

03
04.01.2024
Mb

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 18087 of 2023

Smt. Soma Pratihari

Vs.

Union of India & Ors.

Mr. Bidhayak Lahiri

...for the petitioner

Mr. Anindya Sundar Das

...for the Union of India

1. The present writ petition has been filed by an unfortunate wife who is fighting for maintenance from her husband.
2. In paragraph no. 7 of the writ petition, it has been stated that the petitioner was compelled to file an application under Section 125 of the Code of Criminal Procedure bearing Case No. ACM 764 of 2014 before the Fifth Judicial Magistrate at Alipore along with a prayer for interim maintenance. The Judicial Magistrate directed the petitioner's husband to pay an amount of Rs.4,000/- each per month to the petitioner and her minor daughter, totalling Rs.8,000/- per month, as interim maintenance.
3. However, in paragraph no. 8 of the writ petition it has been contended that the husband having

flouted the said order, the petitioner had to take out an application for execution, bearing M. Execution Case No. 292 of 2018 for realization of arrear maintenance amount. Such application was filed in the month of June, 2018. However, it is alleged that till date, the husband has not been paying any amount, for which a distress warrant was issued against the husband of the petitioner on March 04, 2022.

4. Learned counsel for the petitioner submits that since the property and/or assets of the husband of the petitioner could not be ascertained, the petitioner is not getting fructification of the order of maintenance, which the petitioner is enjoying.

5. In such context, the petitioner approached the concerned Bank where the petitioner's husband is holding a salary account for information regarding the amount lying in the said account. However, the Bank turned down such request under the plea that the said information was exempted under Section 8(1)(e) of the Right to Information Act, 2005. The petitioner thereafter preferred a first appeal, which was also turned down. After that, the petitioner has preferred a second appeal, which is now pending before the Second Appellate Authority under the Right to Information Act.

6. It is submitted that in view of the nature of the litigation pending between the petitioner and her husband, the information sought by the petitioner is not protected under Section 8(1)(e) of the Right to Information Act, 2005.

7. Heard learned counsel for the petitioner and the Union of India who are represented.

8. It transpires that in the present case, the rigour of Section 8(1)(e) of the 2005 Act is diluted inasmuch as the information sought by the petitioner directly pertains to litigation pending before the competent criminal court. Not only that, the criminal court has already passed an order of maintenance in favour of the petitioner. Thereafter, the petitioner's husband having flouted such order, an Execution Case has been filed by the petitioner. However, even in the teeth of the order of the criminal court, the husband has not been paying any amount to the petitioner, for which it has been necessitated that in order to bring fruition to the said order of the court, the exact amount lying in the account of the husband of the petitioner is required to be ascertained.

9. Thus, the information sought by the petitioner cannot be restricted to information available to a person in his fiduciary relationship but the same is necessary to implement orders of the Magistrate.

10. As such, it is the bounden duty of the Bank to assist the Magistrate's Court in compliance of its order by furnishing the information sought by the petitioner.

11. In view of the plight of the petitioner and her daughter, who are running from pillar to post for maintenance, an exception is being carved out in the present case. Instead of directing the Second Appellate Authority to decide the appeal in the light of the observations made above, to cut short unnecessary paraphernalia and to give immediate relief to the petitioner and her daughter, W.P.A. No. 18087 of 2023 is allowed, thereby directing the respondent no. 4, that is, the Assistant General Manager, Indian Overseas Bank and Central Public Information Officer, to furnish the information pertaining to the amount lying in the account of the petitioner's husband to the petitioner at the earliest, positively within one week from the date of communication of this order to the respondent no. 4 by the petitioner.

12. For compliance of this order, the respondent no. 4 shall act on a server copy of this order, without insisting upon prior production of a certified copy thereof.

13. There will be no order as to costs.

14. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)