge is of the year 2018.

In view of the discussion made above, it is on record that service upon the petitioner was not properly effected and the

learned trial court without assessing the same passed the order under challenge.

Considering the said fact, the order under challenge being ex-parte order No.07 dated 26th February, 2018 passed by the learned Additional Chief Judicial Magistrate at Sealdah, South 24 Parganas in connection with M. Case No.127/17, **is set aside in the interest of justice** and Misc. Case No.127 of 2017 is restored to the file of the learned Additional Chief Judicial Magistrate, Sealdah with a direction that the learned ACJM on proper notice to both parties shall dispose of the Misc. Case **within a period of three months** from the date of receipt of this order, in accordance law.

As the order has been set aside, the learned Magistrate shall dispose of the application as per the guidelines of the Hon'ble Supreme Court in ***Rajnesh vs. Neha & Anr., (2021) 2 SCC 324.***

The revisional application is allowed.

All applications, if any, connected thereto stand disposed of.

Interim order, if any, stands vacated.

Let a copy of the order be sent to the learned trial court for compliance.

(Shampa Dutt (Paul), J.)